

April 2010 Errata & Updates for:

EAW Guidelines

Preparing Environmental Assessment Worksheets

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This document updates and corrects information published in the EAW Guidelines dated February 2000.

<u>Page #</u>	<u>Correction or update</u>
Glossary	The definition of cumulative effects given is outdated. Updated information is given in the chapter on General guidance.
2	<p>Under the section titled “30-day comment period:” EAWs may be distributed in electronic form, such as an emailed pdf file or on a mailed CD, however, anyone entitled to receive an EAW must be given a paper copy upon request. Many RGUs now post EAWs at their websites. Comments on an EAW may be submitted in electronic form if the RGU gives an email address on the EAW.</p> <p>The EQB Monitor is now distributed only in electronic form.</p> <p>The diagram showing the steps and timelines of the EAW process is outdated. A corrected listing (with a different format) is given in an appendix to this document.</p>
3	<p>Under the section titled “Responses to comments and decision on the need for an EIS:”</p> <p>The RGU may postpone its decision on the need for an EIS for more than 30 days with the consent of the proposer.</p> <p>Responses to comments may be distributed electronically, with the proviso that a paper copy must be supplied upon request.</p> <p>Two amendments have been made to the criteria for determining if the potential for significant environmental effects exist:</p> <ul style="list-style-type: none"> B. now reads: “cumulative potential effects;” C. now has the modifying clause added: “provided that the RGU may rely only on mitigation measures that are specific and can reasonably be expected to be effective” <p>The changes made in the rules regarding cumulative potential effects are described in Chapter 3 of the <i>2010 Guide to MN Environmental Review Rules</i>.</p> <p>Add the following new section regarding cumulative potential effects:</p> <p style="text-align: center;">“Considering cumulative potential effects in determining the need for an EIS.</p> <p>In order to give proper consideration to the role of cumulative potential effects in making the EIS need decision, the RGU must have obtained the proper information in EAW preparation. Guidance for doing so is provided in a following section titled <i>Accounting for cumulative potential effects when preparing an EAW</i>.</p> <p>Assuming the RGU has obtained sufficient information about the potential impacts from other past, present and future projects which need to be considered as part of the cumulative potential effects analyses, the amended EQB rules state that the RGU should examine the information about each of the types of possible cumulative potential effects with respect to the following factors:</p>

Factor 1. Whether the cumulative potential effect is significant. This means that the RGU should decide if the sum total of the contributions from all the sources is significant. If the total impact is not significant, then obviously the contribution from the project under review cannot be significant.

Factor 2. Whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect. If consideration of the first factor results in a determination that the sum total impact is significant, then the RGU must look to the significance of the contribution from the project under review, viewed in connection with the contributions from other sources.

Factor 3. The degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect. This factor only applies if some governmental unit (or units) has previously developed and put into effect a plan or program of some sort whose purpose is to specifically mitigate the type of cumulative effect under consideration. At present, such plans or programs are not common in Minnesota. One example of such a plan would be a TMDL plan developed by the PCA for cumulative water pollution abatement for impaired waters. In the common case where there is no such plan, the RGU should simply state that as its response to this factor. If there is a qualifying plan, then the question becomes whether the project under review will be in compliance with the specific mitigation prescribed in the plan

Factor 4. The efforts of the proposer to minimize the contributions from the project. If there is no plan in existence to mitigate a cumulative potential effect but the proposer has made an effort to avoid or minimize the contribution from the project through design or mitigation, the RGU should take that effort into consideration in determining the significance of the contribution from the project to the cumulative potential effect. E.g., has the proposer made just a token effort, or have state-of-the-art measures been incorporated? Has the proposer been responsive to suggestions for mitigation from the RGU or from public comments? How do the efforts compare to those of similar projects that the RGU knows of? “

4 The RGU may delay its EIS need decision for more than 30 days if the proposer of the project agrees.

5 The current version of the EAW form can be found on the EQB website:
http://www.eqb.state.mn.us/EnvRevGuidanceDocuments.htm#Environmental_assessment_worksheets

The RGU may take longer than 30 days to review an EAW data submission if the project proposer agrees to more time.

Add the following new section regarding cumulative potential effects:

“Accounting for cumulative potential effects when preparing an EAW.

