

*In the Matter of the Application for the
NorthMet Project Permit to Mine
Dated December 2017*

EXHIBIT 2

TO

**REQUEST TO COMMISSIONER
TO DENY AMENDMENT TO
PERMIT TO MINE APPLICATION**

reasonable for the commissioner to require that the applicant for such a variance, publish a notice in the local newspaper in the same manner as is required when there is an application for a permit to mine. However, for those variance applications which propose minor deviations from the rules or which are unlikely to cause great impacts, such public notice is not reasonable or necessary.

To resolve the decision of whether or not to require publication of a notice, this rule states that the commissioner, upon receipt of a variance request, will first determine whether the proposal constitutes a substantial change from the requirements of these rules. If the changes are substantial, the request will be treated in the same manner as if it were an application for a permit, including the mandatory notice publication and the possibility of holding a public hearing. When the changes are not substantial the commissioner will make the decision on the acceptability of the variance without notice, or need for hearing.

Some commenters who reviewed drafts of these proposed rules have questioned what constitutes a substantial change, and whether the commissioner should have the power to make such decisions without some sort of public involvement. The concept of allowing the commissioner to make decisions, based on substantial change, has its basis in Minnesota Statute, section 93.481 Subd. 3, which specifically addresses the issue of publishing notices, when amendments to a permit to mine are requested by a permittee. Since variances and amendments both constitute a deviation from the norm, it is reasonable that both should be treated in the same manner, and that both follow the process established by statute.

No clear direction was given by the statute on what constitutes a substantial change. It would be reasonable however to include: 1) proposals that would result in a major departure from what would normally occur, if the rules were followed; 2) proposals that would result in impacts occurring at greatly different times or places than would otherwise normally be expected; and 3) proposals where the commissioner feels that the professional expertise in the various disciplines held by the Department of Natural Resources' staff could be augmented by input of the public.

Subp. 3. The proposed rules acknowledge the possibility that a variance may be submitted at the same time as an application for a permit to mine. This rule requires that information about the variance request be inserted into the notice publication of the permit to mine, in order that the public is aware of the variance request.

6132.4200 Amendments

Subpart 1. Pursuant to Minnesota Statutes, section 93.481, subd. 3., an amendment to the permit to mine may be allowed upon application therefor, if the commissioner determines that all lawful requirements are met.

Subp. 2. Minnesota Statutes, section 93.481, subd. 3. also requires the commissioner to make a determination regarding whether the proposed amendment constitutes a substantial change to the permit to mine. In accordance with the statute, when the change is substantial, the person proposing the amendment must publish a notice of the amendment in the same manner as for a new permit. For the purposes of this section a substantial change shall be considered to occur when the proposed amendment: 1) would result in a major departure from what would normally occur, if the approved permit were followed; 2) would result in impacts occurring at greatly different times or places than would otherwise be expected; and 3) requires expert analysis, that the commissioner feels is unavailable within the department, and input of the public would be helpful.

When the change is not substantial and the commissioner determines the all lawful requirements will be met the amendment will be granted.