



THE GREEN BEAGLE

2023 MCEA ENVIRONMENTAL LAW CLE SERIES



50th Anniversary of the Minnesota Environmental Policy Act (MEPA) Symposium

Course code: 494064

AGENDA

1:00pm: Panel #1 - MEPA 101 and key case law

Panelists: Jay Eidsness, MCEA Staff Attorney Heidi Guenther, MCEA Legal Fellow Leigh Currie, MCEA Director of Strategic Litigation

2:00pm-2:10pm – Break

2:10pm: Panel #2 - Environmental justice and the role of MEPA

Panelists: Evan Mulholland, MCEA Healthy Communities Program Director Eric Ini, MCEA Chief Equity and Partnership Officer Melissa Lorentz, MCEA Staff Attorney

3:10pm-3:20pm - Break

3:20pm: Panel #3 - The future of MEPA

Panelists: Joy Anderson, MCEA Senior Staff Attorney Kathryn Hoffman, MCEA Chief Executive Officer

4:30pm-5:30pm - Reception/happy hour



MEPA 101 and key case law

Panel One - An introduction, key components, and appeals process of environmental review



Leigh Currie
MCEA DIRECTOR OF
STRATEGIC LITIGATION



Jay Eidsness
MCEA STAFF ATTORNEY



Heidi Guenther
MCEA JOHN W. PEGG
LEGAL FELLOW



Panel 1 Outline

1. An introduction of MEPA, including a touch-and-go on legislative history and the state of Minnesota's environment when it was passed, and key components of the statute and rules.

Presented by MCEA's John W. Pegg Legal Fellow, Heidi Guenther.

2. A deep dive into environmental review. What is an EAW and an EIS? How do we decide which projects must go through environmental review? What must be studied in an EAW and an EIS? This part will explain the citizen petition process and the notice and comment period.

Presented by Jay Eidsness, MCEA Staff Attorney.

3. The appeal process and standard of review. How has caselaw shaped MEPA over the years and what should lawyers know before challenging an environmental review decision in court.

Presented by Leigh Currie, MCEA's Director of Strategic Litigation.



What is MEPA?

- The Minnesota Environmental Policy Act (MEPA) is one of Minnesota's bedrock environmental laws, Minn. Stat. § 116D.
- First enacted in 1973, and later amended in 1975 and 1976
- MEPA was one of many sweeping acts issued in response to the environmental damages that were being seen across the state

Governor Wendell Anderson said at the time:



Our first concern must be the preservation of what we have left of the natural resources that sustain our lives.... We need a clear statement of environmental policy.... We must see that an concern for the environment becomes part of all major government decisions.... If we err, it will be on the side of public health.... From now for as far into the future as we can see, we must protect."



State of Minnesota's Environment

- Leading up to its 1973 passage, many states were beginning to feel the effects of industrial pollution on their environment and use of natural resources



Robert Jacobson Photograph Collection/Minnesota Historical Society



State of Minnesota's Environment

- Reserve Mining Co. taconite tailings spilling into Lake Superior



Photo: Alfred Eisenstaedt The LIFE Picture Collection/Shutterstock



Legislative History

- Passed in 1973
- Strong bipartisan support of Senate 60-0 and House 119-7
- At the time, both the MN House and Senate were controlled by Republicans (who at the time called themselves “Conservatives”)
- The Governor, Wendell Anderson, was DFL





MEPA Fundamentals

- **MEPA declares three intended purposes for Minnesota (Minn. Stat. § 116D.01):**

(1) to declare a state policy that will encourage productive and enjoyable harmony between human beings and their environment;

(2) to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of human beings; and

(3) to enrich the understanding of the ecological systems and natural resources important to the state and to the nation.



MEPA Fundamentals

- Minn. Stat. § 116D.02: A Declaration of State Environmental Policy
- MEPA declares Minnesota's overarching state policy, to “create and **maintain** conditions under which human beings and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and **future generations**”





MEPA Fundamentals

“Where there is **potential** for **significant environmental effects** resulting from any **major governmental action** (including approval of private actions), the action must be preceded by a **detailed environmental impact statement (EIS)** prepared by the **responsible governmental unit.**”
Minn. Stat. § 116D.04, subd. 2(a).





MEPA Fundamentals

- MEPA requires RGUs to study the environmental impacts of certain projects before approving them.
- Some projects require a shorter study called an Environmental Assessment Worksheet (“EAW”), and some require a bigger study called an Environmental Impact Statement (“EIS”).
- Which project requires what kind of review is determined by Minnesota Rules 4410.4300 and 4410.4400.
- The EIS is really at the heart of what MEPA intended and is designed so that the public and governments can fully assess any alternatives, including a no action alternative.



MEPA Fundamentals

The Environmental Quality Board (“EQB”)

In its 1973 inception, the EQB (which at the time was called the Environmental Quality Council), was made up of:

- 4 governor-appointed citizen members; a representative for the governor; the heads of the Departments of Natural Resources, Health, and Agriculture, the Pollution Control Agency; and the State Planning Agency.
- The 1975 amendments removed the citizen’s petition for an EIS and limited petitions to EAWs only
- The 1976 amendments changed the role of the EQB and introduced the EAW—so that the RGU (responsible governmental unit) is now in charge of whether a project requires an EIS rather than an EAW
- EQB now consists of the heads of nine state agencies and eight public representatives, one from each Congressional district appointed by the governor



MEPA Fundamentals

What is a Responsible Governmental Unit (“RGU”)?

- A responsible governmental unit (RGU) can mean a variety of different decision-making bodies and is defined in Minn. Stat. § 116D.04, subd. 1(a)(e):
- “any state agency and any general or special purpose unit of government in the state including, **but not limited to**, watershed districts organized under chapter 103D, counties, towns, cities, port authorities, housing authorities, and economic development authorities established under sections [469.090](#) to [469.108](#), **but not including** courts, school districts, the Department of Iron Range Resources and Rehabilitation, and regional development commissions other than the Metropolitan Council.”



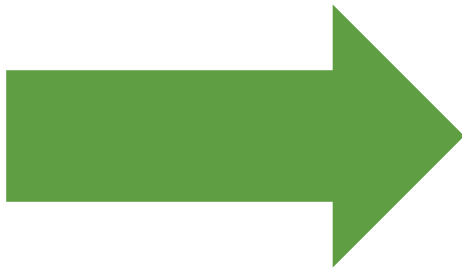
Deep Dive: EAW

- Environmental Assessment Worksheet “means a **brief document** which is designed to set out the **basic facts necessary** to determine whether an environmental impact statement is required for a proposed action.” Minn. Stat. § 116D.04, subd. 1a (c).
- The purpose of an EAW is to disclose information about potential environmental impacts of the project and **to determine whether an EIS is required**. It is NOT an approval process.
- **Can be triggered by:**
 - Mandatory Category – Minn. R. 4410.4300
 - Typically required if project meets certain size thresholds:*
 - Construction of a campground or RV park of 50 or more sites – subp. 20
 - Construction or expansion of a marina by 20,000 square feet – subp. 25
 - Construction of an animal feedlot with a capacity of 1,000 animal units – subp. 29A
 - Citizen Petition



What does an EAW Study?

- The EAW Form asks about 22 areas of information, including potential impacts to:
 - **Water Resources**
 - Including surface water, groundwater, and wastewater
 - **Air Quality**
 - Including stationary source emissions, vehicle emissions, and dust / odors
- Mitigations
- **The EAW does not study alternatives**



Part of the EAW Form

15. Historic properties:

Describe any historic structures, archeological sites, and/or traditional cultural properties on or in close proximity to the site. Include: 1) historic designations, 2) known artifact areas, and 3) architectural features. Attach letter received from the State Historic Preservation Office (SHPO). Discuss any anticipated effects to historic properties during project construction and operation. Identify measures that will be taken to avoid, minimize, or mitigate adverse effects to historic properties.

16. Visual:

Describe any scenic views or vistas on or near the project site. Describe any project related visual effects such as vapor plumes or glare from intense lights. Discuss the potential visual effects from the project. Identify any measures to avoid, minimize, or mitigate visual effects.