Where the EAW form calls for an analysis of an impact there may be a need to take into account not only the effect of the project under review but also other projects that could contribute similar effects, resulting in a “cumulative potential effect,” which will be referred to as “CPE” throughout the remainder of this section. The following guidance should be followed by the project proposer, RGU, and any of their agents involved in completing an EAW form; *however, the RGU must control decisions about what gets left out or included.*

For each environmental effect of the proposed project that may involve CPE, it must be determined if there are any “other projects” that need to be taken into account. These other projects would be those that may affect the same environmental resources covered by the EAW item as the project under review. One way to think about this is to ask if the “environmental footprints” of the projects overlap. (The definition of CPE refers to other projects in the “environmentally-relevant area.” The EQB staff believes that this area must be determined case-by-case, impact-by-impact; thus, generally it may be preferable to simply think in terms of overlapping footprints.) The definition of CPE

specifically states that it makes no difference whether the proposer of the project under review has anything to do with the other project nor whether the RGU has any jurisdiction over the other project. The issue is strictly a technical one, a question of whether similar impacts overlap; this may also involve judgments about how small an impact must become before it no longer needs to be considered.

The definition gives additional guidance for past projects and future projects. It states that past projects whose footprints overlap can be treated in terms of their aggregate effects, which in most cases will be the “existing conditions” with respect to the type of impact in question. Typically, there is no need to itemize the various past projects and their individual contributions; the whole of that can just be lumped together as an aggregate.

For future projects, the definition only requires that a future project be considered if it is actually planned or if a basis of expectation for it has been laid. The definition goes on to specify a two-part test and five sources of pertinent information.

The first half of the test is whether the other project is “reasonably likely to occur.” The definition lists the following as sources of information that should be scrutinized relative to that question:

- whether any applications for permits have been filed with any units of government; (note that this includes units of government other than the RGU and that “permit” is a defined term (4410.0200, subp. 58) that includes virtually any form of permission or assistance from any unit of government)
- whether detailed plans and specifications have been prepared
- future development indicated by adopted comprehensive plans, and zoning or other ordinances
- historic or forecasted development trends, and
- any other factors found to be relevant by the RGU; (one possible example might be the status of funding for the project).

The EQB staff believes that each of these sources of information is not intended to be a “hard-and-fast rule” that by itself necessarily means that a project is or is not “reasonably likely to occur” (although in some cases a single piece of information may be found definitive). In fact, sometimes the different sources may contradict each other; for example, the adopted comprehensive plan might not be consistent with the project as proposed, while other factors tend to predict that it is likely to occur (presumably after the comprehensive plan is amended). In general, the RGU is advised synthesize available information from all the sources and come to an overall conclusion about the likelihood that the project in question will in fact occur.

The second half of the test is whether “sufficiently detailed information is available about the project to contribute to the understanding of CPE.” Note that the rule states that this half of the test only needs to be applied if the first half is met. This half of the test reflects the fact that identifying CPE is not some academic exercise, but rather a practical effort to predict potential environmental effects as accurately as possible. If in a given case it appears to the RGU that a certain other project is “reasonably likely to occur” but very little specific information is available about its potential impacts, then that project would fail this half of the test and not be considered to have a basis of expectation laid for it; thus, it would not be considered when the cumulative potential effects are evaluated. The same five sources of information as discussed above are to be used with respect to the question of whether sufficiently detailed information is available.

In many cases, the RGU may need to consult with adjoining units of government as part of the process of looking for other projects that need to be considered as part of CPE analysis. The RGU will probably want to document any such inquiries to include in its record for the EAW.”

shoreland, include the following features if present: ordinary high water mark; building setback line; shore impact zone boundary; wetlands; bluffs; bluff impact zone boundary; steep slopes; ice ridges; nearshore emergent & submergent vegetation; docks; sand blankets; rip-rap; retaining walls; stairs; patios or platforms; watercraft access; buffers; clearing limits; accessory structures.

7

Item #6 d is now divided into 2 separate sub-items, d & e. Special provisions for phased residential projects in shorelands have also been added at 4410.4300, subpart 19a and 4410.4400, subpart 14a.

For item #8, "certifications" obtained from a governmental unit should also be included.

8

For item #10, cover types, in identifying wetlands dedicated stormwater detention ponds constructed in upland areas should not be designated as wetlands. Natural wetland areas that may have been used for stormwater storage in the past are to be designated as wetlands.

For item #11 fish, wildlife & ecologically sensitive resources, a new information source is available for identifying important wildlife habitats: *Tomorrow's Habitat for the Wild & Rare: an Action Plan for MN Wildlife*, DNR, 2006, available at www.dnr.state.mn.us/cwcs/index.html. This comprehensive wildlife conservation strategy can be used to identify key habitats for wildlife conservation within the Ecological Classification System Subsection where the project is located. The presence of any of these key habitats within the project area should be identified and any proposed changes described.

