



MINNESOTA

ENVIRONMENTAL QUALITY BOARD

520 Lafayette Road North, Saint Paul, MN 55155 | www.eqb.state.mn.us
Phone: 651-757-2873 | Fax: 651-757-2343

October 17, 2018

Meeting Location: MPCA 2A/2B
St. Paul, Minnesota
1:00 p.m. – 4:00 p.m.

ANNOTATED AGENDA

General

This month's meeting will take place in the Minnesota Pollution Control Agency Rooms 2A/2B at 520 Lafayette Road in St. Paul. The Environmental Quality Board (EQB or Board) meeting will be available via live WebEx on October 17 from 1:00 p.m. to 4:00 p.m. You will be able to access the webcast on our website: www.eqb.state.mn.us

The MPCA building is served by bus routes 64, 53, 860L, 61, and 74 and is accessible by bike. For more information about transit options please see <https://www.pca.state.mn.us/about-mPCA/st-paul-office>

The Jupiter Parking Lot is for all day visitors and is located across from the Law Enforcement Center on Grove Street. The Blue Parking Lot is also available for all day visitors and is located off of University and Olive Streets.

Public comment is taken on all agenda items. Time allocated for discussion is at the discretion of the Board Chair.

I. *Adoption of Consent Agenda

Proposed Agenda for October 17, 2018, Board Meeting
September 19, 2018 Meeting Minutes

II. Introductions

** Items requiring discussion may be removed from the Consent Agenda*

- III. Chair's Report**
- IV. Executive Director's Report**
- V. Emerald Ash Borer in MN**
- VI. Environmental Review Advisory Panel Final Report**
- VII. Public Comment**
- VIII. Adjourn**



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II. Introductions

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III. Chair's Report

IV. Executive Director's Report

V. Emerald Ash Borer in MN

Presenters:

Mark Abrahamson
Assistant Director, Plan Protection
Minnesota Department of Agriculture (MDA)
651-201-6505

Valerie McClannahan
Senior Planner in Urban and Community Forestry, Division of Forestry
Minnesota Department of Natural Resources (DNR)
651-259-5283

Karen Zumach, Tree Trust
President
Minnesota Shade Tree Advisory Council (MnSTAC)
952-767-3886

Partnership on Waste and Energy

Jeff Haberman
City Forester
City of Rochester, MN
507-328-2525

Materials enclosed: None

Background:

Emerald Ash Borer (EAB) was first discovered in Minnesota a decade ago. The state is home to over 1.2 billion ash trees throughout our communities and forests. Today, 17 counties have been effected as EAB continues to spread. A team of interagency staff have been collaborating to develop a white paper to better understand the current status and impacts of EAB, and inform policymakers. Agency experts and stakeholders will discuss current trends and challenges confronting our communities, land owners, and land managers in treating and mitigating the destructive effects of this pest.

VI. Environmental Review Advisory Panel Final Report

Presenters:

Denise Wilson
Director, Environmental Review Program
Minnesota Environmental Quality Board
651-757-2523

Materials enclosed:

- ERAP Final Report

Background:

The Environmental Quality Board (EQB) has a general responsibility to take appropriate measures to modify and improve the effectiveness of the Environmental Review (ER) rules (Minn. Rules 4410.0400, subp. 1). In an effort to target potential program improvement opportunities, the EQB convened an ER Advisory Panel (Panel) and asked them to:

- review the ER program,
- identify areas of concern, and
- propose changes to modernize the program.

Panel members met between February, 2017 and August, 2018 and produced a report with their final recommendations. The presentation will give an overview of the process, describe Panel recommendations for selected topic areas and include reflections from individual Panel members. Then, Board members will be asked for their input, to help staff prioritize next steps in response to the Panel recommendations.

VII. Public Comment

VIII. Adjourn

**MINNESOTA ENVIRONMENTAL QUALITY BOARD
MEETING MINUTES**

September 19th, 2018

**Meeting Location: Ramsey County Library - Maplewood
3025 Southlawn Drive
Maplewood, Minnesota
1:00 p.m. – 4:00 p.m.**

EQB Members Present: Tom Landwehr, Jessica Looman, John Saxhaug, Julie Goehring, Bryan Murdock, Gerald VanAmburg, John Linc Stine, Dave Frederickson, Alene Tchourumoff, Kate Knuth, Kristin Eide-Tollefson, Matt Massman, Tom Moibi, Charlie Zelle, Jan Malcolm, Shawntera Hardy *(Due to technical difficulties Commissioner Hardy was not able to fully participate in the meeting.)