EAW Process

- Project proposer supplies information to the RGU
- RGU prepares the EAW
- EAW is published in the EQB Monitor
 - Weekly publication (Tuesday at noon)
- 30-day public comment period
 - Can be extended once by the RGU and more by the project proposer
- RGU responds to comments and makes decision on the need for an EIS



Notice and Comment

- Anyone can submit a comment
- RGU must respond to all comments
- Comments should be directed at:
 - Accuracy and completeness of EAW
 - Potential impacts that may warrant further investigation
 - Need for an EIS
- Powerful tool that can help improve a project
- Part of the record on appeal





Decision on the Need for an EIS

- An EIS is required for projects that have the **potential for significant environmental effects**
- Criteria that informs that question:
 - Type, extent, and reversibility of environmental effects;
 - Cumulative potential effects
 - Extent to which environmental effects can be mitigated by ongoing regulatory authority
 - Extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies





Environmental Impact Statement

- “Where there is potential for significant environmental effects resulting from any major governmental action.” Minn. Stat. § 116D.04, subd. 2a.
- Mandatory Categories – Minn. R. 4410.4400
- EAWs that have the potential for significant environmental effects
- Three main purposes:
 - 1) Gather and provide information about environmental impacts
 - 2) Consider alternatives to the proposed project
 - 3) Explore methods for reducing adverse environmental effects

RARE



Steps for EIS

- **Scoping EAW**

- Designed to identify potentially significant issues
- Define form, level of detail, content, alternatives, timing, permits, etc.
- Very Important – sets table for EIS

- **Draft EIS**

- Includes public comment

- **Final EIS**

- Includes response to comments

Process can take years



Environmental Review: Numbers and Criticisms

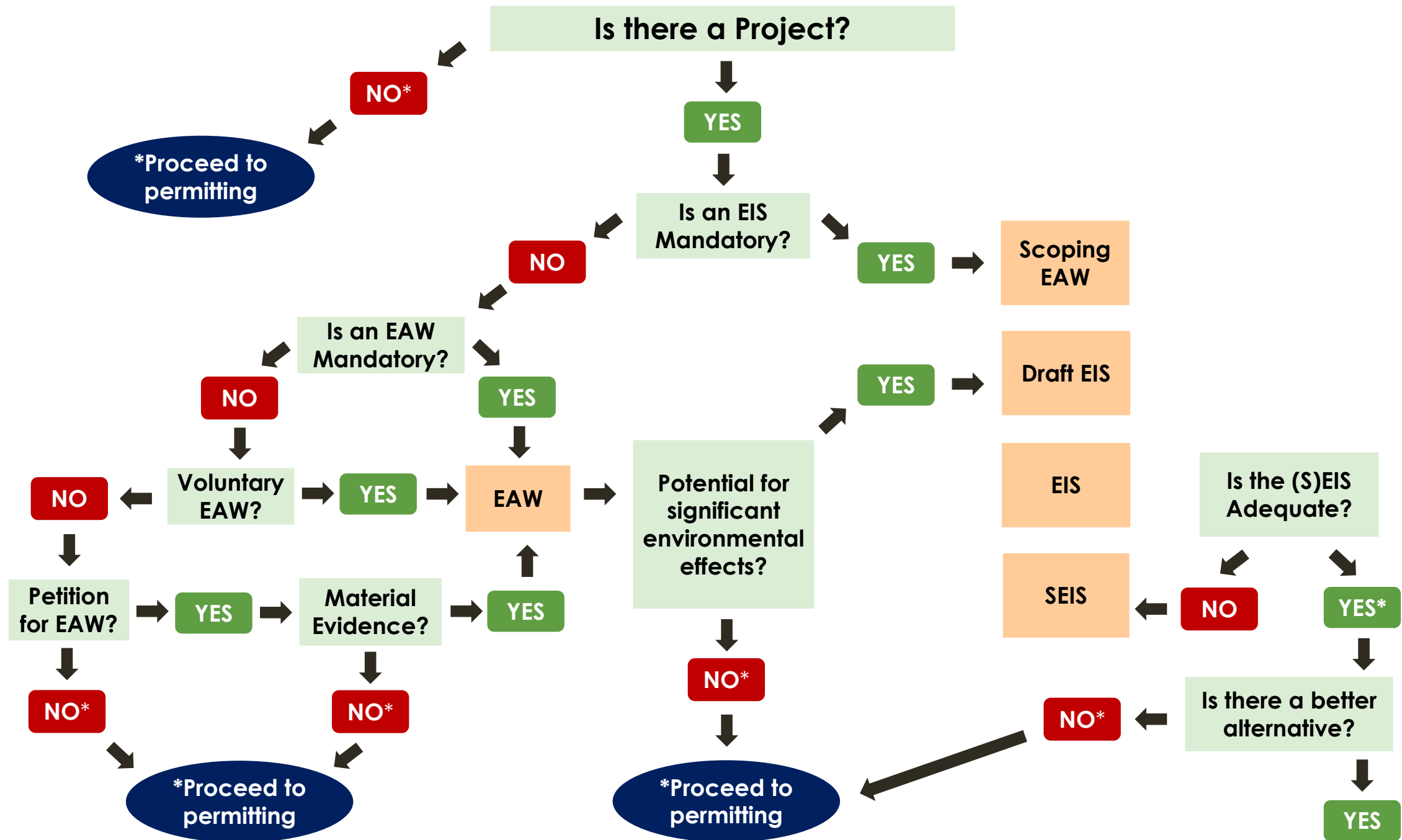


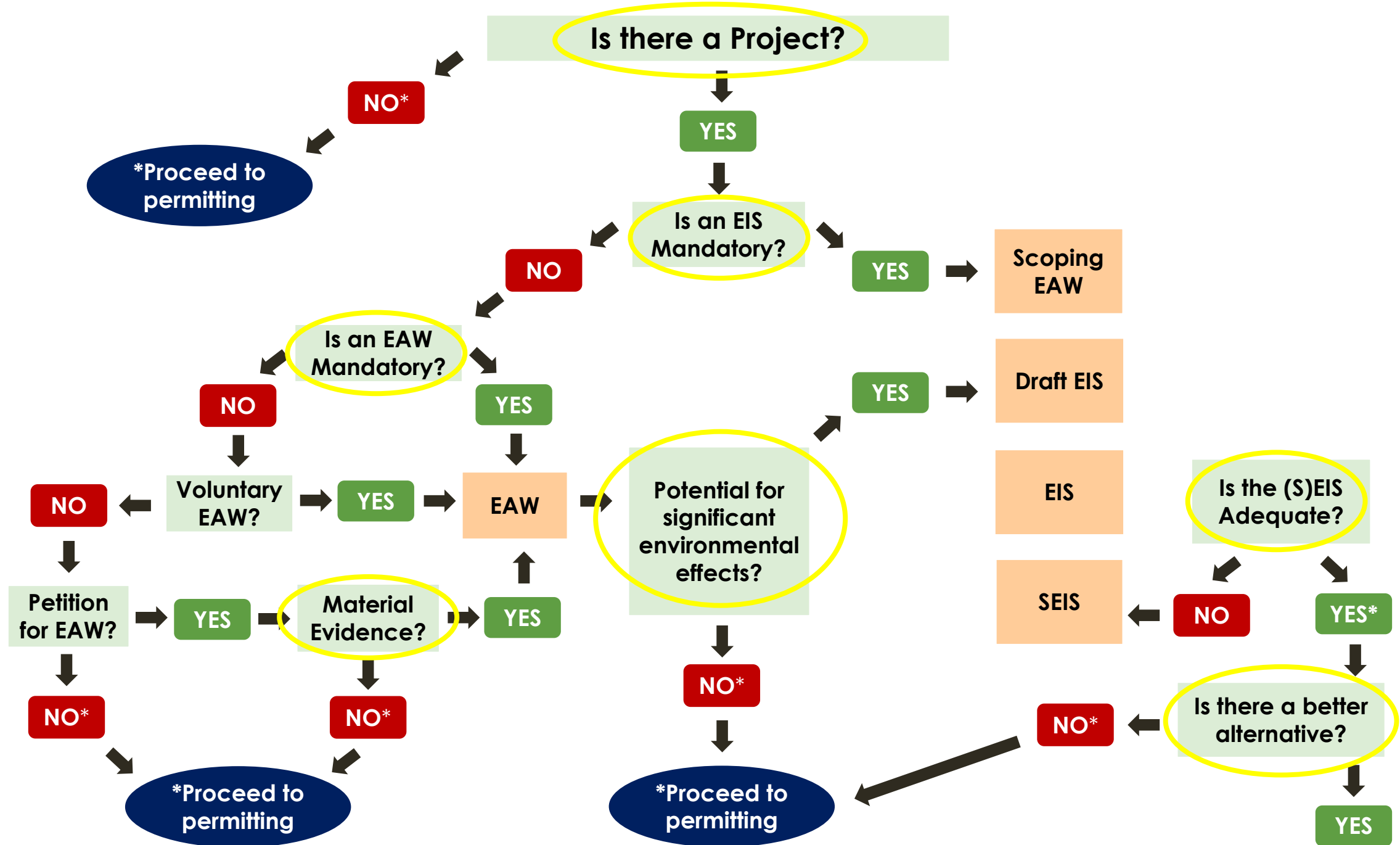
- Very few EISs are completed
- EAWs are becoming much lengthier and unwieldy
- Timing of environmental review makes it hard to implement improvements
- Accused of being an administrative burden
- EAW form does not address environmental justice



