

1 STATE OF MINNESOTA  
2 OFFICE OF ADMINISTRATIVE HEARINGS  
3 FOR THE MINNESOTA POLLUTION CONTROL AGENCY

4 -----  
5  
6 In the Matter of the Proposed  
7 Rules Relating to Water  
7 Quality Variance Procedures;

8 Revisor's ID No. R-4136

9 -----  
10

11 PUBLIC HEARING  
12 OAH DOCKET NO. 82-9003-32864

13  
14 The above-entitled matter came on for  
15 hearing before Administrative Law Judge  
16 Barbara J. Case, at 520 Lafayette Road, St. Paul,  
17 Minnesota, on the 4th day of February, 2016, before  
18 Kelly L. Brede, Court Reporter and Notary Public in  
19 and for the County of Anoka, State of Minnesota,  
20 commencing at approximately 9:00 a.m.

21

22

23

24

25

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## 1 A P P E A R A N C E S

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10 7  
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25 Administrative Law Judge Barbara J. Case.\*

25 \* \* \*

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## 1 P R O C E E D I N G S

2 (Exhibits A through O were marked prior  
3 to the hearing.)4 HEARING OFFICER CASE: Good  
5 afternoon, everyone. I'm going to go through the  
6 procedures of just how the day will go today, just a  
7 little bit of the agenda and some other points,  
8 including when the comment period will close and when  
9 the period is for rebuttal. I will get to that, so  
10 for the people interested in that, that will come a  
11 little bit later.12 Then we'll have some procedural matters  
13 that will be dealt with by the Department. Then we'll  
14 take a short break, and then we'll come back and have  
15 a presentation from the Department. That's a general  
16 overview. And whoever is here and wants to speak will  
17 be invited to speak.18 I have a cold. I don't know if you can  
19 tell. If you need me to speak up, just raise your  
20 hand and I will ask you, What do you need? And you'll  
21 say, I need you to speak up, and I will do that. If  
22 you need anything at all in terms of speaking today,  
23 some kind of accommodation, also let us know that, and  
24 we'll do our best to accommodate you.

25 So again, my name is Barbara Case, and I'm

1 an administrative law judge with the State Office of  
2 Administrative Hearings. The office is independent of  
3 the Pollution Control Agency that is proposing to  
4 adopt rules today, and, also, is not associated with  
5 any other participants in this hearing. The role of  
6 our office is to provide hearings like this in a  
7 manner that's impartial and fair to all parties.  
8 Judge Case is fine, by the way.

9                   I'm going to stop already and say: Is  
10 there a sign on the door that tells people to go to  
11 the overflow room?

12                   MS. LYNN: There isn't, but I can --

13                   HEARING OFFICER CASE: Can someone  
14 put one on? I think people are also welcome to come  
15 in, because we have a few seats left, but I just  
16 noticed some people come and then walk away. Thanks.

17                   It's approximately 3:30, almost 3:35 on  
18 February 4, 2016, and we have convened in Room 100 of  
19 the Minnesota Pollution Control Agency, at 520  
20 Lafayette Road North, St. Paul, Minnesota.

21                   And we've also convened by video  
22 conferencing in the Minnesota Pollution Control  
23 Agency's Duluth office at 525 Lake Avenue, Suite 400,  
24 in Duluth.

25                   And we also have convened in an overflow

1 room at this 520 Lafayette Road North address, where,  
2 if we have more people than we can accommodate here,  
3 they are going to be listening to the proceedings in  
4 that overflow room, and I'm looking at the Minnesota  
5 Pollution Control Agency to say: Is that all correct?

6 MS. KESSLER: Yes.

7 HEARING OFFICER CASE: Is anyone  
8 having trouble hearing at this point? Okay. Thank  
9 you.

10 There's a handout on the table here and in  
11 the video conference room here and in Duluth entitled  
12 "State of Minnesota Office of Administrative Hearings  
13 Rule Hearing Procedures," and it looks like this  
14 (indicating), and it describes the procedures for rule  
15 hearings like this in more detail than I'm going to go  
16 into today, so if you're interested in the details of  
17 the process, this is something more than I'll do  
18 today, but something less than we do in all of the  
19 statutes and rules.

20 This also has information on how to submit  
21 comments, so if you are interested in doing that,  
22 after the hearing, it would be good to take one of  
23 these with you. There are also documents, which I'm  
24 sure you saw when you came in, and I assume there are  
25 duplicates of those in each of the other rooms, that

1 are related to the rule amendments.

2                   There's also the sign-up sheet here and in  
3 Duluth and in the overflow room, and if you did not  
4 sign in, I'd urge you to do so because it helps me to  
5 prepare an accurate report and record of this hearing  
6 if everyone signs it.

7                   If you wish to make a comment today, there  
8 was a column when you signed in that said, Speak at  
9 Hearing, or something similar to that, and what I will  
10 do, after the presentation by the Department, is get  
11 the sheets. First from Duluth, and anyone who is in  
12 Duluth will be invited to speak first, and then we'll  
13 do people who wish to speak that are here in St. Paul.

14                   So this hearing is part of the process  
15 that is used for agencies to adopt rules, under the  
16 Minnesota Administrative Procedure Act, and the  
17 purpose of this hearing is to develop and receive  
18 information on three key issues under the act; namely,  
19 whether the Minnesota Pollution Control Agency has the  
20 legal authority to adopt the proposed rules, fulfilled  
21 all relevant legal and procedural requirements in  
22 order to promulgate rules, and demonstrated that among  
23 the possible alternatives for rule making that were  
24 available to the Agency, the rules that the Agency has  
25 proposed are needed and reasonable.

1                   It's helpful to keep those points in mind  
2 when you're asking questions of the Agency or  
3 submitting your comments. Because part of the purpose  
4 of this hearing today is to develop information  
5 related to the proposed amendments, you will be able  
6 to ask questions of people here from the Agency, when  
7 it's your turn to come up and make a comment or ask a  
8 question.

9                   They will, likewise, be able to ask  
10 questions of people who come up to make comments, and  
11 I may ask questions of the people who come up to make  
12 comments, and I may ask the Agency, because the point  
13 here is to have a full and fair hearing of the issues.

14                  If you previously submitted comments --  
15 and about six comments were received prior to today --  
16 those are going to be offered, I believe, by the  
17 Agency into the record as an exhibit.

18                  And they will also be, it's my  
19 understanding, posted on -- there's a new system in my  
20 office called "e-filing," where people can make  
21 comments electronically, but we are going to find a  
22 way to have the comments that have already come in and  
23 put them there. That's my understanding. If not  
24 there, they will be on our website and the MPCA's  
25 website.

1                   That's a long way of saying, as well, that  
2 if you've submitted a written comment or you are going  
3 to submit a written comment, you don't need to speak  
4 today. You're welcome to, but you don't have to. You  
5 have both options available to you, and if you  
6 submitted something in writing, you certainly don't  
7 need to come up and read that into the record. It  
8 will be part of the record.

9                   All right. So after I'm done with my  
10 introduction here, then Mr. Adonis Neblett, who is  
11 General Counsel for the Minnesota Pollution Control  
12 Agency, will introduce the Minnesota Pollution Control  
13 Agency panel that's here from the Department.

14                   Next, Mr. Neblett will, for the Minnesota  
15 Pollution Control Agency, submit the exhibits it  
16 wishes to include in the hearing record, and you may  
17 look at the exhibits during the break, but please  
18 leave them on that table.

19                   After that, it's my understanding that  
20 Ms. Elise Doucette will make a brief oral presentation  
21 about the rule amendments and the reasons for them; is  
22 that correct?

23                   MR. NEBLETT: Yes.

24                   HEARING OFFICER CASE: Finally, the  
25 rest of the hearing time is allotted for questions and

1 statements from the members of the public. If I  
2 haven't said it enough times, please sign in at the  
3 hearing register, and if you wish to speak, mark that  
4 you wish to speak.

5 We'll call you, again, relatively in  
6 order, and if you need some special accommodation in  
7 terms of the order of things, you can talk to me at  
8 the break.

9 I should have said earlier that we have a  
10 court reporter here with us today, Kelly Brede, so  
11 it's important that everyone speak audibly, not using  
12 nods of the head, et cetera, so that she can take down  
13 an accurate record of anything that we say today, so  
14 if you can identify yourself by name and also if you  
15 represent any particular group, if you could identify  
16 that as well.

17 And the court reporter just reminded me  
18 that it's not -- don't just state your name, please  
19 spell your name for the record, because people believe  
20 that every name -- Mark is always spelled M-A-R-K, but  
21 it's not. Sometimes it's spelled M-A-R-C. So no  
22 matter how ordinary you believe your name to be,  
23 please spell it for the court reporter.

24 Again, although you may ask questions, you  
25 don't need to do that in a way that it would be done

1 in a court trial. This is more informal than that, so  
2 you don't have to ask your question -- you don't have  
3 to make your points by asking a question. You can  
4 simply make your point.

5 And again, I may interrupt a speaker from  
6 time to time to remind them of speaking audibly and  
7 not nodding their head, or ask for spellings or  
8 complete words for what are abbreviations. I hope  
9 that no one will take offense at my interruption. I'm  
10 simply trying to ensure that we have an accurate  
11 hearing record, so if I do that, that is why.

12 If you have a written copy of your  
13 remarks, you can leave them here as an exhibit, and  
14 we'll mark that and enter that into the record. You  
15 can also submit your comments in writing after the  
16 hearing, and comments may be submitted as, again,  
17 described on this piece of paper from the Office of  
18 Administrative Hearings.

19 One of the ways is through a site called  
20 "e-comments," which I will admit to you is a new  
21 process. If you want to submit it by the  
22 old-fashioned way by mail, you may do that, and all of  
23 those choices and ways to do it are described on that  
24 paper. If you're submitting comments, it's helpful if  
25 you refer to the docket number. The docket number in

1 this case is: 82-9003-32864.

2 At the close of the hearing, you will have  
3 20 calendar days to submit your comments. By my  
4 calculations, that deadline will be Wednesday,  
5 February 24, 2016.

6 That said, though, the earlier you make  
7 your comments, the earlier you submit your comments,  
8 the more time you're giving the Agency to think about  
9 those comments and respond to them, so it's much  
10 preferable to do it, say, in the first five days than  
11 to do it the last five days, so that the Agency has  
12 time to consider and respond. It's good to give them  
13 as much time as possible.

14 After that date of February 24, 2016,  
15 there's a five-working-day rebuttal period. That  
16 second period is not an opportunity to submit initial  
17 comments or evidence. Instead, it's an opportunity  
18 for you to review and respond to the comments  
19 submitted by the Department or others during the  
20 comments period. That rebuttal period ends, by my  
21 calculation, on Wednesday, March 2, 2016.

22 And I digress a little bit from my script  
23 and say: Because of this new process that we have,  
24 that's this e-filing system where you can make  
25 comments, according to that system -- as I understand

1       it, not having used it -- you can make comments and  
2       others can respond to your comments.

3               I'm going to treat all comments that come  
4       in within the 20-day period as being comments, not  
5       rebuttal. That's about all I can say about that right  
6       now, but that's the way I'm going to parse that.

7               After the second deadline passes, that  
8       March 2, 2016, I will prepare a report, and that  
9       report will contain my decisions about whether or not  
10      the Department has met its burden, that I discussed  
11      earlier; namely, whether the Department has statutory  
12      authority, has fulfilled all necessary legal  
13      requirements and procedural requirements, and  
14      demonstrate the need and reasonableness of each  
15      portion of the proposed rules.

16               If you want to obtain a copy of my report,  
17      please put your name and address on one of the  
18      envelopes at the respective sign-in tables --  
19      hopefully, there's some in the Duluth location -- and  
20      we will see that you get notice when the report is  
21      available, and you will be informed on how to obtain a  
22      copy.

23               Are there any questions before we proceed  
24      to Mr. Neblett?

25               MS. MACCABEE: Your Honor, if we

1 just would like to have an electronic copy but not a  
2 paper one, what's the best way to ensure that?

3 HEARING OFFICER CASE: A copy of the  
4 report?

5 MS. MACCABEE: Yeah. Just an  
6 electronic copy.

7 HEARING OFFICER CASE: I believe,  
8 although I'm not absolutely certain, that probably the  
9 easiest way is to go on to our website -- the Office  
10 of Administrative Hearings' website for this  
11 particular rule or the Pollution Control Agency's  
12 website. I'm sure they'll post it there as well.

13 And then I think you'll just be able  
14 to send it to yourself electronically from there.

15 MS. MACCABEE: Is there a way, like  
16 with the PUC document, for example, that you can be  
17 notified when it comes out, even if it's -- or --  
18 or -- even if it's not sent as an attachment, just a  
19 notice that it is available on a link?

20 HEARING OFFICER CASE: Okay. I  
21 understand the question, and I'm going to ask the  
22 Department to address that, whenever you wish. Now  
23 or -- Mr. Neblett.

24 MR. NEBLETT: The PCA does not have  
25 an e-docket system like the PUC does, so we would not

1 be able to do that.

2 HEARING OFFICER CASE: And you're  
3 not going to send the report out to the same list of  
4 people that were -- I mean, I don't know that  
5 there's --

6 MR. NEBLETT: I don't think that we  
7 typically do. I think we would, as you say, post it,  
8 and then it will also be available online. I believe  
9 we typically do that. Lynn?

