

January 2007

## “ERRATA SHEET”

For Use with January 31, 2000 Rules Extract Booklet  
(with turquoise-colored cover)

This document, in the form of an “errata sheet,” can be used in conjunction with the turquoise-covered rules extract booklet (dated January 31, 2000 on the Revisor’s Certificate on the inside cover) to incorporate rule amendments effective October 30, 2006.

The EQB has decided not to print and distribute new extract booklets until additional rule amendments (the so-called “Phase 2 amendments”) are adopted, hopefully by late 2007. Until new extract booklets are printed, persons who have the widely-distributed turquoise colored booklets from 2000 can use the errata sheet to bring their existing booklet up to date. Users may wish to mark the places in their turquoise extracts where changes have been made to alert them to when to check the errata sheet for the amended rule language. For each of the rule amendments made, the errata sheet indicates the page number of the turquoise booklets on which the change occurs and shows how the text has been amended.

Disclaimer: although the EQB has carefully prepared the errata sheet, it is not an “official” version of the amended rules. Official versions are described below. If there are any discrepancies between the errata sheet and the official version of the rules maintained by the Revisor of Statutes, the Revisor’s text must be considered as the correct text.

Other versions of the amended rules are also available:

- **Online Official Version:** The complete and “official” text of the amended rules is available at the website of the Revisor of Statutes (who maintains the official text of all agency rules). The rules can be downloaded from the Revisor’s website. The website is linked from the EQB’s website, or its address is: <http://www.revisor.leg.state.mn.us/arule/4410/>
- **Printed Official Version:** It is the EQB’s understanding that the Minnesota Bookstore will print and sell copies of new extract booklet including the recent amendments. Persons who want an up-to-date extract booklet in the interim until the Phase 2 amendments are adopted can purchase a copy from the MN Bookstore (651/297-3000 or [www.comm.media.state.mn.us/bookstore/bookstore.asp](http://www.comm.media.state.mn.us/bookstore/bookstore.asp)).
- **Annotated Full Rule (unofficial version):** The EQB also plans to prepare and post a version of the full text of the rules that will show the changes made by the recent amendments (by the use of strikeout and underlining). The format of this version will be designed to produce a compact printed copy when downloaded. This document will be available at the EQB website.

Any questions about the errata sheet or rules may be directed to the EQB staff at 651-757-2873 or [Env.Review@state.mn.us](mailto:Env.Review@state.mn.us)

| Page | Rule # / Caption   | Amendment (showing changes made to former rule)   |
|------|--|---|
| 2    | 4410.0200, subp. 1a<br>Defn. of "agency"                       | Subp. 1a. <del>Agency.</del>  |
| 3    | 4410.0200, subp.9b<br>Defn. of "connected actions"             | Two projects are "connected actions" if a responsible governmental unit determines they are related in any of the following ways:<br>A. one project would directly induce the other;<br>B. one project is a prerequisite for the other <u>and the prerequisite project is not justified by itself</u> ; or<br>C. neither project is justified by itself.  |
| 8    | 4410.0200, subp.69<br>Defn. of "protected waters"              | <del>"Public waters" has the meaning given in Minnesota Statutes, section 103G.005.</del>   |
| 8    | 4410.0200, subp.70<br>Defn. of "protected wetlands"            | <del>"Public waters wetland" has the meaning given in Minnesota Statutes, section 103G.005, subdivision 15a.</del>  |
| 9    | 4410.0200, subp.92<br>Defn. of "wastewater treatment facility" | "Wastewater treatment facility" means a facility for the treatment of municipal or industrial waste water. <del>It includes on-site treatment facilities.</del>   |
| 15   | 4410.1000, subp. 5<br>Change in proposed project; new EAW      | If, after a negative declaration has been issued but before the proposed project has received all approvals or been implemented, the RGU determines that a substantial change has been made in the proposed project <u>or has occurred in the RGU's circumstances,</u> <del>that</del> which change may affect the potential for significant adverse environmental effects <u>that were not addressed in the existing EAW,</u> a new EAW is required. |
| 16   | 4410.1100, subp. 6<br>EAW Decision (petition process)          | The RGU shall order the preparation of an EAW if the evidence presented by the petitioners, proposers, and other persons or otherwise known to the RGU demonstrates that, because of the nature or location of the proposed project, the project may have the potential for significant environmental effects. The RGU shall  |