Appealing a MEPA decision: **What you need to know**



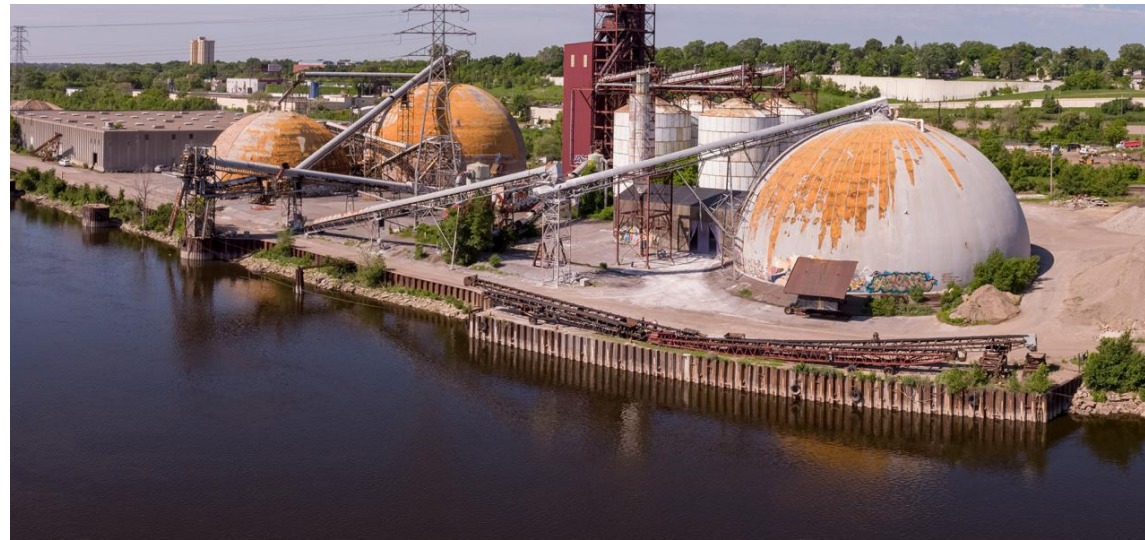






Judicial Review under MEPA

- **Minn. Stat. § 116D.04, subd. 10**
 - Certiorari appeal (as of 2011)
 - MAPA applies
 - 30-day deadline
 - Bond may be required
 - BUT NOT Alternative Urban Areawide Review



In re Final Alternative Urban Areawide Review and Mitigation Plan for the Upper Harbor Terminal Development, 973 N.W.2d 331 (Minn. Ct. App. 2022)

Is it a project?

- *In re Minnesota Power's petition for approval of Energy Forward Resource Package*, 958 N.W.2d 339 (Minn. 2021)
 - We agree with the Supreme Court that, in light of the informational role served by MEPA review, the line that must be drawn requires a “reasonably close causal relationship” between the environmental effect and the alleged cause.
- *In re EAW for 33rd Sale of State Metallic leases*, 838 N.W.2d 212 (Minn. Ct. App. 2013)
- *Minnesotans for Responsible Recreation v. DNR*, 651 N.W.2d 533 (Minn. Ct. App. 2002).





Is an EIS mandatory?

- *In re City of Cohasset's decision on need for an EIS*, 985 N.W.2d 370 (Minn. Ct. App. 2023)



Is an EAW required?

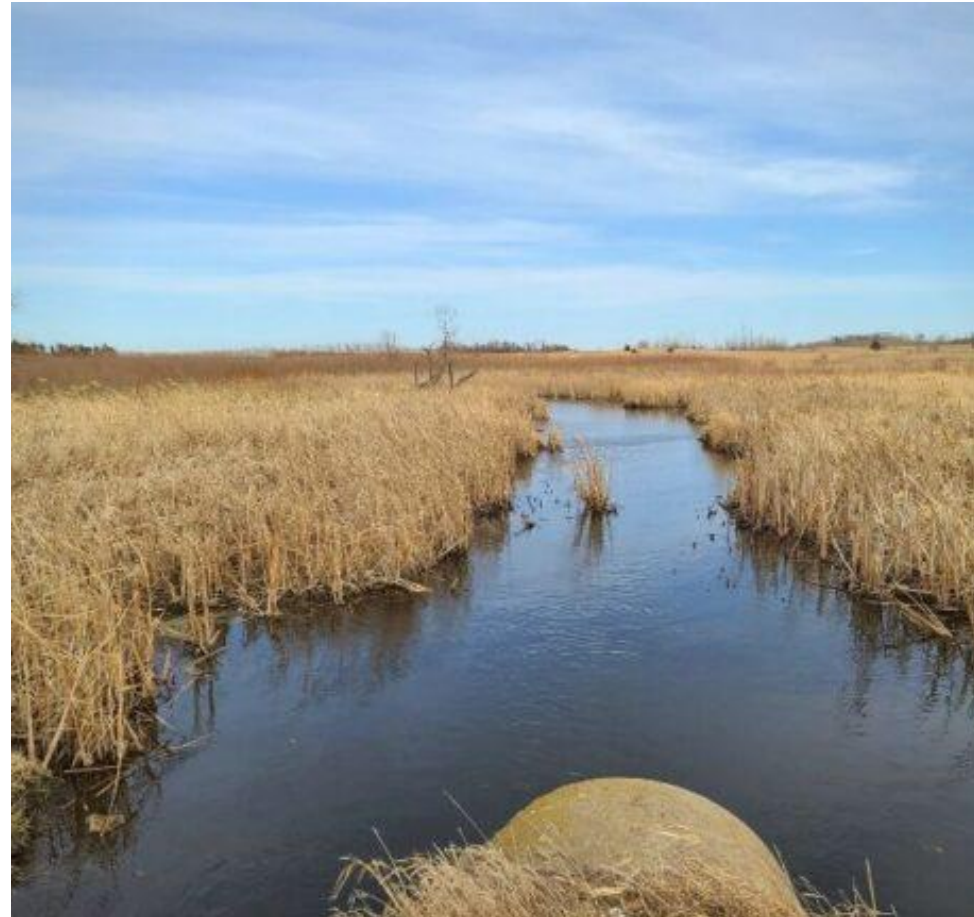


Mandatory category?

- *In re Petition of MCEA for commencement of an EAW*, 980 N.W.2d 175 (Minn. 2022) (public water)
- *Bolander and Sons v. City of Minneapolis*, 488 N.W.2d 804 (Minn. Ct. App. 1992) (considering exemptions)

Citizen petition?

- Material evidence is admissible and relevant and consequential. *Watab Tp. Citizen Alliance v. Benton County Bd. of Comm'rs*, 728 N.W.2d 82 (Minn. Ct. App. 2007)
- May be potential for significant environmental effects. *Bolander*





Does EAW show potential for significant environmental effects?

- **Must explain conclusion:**
 - *In re City of Cohasset.*
- **Must consider cumulative effects:**
 - *Pope County Mothers v. MPCA*, 594 N.W.2d 233 (Minn. Ct. App. 1999).
- **Mitigation measures:**
 - *Citizens Advocating Responsible Development v. Kandiyohi Cty.*, 713 N.W.2d 817 (Minn. 2006) (vague statements of good intention are insufficient);
 - *Friends of Twin Lakes v. Roseville*, 764 N.W.2d 378 (Minn. Ct. App. 2009) (pre-existing regulatory oversight can be considered);
 - *Trout Unlimited*, 528 N.W.2d 903 (Minn. Ct. App. 1995) (can't be in lieu).



Is an EIS adequate?