10 HEARING OFFICER CASE: Okay. And I  
11 know that we don't, because we wouldn't even -- this,  
12 right now is the process, is filling out the envelope  
13 and then getting notification that it's available and  
14 how to get a copy, and I assume it will tell you how  
15 to get it paper or electronically.

16 MS. LYNN: Yes. That was my  
17 understanding, was the purpose of the envelopes is to  
18 be notified by you when you're done with your report,  
19 and when you're done, you notify us, you send it to  
20 us, we post it on the Agency rulemaking web page with  
21 all of the other documents. I don't know if it's  
22 posted on your pages or not.

23 My suggestion would be, within the 20 days  
24 and within the -- the whole time after this hearing,  
25 we will continue to post documents as they become

1 available on our rulemaking web page, the exhibit, the  
2 comments, et cetera, et cetera. And then when we get  
3 the report, that will go on there as well.

4 Do we send out a notification every time  
5 we post something on our website? No, we don't. Does  
6 that help?

7 HEARING OFFICER CASE: Yes. Thank  
8 you.

9 All right. Any other questions at this  
10 point? I'm seeing no one.

11 I'll ask Mr. Neblett to introduce the  
12 panel.

13 MR. NEBLETT: Thank you, Judge Case.

14 For the record, my name is Adonis Neblett.  
15 I'm the general counsel here at the Minnesota  
16 Pollution Control Agency. My name is spelled, first  
17 name, A-D-O-N-I-S, last name, N-E-B-L-E-T-T.

18 I'm here appearing on behalf of the Agency  
19 in this ruling-making proceeding, which is -- in which  
20 we are proposing to amend Minnesota rules governing  
21 water quality variances in Chapters 7050, 7052, and  
22 7053.

23 You have already met Mary Lynn. I would  
24 like to introduce the other members of the rulemaking  
25 team here that are available to provide a brief

1 presentation and respond to your questions as  
2 appropriate or if they are able.

3                   Mary Lynn, as you are aware, is a  
4 rulemaking coordinator of the Resource Management and  
5 Assistance Division of the PCA. She is the project  
6 manager of this rule making to amend the procedural  
7 rules for water quality variances.

8                   She has responsibility for administrative  
9 procedures for this rule making and is the point of  
10 contact for process-related questions.

11                  To my right is Katrina Kessler. She is  
12 the manager of the Water Assessment Section in the  
13 Environmental Analysis and Outcomes division of the  
14 Minnesota Pollution Control Agency. That section has  
15 responsibility for development of water quality  
16 standards, establishing F1 limits, overseeing the  
17 review of variance requests.

18                  To her right is Elise Doucette. She is a  
19 policy analyst in the Environmental Analysis and  
20 Outcomes division of the Minnesota Pollution Control  
21 Agency. She is the lead staff on the promulgation of  
22 the proposed amendments to the water quality variance  
23 rules and will probably take the lead -- or be taking  
24 the lead on the Agency's presentation.

25                  At the end of the table is Steve Weiss.

1 Steve Weiss is the supervisor of the Effluent Limits  
2 Unit within the Water Assessments section at the  
3 Minnesota Pollution Control Agency. Steve oversees  
4 the implementation of water quality standards and  
5 variances in wastewater permits.

6 At this time, Your Honor, I'd like to  
7 submit into the hearing record the exhibits outlined  
8 in that notebook before you. I will first provide  
9 some brief description of what's in those exhibits,  
10 and I understand that those present may want to take a  
11 moment to peruse them during the break.

12 The purpose of these exhibits is to  
13 document that, indeed, the Agency has the legal  
14 authority to adopt these rules, to demonstrate that we  
15 have fulfilled all legal and procedural requirements  
16 for promulgating rules, and that, indeed, the rule  
17 sections are necessary and reasonable. So they will  
18 demonstrate the need and reasonableness of the rule.

19 The exhibits are identified as Exhibits A  
20 through O. A through K of the exhibits are identified  
21 or are in key to correspond to the requirements of  
22 Minnesota Rule 1400.2220, Subpart 1. Without reciting  
23 every -- the name and title of every one of the  
24 exhibits, I'll provide a brief summary of them.

25 In the exhibit index, the exhibit

1 identified as Exhibit C contains a proposed amendment  
2 to the rule.

3 Exhibit D1 is the SONAR. D2 is an  
4 addendum to the SONAR that was necessitated by the  
5 disbanding of the MPCA and made corrections to remove  
6 references to the now defunct board.

7 Many of the exhibits demonstrate that the  
8 Agency has fulfilled all relevant and legal and  
9 procedural requirements, and these would include:  
10 Requests for Comments, which are A1, A2; the  
11 Certificates of Mailing in G1 and G2; and the  
12 corresponding Notices of Rulemaking and Notices of  
13 Hearing are in Exhibits F1 and F2.

14 There is also the Certificate of  
15 Additional Notice in H1 and H2; Notices to the  
16 Legislators in K9; The approvals by the Office of  
17 Management and Budget of the Agency's fiscal analysis  
18 of the impacts of the rules in K1.

19 Additionally, we added in the written  
20 comments. There were six written comments along with,  
21 I believe it was, 52 requests for hearing, and those  
22 are Exhibits I.

23 We have the presentation that will --  
24 well, the slides for the presentation that will be  
25 given by Ms. Doucette in Exhibit L.

7 At this time I would move for -- that the  
8 ALJ receive the exhibits into the record, subject to  
9 any input from the public.

10 HEARING OFFICER CASE: Exhibits A  
11 through 0 are accepted into the record.

12 (Exhibits A through O were received into  
13 evidence.)

14 MR. NEBLETT: And, as I understand  
15 it, we will -- the ALJ had proposed that -- Judge Case  
16 proposed that we take a break before we go into the  
17 actual presentation. I would like to say that  
18 Ms. Doucette will do that presentation and be  
19 supported by those present from the PCA.

20 I appreciate that we are here and  
21 available to answer questions. I only say that we  
22 will answer as we are able. If questions involve  
23 specific legal or regulatory interpretations of rules  
24 that go beyond something that's in our SONAR or  
25 presentation, we would prefer to have time to give

1       those due consideration in order to give you a  
2       considered response.

3               Certainly, factual matters and procedural  
4       matters, we will also do our best to answer those  
5       questions.

6               HEARING OFFICER CASE: All right.

7       Very good.

8               Right now, we will go off the record and  
9       take a short break. Just five minutes. So at 4:05,  
10      we'll come back.

11               (At this time a short break was taken  
12               from 3:58 p.m. to 4:05 p.m.)

13               HEARING OFFICER CASE: It's 4:05.  
14      We took a short break to allow people time to look at  
15      the exhibit book, and we are now going to proceed with  
16      the Department's presentation.

17               MS. DOUCETTE: Thank you, Judge  
18      Case. I am going to remain seated.

19               (At this time a slide presentation  
20               commenced.)

21               MS. DOUCETTE: My name is Elise  
22      Doucette. That's E-L-I-S-E, D-O-U-C-E-T-T-E. I am a  
23      policy analyst and have been working on these rules  
24      since 2012.

25               It is important to note here that the

1 proposed rules amend the procedural rules for water  
2 quality variances. These rules establish the  
3 procedures that must be followed for a Permittee to  
4 request a variance.

5 The proposal rules do not include any  
6 specific water quality variances, they merely  
7 establish a process by which individual permit holders  
8 can apply for a variance from a discharge limit based  
9 on a water quality standard.

10 Our presentation today will give an  
11 overview of answers to the following questions, such  
12 as: What is a water quality variance? Why is MPCA  
13 amending the water quality variance procedures? Who  
14 is affected by these rules? And how were these rules  
15 developed?

16 What we hope to convey at this hearing are  
17 the steps MPCA took to bring these rule amendments  
18 forward, interactions with regulated parties,  
19 stakeholders, and the EPA, comments we received on the  
20 proposed rules during the comments period, and rule  
21 changes we are proposing based on those comments.

22 A variance is a temporary or time-limited  
23 change to a water quality standard for a specific  
24 pollutant. The key term here is "temporary." The  
25 intent is for the discharger to work towards

1 attainment of the final -- excuse me -- of the  
2 effluent limit based on the water quality standard.

Because water quality standard variances are issued to a specific discharger -- excuse me -- because water quality standard variances issued to a specific discharger represent the temporary modification to a water quality standard, EPA must approve water quality standard variances.

1                   The existing procedural rules for  
2 variances reside in three chapters of the Minnesota  
3 Rules: Chapters 7050, 7052, and 7053.

4                   The Chapter 7052 variance rules were  
5 updated in 1998 to comply with the Great Lakes  
6 Initiative, or GLI. The Chapter 7050 and 7053  
7 variance rules have not been changed since their  
8 adoption in 1964.

9                   The variance procedures in the three rule  
10 chapters are inconsistent. There are also differences  
11 between the existing state variance procedures and the  
12 prior federal procedures. These differences have  
13 historically made review and approval of the variances  
14 difficult.

15                  Currently, dischargers and MPCA have to  
16 meet different requirements, under state and federal  
17 rules. This led to inefficiencies and loss of time.  
18 Which, in turn, lead to loss of money on behalf of the  
19 Permittee. For example, a separate engineering report  
20 may be required for EPA that was not required by MPCA,  
21 or questions that needed answering by EPA were not  
22 asked early in the process. Again, leading to a loss  
23 of time.

24                  As indicated on this slide, EPA first  
25 requested comments on federal variance procedures and

1 other federal water quality standard regulations in  
2 July of 1988. EPA again requested comments in July  
3 of 2010. At neither time did EPA provide a draft  
4 language.

5 MPCA began to evaluate -- began its  
6 evaluation of state variance procedural rules in 2012.  
7 As part of that work, MPCA conducted a process  
8 improvement project in an attempt to address the  
9 delays and inefficiencies I mentioned in the previous  
10 slide.

11 The MPCA and stakeholders concluded that  
12 state variance procedural rules needed to be amended  
13 to be more consistent with federal requirements. The  
14 resulting state rulemaking began in October, 2012, and  
15 the initial request for comments.

16 In September, 2013, EPA made their  
17 proposed variance procedures available. The MPCA  
18 modeled our draft variance rule language on the  
19 proposed federal variance procedures. As noted on the  
20 slide and highlighted in yellow, MPCA spoke with EPA  
21 after their draft rule language was proposed with the  
22 intent of understanding if the proposed state rule  
23 amendments aligned with the proposed federal rules.

24 During these conversations, MPCA and EPA  
25 came to the conclusions that the state and federal

1 proposed rules were consistent, and that MPCA should  
2 continue its rulemaking process. MPCA received  
3 executive approval in June, 2015, to publish the  
4 proposed amendments to the state variance rule  
5 procedures.

6                   Despite continued regular conversations  
7 with EPA Region 5, we were not aware until late July,  
8 2015, in a conversation with EPA Region 5, that the  
9 variance rules were to be final in August. Between  
10 August and November, we continued discussions with EPA  
11 Region 5, as noted on this slide. Both agencies  
12 compared proposed federal and state variance rules.  
13 We mutually determined that these rules were similar  
14 enough for the State to move ahead.

15                   The terms of the variance and other  
16 details are controlled by the NPDES/SDS permit.  
17 Therefore, dischargers of wastewater, whether domestic  
18 or industrial, are the entities that may be affected  
19 by this change.

20                   As stated earlier, a discharger that is  
21 struggling to comply with a limit, based on a water  
22 quality standard, needs flexibility. In these  
23 instances the MPCA works with dischargers to  
24 understand their economic and treatment technology  
25 challenges.

1                   Ultimately, the State may make a  
2 preliminary determination to grant a variance. EPA is  
3 responsible for final approval.

4                   As stated previously, this rulemaking  
5 process began after MPCA and stakeholders concluded  
6 that state variance procedural rules needed to be  
7 amended to be more consistent with federal  
8 requirements to make it clear that MPCA would  
9 address -- what MPCA would address when considering  
10 variance. MPCA has engaged the public and worked with  
11 EPA during this rulemaking.

12                  As you've heard, variances are a permit  
13 implementation tool that currently exists. There is a  
14 fee associated with applying for a variance. This fee  
15 is not under MPCA authority and is not addressed in  
16 this ruling.

17                  The proposed rule does not add any  
18 additional costs to regulated parties. If a Permittee  
19 finds that controls to meet a water quality-based  
20 effluent limit are so burdensome as to result in  
21 substantial and widespread negative economic and  
22 social impacts, the Permittee may apply for a variance.  
23 At that point, the Permittee may pay an application fee  
24 to the MPCA.

25                  As part of the state and federal

1 evaluation of a variance application, the financial  
2 burden to install treatment technology and to meet the  
3 discharge limits are considered. Just to be clear, we  
4 are not changing the variance fee. The economic  
5 burden to Permittees is and will continue to be  
6 considered as part of an individual variance request.

7 Previously, the variance procedures in  
8 Chapters 7050 and 7053 did not include the criteria  
9 under which EPA would approve a variance. Proposed  
10 rules do include these criteria, and are now organized  
11 in a way similar to Chapter 7050 -- 2 -- 7052.