The guidance for item 11b is replaced by: "Ecologically sensitive resources" generally refers to rare or unique natural features or features of special significance. Examples include state-listed species; native plant communities, colonial waterbird nesting colonies; high quality wetland complexes and calcareous fens. The DNR Division of Ecological Resources maintains the Natural Heritage Information System (NHIS), a collection of databases that provides the most comprehensive information on Minnesota's rare natural features. For information on how to obtain this data refer to:

http://files.dnr.state.mn.us/eco/nhnrp/natural_heritage_data.pdf.

Ecologically sensitive resources not in the NHIS, but known to occur on the project site, should also be identified and described in the EAW. If biological surveys are going to be completed, coordination for survey methods should occur with the DNR staff prior to the surveys. Potential impacts to identified rare features should be addressed in the EAW.

8

The response to item #12 should include identification of any specially-designated waters, such as trout streams or lakes, wildlife lakes, wild rice lakes, migratory waterfowl feeding and resting lakes, and outstanding resource value waters. Many of these waters can be located using a GIS-based tool at

<http://pca-gis02.pca.state.mn.us/website/stormwater/csw/viewer.htm>.

Indirect physical impacts, such as changes due to runoff, dewatering, riparian alteration or other hydrologic changes, should be addressed in

item 12. For wetlands this includes changes that would alter the vegetation in the wetland.

Include discussion of any proposals to convert or use natural wetlands in stormwater management systems.

Note that PCA rule 7050.0186 may still apply to proposed wetland alternations even if the alteration is not subject to the Corps of Engineers Wetland Conservation Act, or DNR jurisdiction.

8

Regarding Item #13, water supply:

Identify any surface water sources as well as wells if the project will change or create a public water supply.

If dewatering water will be discharged, describe treatment methods to be used.

Mower County should be deleted from the list of counties with a delegation agreement for local well regulation.

The Unique Well Numbers can be obtained from the County Well Index maintained by the MN Department of Health and the MN Geological Survey, which includes all wells constructed since 1975 and some wells constructed earlier.

9

The "Note" under item #16 is outdated. The threshold at which an NPDES stormwater permit is required has dropped from 5 acres to one (1) acre.

The descriptions of stormwater management system elements in item 17a should not be limited to detention/retention basins; newer types of Best Management Practices, such as infiltration areas, should also be described and shown on site plans.

10

Regarding item #17b, for stormwater discharges to designated trout stream, potential for thermal impacts must be evaluated and appropriate mitigation proposed. See the first entry for page 8 above for a link to a GIS-based system for identifying such trout streams.

Items #17 and 18 now require consideration of whether any receiving waters have been designated as "impaired" by the PCA. This information can be found at: www.pca.state.mn.us/water/tmdl/tmdl-303dlist.html. If a receiving water has been so designated, the response to 17b & 18b must describe the nature of the impairment, the status of a TMDL plan to address the impairment, and whether the project complies with the plan provisions.

11

The source of information about geologic hazards should be given for item # 19. For example were geotechnical studies done or was the information taken from a geologic atlas?

12

Under items #21, traffic, and 22, vehicle-related air emissions, the references to the former PCA Indirect Source (ISP) program should be stricken. The PCA no longer operates the ISP program.

Regarding item #23, air emission sources frequently require air quality permits from the PCA and applications for such permits may require extensive information. In these cases, the EAW may be based on information being developed for the air permit. Proposers are advised to