Failure to consider issue raised in scoping:

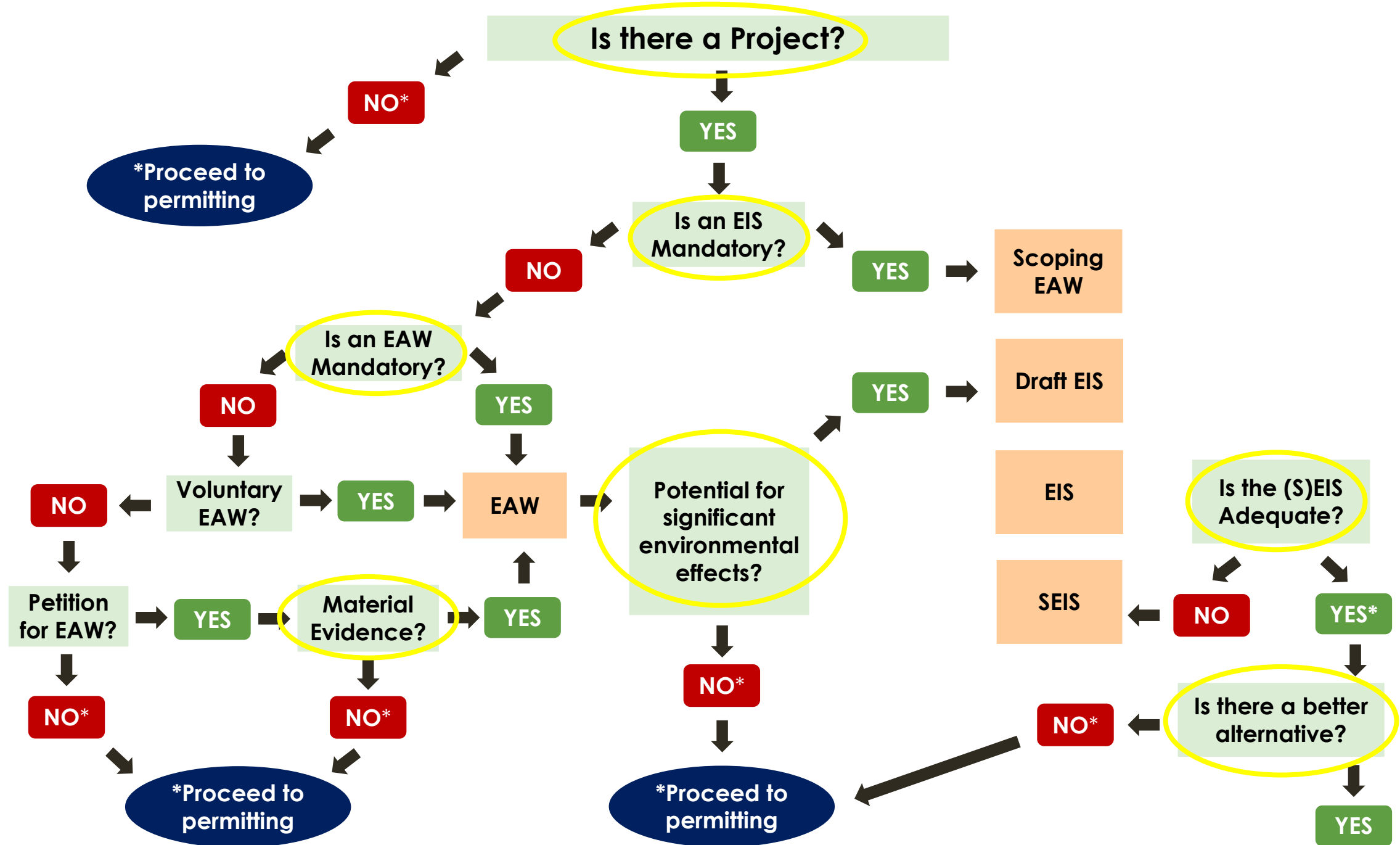
- *In re Enbridge Energy Applications*, 930 N.W.2d 12 (Minn. Ct. App. 2019)

Hard Look Doctrine:

- *Reserve Mining v. Herbst*, 256 N.W.2d 808 (Minn. 1977), (not MEPA)
- *Citizens Advocating Responsible Development v. Kandiyohi Cty.*, 713 N.W.2d 817 (Minn. 2006)
- *Friends of Twin Lakes v. Roseville*, 764 N.W.2d 378 (Minn. Ct. App. 2009)









Questions?



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The Role of MEPA in Addressing Environmental Justice

Panel Two



Eric Ini
MCEA CHIEF EQUITY
AND PARTNERSHIP
OFFICER



Evan Mulholland
MCEA HEALTHY COMMUNITIES
PROGRAM DIRECTOR



Mel Lorentz
MCEA STAFF ATTORNEY

Roadmap:

- 1) What is EJ
- 2) MEPA and EJ
- 3) NEPA and EJ
- 4) Tribal Rights and MEPA
- 5) Some Recommendations
- 6) Questions and Discussion





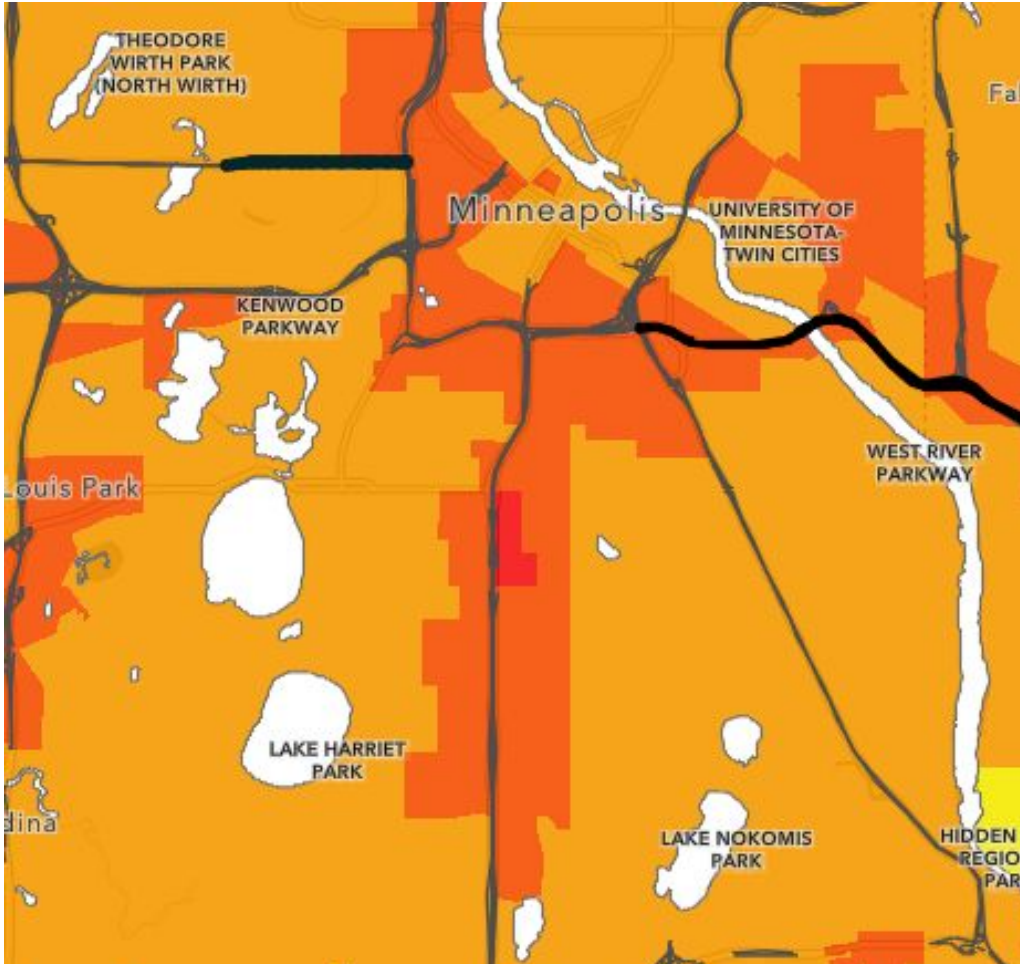
What is Environmental Justice

Environmental IN-justice:

Intentional and systematic concentration of highways and polluting facilities that protect and advantage rich and white communities while harming low-income, Black, and brown communities.