12 First, applicability, which establishes  
13 what the discharger may do to demonstrate that they  
14 are eligible for a variance.

15 Conditions for approval. This includes  
16 the criteria that must be met during -- before a  
17 variance can be allowed.

18 Next, what is required to be submitted.

19 Final decision. This includes conditions  
20 that would be included in a permit to ensure progress  
21 toward final limit; such as, compliance activities and  
22 interim limits.

23 Renewal requirements, should the Permittee  
24 need a renewal of the variance.

25 The term or length of the variance.

Definitions were requested for highest attainable condition and the use of the term "water quality standard" as opposed to the term "use."

21 The MPCA is proposing changes in response  
22 to comments we received. The proposed changes are  
23 posted on the water quality variance rule web page,  
24 and copies are available at this hearing.

25 The proposed changes are summarized on

1       this next slide. The MPCA will change the term of the  
2       variance to be consistent with the final federal  
3       variance rules.

4               The proposed State rule includes a  
5       variance term of as short as possible, but no longer  
6       than ten years. This is inconsistent with the  
7       draft -- this is consistent -- excuse me -- consistent  
8       with the draft variance procedures proposed by EPA in  
9       September, 2013.

10               All commenters made reference to the term  
11       of the variance in their comment letters, and for that  
12       reason, MPCA proposes to change the term of the  
13       variance to "only as long as needed to achieve the  
14       highest attainable condition."

15               MPCA also proposes to change the rules to  
16       specify that variances lasting longer than five years  
17       will be reevaluated every five years.

18               MPCA will add aquatic-life protection  
19       uses, as suggested by EPA, to the fifth of six  
20       criteria in Chapter 7050. Their comment letter -- in  
21       their comment letter, EPA indicated that they would --  
22       it will be difficult for them to approve a variance  
23       using the criteria for a water quality standard  
24       designed to protect something other than aquatic life.

25               The criteria in question relates to

1 impacts to aquatic life from the physical conditions  
2 of a water body, such as flow and depth. MPCA  
3 proposes this change to be clear and consistent with  
4 EPA.

5 Finally, EPA has indicated multiple times  
6 that variances to discharge restrictions under  
7 Chapter 7053 do not need EPA approval. Therefore, the  
8 MPCA proposes to change the rule language in  
9 Chapter 7053 to make this clear.

10 The public has the opportunity to submit  
11 oral and written comments today and during the  
12 post-hearing comment period. The post-hearing  
13 administrative process is summarized on this slide.

14 And, Judge Case, this ends the  
15 presentation on amended rules for water quality  
16 variance procedures.

17 (At this time the slide presentation was  
18 concluded.)

19 MR. NEBLETT: Judge Case?

20 HEARING OFFICER CASE: Yes.

21 MR. NEBLETT: May I ask a clarifying  
22 question?

23 HEARING OFFICER CASE: Yes.

24 MR. NEBLETT: Ms. Doucette, during  
25 your presentation, in reference to Slide Number 3, I

1 believe you may have misspoke, and I'd like to give  
2 you an opportunity to correct your statement for the  
3 record.

4 I believe that when talking about the --  
5 the variance rule discussions following August, 2015,  
6 and our November, 2015, proposal, you indicated that  
7 the comparison that was being made was between  
8 proposed federal rule and proposed state rule.

9 And would you like to correct that  
10 statement?

11 MS. DOUCETTE: Yes. Thank you.

12 Both agencies compared proposed State and  
13 Final Federal Variance Rules, when mutually determined  
14 that the rules were similar enough for the State to  
15 move ahead. Thank you.

16 HEARING OFFICER CASE: Ms. Doucette,  
17 the written comments that you had before you when you  
18 were doing your presentation, would you like to offer  
19 those as an exhibit?

20 MS. DOUCETTE: Yes. Thank you,  
21 Judge. Yes, I would.

22 HEARING OFFICER CASE: Your comments  
23 will be received as Exhibit 1.

24 (Exhibit Number 1 was received into  
25 evidence.)

1 HEARING OFFICER CASE: Any other  
2 documents we take today here we'll mark with numbers  
3 to differentiate them from the Department's exhibits  
4 that were introduced earlier.

5 You can bring that -- is that all right?

6 MS. DOUCETTE: Yes.

7 MR. ETTINGER: Excuse me, Your  
8 Honor. Can I ask a clarifying question also at this  
9 point?

10 HEARING OFFICER CASE: All right.  
11 Let's go off the record.

12 (A discussion was held off the record.)

13 HEARING OFFICER CASE: Would you  
14 state your name.

15 MR. ETTINGER: I am Albert Ettinger,  
16 E-T-T-I-N-G-E-R. I am here representing the Minnesota  
17 Center for Environmental Advocacy.

18 I had one question, at this point, to  
19 clarify her remarks. I'm not sure whether I heard  
20 them wrong or you misspoke or maybe I'm just confused,  
21 but with regard to 7053.0195, I was not clear as to --  
22 it sounded, and I thought, that you had deleted that  
23 reference that the permit requirements be -- not get  
24 approval from US EPA, because they do need approval  
25 from US EPA, but I thought I heard you just say that

1           US EPA does not need them approved.

2                   What is correct there?

3                   MS. KESSLER: I can answer that.

4           I'm Katrina Kessler, K-A-T-R-I-N-A, K-E-S-S-L-E-R, and  
5           we do send variances to EPA from all of our water  
6           quality standards chapters, but historically, they  
7           have said that they do not approve variances from  
8           Chapter 7053, and they submitted that comment to us.

9                   And as a result, we removed that from  
10           Chapter 7053, from the proposed rules.

11                   MR. ETTINGER: I will pursue that  
12           later.

13                   HEARING OFFICER CASE: All right.  
14           This is Exhibit 1. I'm handing it to you to be  
15           marked. Thank you.

16                   (Exhibit Number 1 was marked for  
17           identification by the court reporter.)

18                   HEARING OFFICER CASE: Sometimes it  
19           makes it easier when we go back if we have things that  
20           people have read submitted.

21                   All right. Now we're going to go to  
22           people who signed in at the Duluth location.

23                   MS. TOPPING: Good afternoon. My  
24           name is Debra Topping, D-E-B-R-A, T-O-P-P-I-N-G. I am  
25           here representing my grandchildren, future

1           generations. So I'm all new to all this policy and  
2           procedure stuff, so please forgive my ineptness with  
3           that.

4           As I'm looking through this, I know a  
5           little bit about how the policies -- you make a change  
6           and it's -- you are trying to change for a specific  
7           pollutant.

8           What specific pollutant is that?

9           HEARING OFFICER CASE: I'll ask you  
10           to answer that.

11           MS. KESSLER: Again, this is Katrina  
12           Kessler. And just to clarify, thanks for the  
13           question. It's important to make this clear.

14           We are not proposing any chemical-specific  
15           changes to water quality standards today. The  
16           proposed variance rule is procedural in nature, so  
17           what we are proposing today is to change the process  
18           by which an individual permit holder could apply for a  
19           variance from a chemical-specific limit, based on a  
20           water quality standard.

21           HEARING OFFICER CASE: Thank you.

22           MS. TOPPING: And you are saying  
23           that, yes, it should go through and, yes, we should do  
24           this?

25           MS. KESSLER: So just to be clear,

1       we are asking today to consider the proposed  
2       procedural rule. That does not include any changes to  
3       chemical-specific water quality standards.

4                   MS. NORTHRUP: Okay. My name is  
5       Korey Northrup, K-O-R-E-Y, N-O-R-T-H-R-U-P, and for  
6       purposes of clarity, I'm wondering if you're not  
7       trying to change it for a specific pollutant, then  
8       what are you trying to change the policy for?

9                   MS. KESSLER: So this is Katrina  
10      again. We are just changing the procedures, the  
11      process by while ultimately someone can apply for a  
12      change to a water quality standard.

13                 So the rulemaking proposed today is only  
14      about process. And ultimately, if this goes through  
15      and is adopted, this is the process that someone can  
16      use to apply for a chemical-specific variance.

17                 UNIDENTIFIED SPEAKER: So as the  
18      EPA, are we not looking for how to prevent that? Or,  
19      no, we're just looking at the process? We're looking  
20      at the process in which people could put chemicals  
21      inside our water?

22                 MS. KESSLER: So the -- just -- I  
23      think -- I think your question is whether or not we're  
24      looking at chemical-specific questions today, and  
25      again, we're just looking at process.

1 UNIDENTIFIED SPEAKER: No. I  
2 understand. Right, right, right. But specifically,  
3 you know, I guess, it really doesn't matter what kind  
4 of --

5 HEARING OFFICER CASE: Okay. I'm  
6 going to stop -- this is Judge Case, and I'm going to  
7 stop you because if you're changing who's speaking,  
8 will you please identify yourself? It's a little hard  
9 down here --

10 UNIDENTIFIED SPEAKER: Yep. Thank  
11 you.

12 HEARING OFFICER CASE: Wait. Let me  
13 finish.

14 It's a little hard because of the time lag  
15 for us to see who's speaking, and it's important for  
16 an accurate record that you identify yourself before  
17 you speak so the court reporter, who I think you can't  
18 see, can take down what you're saying.

19 Well, with that, I'll let you go ahead and  
20 ask your question, but identify yourself first,  
21 please.

22 UNIDENTIFIED SPEAKER: Go ahead.  
23 I'm just listening.

24 MS. TOPPING: Okay. Debra Topping.  
25 Back to Debra Topping, here.

1                   There is a few things I was questioning  
2                   about, was that the process is -- seems awfully  
3                   ridiculous to be even questioning -- should we allow  
4                   any poison or any pollutant into our water, and how  
5                   should we -- what happens if we do, do that?

6                   Should we just allow that to happen or are  
7                   we not looking for something that says, Hey, what are  
8                   we doing to prevent this?

9                   Do you see what I'm saying here or am I  
10                  not --

11                  HEARING OFFICER CASE: This is  
12                  Judge Case, and I do think that your questions are a  
13                  little beyond and outside of the scope of what these  
14                  rules are about. But I believe that from your  
15                  question, I understand your concern. I'm not sure  
16                  that these rules -- I'm not positive that these rules  
17                  are the place for that concern to be addressed,  
18                  although this is the right agency.

19                  So with that comment, I'll let the MPCA  
20                  respond. I'll also suggest that it may be that, if  
21                  you would like, you can listen to the other  
22                  questioners here and then that may make the purpose of  
23                  this rule more clear, and then if you --

24                  MS. TOPPING: And also --

25                  HEARING OFFICER CASE: Wait. Let me

1 finish, please.

2 We can come back to you and I can ask you  
3 if you have more questions, if that seems helpful to  
4 you.

5 All right. First I'm going to ask the  
6 MPCA if they want to respond to anything, and then I'm  
7 going to come back to you in Duluth.

8 MS. KESSLER: I would just add that  
9 any variance to a specific water quality standard,  
10 which I think the commenter is asking about, goes  
11 through a thorough review and is subject to a public  
12 comment and ultimately needs to be approved not only  
13 by the MPCA, but also by EPA.

14 And I think the record is clear that  
15 variances cannot remove an underlying use, and that's  
16 sort of inside baseball, but what that means is that  
17 we adopt standards to protect things like aquatic life  
18 and recreation, fishing, and swimming.

19 And ultimately, we can't allow a  
20 discharger, even with a variance, to remove the use of  
21 fishing or swimming, so we need to protect those  
22 things fundamentally.

23 So that will be a part of any evaluation,  
24 and we take that very seriously.

25 HEARING OFFICER CASE: All right.

1       Thank you for that explanation.

2                   Back to Ms. Topping or Ms. Northrup in  
3                   Duluth.

4                   MS. TOPPING: So moving right along  
5                   here, you know, you were talking a little bit about --

6                   HEARING OFFICER CASE: Who is  
7                   talking?

8                   MS. TOPPING: I'm sorry. Sorry.  
9                   Debra Topping.

10                  About the public involvement, there was --  
11                  I don't recall any information or input from the  
12                  reservation about any of this, so there was no  
13                  other -- and this pertains to us also, so I don't see  
14                  anybody from the tribe represented here, so was --  
15                  were they involved in this decision making?

16                  MS. LYNN: This is Mary Lynn, rule  
17                  coordinator. The answer to that is laid out in the  
18                  exhibits. The three-ring binder that you have there  
19                  as well.

20                  When we did notification of this  
21                  rulemaking, as well as when we public-noticed the  
22                  proposed rules and hearing, notification was sent to  
23                  the tribes. There's the e-mails there with the names  
24                  of the tribal contacts who that information went to.

25                  There's also the list of the air and water

1                   representatives of the tribes -- the 11 tribes here in  
2                   Minnesota -- so they were -- they did receive that  
3                   communication.

4                   If I'm correct, Katrina Kessler also did  
5                   some outreach to the tribes prior to when the rules  
6                   were proposed, letting them know that the rules were  
7                   forthcoming, so they have been -- they're part of our  
8                   mailing list. They're -- we include the tribes. We  
9                   didn't receive any comment letters from any of the  
10                   tribal representatives, but --

11                   HEARING OFFICER CASE: And,  
12                   Ms. Topping, I would add that this process is the time  
13                   for public input into what is being proposed, so --

14                   MS. TOPPING: Right.

15                   HEARING OFFICER CASE: -- and I'm  
16                   not sure if you were here during my introduction, but  
17                   just so that -- I want to reiterate for you that today  
18                   is not the only opportunity for you to offer input,  
19                   but there is a 20-day comment period during which  
20                   written comments may also be received.