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|    |  | deny the petition if the evidence presented fails to demonstrate the project may have the potential for significant environmental effects. <u>In considering the evidence, the RGU must take into account the factors listed at part 4410.1700, subpart 7.</u> The RGU shall maintain, either as a separate document or contained within the records of the RGU, a record, including specific findings of fact, of its decision on the need for an EAW.   |
| 17 | 4410.1200<br>EAW Content   | <u>H. an assessment of the compatibility of the project with approved plans of local units of government.</u>   |
| 17 | 4410.1400<br>Preparation of an EAW.  | The EAW shall be prepared as early as practicable in the development of the proposed project. The EAW shall be prepared by the RGU or its agents.<br><br>When an EAW is to be prepared, the proposer shall submit the completed data portions of the EAW to the RGU. The RGU shall determine whether the proposer's submittal is complete <u>within 30 days or such other time period as agreed upon by the RGU and proposer.</u> If the RGU determines that the submittal is incomplete, the RGU shall return the submittal to the proposer for completion of the missing data.... |
| 18 | 4410.1500, A<br>Publication and distribution of an EAW                             | 7) <u>the State Archeologist;</u><br>8) <u>the Indian Affairs Council</u><br>9) <u>the Environmental Conservation Library</u> ; ... [renumber remaining subitems]   |
| 19 | 4410.1700, subp. 2a, item B<br>Decision on Need for EIS – insufficient information | B. postpone the decision on the need for an EIS, for not more than 30 days <u>or such other period of time as agreed upon by the RGU and proposer,</u> in order to obtain the lacking information. ...  |
| 19 | 4410.1700, subp. 3<br>Decision on Need for   | The RGU's decision shall be either a negative declaration or a positive <u>declaration.</u> <u>The RGU shall base its decision regarding the need for an EIS on the</u>   |

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|    | EIS – form and basis for decision  | information gathered during the EAW process and the comments received on the EAW.   |
| 22 | 4410.2100, subp. 4<br>EIS Scoping – scoping period for some discretionary EISs | <p>If the EIS is being prepared pursuant to part <u>4410.2000</u>, subpart 3, item A, the following schedule applies:</p> <p>A. At least ten days but not more than 20 days after notice is published in the EQB Monitor, a public meeting shall be held to review the scope of the EIS. Notice of the time, date, and place of the scoping meeting shall be published in the EQB Monitor <u>within 15 days of receipt of the proposer’s scoping cost payment pursuant to part 4410.6500, subp. 1, item A</u>, and a press release shall be provided to a newspaper of general circulation in the area where the project is proposed. All meetings shall be open to the public.</p> <p>B. Within <u>15 days of the public scoping meeting</u>, the RGU shall issue its final decision regarding the scope of the EIS. ...</p> |
| 23 | 4410.2100, subp. 8<br>Amendments to scoping decision.                          | [Add at end of subpart 8:] <u>The notice may be incorporated into the notice of the availability of the draft or final EIS.</u>   |
| 24 | 4410.2100, subp. 9<br>EIS preparation notice.                                  | An EIS preparation notice shall be published within 45 days after the <u>RGU receives the proposer’s cash payment pursuant to part 4410.6410, subp. 3 or part 4410.6500, subp. 1, item B</u> ,. ...   |
| 34 | 4410.3100, subp. 1<br>Prohibitions on governmental decisions                   | <p>If an EAW or EIS is required for a governmental action under parts <u>4410.0200</u> to <u>4410.6500</u>, or if a petition for an EAW is filed under part <u>4410.1100 that complies with the requirements of subparts 1 and 2 of that part</u>, a project may not be started and a final governmental decision may not be made to grant a permit, approve a project, or begin a project, until:</p> <p>A. a petition for an EAW is dismissed;</p> <p>B. a negative declaration on the need for an EIS is issued;</p> <p>C. an EIS is determined adequate;</p> <p>or</p> <p>D. a variance is granted under subparts 3 to 7 or the action is an</p>  |