What is Environmental Justice



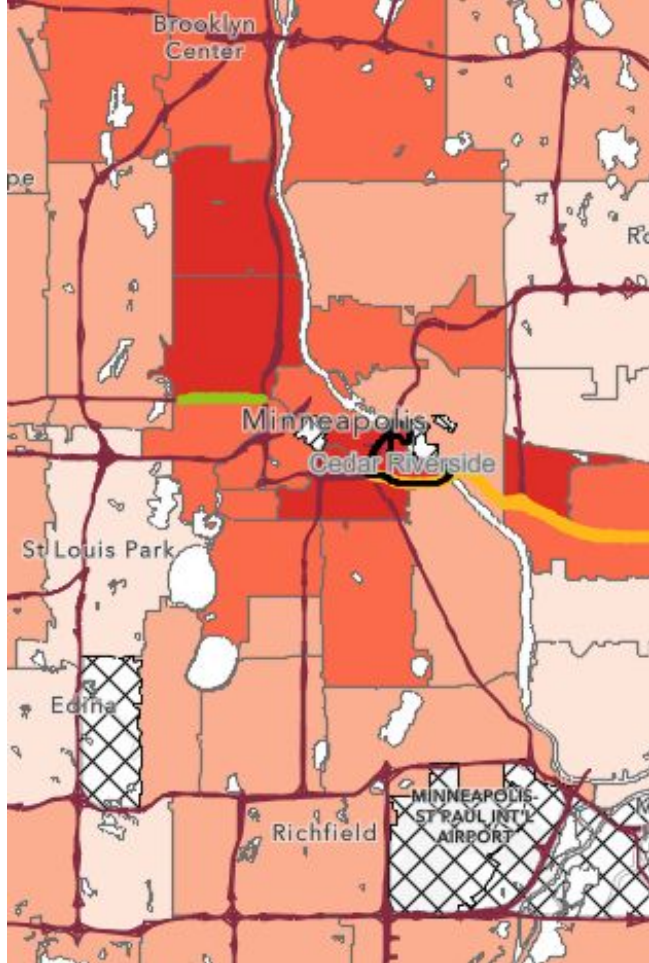
- Air Quality (darker red is worse air quality)

Thanks to Our Streets Minneapolis for the data visualizations

-https://www.ourstreetsmpls.org/environmental_justice_data_portal

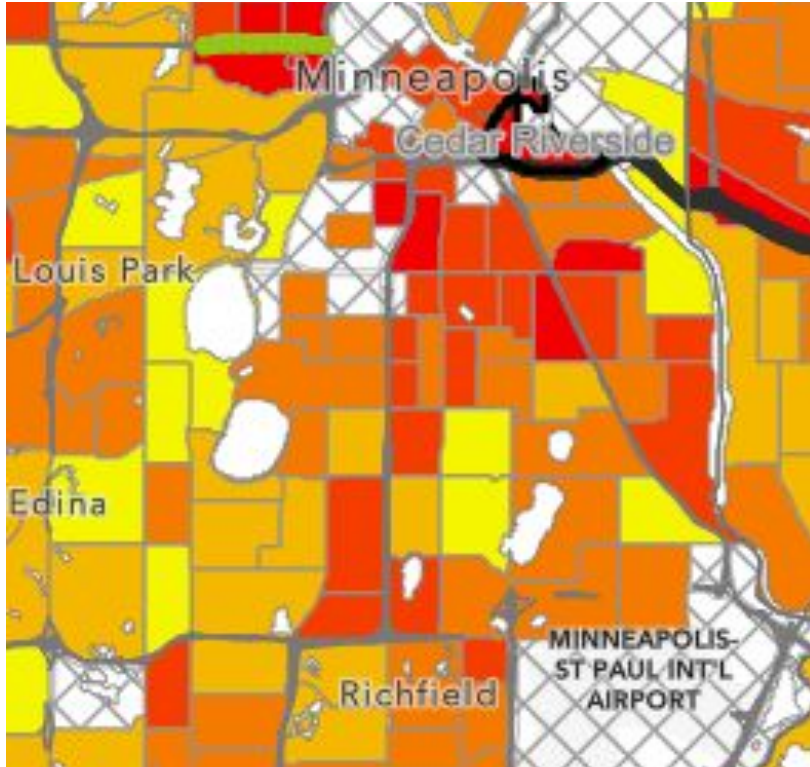


What is Environmental Justice

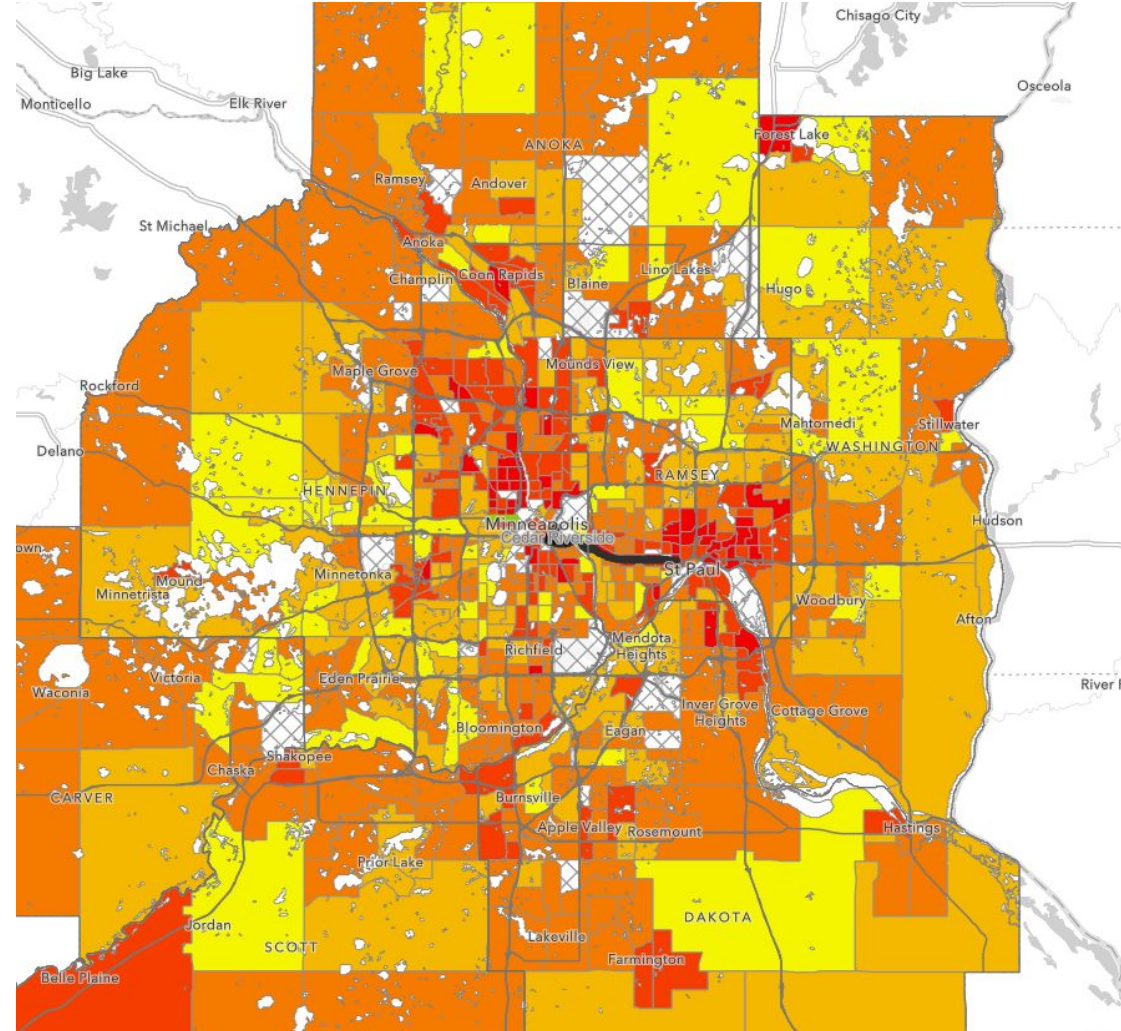


- Asthma Hospitalizations (darker red is more per 1000 residents)