21                   Do you have any --

22                   MS. NORTHRUP: Korey Northrup. I  
23                   have a question about this bit of public -- the 20-day  
24                   thing. How many, exactly, meetings or conversations  
25                   with commenters do you have scheduled during that

1 20-day period?

2                   Like, will I be able to go to a public  
3 place and hear about what's going on or what you're  
4 proposing? Because that's what I understand you to  
5 say, "Meetings and conversations with commenters."

6                   So where can I pick up a meeting if I  
7 decide I want to make some more comments?

8                   HEARING OFFICER CASE: Okay. This  
9 is the only meeting. I'm not sure what you're  
10 referring to that's before you, but there is --

11                  MS. NORTHRUP: Public Involvement  
12 Number 5 bullet point. It's under the second blue  
13 bullet point. It is the second red bullet point on  
14 the slide. Number 5, under "Public Involvement."

15                  So that's where we're at right now.

16                  HEARING OFFICER CASE: All right.

17                  MS. NORTHRUP: Yep. That's what  
18 I'm -- that's what I'm referring to right now.

19                  HEARING OFFICER CASE: All right.  
20 I'm going to let the MPCA --

21                  MS. NORTHRUP: So I'm just trying --

22                  HEARING OFFICER CASE: Okay. You  
23 have to stop --

24                  MS. NORTHRUP: -- understand what  
25 you mean by meeting there.

1 HEARING OFFICER CASE: You have to  
2 stop so that we can answer, so we don't talk over each  
3 other. It's impossible for the court reporter to take  
4 down what everyone is saying if we speak over each  
5 other, and I'm cautioning myself, as well as everyone  
6 here.

7 I'll let the MPCA respond first and then I  
8 will respond and then we'll go back to the Duluth.

9 MR. NEBLETT: Adonis Neblett. I'm  
10 going to try to clarify. You were making -- you're  
11 looking at Slide Number 5 that talks about public  
12 involvement. Slide --

13 MS. NORTHRUP: Correct.

14 MR. NEBLETT: Slide Number 5 talks  
15 about public involvement, the process up to this  
16 point. This -- the slide was part of a presentation  
17 of how we got here, and so there were meetings before  
18 this.

19                   There were opportunities for comment  
20 before this, and now this is -- this is the, if you  
21 will, the culmination or end of the process, and as  
22 part of this -- this final stage of the process, we  
23 have a public hearing, which we are having now, and --

24 MS. NORTHRUP: Right.

25 MR. NEBLETT: -- your comment, your

1       input, this is your opportunity to provide that now,  
2       and you may also provide additional input in writing  
3       after this hearing in the 20-day period, and after  
4       that, there will be a 5-day rebuttal period.

5                   So essentially, you have approximately 25  
6       days, but 20 days, to get in your additional comments,  
7       and we will all see those and provide any responses or  
8       reactions to it, but ultimately, they will also be  
9       going to the administrative law judge, Judge Case, and  
10      then the decision will be made about whether or not we  
11      have followed the necessary procedures, we have the  
12      statutory authority, and we've demonstrated the need  
13      for the rule.

14                   HEARING OFFICER CASE: All right.

15      Thank you, Mr. Neblett --

16                   MS. NORTHRUP: Okay. So --

17                   HEARING OFFICER CASE: -- and before  
18      I recognize you in Duluth again, I'm going tell you  
19      that I have a number of people here that also want to  
20      speak, so I'm going to come back to your questions,  
21      and then in five more minutes, I'm going to ask you to  
22      wait if you want to speak again, and then I'll come  
23      back to you after the folks that are here have also  
24      had a chance to speak.

25                   All right. So, Ms. Topping or

1 Ms. Northrup.

2 MS. NORTHRUP: Ms. Northrup here.

3 I'm wondering what the use of the Great Lakes  
4 conditions outside of the Lake Superior Basin is  
5 exactly. I'd like to have some clarification on that  
6 Slide Number 8, since I was unable to understand you  
7 guys had meetings to inform me, the public, before  
8 that.

9 MS. DOUCETTE: This is Elise  
10 Doucette, D-O-U-C-E-T-T-E. The Great Lakes  
11 Initiative, which is 7052 of our rules, has variance  
12 language in it that is the same as EPA's procedural  
13 policy, and that is what we are basing rules in the  
14 rest of the state on.

15 MS. KESSLER: So this is Katrina.  
16 Just to clarify, EPA worked with all the states in the  
17 Great Lakes to develop the Great Lakes Initiative  
18 language which was adopted into Minnesota Chapter  
19 Rule 7052, I think, in 1998, along with, then, the  
20 other Great Lakes states.

21 And that represents the most recent, until  
22 August 2015, EPA documentation of variance procedures,  
23 and that served as the basis for much of our proposed  
24 rule, along with, ultimately, what EPA proposed in  
25 their federal rule.

1 So it's one of the chapters of Minnesota  
2 rules that includes variance procedures and water  
3 quality standards, and it aligns with the other Great  
4 Lakes states, as well as EPA, to protect the Great  
5 Lakes waters.

6 HEARING OFFICER CASE: Okay. Thank  
7 you.

8 MS. NORTHRUP: But we're giving them  
9 the -- no.

10 MS. TOPPING: We can wait -- this is  
11 Debra Topping. We can wait until after the other  
12 questions have been asked. Thank you.

13 HEARING OFFICER CASE: All right.  
14 Thank you. I'll come back to Duluth. You can mute  
15 that right now. You can hear us, correct?

16 UNIDENTIFIED SPEAKER: Yes, we can.  
17 Thank you, Judge.

18 HEARING OFFICER CASE: All right.

19 Thank you. I'm going to ask the people in the room I  
20 am in, Ms. Lynn, whether or not the people who are in  
21 the remote room here, I'm assuming these are not  
22 people that want to comment, is that correct, that  
23 they're observing?

24 MS. LYNN: Yes. It looks to me that  
25 they are all observing.

1 UNIDENTIFIED SPEAKER: Yes, Judge  
2 Case, you are correct. We don't have anyone in the  
3 overflow room who would like to speak.

4 HEARING OFFICER CASE: All right.

5 Thank you, and please let me know if that changes.

6 All right. Here's how I'm going to  
7 proceed: I'm going to call the first person who  
8 signed up that said they wanted to speak that's on  
9 this list unless someone tells me right now that they  
10 are under some very, very tight constraint, like they  
11 have an airline ticket to get on a plane at 6:00 or  
12 something like that, in which case, raise your hand.

13 MR. ETTINGER: Not that tight. I  
14 have an airline ticket to get on a plane at 8:00.

15 HEARING OFFICER CASE: Okay. Thank  
16 you. And your name, again, is?

17 MR. ETTINGER: Albert Ettinger,  
18 E-T-T-I-N-G-E-R.

19 HEARING OFFICER CASE: Okay. And I  
20 saw another hand.

21 MS. MACCABEE: Judge Case, I have a  
22 meeting I need to be at by 7:15, which isn't terrible,  
23 but just to keep in mind.

24 HEARING OFFICER CASE: Okay. Thank  
25 you. All right.

1 So typically, how I like to proceed is to  
2 let people speak and kind of gauge where we are. I'll  
3 try that right now. When I call you, please, again,  
4 understand that you have a chance to submit comments  
5 in writing.

6 I certainly want to hear what you have to  
7 say tonight, but if comments go on for quite a while,  
8 I may ask you -- as I just did in Duluth -- ask people  
9 to go back to the end of the line and come back to  
10 make the rest of their comments.

11 All of that said, the first person on the  
12 list is Mr. Lightfoot.

13 MR. LIGHTFOOT: And, Your Honor,  
14 based upon what's been discussed here, I'm  
15 representing the Minnesota Chamber. There's nothing  
16 really more to add to the Chamber's written comments,  
17 so I need not speak.

18 HEARING OFFICER CASE: All right.  
19 Well, I certainly don't want to step on your  
20 opportunity or have us miss the opportunity to have  
21 your dialogue with MPCA, but if you're certain, then  
22 I'll go to the next person on the list, and that  
23 person is Bob Tammen.

24 Again, while Mr. Tammen is coming up, I'll  
25 say that if you're reading from typed comments that

1 you have and you'd like to make them an exhibit after  
2 you're done, that's useful for the final report.

3 MR. TAMMEN: Thank you, Your Honor.

4 Bob Tamm, B-O-B, T-A-M-M-E-N, from  
5 Soudan, Minnesota, home of Minnesota's first iron  
6 mine. My wife, Pat, and I are both retired. I worked  
7 in several of the mines in my younger years. Pat  
8 taught in Ely for over 30 years.

9 And I know a lot of this relates to  
10 environmental activities. I'd like to focus a little  
11 bit on economics, because we live up there, mining  
12 country. We have large mining operations. Our  
13 existing taconite operation is 100 miles of mining.  
14 Our proposed copper activities in the sulfide ore body  
15 in Duluth Complex -- thousands of acres of wetlands.

16 Now, Pat and I went to a Bowser thing  
17 yesterday, and they had a presentation on wetland  
18 mitigation, and I was curious. I said, What is the  
19 cost on average for an acre of wetland mitigation?  
20 And they said, A little over \$30,000. Of course, it  
21 varies a lot, but that's the average.

22 I think that's important, and perhaps I'm  
23 stretching the issue, being we're here talking about  
24 variances, and I want to talk about the economics, and  
25 specifically about mitigating outside of our

1 watershed, and I believe that ties in with variances.

2 We know we're doing it already, and there  
3 are a lot of proposals, and I would object to that.

4 Because if you think about that \$30,000-an-acre  
5 number, and it wouldn't be unknown or a mining company  
6 to need 1,000 acres of wetlands, there's \$30 million.

7 And if we follow the proposed mitigation  
8 process, that \$30 million is not coming into our  
9 community where our wetlands are destroyed or  
10 degraded. It could very well be going to some  
11 millionaire farmers in the Red River Valley.

12 And that's -- so I think it's important  
13 that when we think about variances, there are a lot of  
14 pressure on our freshwater, on our public surface  
15 waters.

16 And we have been more than generous with  
17 variances in my working lifetime. I started working  
18 at Minntac in '69. Those tailings ponds were leaking  
19 then. The laws changed. I believe '87 they had to do  
20 an application for a discharge permit. They've run on  
21 that permit for years. Those mining operations are  
22 degrading our public waters.

23 I know that. I've taken a conductivity  
24 meter -- you can take a \$100 meter and go out there  
25 and you can see the mining industry is degrading our

1       public waters, so when you talk about variances, I  
2       would hope that there's some way to tie in these  
3       proposals to mitigate out of our watershed.

4               And it's said that the mining industry  
5       doesn't have enough mitigation opportunities in our  
6       area. I can think of a number of watersheds -- the  
7       St. Louis Watershed, the Partridge River Watershed,  
8       Embarrass River, Pike River, the Dark River Watershed,  
9       that's getting discharge water from Minntac's tailings  
10      ponds. I've gone out there with my little  
11      conductivity meter. That water is degraded.

12              And the point I'm trying make to tie in  
13      this mitigation out of watershed, you know, the  
14      wording in the statute, if it's a hardship for the  
15      company to comply with Minnesota's discharge  
16      standards, the Commissioner can grant a variance.

17              The more we let them degrade our public  
18      waters by mitigating out of our watershed, we're  
19      sending that money out of our watershed, we're getting  
20      saddled with degraded wetlands, and our quality of  
21      life is going down.

22              So I would ask that this variance process  
23      be tightened up considerably. That's pretty sad how  
24      long some of these companies have been running on  
25      variances, when we have technology that can clean it

1 up.

2                   But the sad truth is, our mining ore  
3 bodies are not really globally competitive at a  
4 competitive market rate. If we don't subsidize our  
5 iron-mining industry, which is 25 percent iron  
6 compared to 50 or more in Brazil, Argentina, Sweden,  
7 they can't compete.

8                   The pressure is on us to grant variances  
9 for economic reasons so our companies can compete when  
10 they're not really competitive. Thank you.

11                   HEARING OFFICER CASE: Mr. Tammern --

12                   MR. TAMMEN: Yes?

13                   HEARING OFFICER CASE: It says here  
14 that you are representing Wetlands Action Group; is  
15 that correct?

16                   MR. TAMMEN: Yes, it is. It's the  
17 only group that will let me speak without clearance  
18 ahead of time.

19                   HEARING OFFICER CASE: Before you  
20 sit down, are there any questions from the panel for  
21 Mr. Tammern?

22                   MR. NEBLETT: No questions.

23                   MS. KESSLER: Thank you, though.

24                   HEARING OFFICER CASE: I have a  
25 question.

1 MR. TAMMEN: Yes?

2 HEARING OFFICER CASE: What does  
3 mitigation outside of our watershed mean?

4 MR. TAMMEN: I believe our  
5 legislature passed a rule that we can -- if we destroy  
6 wetlands in the Lake Superior Watershed, we can hop  
7 over into the Hudson Bay Watershed on the other side  
8 of the Laurentian.