- consult with the PCA staff regarding air permit requirements prior to preparing the EAW data.
- 13 The list of hazardous air pollutants that was formerly Appendix E has been withdrawn. Proposers are now advised to contact the PCA air permit staff regarding hazardous air pollutants in connection with item 23 Under item #24, regarding noise the final paragraph should be stricken as the PCA no longer operates the ISP program.
- Regarding the “Note” in item #28, the definition of “connected actions” has been amended; the second of the three conditions now reads: “(2) one project is a prerequisite for another and the prerequisite project is not justified by itself;”.
- 14 Replace the guidance for item #29, cumulative impacts, with the following text to bring the guidance into agreement with rule amendments adopted in 2009:
- “29. Cumulative potential effects. Throughout the EAW, the guidance given in the section titled *Accounting for cumulative potential effects when preparing an EAW* on page 4 should be followed to identify contributions to impacts due to other projects that need to be accounted for in the EAW analyses. Generally, the contributions to impacts from other projects should be treated item-by-item throughout the EAW. Item #29 can be used to describe or summarize how the RGU went about identifying “other projects” that have been included in the cumulative potential effects analyses, including the geographic and temporal scales that were considered. If the RGU believes that the item-by-item responses have adequately presented this information, this item may be answered by stating that all necessary cumulative potential effects analysis information has been presented item-by-item (unless the RGU chooses to summarize information under item 29).
- In the section Certification by the RGU the reference for obtaining the EAW distribution list from the EQB’s website should be changed to: <http://www.eqb.state.mn.us/EnvRevGuidanceDocuments.htm>.
- 15 The RGU assigned to Electric Generating Facilities, Transmission Lines, & Pipelines should be changed to: Department of Commerce, Office of Energy Security, Energy Facilities Permitting.
- Under item #18 (or #17) for Nonmetallic Mineral Mining, discharges of stormwater, if any, should also be discussed.
- 16 Under the guidance for commercial or institutional projects the second paragraph regarding parking should be deleted since the PCA no longer operates the Indirect Source program.
- In the references to PCA as an RGU for air pollution, hazardous waste & sewage systems, “metropolitan, north or south planning units” should be deleted.
- The guidance for subpart 19, residential development, also applies to the new category subpart 19a, residential development in shoreland outside of the seven-county Twin Cities metropolitan area.
- Under item #6 for residential developments, include any permanent stormwater management structures as part of infrastructure described.
- Regarding the guidance for item #6 d & e, the sentence about “cumulative impacts” should be deleted; instead, follow the guidance given for page 5,

<u>Page #</u>	<u>Correction or update</u>
17	<p data-bbox="664 195 1377 254">in the section titled <i>Accounting for cumulative potential effects when preparing an EAW</i>.</p> <p data-bbox="664 285 1393 436">The guidance for subpart 20, recreational development, also applies to the new category, subpart 20a, resorts, campgrounds, and RV parks in shorelands. Stormwater management structures should be included as part of the support facilities.</p> <p data-bbox="664 468 1419 527">Under subpart 21, airport projects, stormwater management and deicing management systems should also be discussed.</p>
18	<p data-bbox="664 562 1419 621">For subpart 22, highway projects, under guidance for item #22 delete the second sentence regarding Indirect Source permits.</p> <p data-bbox="664 653 1393 743">Under subpart 23, barge fleeting, delete the guidance for item# 29 and instead follow the guidance given for page 5, in the section titled <i>Accounting for cumulative potential effects when preparing an EAW</i>.</p> <p data-bbox="664 774 1419 865">For subpart 25, marinas, under item 12 it should be noted that disposal of dredge spoils may require an NPDES/SDS Dredged Disposal permit from the PCA.</p> <p data-bbox="664 896 1419 1052">Under subpart 26, stream diversion, item 11 should also address any changes in streambed habitat characteristics such as decreases in sinuosity, and describe appropriate compensatory mitigation. Under item 12, it should be noted that the PCA may require a NPDES/SDS Dredged Disposal permit.</p>
19	<p data-bbox="664 1087 1317 1171">Under subpart 29, animal feedlots, delete the second and third paragraphs and change the reference to the EQB website to: http://www.eqb.state.mn.us/EnvRevGuidanceDocuments.htm.</p>
21	<p data-bbox="664 1207 1419 1356">Appendix A. To find current contact information for units of government, it is suggested that internet resources be used; most units of government now have websites with contact information as well as descriptions of programs and requirements. State agency websites can be accessed by use of the State of Minnesota Northstar website:</p> <p data-bbox="358 1356 1260 1419">http://www.state.mn.us/portal/mn/jsp/content.do?az_type=description&subchannel=536887676&programid=536906629&sc3=null&sc2=null&id=8494&agency=NorthStar.</p> <p data-bbox="664 1451 1360 1514">An up-to-date map of DNR administrative regions is provided in this errata below.</p>
22	<p data-bbox="664 1549 1419 1633">Appendix B, wetland types. A table is included in this errata below that correlates Circular 39 wetland classes with those used under the Wetland Conservation Act.</p>
23	<p data-bbox="664 1669 1419 1753">Appendix C, river classifications. Make the following changes: In the first paragraph, update the statutory reference to: Minn. Stat.,sec. 103F.301 to 103F.345.</p> <p data-bbox="664 1753 1386 1816">In the second paragraph, line 5, replace “land use <u>controls</u>” with “land use <u>districts</u>.”</p> <p data-bbox="664 1816 1393 1877">In the third paragraph, line 9, replace “<u>regional</u> hydrologist” with “<u>area</u> hydrologist.”</p>

Page #

Correction or update

In the fourth paragraph, delete the reference to *A Guide to Buying and Selling Property along Wild and Scenic Rivers*.