What is Environmental Justice

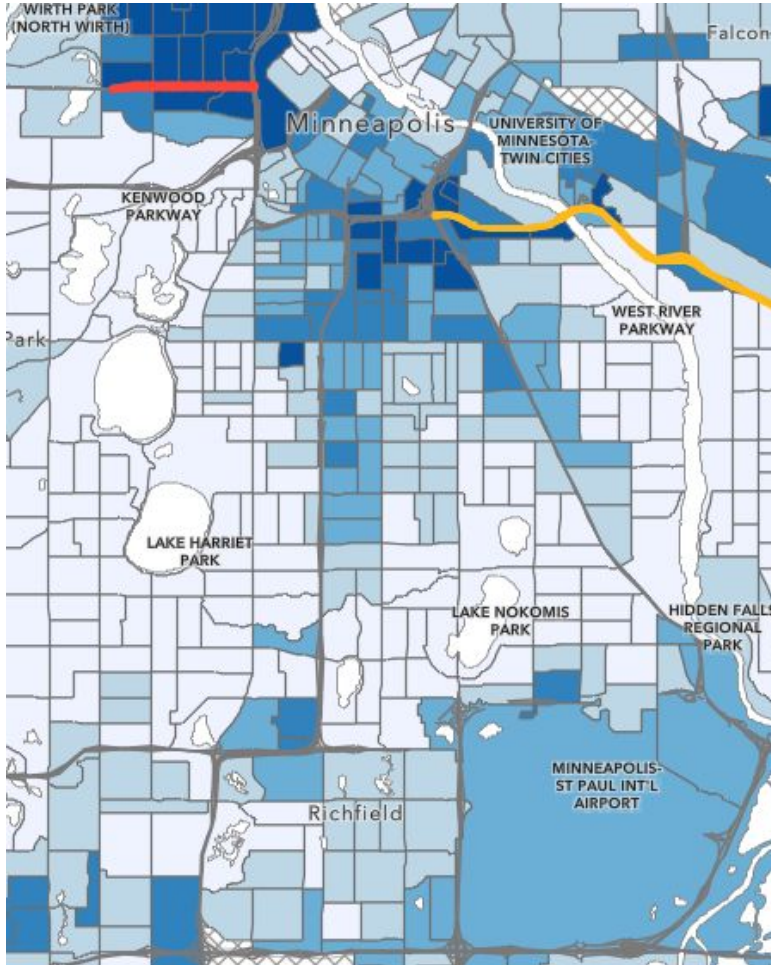


*Life Expectancy (yellow is 84 to 91,
darker red is 64 to 75)*





What is Environmental Justice



- Total Residents Identifying as Person of Color divided by Total Population
- (Dark blue is over 53%)



What is Environmental Justice

- The fair treatment and meaningful involvement of all **people**, regardless of race, color, national origin, or income, concerning the development, implementation, and enforcement of environmental laws, regulations, and policies.

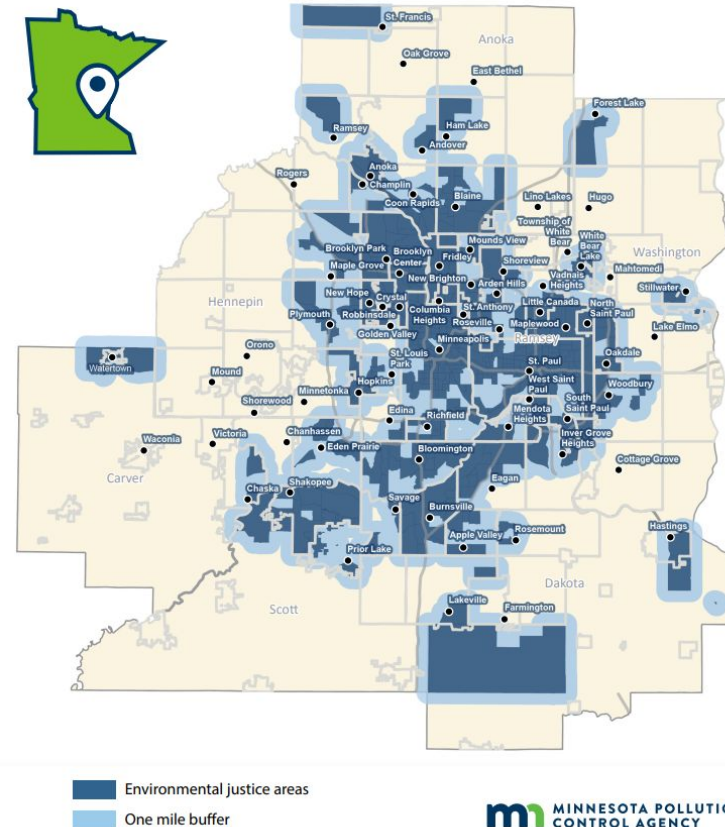
What is an Environmental Justice Community?

(1) A census tract where:

- (i) 40 percent or more of the population is nonwhite;
- (ii) 35 percent or more of the households have an income at or below 200 percent of the federal poverty level; or
- (iii) 40 percent or more of the population over the age of five has limited English proficiency; or

(2) located within Indian Country.

Minn. Stat. § 116.065 (2023 Cumulative Impact Law)





Why consider Environmental Justice in Environmental Review?

- **Complete information to make an informed decision.**

See *No Power Line, Inc. v. Minnesota Env't Quality Council*, 262 N.W.2d 312, 327 (Minn. 1977) (Environmental Review is meant to help agencies make an informed decision).

- **Furtheres the purpose of MEPA**

(Minn. Stat. §116D.01) (“productive and enjoyable harmony between human beings and their environment”)

- **Understanding of Disparate Impacts of a Proposed Project**

Potential Constitutional violation & violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq.



Environmental Justice in MEPA

No Minnesota caselaw that EJ in MEPA is required.
But...

- **Statute – §116D.04, subd. 2a**
 (“environmental effects” and “sociological effects”)
- **EAW Form and Guidance:**
 - Air Quality
 - Cumulative Potential Effects (Minn. R. 4410.0200)

Environmental Justice in MEPA



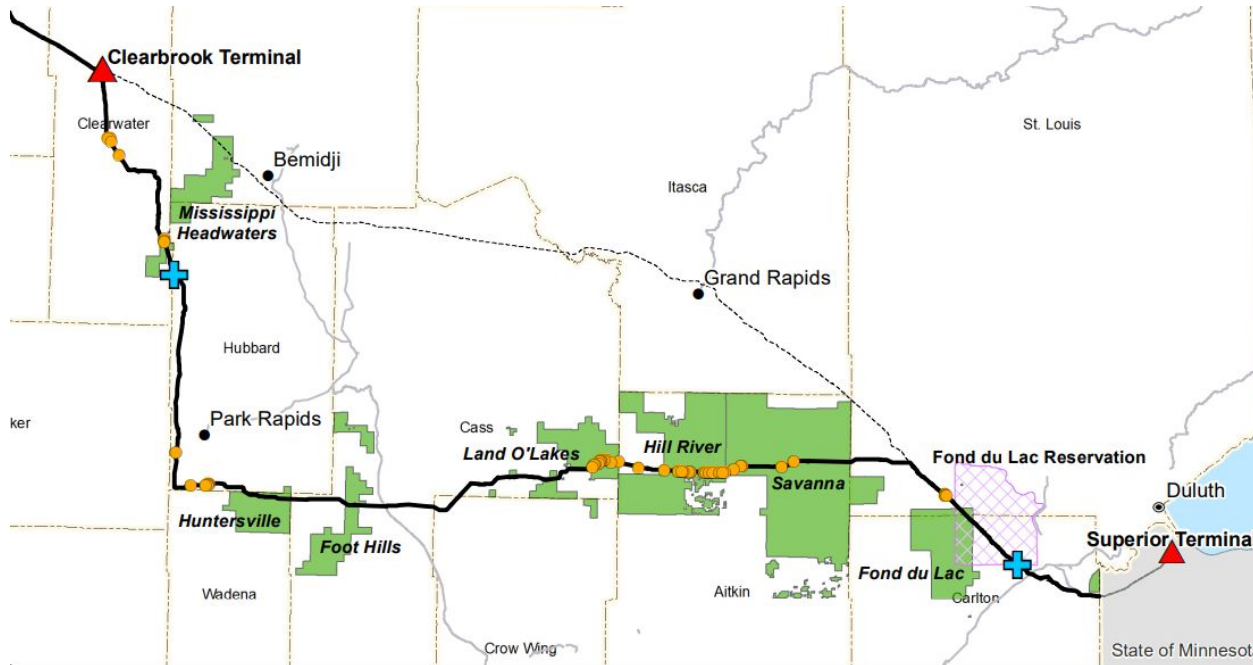
East Philips Neighborhood Institute (Roof Depot) EAW

EPNI v Minneapolis (2023) 2023 WL 1770292,
(Minn. Ct. App. Feb. 6, 2023), review denied
(Apr. 18, 2023)

(Picture from the Spokesman Recorder)



Environmental Justice in MEPA



Line 3 EIS

Environmental Justice in MEPA



Upper Harbor
Terminal AUAR



Environmental Justice in MEPA



EQB continuous improvement
process for environmental review

Environmental Quality Board
June 30, 2023

Environmental
Quality Board

EQB Action?



NEPA and EJ – Brief overview

- 1994 Executive Order 12,898:

Directs agencies to identify and address:

disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations

Federal Register		Presidential Documents	
Vol. 59, No. 32			
Wednesday, February 16, 1994			
Title 3—		Executive Order 12898 of February 11, 1994	
The President		Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations	
		By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:	
		Section 1-1.Implementation.	
		1-101. Agency Responsibilities. To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.	



NEPA and EJ – Brief overview

“The purpose of an environmental justice analysis is:

- to determine whether a project will have a disproportionately adverse effect
- on minority and low-income populations.”