9 And you'll see a lot of political  
10 contention because those counties up there object to  
11 their nice little farms being bought up. The  
12 mitigation people plug the ditches, turned it back  
13 into wetlands, and then they can mine in the Lake  
14 Superior side of the watershed.

15 And there are proposals to designate  
16 high-value restoration opportunities. It's  
17 difficult -- and I acknowledge this -- it's difficult  
18 for the mining industry to find cheap  
19 restoration-mitigation activities in St. Louis County,  
20 but because they're not cheap doesn't mean they're not  
21 there.

22 If you look at a drainage map, we have a  
23 lot of drained wetlands. We have a lot of degraded  
24 rivers. Those little rivers I mentioned, their  
25 watersheds are degraded, a lot of it by mining

1 activity, so there are mitigation opportunities.

2 HEARING OFFICER CASE: Okay. I  
3 think I understand, so thank you very much for  
4 answering my question.

5 MR. TAMMEN: Thank you.

6 HEARING OFFICER CASE: Next on the  
7 list is Paula Maccabee.

8 MS. MACCABEE: Thank you, Your  
9 Honor. I'm Paula Maccabee, and that's P-A-U-L-A, last  
10 name, M-A-C-C-A-B-E-E, and I am here on behalf of  
11 Water Legacy, and though I have notes, I'm scribbling  
12 all over them and changing them, and I will submit  
13 comments afterwards.

14 I think -- first, I think I want to talk  
15 about -- respond to a couple of the things that the  
16 Pollution Control Agency said today. One of the  
17 things Ms. Doucette said, what I think is really  
18 important we push back on, is the idea that the people  
19 who are affected are the discharges.

20 I think what you heard from the speakers  
21 in Duluth, and also from Mr. Tammen, is that the  
22 community is affected by the laws about the variances.  
23 If laws about variances -- if the procedure is very  
24 stringent and requires a high burden of proof, then  
25 what citizens will have is water that's better to

1 drink, water that sustains aquatic life, water that  
2 sustains wild rice, which, incidentally, is a Clean  
3 Water Act 101(a)(2) -- we use these because they're  
4 used for wildlife.

5 And so it is important to citizens, to  
6 tribes, to communities, because they drink the water,  
7 they eat the fish, they gather the wild rice, they go  
8 canoeing, and their economies are based on having  
9 high-quality natural resources, which is, I think,  
10 what Mr. Tammen was getting at.

11 So when we ask who are the stakeholders,  
12 is it true that most of the commenters, with the  
13 exception of MPCA -- who I'm eternally grateful for,  
14 for noticing this -- most of the commenters were the  
15 stakeholders who are dischargers. That does not mean  
16 they are the only stakeholders that have to be  
17 considered.

18 So first I want to go back to one of the  
19 things that, Judge, you talked about in the beginning,  
20 is do the rules fit with the enabling legislation, and  
21 is there some kind of need inside to comply or conform  
22 to the EPA.

23 And I want to make it really clear from  
24 our perspective. This requirement is not symmetrical.  
25 For example, we heard that the Pollution Control

1 Agency is already saying we're going to remove the  
2 ten-year limit on variances, and we are going to  
3 require the five-year valuation, based on the EPA.

4 You will notice that the EPA did not ask  
5 that that ten-year limit be removed, because the law,  
6 and that's Minnesota Statutes 115.03(5), says that  
7 Minnesota state law has to be at least as stringent.  
8 That is exactly what federal law says as well.

9 So if there's an area wherewith the  
10 Pollution Control Agency has proposed where it's less  
11 stringent than the EPA, then that is an area which  
12 requires revision. So by not having any evaluation  
13 within five years, it was less stringent. That has to  
14 be changed.

15 The question of whether there should be a  
16 ten-year time limit on variances is one that many of  
17 us think is actually far too long. There should be a  
18 five-year limit. A permit time should be the limit on  
19 variances.

20 And what troubles me, speaking for  
21 citizens in the community, is that the Pollution  
22 Control Agency didn't even hear that most of the  
23 people in -- who I represent, think that ten years is  
24 too long, and everyone who knows the law knows that  
25 the PCA can choose to have a limit, whether or not the

1       federal government does.

2                   So I want to make it really clear -- and  
3       talking to the PCA, as well as to the record -- the  
4       law is asymmetrical. It cannot be more lax than the  
5       EPA and it can be stronger.

6                   If Minnesota says, We're the land of  
7       10,000-plus lakes. Our economy depends on our lakes  
8       and our fishing and our tourism, and we don't want to  
9       have a relaxed standard. We want to go tougher. You  
10      better believe we have the right to do that.

11                  Now, why didn't you hear this before? I'm  
12      going to say that -- first of all, I must thank the  
13      judge for giving us the maximum allowed, full 20 days  
14      for post-hearing comment.

15                  I'm not sure you're aware of this, Judge,  
16      but this is a very lopsided record, and there's a  
17      reason for it. The comment period in this case was  
18      from November 9th to December 31st. Now, that's not  
19      only the holidays of Thanksgiving, Hanukkah,  
20      Christmas, but it also is the time period within which  
21      all of the tiny little environmental groups -- of  
22      which Water Legacy is one -- and all the citizens who  
23      try to master this difficult scientific and legal  
24      stuff -- they have three common deadlines for comment  
25      on the Environmental Review, on the Section 404

1       Permit, on the Land Exchange. That was also when the  
2       Pollution Control Agency submitted their rules on wild  
3       rice, which is where the tribes have had to put an  
4       enormous amount of energy not to lose their resources.

5                   So I think it's really important, I'm  
6       asking the PCA: Please do not make changes until  
7       you've heard from some of these stakeholders. We  
8       would -- I would -- I've commented before. There just  
9       was no way to add another comment to the 500 pages I  
10      was already writing within six weeks.

11                  So please do not make changes until you've  
12       had a chance to hear from some of us who -- whether it  
13       was coincidence or whatever, we just couldn't get this  
14      done.

15                  So I'm going to take a few minutes, based  
16       on what I've heard today, to -- to talk about some of  
17       the areas where I think there is a very important  
18       conflict between Pollution Control proposal and EPA,  
19       and this is a kind of conflict that is not allowed  
20       under federal law; namely, I'm only going to highlight  
21       the places where I believe the proposed rules are not  
22       appropriate because they are less stringent.

23                  In the written comments, I might also take  
24       the time to thank the PCA for areas where I think they  
25       are more protective, but I'm not going to do that

1 today. So please don't feel insulted.

2 First, I think the PCA is already trying  
3 to address the fact that the proposed rules did not  
4 require the highest attainable interim limits, and  
5 that is required by the federal rule.

6 And using the words "currently achievable  
7 treatment conditions," that is no less stringent, that  
8 was achieved under the prior permit, sets off claxons  
9 to me. Because Water Legacy has also filed a petition  
10 last July with the Environmental Protection Agency,  
11 expressing our concern about the Pollution Control  
12 Agency's failure to enforce existing permits.

13 The Minntac project that Mr. Tammen was  
14 talking about doesn't have a variance. It simply has  
15 the ability -- it has had the ability, since about  
16 1989, to release more pollutants than allowed in its  
17 permit.

18 So we want to make sure that anything that  
19 says that keeping the status quo, it doesn't meet the  
20 federal requirements, and in Minnesota, that is a  
21 recipe for perpetuation of pollution.

22 I think that is going to be cleaned up,  
23 and I will certainly propose some language more  
24 consistent with the federal requirement so that we  
25 don't have a variance procedure that seems to endorse

1 backsliding; namely, having permits -- having variance  
2 limits that are weaker than existing permits.

3                   And we don't have a variance limit that  
4 allows the status quo to be maintained, when it never  
5 was the highest attainable. It just was the cheapest,  
6 easiest thing to do then, so that's a really important  
7 issue.

8                   Second, I know there has been some  
9 discussion about the time limit on variances. Water  
10 Legacy believes the time limit on variances should be  
11 five years. That's the time to run permits, and that  
12 would require that there be a consistent evaluation  
13 and accountability.

14                   And we've seen -- and I'm much more  
15 familiar with the Duncan mine, because we -- we  
16 analyze that. We have a citizen assigned who really  
17 is an expert in that area. That variance has been  
18 left outstanding. The permit has not been updated.  
19 It is resulting in continuing violations of water  
20 quality standards -- copper, I mean, things that  
21 actually affect aquatic life.

22                   So the practice of letting variances drag  
23 on -- and we brought this up in triennial review;  
24 nothing happened. The practice of having long-term  
25 variances, let alone indefinite variances, which is

1 what the discharges have requested -- very bad public  
2 policy, history in Minnesota doesn't work.

3 So at the very least, the Pollution  
4 Control Agency should hold on to their ten years, and  
5 I think, and most of the people I have talked to --  
6 who are retired from your agency -- think five years  
7 would be the appropriate limit.

8 Here's a very big one that the EPA  
9 emphasized and I would like to emphasize this also:  
10 The Federal Rules at 40 CFR 131.14 --

11 THE COURT REPORTER: Could you  
12 please repeat that? Or just slow it down when you say  
13 the numbers.

14 MS. MACCABEE: 40 CFR -- which is  
15 Code of Federal Regulations -- Section 131.14.

16 THE COURT REPORTER: Thank you.

17 MS. MACCABEE: Those are the new  
18 rules that were just adopted by the EPA. They make  
19 absolutely crystal clear that there is a requirement  
20 for a public hearing. There is a requirement for an  
21 actual public hearing at the time when a variance is  
22 determined or adopted, and also a requirement of a  
23 public hearing when initial variance is brought up at  
24 triennial review, and that's under 40 CFR Part 25.

25 Now, I'm not going to blame the State of

1 Minnesota because the reference in the proposed rule  
2 to Minnesota Rule 7000.7000 was never in conformity  
3 with the federal regulations, and the EPA never raised  
4 that issue before.

5 I think one of the things that they were  
6 trying to do with the new rules that they adopted this  
7 summer is to be much more clear about what the  
8 procedural requirements should be for variances.

9 And I would suggest that -- just take the  
10 procedures that are in the Federal Regulations at  
11 40 CFR Part 25 and apply them, and this is some of the  
12 things that they include: They include public  
13 hearings, they include a 45-day notice, they include  
14 making the written materials available to the public  
15 30 days in advance, they include giving an opportunity  
16 to schedule witnesses ahead of time, if you want to,  
17 or just come in and talk, and they include creation of  
18 a transcript, a public record.

19 So in other words, they include something  
20 very similar to what we're doing today, only there's  
21 no requirement -- that somebody had the smarts to come  
22 up with -- of 25 signatures to do that. It's just  
23 part of the rules at the federal level. It should be  
24 part of the rules at the state level. I'm not  
25 faulting the PCA. EPA as let that slide for a really

1 long time, but now is the time to clean it up, get it  
2 right, and have a public process.

3 Another point that was made by the EPA,  
4 which I think is very, very legitimate, at the  
5 proposed rules in 7052, treat variance in the Great  
6 Lakes the same way as they do everywhere else, but  
7 that's not the way the federal regulation treats them.

8 In, once again, 40 CFR, Part 132,  
9 Appendix F, Procedure 2, it's very clear that after  
10 discussing the potential that a state or tribe could  
11 issue a variance in the Great Lakes -- this is really  
12 clear -- this provision shall not apply to new Great  
13 Lakes dischargers or recommencing dischargers.

14 In other words, the federal law is just  
15 crystal clear. If you've -- if it's an existing  
16 variance, an existing discharge -- maybe you have some  
17 treatment plant that's been operating for 50 years and  
18 has never really complied, that is something that you  
19 can consider, but a new project -- like a new mine,  
20 like maybe the Mesabi Nugget project, for example --  
21 that should never have been issued a variance because  
22 it's a new discharge or a recommencing discharge.

23 And that's -- that provision, that is very  
24 critical, very central to the Great Lakes Initiative,  
25 needs to be in our rules. The Environmental

1 Protection Agency highlighted it, and so that's one of  
2 the places where I don't think the State has any  
3 discretion on that point. That needs to be in our  
4 rules, because to exclude it would make our rules less  
5 stringent than the federal rules.

6 And then finally, I know there was some  
7 discussion about nondegradation. We believe that the  
8 proposed rules for 7052 should require that there be  
9 compliance with nondegradation requirements in order  
10 to issue a variance; however, the reference should be  
11 to the 7052 nondegradation requirements, not those for  
12 the rest of the state.

13 Because the state -- and I -- let me see  
14 if I can -- I think you know -- the ones at 70 --  
15 Minnesota Rule 7052.0300 to 0330, those are  
16 nondegradation requirements specific to the Great  
17 Lakes, and they deal with things like outstanding  
18 international waters and bioaccumulative substances of  
19 concern, and so I think the Pollution Control Agency  
20 did a really good thing in making sure the rules  
21 linked to, We're not going to allow degradation, but I  
22 think it's really critical to use the appropriate  
23 nondegradation standard.

24 In conclusion, I know we didn't get a  
25 whole lot of comments in, but Minnesotans do care

1 about the quality of their water for drinking,  
2 fishing, swimming, canoeing, gathering wild rice, and  
3 is a legacy we'll leave for the next generation.