In the footnote (marked by *) update the statutory reference to Minn. Stat., sec. 103F.351.

24

Appendix D, lakes needing a nutrient budget analysis. The updated list of Metropolitan Area Priority Lakes can be found as "Appendix A-2" at the following web address:

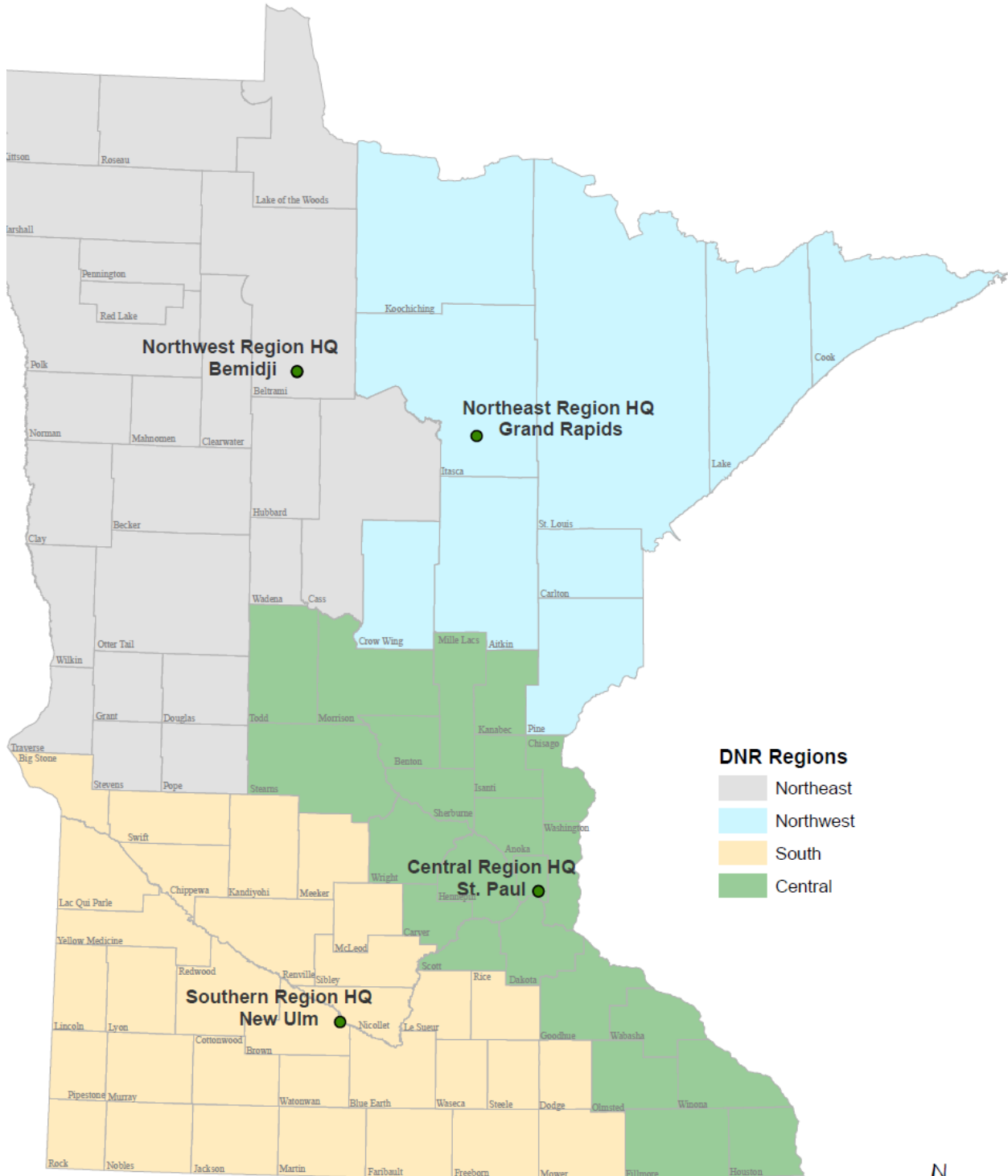
<http://www.metrocouncil.org/planning/environment/WRMPP/WRMPP2005.htm>

25

Delete Appendix E regarding hazardous air pollutants; instead contact the PCA air permit staff.