Mid States Coalition for Progress v. Surface Transp. Bd., 345 F.3d 520, 541 (8th Cir. 2003)



NEPA and EJ – Brief overview

- EJ analysis in NEPA began as a result of the 1994 Executive Order.
- But, because the EO is not independently enforceable, the EJ analysis is reviewed under arbitrary and capricious standard under NEPA and the APA.
- Most cases result in deference to agency's EJ analysis.
- Dissent in *Ctr. for Cmty. Action & Env't Just. v. Fed. Aviation Admin.*, 61 F.4th 633, 655 (9th Cir. 2023) (Amazon hub)



NEPA and EJ – Brief overview

- Draft CEQ Phase II NEPA rule proposal –
 - Codification of EJ definition 1508.1(k) and
 - Encouraging mitigation for disproportionate adverse effects -- 1505.3(b)



Tribal Rights in Environmental Review

- Tribal government expertise
- Compliance with Tribal laws (e.g., downstream water quality standards)
- Environmental justice
- Treaty rights
- Historic/cultural resources
- Tribal consultation throughout



Tribal Government Expertise

- Applicable to any Tribe that exercises regulatory authority (environmental or natural resources departments)
- Based on stewardship responsibility and environmental expertise
- Tribal government expertise should be given at least as much weight as state/federal regulators





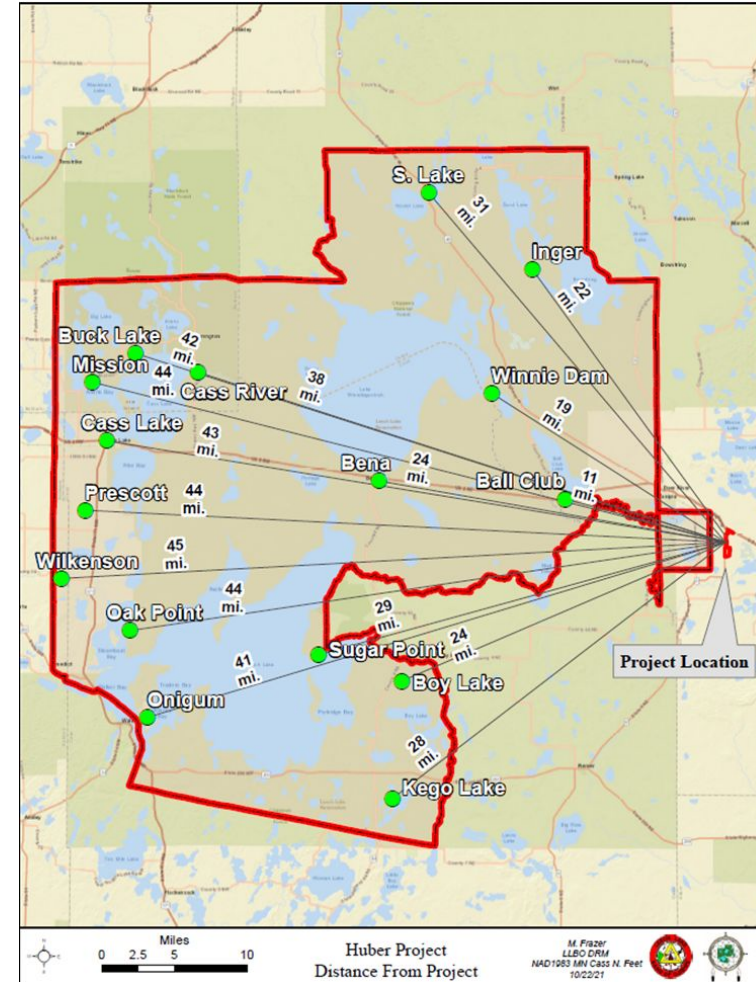
Standing Rock reversal

But the Tribes are not, as Dakota Access suggested at oral argument, “quintessential ... not-in-my-backyard neighbors.” They are sovereign nations with at least some stewardship responsibility over the precise natural resources implicated by the Corps’s analysis. . . . The Tribes’ unique role and their government-to-government relationship with the United States demand that their criticisms be treated with appropriate solicitude.

Standing Rock Sioux Tribe v. United States Army Corps of Engineers, 985 F.3d 1032, 1043 (D.C. Cir. 2021)



Huber case – Leech Lake Reservation





Expertise of the Leech Lake Band

“[F]ederal caselaw has called for treating tribal comments in this context with ‘appropriate solicitude.’ . . . Based on the Leech Lake Band’s sovereign status and environmental expertise, we accord significant weight to its comments on the EAW and arguments in this appeal.”

In re City of Cohasset’s Decision on Need for an EIS for Proposed Frontier Project, 985 N.W.2d 370, 384 (Minn. Ct. App. 2023)



PolyMet Water-Permit Reversal

“If the MPCA approved a permit that violates the Band’s water quality standards . . . then the MPCA failed to treat the Band with appropriate solicitude under the law”

In re Denial of Contested Case Hearing Requests, 993 N.W.2d 627, 668 (Minn. 2023) (McKeig, J., concurring)



Treaty rights analysis

Should include:

- Geographic scope of treaty right
- Effects of project on specific resources subject to the treaty right
- How Tribe and Tribal citizens would be disproportionately affected by pollution/loss of resources



NEPA Treaty Rights Cases

- ***No Oilport! v. Carter*, 520 F. Supp. 334 (W.D. Wash. 1981)**
 - Map of treaty areas
 - Probability of spills and spill effects on fish
 - Acknowledged potential significant loss to Native fishing enterprises
- ***Okanogan Highlands Alliance v. Williams*, 236 F.3d 468 (9th Cir. 2000)**
 - Acknowledged lands that would become unavailable for hunting/fishing, described lands still available
 - Extensively analyzed effects to aquatic habitat
- ***Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 255 F. Supp. 3d 101 (D.D.C. 2017)**
 - Modeled oil-spill impacts to treaty waters
 - Corps considered *possibility* of spill but failed to adequately consider *effects* of spill on treaty fish and wildlife



MEPA & EJ Recommendations

- Draw on NEPA precedent to advocate for thorough EJ assessments in MN
- Continue to build trust between state agencies and the public, particularly overburdened, low-income, and Black and brown communities
- Agencies should consult with Tribal governments and, at minimum, give their concerns the same weight that they would give the DNR and MPCA.



Questions?



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MCEA CHIEF EQUITY
AND PARTNERSHIP
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Future of MEPA: Reforms and Resistance

Panel Three



Kathryn Hoffman
MCEA CEO



Joy Anderson
MCEA SUPERVISING
ATTORNEY



EQB changes to Environmental Review process

- 2017-2022 Addition of climate change information to EAW
 - 2023 Beginning of Continuous Improvement Process



Adding Climate Change Information

- Advocates have called for climate change information to be added to EAW for many years
- Court of Appeals cases held that analysis of greenhouse gas emissions had to be included in EAW when raised as an issue by commenters
 - *In re Denial of Contested Case Hearing (Daley Farms of Lewiston)*, 2019 WL 5106666 (Minn. App. Oct. 14, 2019)
 - *In re: Determination of Need for EIS for Mankato Motorsports Park*, 2021 WL 1604359 (Minn. App. Apr. 26, 2021)
- Revised EAW Form approved in Dec. 2022



Climate Change Additions to EAW

- **Climate Adaptation and Resilience**

- Climate change risks and vulnerabilities
- Proposed adaptations to address effects