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|    |  | <p>emergency under subpart 8.</p> <p><u>To start or begin a project includes taking any action within the meaning of "construction," as defined at part 4410.0200, subp. 10.</u></p>  |
| 37 | <p>4410.3610, subp. 1</p> <p>Applicability of the AUAR process</p>                       | <p>A local unit of government may use the procedures of this part instead of the procedures of parts <a href="#">4410.1100</a> to <a href="#">4410.1700</a> and <a href="#">4410.2100</a> to <a href="#">4410.3000</a> to review anticipated residential, commercial, warehousing, and light industrial development and associated infrastructure in a particular geographic area within its jurisdiction, if the local unit has adopted a comprehensive plan that includes at least the elements in items A to C.</p> <p><u>The procedures of this part may not be used to review any project meeting the requirements for a mandatory EAW in part <a href="#">4410.4300</a>, subparts 2 to 13, 15 to <a href="#">17</a>, <a href="#">18</a>, <a href="#">items B or C</a>, or 24, or a mandatory EIS in part <a href="#">4410.4400</a>, subparts 2 to 10, 12, 13, or 25.</u></p>  |
| 39 | <p>4410.3610, subp. 5, items A, B, D, E, F &amp; H</p> <p>Procedures for AUAR review</p> | <p>A. The RGU shall prepare a draft environmental analysis document addressing each of the development scenarios selected under subpart <a href="#">3</a>, using the standard content and format provided by the EQB under subpart 4. <u>A draft version of the mitigation plan as described under item C must be included.</u> The draft document must be distributed and noticed in accordance with part <a href="#">4410.1500</a></p> <p>B. Reviewers shall have 30 days from the date of notice of availability of the draft environmental analysis in the EQB Monitor to submit written comments to the RGU. Reviewers that are governmental units shall be granted a 15-day extension by the RGU upon a written request for good cause. A copy of the request must be sent to the EQB. Comments <u>may</u> address the accuracy and completeness of the information provided in the draft analysis <u>and draft mitigation plan</u>, potential impacts that warrant further analysis, further information that may be required in order to secure permits for specific projects in the future, <u>mitigation</u> measures or procedures necessary to prevent significant environmental impacts within the</p> |

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| 40 | <p>area when actual development occurs, <u>and the need to analyze additional development scenarios as required by this part.</u> ...</p> <p>D. The RGU shall distribute the revised environmental analysis document, <u>including the plan for mitigation</u>, in the same manner as the draft document and also to any persons who commented on the draft document and to the EQB staff. State agencies and the Metropolitan Council of the Twin Cities have ten days from the date of receipt of the revised document to file an objection to the document with the RGU. A copy of any letter of objection must be filed with the EQB staff. An objection may be filed only if the agency filing the objection has evidence that the revised document contains inaccurate or incomplete information relevant to the identification and mitigation of potentially significant environmental impacts, <u>that the review has not analyzed sufficient development scenarios in accordance with the requirements of this part</u>, or that the proposed plan for mitigation will be inadequate to prevent potentially significant environmental impacts from occurring.</p> <p>E. Unless an objection is filed in accordance with item D, the RGU shall adopt the revised environmental analysis document, <u>including the plan for mitigation</u>, at its first regularly scheduled meeting held 15 or more days after the distribution of the revised document. The RGU shall submit evidence of the adoption of the document and plan for mitigation to the EQB staff and all agencies that have stated that they wish to be informed of any future projects within the area as part of their comments on the draft environmental analysis document. The EQB shall publish a notice of the adoption of the document, and the completion of the review process in the EQB Monitor.</p> <p>Upon adoption of the environmental analysis document, <u>including the plan for mitigation</u>, residential, commercial, warehousing, and light</p> |
| 40 | <p>Upon adoption of the environmental analysis document, <u>including the plan for mitigation</u>, residential, commercial, warehousing, and light</p>  |