4 We expect that limits that are set in  
5 water quality standards will be enforced, will be in  
6 permits, and will be complied with, and also that our  
7 narrative standards that prevent degradation and  
8 toxicity will be followed.

9 So most of us believe that the variance  
10 should be a very, very rare occurrence, and we  
11 appreciate the effort that has been made so far to  
12 make a clear standard, in compliance with the federal  
13 law.

14 And anything that we, as a state that  
15 values water above all else, can do to tell the  
16 dischargers that this is a last resort. It's not the  
17 first resort. It's not the first thing you do before  
18 you cost out your treatment. It's not the first thing  
19 you do rather than collect your tailings waste. It's  
20 the last resort, and that's what the citizens of  
21 Minnesota need, and that's what our next generation  
22 needs.

23 So if you have any questions, I would be  
24 happy to answer them, or try to answer.

25 HEARING OFFICER CASE: Any

1       questions?

2                   I look forward to your written comments.

3                   MS. MACCABEE: Thank you very much.

4                   HEARING OFFICER CASE: And I'm just  
5       going to remind you -- I know you heard me. I'll say  
6       it again for everyone -- to the extent that you're  
7       making specific recommendations to language changes --  
8       and I realize you have a million things you're  
9       doing -- but sooner, in terms of allowing the Agency  
10      to consider them, rather than later.

11                  MS. MACCABEE: So, Your Honor, what  
12      you're suggesting is if people have specific  
13      recommendations, to try and get them in before the  
14      20 days so that the PCA has an opportunity to review?

15                  HEARING OFFICER CASE: Yes. Thank  
16      you for saying that. Thank you for your comments.

17                  MR. NEBLETT: Your Honor,  
18      Ms. Kessler would like to make a remark.

19                  MS. KESSLER: We just want to say  
20      thank you, but I -- I -- and we're not going to  
21      respond to everything she did, but I just want to make  
22      clear, because I think we said this in the  
23      presentation, but it needs to be made clear that we  
24      recognize that EPA needs to approve variances to water  
25      quality standards and that anything we do needs to

1 conform with EPA's final variance rule including the  
2 necessary requirements for the hearings and public  
3 notice.

4 And so we understand that any variance  
5 that ultimately needs to be approved by EPA needs to  
6 conform with their process.

7 HEARING OFFICER CASE: Okay. Thank  
8 you.

9 Mr. Ettinger.

10 MR. ETTINGER: I'll stand at the  
11 podium, as others have. I'm Albert Ettinger. I live  
12 in Chicago, Illinois.

13 HEARING OFFICER CASE: Please spell  
14 your name.

15 MR. ETTINGER: I've given the court  
16 reporter a card.

17 HEARING OFFICER CASE: You have it?  
18 Okay. Thanks.

19 MR. ETTINGER: The -- I've had the  
20 honor of working on water quality standards in a  
21 number of states, and I'll endeavor not to make myself  
22 as unpopular here as I am in southern Illinois.

23 What I want to say, first of all, is I  
24 very much appreciate Ms. Maccabee's remarks. I think  
25 all the environment groups were under a lot of

1 pressure given the time here, and that's part of why I  
2 was brought in from out of town to work on this.

3 Noticing during Thanksgiving and Christmas vacations  
4 makes it a little tough on a lot of people.

5                   The first thing I wanted to say, though,  
6 and I -- is I am very confused by the 7053.0195 rules.  
7 I think US EPA is confused by them too, and I think --  
8 I'm not really sure where they fit in to the overall  
9 scheme.

10                  I don't want to give a long lecture on the  
11 Clean Water Act, but basically, there are  
12 technology-based requirements that states have, and  
13 then there are water quality-based requirements, and  
14 every NPDES permit needs to meet both kinds of  
15 requirements? Every variance, from a water quality  
16 standard, has to be approved by US EPA, under  
17 Section 303(c) of the Clean Water Act.

18                  Changes to technology-based requirements  
19 that the state may have that are in addition to  
20 federal effluent limitations don't have to be  
21 approved. In fact, generally, US EPA doesn't have to  
22 approve individual permits, but it does have to  
23 approve every variance to water quality standards.

24                  What I'm confused about is, is your old  
25 7053.0195 seemed to be addressed to technology-based

1 standards, and it had language that was adopted to  
2 getting a variance from a technology-based standard;  
3 for example, there's a general requirement for  
4 secondary treatment of sewage.

5 Under certain cases, you can get a  
6 variance from that if it would have an extreme  
7 hardship on the community, and that's what your old  
8 variance language has.

9 What you've substituted now is language  
10 that doesn't seem to fit into either box, and I'm  
11 really -- I'm really confused. If -- and let's look  
12 at a -- I think a -- what would be a typical example,  
13 let's say, for example, that you have a municipality  
14 which is -- believes that it would cause unusual, you  
15 know, to use the term in the Federal Rule, "widespread  
16 economic impact" to meet a chloride standard, because  
17 chloride -- because we use rock salt, there's often  
18 chloride that comes out under conditions like this  
19 that may cause a violation. The municipality or  
20 another discharger might seek a variance from the  
21 chloride standard.

22 I believe that it's quite clear that in  
23 that case they could at least apply for a variance,  
24 but a variance that was applied for under that  
25 condition -- under that situation, which was actually

1 a water quality standard on chloride, would have to be  
2 approved by US EPA.

3 I'm -- so -- that's why I was really  
4 confused by the language saying that variances under  
5 7053.0195 don't have to be approved by US EPA. I  
6 understand. I read the US EPA letter, but I believe  
7 they think that that rule only applies to  
8 technology-based limits.

9 I don't think they were thinking that that  
10 would apply to the situation in which a discharger got  
11 a variance so that it would avoid a Q-Val, a water  
12 quality-based effluent limit, because that kind of  
13 variance does require approval by US EPA.

14 So I think, basically -- and I'm not  
15 blaming anybody -- but I think there's been a  
16 disconnect between US EPA and MPCA as to what 7053 now  
17 applies to.

18 If they told you in the past 100 times  
19 that they don't need 7053 variances approved, I think  
20 that's because the 7053 variances before were from  
21 technology-based requirements that went beyond what is  
22 required by US EPA.

23 So we're going -- that's a -- that's a  
24 very important thing we're going to have to clarify  
25 here. You deleted the language, actually, so when

1 I -- when I saw that originally, deleting the language  
2 from 7053, saying that this doesn't need to be  
3 approved by US EPA, I thought you'd gotten our point,  
4 which was that a variance from 7053 that was designed  
5 to get around a water quality-based effluent limit or  
6 to get a variance for a water quality-based effluent  
7 limit does have to be approved by the US EPA.

8 So that is the basic problem here. We'll  
9 try to lay it out in greater detail in our comments,  
10 but I would really ask you to start thinking about  
11 that now because I believe there's some very serious  
12 confusion going on here.

13 And as you said, it doesn't do anybody any  
14 good to apply for variances that will get through your  
15 process somehow, but will be rejected ultimately by  
16 US EPA, and I think it would be a real mistake for  
17 people to come away thinking they can go through this  
18 7053 variance and avoid US EPA approval, when if, in  
19 fact, what they're doing is seeking a change to the  
20 water quality standard that does require US EPA  
21 approval.

22 Now I'm just going to make a few other  
23 comments. I'm going to try not to -- not to repeat  
24 anything that anyone else has said, particularly  
25 Ms. Maccabee, who did cover several of my points,

1 because, as you have heard, I have -- I have a plane  
2 to catch. I need to actually get on it at 7:00. It  
3 takes off at 8:00. They don't let you jump onto the  
4 wing and things.

5 So what I -- couple of other points here.  
6 One is, and this was a -- really a reaction to the  
7 Chamber of Commerce position and some other positions  
8 that were taken that we want to limit these rules and  
9 protections. Implicitly, in Minnesota, the fishable,  
10 swimmable uses.

11 Now, I've read the rules. I know what the  
12 fishable, swimmable uses are. The most notable thing  
13 that they eliminate or don't cover is drinking water  
14 and certain industrial uses. I don't think the State  
15 of Minnesota wants to get in the business of providing  
16 less drinking water protection or make it easier to  
17 get a variance from protecting drinking water than it  
18 does other uses of water.

19 And because you are fortunate in this  
20 state -- or maybe not fortunate -- you're wise in this  
21 state to not have a rule like we have in some other  
22 states, such as Wisconsin or Indiana, that the state  
23 law and the state regulations have to be as weak as  
24 federal law.

25 You certainly should not wish to dumb down

1       your rules so that we are allowing variances from  
2       protections of drinking water supplies, so that would  
3       be a major thing that I don't think you want to do,  
4       and I think your existing rules would not do that --  
5       or your existing proposal would not do that, but that  
6       should be clear in the final rules.

7               This is another -- this is a practical  
8       problem, and this is, in part, a question -- or  
9       question that doesn't have to be answered particularly  
10       today, but will have to be answered in the course of  
11       the proceeding. It talks in your rule about highest  
12       attainable use should not be limited to -- or it's  
13       talking about currently achievable treatment.

14               One thing we are concerned about is  
15       that -- that a variance not be given because it is not  
16       achievable or that meeting the standard is not  
17       achievable by the equipment that the discharger  
18       happens to have now.

19               If, for example, a discharger cannot now  
20       meet a phosphorous water quality standard because it  
21       does not currently -- equipped to remove phosphorous,  
22       the answer there is not to give them a variance. The  
23       answer there is to put the -- give them the  
24       phosphorous equipment or require the phosphorous  
25       equipment removal that is feasible.

1                   In fact, that's what the federal rule  
2    says, "Feasible pollutant control technology," not the  
3    control technology that the discharger happens to have  
4    on the site now.

5                   Finally, we believe and MPCA believes that  
6    you need to look more at nonpoint sources as a way of  
7    assuring compliance with water quality standards,  
8    without reaching for the variance -- variance drug  
9    first.

10                  And with regard to that, we have -- I have  
11    a series of -- one question here. In your draft  
12    rules, it talks to -- about that you will require  
13    nonpoint controls that are under Permittees' control.  
14    That the nonpoint controls be put into place that are  
15    under the Permittees' control.

16                  Do you have any -- in other words, is  
17    there any existing rules or any other basis in which  
18    we would know what is under the Permittees' control,  
19    in the view of the MPCA? And that is the question.

20                  MS. KESSLER: So this is Katrina  
21    Kessler, and I'll just briefly say that we issue  
22    permits to regulated parties for activities that are  
23    within their jurisdiction. So whether it's a  
24    municipal wastewater plant -- another example within  
25    that municipal jurisdiction would be an MS4 storm

1 water permit.

2 So anything that we have the delegated  
3 authority to issue a permit for, that that entity has  
4 control over, that could be enforceable in a permit.

5 MR. ETTINGER: Okay. So an MS4  
6 municipality, they could pass an ordinance that would  
7 control nonpoint pollution would be required to do  
8 that before they had a variance?

9 MS. KESSLER: This is Katrina again,  
10 and I can't speak to every single specific situation,  
11 but that is an example of something that might be  
12 within jurisdictional control of the Permittee.

13 MR. ETTINGER: Okay. Then the last  
14 thing I just wanted to mention, and this is sort of a  
15 technical point again.

16 On the duration of the -- the US EPA's --  
17 assuming -- if you were to adopt the minimum US EPA  
18 duration requirements, which allows, potentially, an  
19 infinite duration, but one that has to be reconsidered  
20 every five years, there's also a provision within the  
21 federal regulations -- the new federal regulations  
22 that say that the -- must include a provision that the  
23 variance will no longer be applicable if the states do  
24 not conduct the reevaluation.

25 Is that -- I do not see that language in

1 your rule now. Are you intending to put that in the  
2 rule? Or how it that going to be handled?

3 MS. KESSLER: This is Katrina. I  
4 would just give the same answer that we gave to  
5 Ms. Maccabee, that we understand that for every  
6 variance that we preliminarily approve and send to EPA  
7 for final approval, we need to follow the -- the  
8 federal procedures.

9 So if we were to approve a variance under  
10 the state rules and the federal rules, and then not  
11 reevaluate it in accordance with the federal rules,  
12 it's our understanding that that would no longer be in  
13 effect, based on the final federal rules.

14 MR. ETTINGER: You think it would be  
15 useful to say that in your rules so that people who  
16 had a variance knew that they had to have their  
17 variance reevaluated every five years so that they  
18 didn't find that it evaporated on them without notice?

19 MS. KESSLER: Well, I think that  
20 we'll -- we'll consider that question as we put our  
21 written comments together.

22 MR. ETTINGER: With that, I  
23 conclude.

24 HEARING OFFICER CASE: Thank you.

25 Ms. Maccabee, you have a question.

1 MS. MACCABEE: I have a question for  
2 Ms. Kessler.

3 HEARING OFFICER CASE: I assume it's  
4 related to something Mr. Ettinger said?

5 MS. MACCABEE: It's related to that  
6 last statement. I'm --

7 HEARING OFFICER CASE: Okay. But  
8 I'm going to let Mr. Ettinger sit down.

9 MS. MACCABEE: Oh.

10 MR. ETTINGER: My legs aren't  
11 hurting me.

12 HEARING OFFICER CASE: Okay.

13 MR. ETTINGER: If there's another  
14 question after --

15 MS. MACCABEE: But he may want to  
16 follow up.

17 HEARING OFFICER CASE: All right.

18 MS. MACCABEE: I -- I -- am I  
19 understanding correctly that the staff -- the PCA  
20 staff are saying that even if they know that a certain  
21 procedure is required under the federal rule, there  
22 are ideas that they might just do it without having it  
23 in Minnesota rules? Or am I just misunderstanding  
24 that completely?