EQB Members Absent: Alan Forsberg

Staff Present: Will Seuffert, Tabitha Cale, Erik Dahl, Kristin Mroz-Risse, Katie Pratt, Giuseppe Tumminello, Denise Wilson

Activity	Audio
I. Adoption of Consent: Agenda and Minutes	0:00:00
II. Introductions Nur Ibrahim, EQB's legal counsel, joined the Board.	0:00:40
III. Chairs Report – No Report	0:02:25
IV. Executive Director's Report Upcoming board meeting logistics and plans were discussed. The Governor's Task Force on Wild Rice has been appointed, meetings will be noticed.	0:02:30
V. Resolution to Adopt 2018 EQB Strategic Plan Will Seuffert, EQB Executive Director, described strategic plan documents. Resolution to adopt resolution passed with full support of present board members.	0:06:37
VI. Resolution Authorizing Initiation of Rulemaking to Adopt Amendments to the Environmental Review Rules, Minn. Rules, Part 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, and 4410.4600. Authorizing EQB Staff to Issue a Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received in Minnesota Revisor of Statutes File Numbers: RD-04157, With Any Modifications Approved By the Board. Erik Dahl and Denise Wilson gave a brief overview of the rulemaking recommendations, these were discussed by the board prior to passing the resolution to authorize initiation of rulemaking. The resolution passed after public comment with 12 votes in favor 2 in opposition and 1 abstention.	0:26:07
VII. Public Comment Ted Schoenecker, representing Minnesota County Engineers and Nancy Daubenberger, Assistant Commissioner of MnDOT provided public testimony regarding Minn. Rules 4410.4300, subpart 22.	1:52:01
VIII. Adjourn	

Environmental Review Advisory Panel

Environmental Quality Board
October 4, 2018

Project Team

Lisa Anderson
Henriët Hendriks
Barbara Tuckner

Enterprise Director, MAD

Ryan Church

Assistant Director

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Management Analysis and Development

Management Analysis and Development is Minnesota government's in-house fee-for-service management consulting group. We have over 30 years of experience helping public managers increase their organizations' effectiveness and efficiency. We provide quality management consultation services to local, regional, state, and federal government agencies and public institutions.

Alternative Formats

Upon request, this document can be made available in alternative formats by calling 651-259-3800.

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Introduction

The Environmental Quality Board (EQB) has a general responsibility to “monitor the effectiveness” and “take appropriate measures to modify and improve” the effectiveness of the environmental review (ER) rules.¹ Over the past few years, EQB staff have initiated several opportunities for public engagement, including surveys of responsible governmental units (RGUs) and citizens to monitor ER effectiveness, and stakeholder engagement to inform the Mandatory Categories rulemaking.

At times, these initiatives resulted in conflicting and competing process improvement recommendations. In February 2017, the EQB convened an advisory panel composed of members with diverse viewpoints to see if they could reach consensus and propose changes to modernize the ER program. This report documents the advisory panel’s work, including the panel process, the panel’s recommendations, and additional perspectives.

Minnesota statutes and rules on environmental review

The Minnesota Environmental Policy Act (MEPA) of 1973 established a formal process for investigating the environmental impact of major development projects. The purpose of the review is to provide information about a project’s environmental impacts before approvals or necessary permits are issued. Each review is assigned to a unit of government, the RGU, which can be a local government, state agency, or joint powers organization. Environmental review applies to public and private development projects that are site specific and contemplate on-the-ground environmental changes. Projects such as building projects, feedlots, shopping centers, mining operations, and residential developments are subject to review.

MEPA’s purpose is codified in Minnesota Statutes, section 116D.01:

The purposes of Laws 1973, chapter 412, are: (a) to declare a state policy that will encourage productive and enjoyable harmony between human beings and their environment; (b) to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of human beings; and (c) to enrich the understanding of the ecological systems and natural resources important to the state and to the nation.

The ER process further operates according to rules adopted by the EQB. In particular, Minnesota Rules states:

The Minnesota Environmental Policy Act recognizes that the restoration and maintenance of environmental quality is critically important to our welfare. The act also recognizes that human activity has a profound and often adverse impact on the environment. A first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of [these rules] is to aid in providing that understanding through the preparation and public review of environmental documents.²

¹ Minnesota Rules, part 4410.0400.

² Minnesota Rules, part 4410.0300, subp.3.