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| 41 |  | <p>industrial projects and associated infrastructure within the area that are consistent with the assumptions of the document and that comply with the plan for mitigation are exempt from review under parts <a href="#">4410.1100</a> to <a href="#">4410.1700</a> and <a href="#">4410.2100</a> to <a href="#">4410.2800</a>.</p> <p>F. If an objection is filed with the RGU in accordance with item D, within five days of receipt of the objection the RGU shall consult with the objecting agency about the issues raised in the objection and shall advise the EQB staff of its proposed response to the objection. At the request of the RGU, the objecting agency, the EQB staff, and any other affected agency shall meet with the RGU as soon as practicable to attempt to resolve the issues raised in the objection. Within 30 days after receipt of the objection the RGU shall submit a written response to the objecting agency and the EQB chair. The response shall address each of the issues raised in the objection. The RGU may address an issue by either revising the environmental analysis document or plan for mitigation, or by <del>refuting the comment.</del></p> |
| 41 |  | <p>H. If the matter is referred to the EQB under item G, the EQB shall determine whether the environmental analysis document, <del>including the and</del> plan for mitigation, <del>is</del> adequate, conditionally adequate, or inadequate. If the EQB finds the documents conditionally adequate or inadequate, the EQB shall specify the revisions necessary for adequacy. The EQB shall only find the documents inadequate if <del>it</del> the EQB determines that <del>it</del> contains inaccurate or incomplete information necessary to the identification and mitigation of potentially significant environmental impacts, <del>that the review of development scenarios is not in compliance with this part,</del> or that the proposed plan for mitigation will be inadequate to prevent the occurrence of potentially significant environmental impacts.</p> <p>If the EQB finds the documents adequate or conditionally adequate,</p>   |

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|    |   | the RGU shall adopt the documents under item E. If the documents <del>is</del> were found conditionally adequate by the EQB, the RGU shall first revise the document, as directed by the EQB. If the EQB finds the document inadequate, the RGU has 30 days to revise the document and circulate it for review in accordance with items D to H.   |
| 45 | 4410.3800, subp. 5<br>Criteria for ordering an EIS                      | J. <u>the degree to which the cost of basic information ought to be borne by the public rather than individual project proposers;</u><br>K. <u>the need to explore issues raised by a type of project that go beyond the scope of review of individual projects;</u> and<br>L. <u>the need to understand the long term past, present and future effects of a type of action upon the economy, environment and way of life of the residents of the state.</u>  |
| 46 | 4410.3800, subp. 8<br>Relationship [of GEIS] to project-specific review | Preparation of a generic EIS does not exempt specific activities from project-specific environmental review.  |
| 51 | 4410.4300, subp. 15<br>Air pollution                                    | For construction of a stationary source facility that generates 250 tons or more per year or modification of a stationary source facility that increases generation by 250 tons or more per year of any single air pollutant after installation of air pollution control equipment, the PCA shall be the RGU.   |
| 52 | 4410.4300, subp. 18<br>Wastewater systems                               | Items A to C designate the RGU for the type of project listed:<br>A. For expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of any part of that system by 1,000,000 gallons per day or more <u>if the discharge is to a wastewater treatment facility with a capacity less than 20 million gallons per day, or for expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow</u> |