25 Because I think that's what Mr. Ettinger

1 was getting at, is that if we know, for example, there  
2 needs to be a reevaluation process, and if you don't  
3 do it, then the variance can't be continued or -- what  
4 I mentioned -- there has to be a public hearing  
5 process.

6                   Is the Agency considering something other  
7 than actually putting that into state rules?

8                   MR. NEBLETT: I'll just say that it  
9 is not necessarily the case that every federal  
10 requirement that the State is bound to follow must be  
11 mirrored, duplicated, or included in state rule.

12                  The fact that we have to comply with  
13 federal requirements -- if we don't, we will hear from  
14 the feds, we will hear from interested parties, if we  
15 fail to meet our obligations -- "our" obligations.

16                  MS. MACCABEE: I'm just going to say  
17 this from the perspective of citizens, rather than the  
18 regulated parties who spends the, you know -- an  
19 enormous amount of time and expertise.

20                  If there is nothing in the rules saying  
21 that one is entitled to a hearing -- or nothing in the  
22 rules saying that at the time of triennial review, you  
23 get a hearing -- I -- so -- you know, I will tell you,  
24 even as a person who represents and is an attorney, I  
25 would not have had a clue that that was a requirement.

1                   And actually, what isn't in the rules, and  
2 I have previously brought it up to the PCA, You're not  
3 in compliance with federal rules, they basically --  
4 the PCA basically said, As long as what we have is  
5 approved and -- we don't have to provide anything  
6 more, because I have asked for hearings numerous times  
7 of being told that.

8                   So from the perspective of citizens, not  
9 having it in the rules does not appear to be a  
10 satisfactory way of resolving.

11                   HEARING OFFICER CASE: All right.

12                   Thank you.

13                   MR. ETTINGER: And I would just  
14 follow up on that. I do think, for clarity's sake,  
15 certainly where there's something like that there's  
16 got to be a reevaluation done. That would be something  
17 that would be beneficial to put in your rules so that  
18 people can see that and know, I've got this variance,  
19 and then in five years, I've got to get this  
20 reevaluated.

21                   And also, the public would know there is  
22 going to be a reevaluation of this in five years, as  
23 opposed to just, Oh. There's a federal rule out there  
24 that we think applies. So that is another issue.

25                   I would just add to that. In general,

1 there is a lot of confusion, and I understand it's not  
2 your fault that US EPA snuck up on you with their  
3 final rule, but there is a lot of difficulty here  
4 because your rule is targeted towards an earlier  
5 draft, and getting them to mesh now is a very  
6 difficult thing, and it's difficult for a lot of  
7 people to figure out how we're going to make the  
8 Minnesota rule conform to the federal rule, when the  
9 Minnesota rule is based on an earlier federal draft.

10 HEARING OFFICER CASE: All right.

11 Thank you.

12 Lewis Knieper.

13 MR. KNIEPER: My name is Louis  
14 Knieper, and it's K-N-I-E-P-E-R and L-O-U-I-S.

15 I am the environmental manager for  
16 Southern Minnesota Beet Sugar Co-op in Renville,  
17 Minnesota, and -- am I too fast?

18 THE COURT REPORTER: You're okay  
19 right now.

20 MR. KNIEPER: I have about 45 years  
21 in the environmental industry in my career, 11 of them  
22 in Minnesota, so I'm representing the Minnesota --  
23 Southern Minnesota Beet Sugar Co-op today.

24 First, I want to say -- I want to thank  
25 the MPCA for addressing the variance rule and trying

1 to update it and trying to bring it into compliance  
2 with the EPA.

3                   We, as an industry regulated by both  
4 federal and state rules, appreciate having a  
5 consistent set of guidelines to try to meet so that we  
6 don't have a conflict between the federal and state  
7 rules.

8                   I'll tell you a little bit about Southern  
9 Minnesota Beet Sugar Co-op. First off, we're a  
10 cooperative. We're owned by farmers and growers who  
11 have about 500,000 acres in southern Minnesota in  
12 21 counties.

13                   Of those, about 120,000 acres are farmed  
14 every year in sugar beets. Sugar beets are converted  
15 to sugar in our factory in Renville, and we employ  
16 about 300 people from the community, from those 21  
17 counties, during the year, and we have another 100  
18 employees during harvest that are part-time.

19                   We do have a significant economic impact  
20 to the community of about a billion dollars a year, so  
21 we are a large part of the southern Minnesota economy,  
22 and we do enjoy a variance. We are a company that  
23 does have a variance.

24                   We have a variance from the dissolved  
25 solids or solidity requirements. We discharge water

1 into a Class 7 waterway and do not meet the 1,000  
2 conductivity -- 1,000 micro-Mhos conductivity because  
3 sugar beets have salt.

4                   The water we treat and process comes  
5 primarily from the sugar beets, and the sugar beet is  
6 about 80 percent water, so if we process  
7 3.6 million tons of sugar beets in a year, we have  
8 anywhere from 400 to 600 million gallons of water to  
9 treat and manage, some from rainfall, primarily from  
10 the sugar beets.

11                  The variance that we have from the  
12 salinity standard on the County Ditch 45 -- we  
13 discharge into a ditch, a drainage ditch -- allows us  
14 to discharge water that's above the 1,000 micro-Mhos  
15 per centimeter conductivity standard, which also is a  
16 measurement that identified solids. It's a surrogate  
17 for measuring the amount of solids.

18                  Because of this, we're able to remain in  
19 business. Because of this, we're able to continue to  
20 sustain this company and provide jobs, provide the  
21 sugar, provide an added value to our farmers, and we  
22 do appreciate the variance that we have.

23                  We feel that the water quality standards,  
24 the changes to the variance do not -- did not -- the  
25 first draft we got, did not reflect fully the efforts

1 of MPCA to parallel EPA's requirements. We think they  
2 failed.

3 We have a new draft that came out just  
4 recently and we do believe that we're getting closer  
5 to EPA in terms of the duration of variance. We heard  
6 a number of commenters about duration of variance. We  
7 agree that the variance should be for a specific  
8 period of time, with review, and with requirement to  
9 improve.

10 Southern Minnesota Beet Sugar Co-op has  
11 discharged under a variance for a number of years,  
12 since 2004. Since that time, we have been able to  
13 improve. The variance has allowed us to reduce the  
14 salinity of our effluence, and the variance has  
15 allowed us to install the equipment and process and  
16 make the changes to continue to improve, so we applaud  
17 the fact that we can get a variance and the fact that  
18 we do have a duration and the fact that there is a  
19 review.

20 We don't believe, however, that the term  
21 "water quality standard" should be used in the state  
22 regulation in view -- instead of the term "use," that  
23 EPA had. Use is a -- is a driver of standards. We  
24 think use is the foundation on which standards are  
25 built.

1                   So we request that the MPCA return to  
2 using the term "use" and not "water quality standard"  
3 in its regulation, and they have done that a little  
4 bit in the recent -- in the recent version. I haven't  
5 had the chance to read the whole recent version. I  
6 printed it out just before I came over, but there are  
7 also redline changes that I saw this morning.

8                   But we would ask that everything be  
9 returned to "use," since use is the basis on which  
10 standards are developed.

11                  I'm sorry. I've got to refer to my notes.  
12 My memory isn't as good as it used to be.

13                  We also are concerned with the definition  
14 or the ability to define or inadequately defining the  
15 highest attainable use of condition that must be met  
16 during the permitting period.

17                  We think there needs to be some more  
18 clarity, some more guidelines, some more understanding  
19 so that both the industry, as we spend our money to  
20 achieve this use, and the public both understand what  
21 this -- how do we define the highest attainable use of  
22 condition, and we just don't feel that the current  
23 document, even with the modifications this morning,  
24 adequately explains how that's going to be determined  
25 so that everybody knows at the front end what's going

1 on.

2 That's pretty much all I have to say.

3 HEARING OFFICER CASE: Okay. Thank  
4 you.

5 Does anyone have questions? All right.

6 MR. KNIEPER: Thank you very much.

7 HEARING OFFICER CASE: Thank you for  
8 your comments.

9 I want to have a sense of where we are. I  
10 have one more person who signed up to speak, I  
11 believe. Daniel Marx.

12 MR. MARX: Yes.

13 HEARING OFFICER CASE: Anyone else  
14 in this room who didn't sign up to speak but intends  
15 to? If you could just raise your hand.

16 And Duluth, after one more speaker, I can  
17 come back to you. Are you going to want to speak  
18 again?

19 MS. TOPPING: Yes. This is Deborah  
20 Topping. Yes.

21 HEARING OFFICER CASE: Are you fine?

22 THE COURT REPORTER: I'm good.

23 HEARING OFFICER CASE: All right.

24 Mr. Marx.

25 MR. MARX: My name is Daniel Marx,

1 M-A-R-X, and I represent the Minnesota Environmental  
2 Science and Economic Review Board. The abbreviation  
3 is MESERB, M-E-S-E-R-B, and MESERB is a joint-powers  
4 organization of 42 Minnesota cities, public utilities  
5 commissions, and sanitary districts, so MESERB  
6 represents the regulated community on the public side.

7 MESERB members are the individuals that  
8 are kind of on the front lines every day, cleaning and  
9 protecting Minnesota water through wastewater  
10 treatment.

11 And I wanted to just thank you for the  
12 opportunity to have the hearing today, and I will try  
13 to keep my comments to things that have not yet been  
14 covered, and I'll hit the highlights of, kind of, the  
15 questions that we have that have not been addressed.

16 I will relay support for, kind of, the  
17 general comments that we have concerns about the  
18 consistency, kind of, across the board with the  
19 federal rule and the state rule, particularly in  
20 Chapter 7052.

21 And MESERB has kind of a unique interest  
22 because we represent the public wastewater community,  
23 and while we are very interested in clean water and  
24 clean water for the communities that we represent and  
25 serve and clean water for the state, we also are

1 interested in ensuring that all the regulations that  
2 affect our membership, that affect wastewater  
3 treatment are reasonable, that they're based on sound  
4 science, and that they will achieve a measurable  
5 benefit to water quality, because our resources, in  
6 terms of greater-Minnesota cities and sanitary  
7 districts, are limited, and we do have a significant  
8 amount -- we have other obligations besides just  
9 wastewater treatment. We have police and roads and  
10 fire and ambulance and libraries, and so we want to  
11 ensure that the resources that we have for clean water  
12 are allocated efficiently and effectively.

13                   And the MPCA graciously had us for a  
14 meeting on December 9th of this year, and we discussed  
15 a multitude of issues. In the discussion of the  
16 variance issue, one of the understandings that MESERB  
17 and the executive committee left with is that we all  
18 agree that, in a regulatory scheme, variances should  
19 be limited.

20                   However, if a regulatory scheme is going  
21 to have variances, that variance process needs to be  
22 user-friendly, it needs to be understandable, and it  
23 needs to be reasonable for the regulated parties.

24                   And there needs to be some level of  
25 flexibility, particularly for the public -- for the

1 regulated public, for wastewater. And speaking about  
2 that, I think that the MPCA and MESERB both  
3 acknowledged that in the past, the MPCA has taken a  
4 very restrictive approach to variances.

5 My last count is that there are currently  
6 five approved variances in the state, and maybe that's  
7 a little off. In the future, the MPCA acknowledged  
8 and sees that there is a possibility and a potential  
9 for the need for more variances and that there will be  
10 additional applications for variance, particularly by  
11 wastewater treatment, in respect to the coming  
12 regulations for chloride and -- related to sulfate and  
13 nitrogen and other regulations that are on the  
14 horizon.

15 In addressing, kind of, the -- the  
16 purported intent of this rulemaking, which is the  
17 consistency with the federal rules, and as MESERB  
18 understood it, kind of, flexibility for the regulated  
19 public.

20 You have a couple of points that I don't  
21 expect responses right now, and you may have them, and  
22 I know that some of them have already been addressed.  
23 But one of the things that was concerning to MESERB  
24 was the application of the Great Lakes Initiative  
25 Standard, which is found at 40 CFR 132, it's

1 Procedure 2, Appendix F, and my understanding is that  
2 that standard was developed and codified previously  
3 under the Minnesota Rules under 7052, to particularly  
4 apply to waters and water quality standards within the  
5 Great Lakes Region.

6 And we have concerns that the MPCA is kind  
7 of taking that standard and applying it and  
8 superimposing it on the remainder of the state in  
9 areas where the federal rule does not require that.

10 Now, I acknowledge that Federal  
11 Rule 131.14 incorporates CFR 131.10, which kind of  
12 adopts several of the criteria that are encompassed in  
13 that Great Lakes Standard.