Minnesota Department of Natural Resources

DNR Administrative Regions



DNR Regions

- Northwest
- North
- South
- Central



10/15/2009

Wetland type classifications for Appendix B

Wetland Plants and Plant Communities of Minnesota and Wisconsin (Eggers and Reed 1997), as modified by the Board of Water and Soil Resources- United States Army Corps of Engineers Wetland Mitigation Memorandum of Understanding (May 2007)	Classification of Wetlands and Deepwater Habitats of the United States (Cowardin et al. 1979)	Fish and Wildlife Service Circular 39 (Shaw and Fredine 1971)
Shallow, open water	Palustrine or lacustrine, littoral; aquatic bed; submergent, floating, and floating-leaved	Type 5: Inland open fresh water
Deep marsh	Palustrine or lacustrine, littoral; aquatic bed; submergent, floating, and floating-leaved; emergent; persistent and nonpersistent	Type 4: Inland deep fresh marsh
Shallow marsh	Palustrine; emergent; persistent and nonpersistent	Type 3: Inland shallow fresh marsh
Sedge meadow	Palustrine; emergent; narrow-leaved persistent	Type 2: Inland fresh meadow
Fresh (wet) meadow	Palustrine; emergent; broad- and narrow-leaved persistent	Type 1: Seasonally flooded basin or flat Type 2: Inland fresh meadow
Wet to wet-mesic prairie	Palustrine; emergent; broad- and narrow-leaved persistent	Type 1: Seasonally flooded basin or flat Type 2: Inland fresh meadow
Calcareous fen	Palustrine; emergent; narrow-leaved persistent; scrub/shrub; broad-leaved deciduous	Type 2: Inland fresh meadow Type 6: Shrub swamp
Open bog or coniferous bog	Palustrine; moss/lichen; scrub/shrub; broad-leaved evergreen; forested; needle-leaved evergreen and deciduous	Type 8: Bog
Shrub-carr or alder thicket	Palustrine; scrub/shrub; broad-leaved deciduous	Type 6: Shrub swamp
Hardwood swamp or coniferous swamp	Palustrine; forested; broad-leaved deciduous; needle-leaved evergreen and deciduous	Type 7: Wooded swamp
Floodplain forest	Palustrine; forested; broad-leaved deciduous	Type 1: Seasonally flooded basin or flat
Seasonally flooded basin	Palustrine; flat; emergent; persistent and nonpersistent	Type 1: Seasonally flooded basin or flat

2

EAW Process Steps and Timeline

0. **Informal communication** between project proposer and RGU in preparation for filing EAW data submission (usually in conjunction with discussions about permit information needs)
1. **Proposer submits** completed data portions of EAW to RGU
2. **RGU reviews data submittal** for completeness (within 30 days – extendable with agreement of proposer)
 - a. If complete, notifies proposer within 5 business days
 - b. If incomplete, returns for corrections (then steps 1 & 2 repeat)
3. **RGU prepares and approves EAW** for public comment (within 30 days of notice of completeness sent to proposer)
4. RGU submits **notice to EQB** for publication in *EQB Monitor* and **distributes EAW** to official EQB distribution list (within 5 business days of approval of scoping EAW)
5. RGU provides **press release** about EAW to at least one newspaper of general circulation in project area (within 5 business days of submission of notice to EQB)
6. **Notice appears in *EQB Monitor*** (varies between 7 and 20 days from receipt of notice at EQB, but usually is 7 days)

(Optional: RGU may hold public meeting to receive oral comments; if meeting held, information regarding meeting included in *Monitor* notice & in press release)
7. **Comment period ends** (30 days after *Monitor* notice published)
8. RGU prepares **written responses** to substantive and timely comments (documented in Record of Decision documents; RGU may request information from proposer as necessary)
9. RGU makes **EIS need decision** based on whether record (EAW, comments & responses) indicates project has the potential for significant environmental effects (between 3 business and 30 calendar after end of comment period; RGU may postpone decision to gather critical missing information for up to 30 days or a longer period if agreed to by the project proposer; decision must be documented in written record of decision)
10. RGU **distributes notice** of EIS need decision (within 5 business days to EAW distribution list and anyone else who submitted timely and substantive comments; commenters must receive copy of response to their comments)
11. **EQB publishes notice** of EIS need decision in *EQB Monitor*