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|    |  | <p><u>of any part of that system by 2,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with the capacity of 20 million gallons or greater, the PCA shall be the RGU.</u></p> <p>B. For expansion or reconstruction of an existing municipal or domestic wastewater treatment facility which results in an increase by 50 percent or more and by at least <u>200,000</u> gallons per day of its average wet weather design flow capacity, or construction of a new municipal or domestic wastewater treatment facility with an average wet weather design flow capacity of <u>200,000</u> gallons per day or more, the PCA shall be the RGU. [C is unchanged]</p>   | <p>Formatted: Font: Courier</p> <p>Deleted: 50,000</p> <p>Deleted: 50,000</p>                           |
| 53 | 4410.4300, subp. 19<br>Residential development       | <p>An EAW is required for residential development if the total number of units that may ultimately be developed on all contiguous land owned or under an option to purchase by the proposer, <del>and that is zoned for residential development or is identified for residential development</del> except land identified by an applicable comprehensive plan, ordinance, resolution, or <u>agreement</u> of a local governmental unit for a future use other than residential development, equals or exceeds a threshold of this subpart. ...</p>   |   |
| 55 | 4410.4300, subp. 27<br>Wetlands and protected waters | <p>Wetlands and <u>public waters</u>. Items A and B designate the RGU for the type of project listed:</p> <p>A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any <u>public water or public waters</u> wetland except for those to be drained without a permit pursuant to Minnesota Statutes, chapter 103G, the local government unit shall be the RGU.</p> <p>B. For projects that will change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more, excluding <u>public waters</u> wetlands, if any part of the wetland is within a shoreland area, delineated flood plain, a federally designated wild and scenic rivers district, the Minnesota</p> | <p>Deleted: protected</p> <p>Deleted: protected</p> <p>Deleted: protected</p> <p>Deleted: protected</p> |

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|    |   | River Project Riverbend area, or the Mississippi headwaters area, the local government unit shall be the RGU.   |
| 57 | 4410.4300, subp. 31<br>Historical places            | For the destruction, in whole or part, or the moving of a property that is listed on the National Register of Historic Places or State Register of Historic Places, the permitting state agency or local unit of government shall be the RGU, except this does not apply to projects reviewed under section 106 of the National Historic Preservation Act of 1966, United States Code, title 16, section 470, <del>the federal policy on lands, wildlife and waterfowl refuges, and historic sites pursuant to United States Code, title 49, section 303, or projects reviewed by a local heritage preservation commission certified by the State Historic Preservation Office pursuant to 36 CFR 61.5 and 61.7. This subpart does not apply to a property located within a designated historic district if either the property is listed as "noncontributing" in the official district designation or if the State Historic Preservation Office issues a determination that the property is noncontributing.</del> |
| 57 | 4410.4300, subp. 33<br>Communication towers         | For construction of a communications tower equal to or in excess of 500 feet in height, or 300 feet in height within 1,000 feet of any <del>protected</del> public water or <del>protected</del> public waters wetland or within two miles of the Mississippi, Minnesota, Red, or St. Croix rivers or Lake Superior, the local governmental unit is the RGU.  |
| 58 | 4410.4400, subp. 5, B<br>Fuel conversion facilities | B. For construction or expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by 50,000,000 or more gallons per year of alcohol produced <u>if the facility will be in the seven-county Twin Cities metropolitan area or by 125,000,000 or more gallons per year of alcohol produced if the facility will be outside the seven-county Twin Cities metropolitan area</u> , the PCA shall be the RGU.  |
|    | 4410.4400, subp. 14                                 | An EIS is required for residential  |