14 However, the federal rule eliminates  
15 certain elements, and I think it would be important  
16 for the MPCA to pay close attention to that,  
17 particularly because those additional elements -- for  
18 example, one of them that is not required under the  
19 Federal Variance Rule at 131.14, is requiring an  
20 applicant to show that a variance would not  
21 jeopardize, endanger, or threaten species or critical  
22 habitat. That is not in the Federal Rule at 131.14 or  
23 131.10, that is specific to the Great Lakes Region.

24 Another example is if the applicant can  
25 characterize the extent of any increased risk to human

1       health and environment associated with granting the  
2       variance.

3               I raise this, not because MESERB members  
4       are not concerned with endangered or present species  
5       or critical habitat, or we're not concerned with the  
6       increased risk to human health. What we're concerned  
7       with is a variance standard that we can meet.

8               If we're going to have a variance standard  
9       in this regulatory scheme, it has to be something that  
10      is achievable for the regulated public, and we have  
11      concerns that there are places where the MPCA is going  
12      further where it is not necessary and it places an  
13      additional potential technical burden on some of our  
14      member cities.

15               And MESERB represents large cities like  
16      Rochester, and we also represent smaller cities that  
17      have populations of 1,000, 2,000, 3,000 people, and  
18      our concern is that this process clearly puts the  
19      burden on the Permittee to apply for the variance, and  
20      some of our entities do not have the technical  
21      expertise to demonstrate, perhaps, that they don't  
22      jeopardize endanger, or threaten species or critical  
23      habitat in this application for a variance.

24               So one of the things that concerns us is  
25      how is MPCA going to assist smaller cities with the

1       technical expertise required to apply for this  
2       variance, because in a lot of our cities, the cost of  
3       applying for the variance can become cost prohibitive.

4               And I recognize, just as you guys  
5       recognize, that for a lot of cities, it makes sense to  
6       invest the, perhaps, \$25,000, perhaps more, to apply  
7       for the variance because it could save them millions  
8       and millions of dollars of technological upgrades that  
9       might not produce that much benefit.

10              However, for a small city, without  
11       significant technical engining capacity, to see that  
12       and to make that application is difficult, and so we'd  
13       like the MPCA to take that into consideration.

14              And some of the ways that we ask you to  
15       consider is, you know, that the fee for a variance is  
16       around \$10,000, in my understanding, and the technical  
17       cost and the legal cost for some of our members to  
18       meet the standard could easily exceed \$15,000 or more,  
19       and that could be cost probative for them.

20              And I think that the SONAR does not  
21       address in a substantive way that issue. The SONAR  
22       kind of states, you know, that we believe that with  
23       the cost of the application and the technical cost, it  
24       won't exceed \$25,000, and I don't -- I don't know what  
25       that basis -- I don't know if there was an engineer,

1 firm that was given the opportunity to say, Well, what  
2 would it cost for you to help the City figure this  
3 out?

4 So we're concerned about, kind of, the  
5 substantive requirement to meet that issue of the  
6 SONAR at Minnesota Statute 114.127(1), but then we're  
7 also just concerned with how are the smaller cities  
8 going to deal with this.

9 So one of the things that we would ask you  
10 to consider is, perhaps, a sliding-fee scale for  
11 smaller cities, and there's no reason that a city of  
12 2,000 should have to pay the same as the Met Council,  
13 for a variance, and so we'd ask you to consider that  
14 as you move forward with the rulemaking.

15 And then we ask you to look at some of  
16 those inconsistencies in the GLI standard or taking  
17 the GLI standard and applying it to Minnesota across  
18 the board -- Minnesota waters across the board and  
19 really making sure that it is in line with the federal  
20 rule, because we believe that there are areas where  
21 your rule is imposing the federal standard for the GLI  
22 where it's not necessary, and it would make it more  
23 difficult for our cities to comply with the  
24 application process.

25 And those are the comments I have at this

1 time, and if you can address any of them right now,  
2 that's great. I know that time is crunched, so we can  
3 do it later as well.

4 So thank you very much for the opportunity  
5 to be heard.

6 HEARING OFFICER CASE: Thank you.

7 Are there any questions?

8 All right. I believe that that was all  
9 the people signed up in this room. Is there anyone  
10 else here who wants to speak? Otherwise we'll go back  
11 to Duluth.

12 All right. I believe that that's  
13 Ms. Northrup who is --

14 MS. TOPPING: Topping, Debra  
15 Topping.

16 HEARING OFFICER CASE: Topping. All  
17 right.

18 MS. TOPPING: I'm on? Okay.

19 HEARING OFFICER CASE: Go ahead.

20 MS. TOPPING: So I don't want to  
21 beat a dead horse here. There's nobody here talking  
22 for the deer or the water, you know, even though we  
23 are here talking about the water, it's not the same  
24 thing.

25 Who's talking about the medicines that

1       this will be disrupting? We really need to look at  
2       the balance of this all. Five years for anything,  
3       even though I get the -- the paper, red tape. I get  
4       it. I understand it, but five years, to believe to  
5       continue this, is -- is five years too much.

6               I -- as a First Nations person, as an  
7       indigenous person, I don't even -- I can't even  
8       comprehend how this is acceptable anywhere. There is  
9       no room for variances.

10              And then to get to the bottom of it, it  
11       costs \$10,000. This -- it just gets -- keeps getting  
12       better. You know? So I would like to say, no.  
13       That's my point. That's where -- my children and my  
14       grandchildren, there is no room for a variance.

15              Thank you.

16              HEARING OFFICER CASE: All right.  
17       Ms. Topping, thank you for your comment.

18              All right. There being no one else here  
19       who wants to comment, I'm going to look at my notes to  
20       see what questions I have before I adjourn.

21              Some of these you've addressed, so I'm  
22       just going through my list to see what it is I want  
23       to -- and I'm not going to ask you to answer now, but  
24       you can think about these things as you are putting in  
25       your responses to comments that you get here today and

1 then other comments that came in.

2                   And again, before I ask these, I'm going  
3 to say I understand that I'm probably the least expert  
4 in this room regarding this topic. That's another  
5 reason for the hearing is to make me better informed.

6                   There are some comments, as I recall, that  
7 came in before today, although I didn't hear anyone  
8 say it at the podium, that the rules should be  
9 withdrawn and you should start over, and if you could  
10 just address that in your response broadly.

11                  Because I understand that there's never a  
12 good sync between the federal regulations and the  
13 state regulations. I mean, the timing is always, from  
14 a State Agency's perspective, not quite in sync, and  
15 it makes it difficult.

16                  But one of the broader concerns I have is  
17 that the SONAR was written to the proposed regulations  
18 and not the final regulations, and so to the extent,  
19 without rewriting your SONAR, you can address --  
20 especially as to the part that goes to the language  
21 itself, not your process, whether or not the SONAR  
22 continues to be responsive or provide an explanation.  
23 And, of course, you can provide it in the next 20  
24 days.

25                  This is kind of nitpicky, but on page 33

1 of the SONAR, you say "As the intent of the proposed  
2 rules is to reduce staff time needed to process  
3 variance requests," it's kind of in the middle of the  
4 page. Do you see that? "What is the anticipated  
5 effect on State revenue?" And I'm sure you meant "One  
6 of the intents." Would you agree?

7 Not the sole -- it kind of views as if  
8 that's the intent, but I know from reading elsewhere  
9 that it's --

10 MS. KESSLER: Yes. We agree that  
11 that is not the only intent.

12 HEARING OFFICER CASE: Okay. Thank  
13 you.

14 MS. KESSLER: Yes, yes. Not the  
15 primary intent either.

16 HEARING OFFICER CASE: I didn't  
17 think so. Thank you.

18 For my own clarification, am I correct in  
19 stating that federal law does not require a variance  
20 process at all?

21 MS. KESSLER: Yes. So this is  
22 Katrina, and the rule that EPA adopted in  
23 August spells out what they think states should  
24 generally follow.

25 And previously, there was no federal rule

1 about variances. There was federal language that EPA  
2 used to point states to, and they have consolidated  
3 it. And the expectation is that states will have  
4 variance provisions adopted in their rules, if they  
5 are going to use variances as a permit-implementation  
6 tool.

7 HEARING OFFICER CASE: Thank you.  
8 That's clear.

9 And I'm sorry to bore everyone with my  
10 silence, but I'm just trying to be careful. And I  
11 don't have any opportunity, just to be perfectly  
12 clear, to talk to the Agency off the record, and no  
13 one wants me to, so that's why I'm taking my time  
14 here.

15 Under 7050.0190, Variance From Standards,  
16 as originally proposed -- and I haven't had the time  
17 today, as I've been listening to compare whether or  
18 not this part still exists, but I think it does --  
19 it's proposed language under Subpart 4D. "Shows  
20 sufficient information," -- that section.

21 So this is a list of, "To be eligible for  
22 a preliminarily determination by an Agency to grant  
23 the variance, the Permittee must," and then there's a  
24 list of things that the Permittee "must," and D is,  
25 "Show sufficient information to allow the Agency to

1 determine the water quality currently attained and the  
2 interim numeric effluent conditions that reflect the  
3 highest attainable conditions."

4 Are you with me?

5 MS. KESSLER: Uh-huh.

6 HEARING OFFICER CASE: Is interim a  
7 particular period and is it the period -- well, what  
8 period is it?

9 MS. KESSLER: So generally what  
10 interim -- how interim is used is when something spans  
11 longer than, for instance, the term of the permit,  
12 which is five years. We would put interim conditions  
13 in that need to be achieved, likely annually, to show  
14 progress towards the ultimate final limit.

15 HEARING OFFICER CASE: All right.

16 Thank you.

17 I think I'll just ask you when you're  
18 putting in your whatever you're going to put in  
19 writing, if you can broadly explain -- and to the best  
20 of your ability, in language for people who are not  
21 participants in these systems -- broadly about what  
22 each of the three sections is for.

23 And if the terms -- and again, I had to  
24 compare it to what you change it -- but if the term of  
25 the variances are different under them, why is that?

1       The term of the permit.

2                   MS. KESSLER: Judge Case, just to  
3       clarify, when you say three sections, you are talking  
4       about Chapters 7050, 7053, and 7052? And the second  
5       part of the question, I think I heard, was if the term  
6       of the variance is different within those three  
7       chapters, explain why?

8                   HEARING OFFICER CASE: Yes.

9                   MS. KESSLER: And why it may not be  
10       five years that lines up with the permit? Is that the  
11       last thing you said?

12                  HEARING OFFICER CASE: Yes.

13                  MS. KESSLER: Okay.

14                  HEARING OFFICER CASE: All right. I  
15       think the rest of my questions have been asked here  
16       today.

17                  Having asked my questions, I'll ask anyone  
18       else here if they have any other questions.

19                  Ms. Maccabee.

20                  MS. MACCABEE: I'm wondering if you  
21       could respond to Mr. Ettinger's question, because I  
22       must admit that I didn't understand it.

23                  Is 7053 applying only to reduction of  
24       technology requirement that are above and beyond  
25       federal requirements? Or was it intended to be a

1 variance from water quality-based effluent  
2 limitations?

3 MS. KESSLER: And just, we will  
4 respond in writing, but just in general, we would say  
5 that 7053 does not include water quality standards  
6 provisions.

7 7050 and 7052 have the water quality  
8 standards provisions. 7053 are implementing  
9 procedures for our state discharge restrictions.

10 And we'll explain that.

11 HEARING OFFICER CASE: That's a very  
12 succinct explanation there.

13 All right. Thank you.

14 Does the Minnesota Pollution Control  
15 Agency have anything else it would like to say at this  
16 time?

17 MS. KESSLER: Well, I think we would  
18 just like to say thank you to everyone for taking your  
19 afternoon and early evening to come and give comments.  
20 We really appreciate the people who have given written  
21 comments up to date and for people who took the time  
22 to give oral comments today.

23 We take this very seriously and will give  
24 all the comments due consideration as we put our  
25 preliminary response to comments together, which we

1 will make available, as we've heard, on our website as  
2 soon as possible, but no later than the 20-day  
3 deadline that you laid out at the beginning.

4 HEARING OFFICER CASE: All right.

5 Thank you.

6 And again, is there anyone else that would  
7 like to make another comment? And Duluth? Duluth is  
8 good.

9 UNIDENTIFIED SPEAKER: No, thank  
10 you.

11 HEARING OFFICER CASE: All right.

12 And again, I'll just remind folks that the  
13 deadline for comments is Wednesday, February 24th, and  
14 then the rebuttal period will close on Wednesday,  
15 March 2, 2016.

16 And I thank everyone who submitted  
17 comments to date, and I look forward to your comments  
18 going forward.

19 And if there's no one else that wants to  
20 speak -- going once, going twice. We are adjourned.

21 (At this time the proceedings were  
22 concluded at 6:01 p.m.)

23

24

25

STATE OF MINNESOTA)  
                      ) SS.  
COUNTY OF ANOKA    )

## REPORTER'S CERTIFICATE

I, Kelly L. Brede, do hereby certify that the above foregoing transcript, consisting of the preceding 102 pages is a correct transcript of my stenographic notes, and is a full, true, and complete transcript of the proceedings to the best of my ability.

Dated and signed this 11th day of February, 2016.

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Kelly L. Brede  
Court Reporter