- **GHG Emissions Analysis**

- GHG quantification
- Mitigations
- Effect on state GHG goals





Continuous Improvement Projects



Look at criteria used to determine whether to order an EIS



Review current mandatory categories for EAWs and EISs



Create Minnesota-specific GHG emissions calculator



Very few
projects go
to EISs

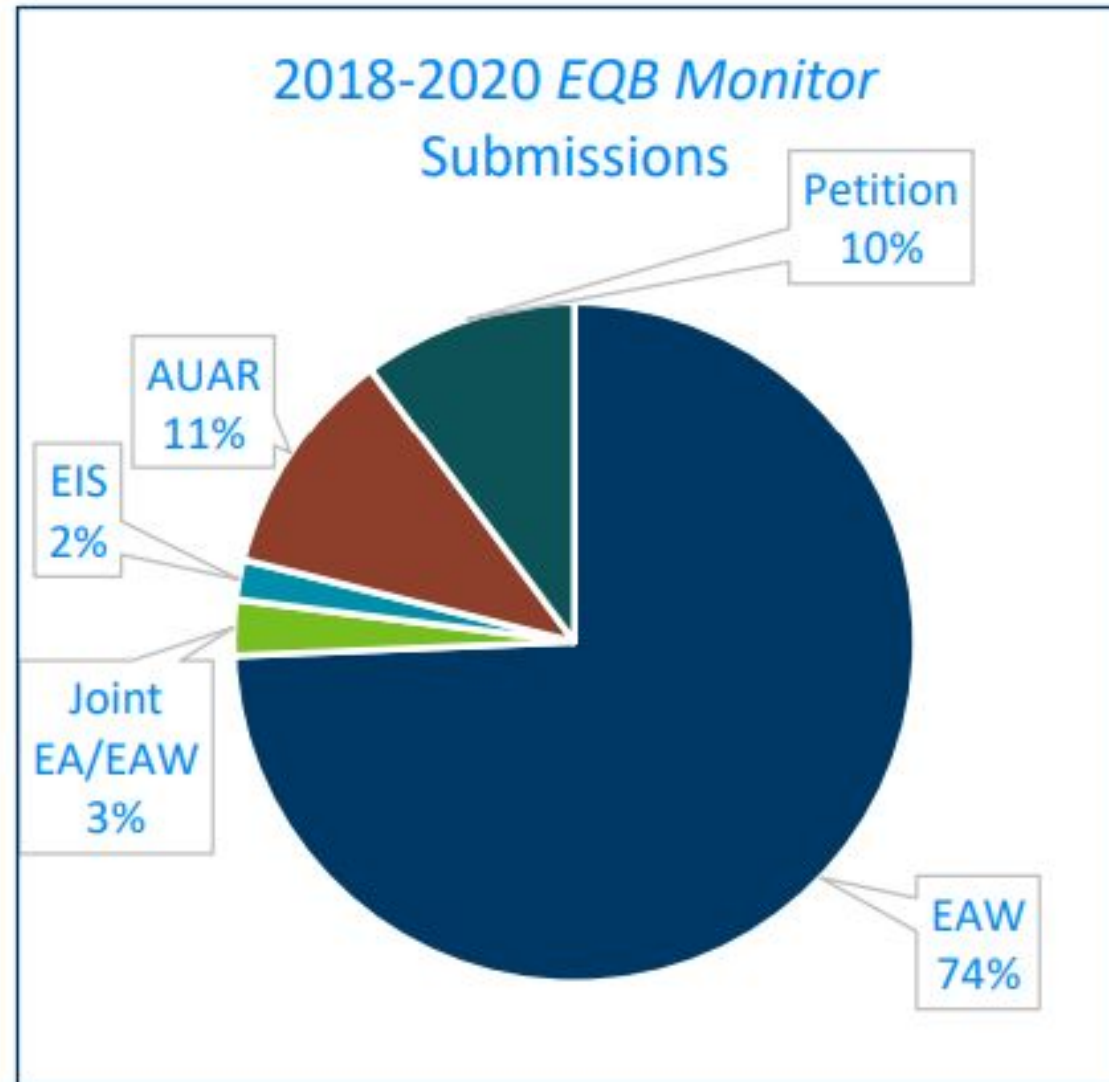


Figure 2. Approximately 76% of environmental review completed in 2018-2020 was for EAWs and EISs.



PolyMet EIS – 14 years

- “Based on our review of the DEIS, EPA has rated the DEIS as Environmentally Unsatisfactory - Inadequate, or EU-3. Environmentally Unsatisfactory (EU) indicates that our review has identified adverse environmental impacts that are of sufficient magnitude that EPA believes the proposed action ***must not proceed as proposed***. The numeric portion of the rating indicates the DEIS ***does not present adequate information*** for the EPA to fully assess the environmental impacts that should be avoided in order to fully protect the environment or EPA identifies reasonably available alternatives which could reduce the environmental impacts of the action”
- EPA Comments submitted 2/18/2010 on PolyMet initial Draft EIS (emphasis added)



Gutting the process fails

- *In re City of Cohasset's Decision on the Need for an Env't Impact Statement for the Proposed Frontier Project*, 985 N.W.2d 370 (Minn. Ct. App. 2023)

“Based on the Leech Lake Band's sovereign status and environmental expertise, we accord significant weight to its comments on the EAW and arguments in this appeal.”



“Streamlining” efforts

- State: “Within 12 months of the submission of an application, the commission shall approve or deny a certificate of need for the facility.”
Minn.Stat. 216B.243, subd. 5
- **Federal:** FAST Act in 2015 attempts to streamline environmental review for transportation projects by coordinating state and federal processes.
 - Also a series of executive orders by presidents since Reagan

Why hasn't this worked?



Maybe we don't need streamlining

Executive summary

(Current review period: July 1, 2022 – June 30, 2023)

	2018	2019	2020	2021	2022	2023
Priority permits that met goal	97%	99%	98%	98%	99%	98%
Non-priority permits that met goal	63%	61%	92%	83%	46%	76%
All permits that met goal	93%	93%	96%	96%	89%	91%

Overall permitting efficiency continues to be very good especially regarding the Minnesota Pollution Control Agency's (MPCA) priority permits, which represent economic growth and new job opportunities for the state.

We received about a 9% increase in the total number of applications from last year. We returned about the same number of applications (as incomplete) this review period compared to last year. The overall return rate continues to be very low (1.5%) which indicates that application quality is very good. We saw more non-priority permits miss their goal with 76% of these permits meeting the timeliness goal; however, we still reached 91% of all permits meeting their timeliness goal.



Maybe we don't need streamlining (2)

- One in 450 NEPA processes face legal challenges
- More time spent on a NEPA process = less likely to be challenged
- Environmental plaintiffs are more likely to be successful than other types



Calls for change from advocates

- Is environmental review an empty exercise that provides cover but does not actually protect the environment?
- Reviewing governments often favor project approval
- Public comments don't lead to changes to project
- No EISs, so no alternatives are considered
- Project proposers write their own review and use as a shield





Environmental review is still effective

- Requires that environmental information be gathered and considered before project is approved
 - *In re City of Cohasset*, 985 N.W.2d 370 (Minn. App. 2023)
- Informs the public and allows the public to organize to ask for changes
 - Lutsen Ski Hill Proposed Expansion
- Requires reviewer to respond to public or agency comments
 - *In re Denial of Contested Case Hearing Requests (PolyMet)*, 993 N.W.2d 627 (Minn. 2023).
- Forces changes behind the scenes to avoid EIS
 - MilePost 7



Ordering more EISs



- Since 2015, only 1-2 EISs per year (from mandatory categories)
- EAWs never find any potential for significant environmental effects
- Without EIS, no alternatives analysis
- MEPA intent: environmental review would lead to best alternative for environment



Potential reforms: Decision Criteria

Type, extent, and reversibility of effects

Cumulative effects of project

Mitigation by ongoing regulatory authority

Effects anticipated by other environmental studies



Choosing appropriate reviewer

- Local governments want economic development
 - Tend to ease requirements, approve review as adequate
- Local governments lack expertise in environmental review
 - Form is detailed and complicated
 - Staff may not know what sorts of questions to ask or changes to request
- Local decision makers lack expertise to review environmental review documents
 - Difficult to determine whether environmental review is adequate
 - Difficult to incorporate environmental information into decisionmaking



Potential reforms: Choice of Reviewer

Currently

- Government with greatest responsibility for supervising or approving the project
- Selection: by agreement between reviewers, or EQB selects

Reform

- Consider experience of reviewer and expertise in types of environmental issues associated with that project
- Provide more transparency about how reviewer is selected in written decision by EQB



Questions?



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MCEA CEO



Joy Anderson
MCEA SUPERVISING
ATTORNEY



THE GREEN BEAGLE

2023 MCEA ENVIRONMENTAL LAW CLE SERIES



50th Anniversary of the Minnesota Environmental Policy Act (MEPA) Symposium

Course code: 494064

AGENDA

1:00pm: Panel #1 - MEPA 101 and key case law

Panelists: Jay Eidsness, MCEA Staff Attorney Heidi Guenther, MCEA Legal Fellow Leigh Currie, MCEA Director of Strategic Litigation

2:00pm-2:10pm – Break

2:10pm: Panel #2 - Environmental justice and the role of MEPA

Panelists: Evan Mulholland, MCEA Healthy Communities Program Director Eric Ini, MCEA Chief Equity and Partnership Officer
Melissa Lorentz, MCEA Staff Attorney

3:10pm-3:20pm - Break

3:20pm: Panel #3 - The future of MEPA

Panelists: Joy Anderson, MCEA Senior Staff Attorney Kathryn Hoffman, MCEA Chief Executive Officer

4:30pm-5:30pm - Reception/happy hour