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| 61 | Residential development                                  | development if the total number of units that the proposer may ultimately develop on all contiguous land owned by the proposer or for which the proposer has an option to purchase, <del>and that is zoned for residential development or is identified for residential development except land</del> identified by an applicable comprehensive plan, ordinance, resolution, or <u>agreement</u> of a local governmental unit for a future use other than residential development, equals or exceeds a threshold of this subpart. ...   |
| 63 | 4410.4400, subp. 20<br>Wetlands and <u>public</u> waters | For projects that will eliminate a <u>public water or public waters</u> <del>protected wetland</del> , the local government unit shall be the RGU.  |
| 64 | 4410.4600, subp. 2, D & E<br>Standard exemptions         | D. projects for which a substantial portion of the project has been completed and an EIS would not influence remaining construction; and<br><br>E. projects for which environmental review has already been <u>completed</u> , or for which environmental review is being conducted pursuant to part <u>4410.3600</u> or <u>4410.3700</u> .   |
| 67 | 4410.4600, subp. 19<br>Animal feedlots                   | The activities in items A to <u>D</u> , are exempt.<br><u>A. Construction of an animal feedlot facility with a capacity of less than 1,000 animal units, or the expansion of an existing animal feedlot facility to a total cumulative capacity of less than 1,000 animal units, if all the following apply:</u><br><u>(1) the feedlot is not in an environmentally sensitive location listed in part 4410.4300, subpart 29, item B;</u><br><u>(2) the application for the animal feedlot permit includes a written commitment by the proposer to design, construct, and operate the facility in full compliance with PCA feedlot rules; and</u><br><u>(3) the county board holds a public meeting for citizen input at least ten business days prior to the PCA or county issuing a feedlot permit</u> |

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|    |  | <p><u>for the facility, unless another public meeting for citizen input has been held with regard to the feedlot facility to be permitted.</u></p> <p>(Reletter existing A as B, B as C, and C as D.)</p>  |
| 70 | 4410.5200, subpart 1, EQB Monitor publication requirements               | Delete item A, subitem (5).  |
| 71 |  | <p>P. Notice of the availability of a draft <del>environmental report, pursuant to part 4410.7100, subp. 6</del> <u>Alternative Urban Areawide Review document.</u></p> <p>Q. Notice of the <del>availability adoption of a final environmental report, pursuant to part 4410.7100, subp. 10</del> <u>Alternative Urban Areawide Review document.</u></p>  |
| 72 | 4410.5600, subp. 2 Distribution [of EQB Monitor]                         | <u>The EQB Monitor may be published by electronic means, including by posting at the EQB internet website and by electronic mail to persons who have registered with the EQB to receive the EQB Monitor.</u>   |
| 73 | 4410.6100, subp. 1 Proposer and RGU agreement [about EIS costs]          | <p>Within 30 days after the <u>RGU's scoping decision has been issued</u>, the RGU shall submit to the <u>proposer a draft cost agreement</u>. The agreement shall include the EIS estimated cost and a brief description of the tasks and the cost of each task to be performed by each party in preparing and distributing the EIS. Those items identified in part <u>4410.6200</u> may be used as a guideline in determining the EIS estimated cost. <u>The proposer may request changes in the cost agreement. If, within 30 days after the proposer receives the draft cost agreement, the RGU and proposer have not signed a cost agreement, either party may refer the matter to the EQB pursuant to part 4410.6410. If the RGU and proposer sign the cost agreement, the RGU shall submit a copy to the EQB.</u></p> |
| 73 | 4410.6200, subp. 1, A & D EIS cost inclusions [in determining EIS costs] | <p>A. the cost of the RGU's staff time including direct salary and fringe benefit costs, <u>unless the RGU elects to waive these costs;</u></p> <p>D. indirect costs of the RGU not to exceed the RGU's normal operating overhead rate, <u>unless the RGU elects</u></p>   |

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|    |  | <u>to waive these costs;</u>   |
| 75 | 4410.6500, subp. 1, item A<br><br>Schedule of payments [of EIS costs]                                      | The proposer shall pay the RGU for the full cost estimated by the RGU to be necessary for the scoping of the EIS not later than the date of submission by the proposer of the completed data portions of the scoping EAW <u>or within 5 days of issuance of a positive declaration.</u> The RGU shall not proceed with the scoping process until this payment is made. ... |
| 76 | 4410.6500, subp. 6<br><br>Prohibition on state agency permits until notice of final payment [of EIS costs] | Upon receipt of final payment from the proposer, the RGU shall promptly notify <del>each state agency having a possible governmental permit interest</del> in the project that the final payment has been received. ...  |

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