Minnesota Rules state that the ER process is designed to:

- A. provide usable information to the project proposer, governmental decision makers and the public concerning the primary environmental effects of a proposed project;*
- B. provide the public with systematic access to decision makers, which will help to maintain public awareness of environmental concerns and encourage accountability in public and private decision making;*
- C. delegate authority and responsibility for environmental review to the governmental unit most closely involved in the project;*
- D. reduce delay and uncertainty in the environmental review process; and*
- E. eliminate duplication.³*

ER documents serve as “guides in issuing, amending, and denying permits and carrying out other responsibilities of governmental units to avoid or minimize adverse environmental effects and to restore and enhance environmental quality.”⁴ As such, they provide decision makers with information about the potential environmental effects of a proposed project. ER documents are also used by the public to help ensure meaningful input into the decision-making process.

There are generally three types of analysis documents prepared through environmental review: an Environmental Assessment Worksheet (EAW), an Environmental Impact Statement (EIS), and/or an Alternative Urban Areawide Review (AUAR).

Advisory panel: purpose, process, and discussion topics

Panel purpose

The EQB has statutory authority to convene advisory panels to provide recommendations and guidance for program improvement.⁵ As part of its underlying authority, and to implement a 2015 session law,⁶ the EQB initiated an ER mandatory categories rulemaking in 2016. Many of the comments received during this process addressed larger policy questions that fell outside of the scope of the rulemaking process, including human health impacts, climate change considerations, alternative review, and environmental justice.

In response, the EQB convened “an advisory panel charged with modernizing and improving the effectiveness and efficiency of the ER program.”⁷ The purpose of the panel was “to review the ER program, identify areas of

³ Minnesota Rules, part 4410.0300, subp.4.

⁴ Minnesota Rules, part 4410.0300, subp.3.

⁵ Minnesota Statutes, section 116D.03, subd. 2.

⁶ Minnesota Session Law, 2015, 1st Special Session, chapter 4, article 3, section 2, subdivision 5: “\$500,000 the first year from the general fund is a onetime appropriation to the Environmental Quality Board for activities to streamline the environmental review process.”

⁷ From the EQB’s Advisory Panel Charter.

concern, and propose changes to modernize the program.”⁸ The panel’s charter further established that the panel’s activities and recommendations were to be documented in a report.

Specifically, the advisory panel had the following objectives:

1. Provide suggestions for modernizing and improving the effectiveness and efficiency of the ER program.
2. Review issue-focused suggestions from the public and stakeholders, and guide the EQB in larger policy questions and shifts.
3. Participate in a forum where members with disparate worldviews are able to arrive at solutions for the benefit of Minnesota.

Panel process and facilitation

Interested individuals submitted application letters to the EQB. Fifteen individuals were selected, representing citizens, environmental organizations, industry, project proposers, ER practitioners (state agency and local government staff responsible for conducting ER assessments), and consultants, who often act as technical experts in preparing ER documents. A list of panel members can be found in Appendix A. The panel reflected a wide range of perspectives, although the EQB recognized that some voices were not at the table. Meetings were open to the public and opportunities were provided for public comment and panel members indicated the public comments informed and impacted their discussions and recommendations. However, there is a large, unmet demand for broader, ongoing participation in this discussion.

The panel was comprised of people with different, sometimes opposing, points of view brought together with the intent to provide a more holistic view of the issues and challenges facing the current ER process. The EQB’s goal was to explore where consensus and compromise could be identified among ER stakeholders, as well as to better understand the barriers when consensus was not possible. While people with similar views might more easily reach consensus, a collaboration among stakeholders with opposing views can lead to recommendations that address all potential concerns and can facilitate implementation of such recommendations.⁹

The EQB retained Management Analysis and Development (MAD) of Minnesota Management and Budget to provide independent consulting on the design, facilitation, and documentation of the panel process. With input from MAD consultants, EQB staff designed monthly meeting agendas and objectives. During each panel meeting, MAD consultants facilitated panel discussions and provided panel members the opportunity to share their views on the monthly discussion topic and questions posed in the meeting agendas. The objective of each meeting was to explore similarities and differences in panel members’ perspectives, document consensus recommendations, and note divergent or dissenting views. After each meeting, EQB staff summarized the panel recommendations and divergent views, and reported these back to the panel for further revision. The goal was to have every panel member’s voice reflected in consensus recommendations or, if no consensus could be reached, report the various opinions of panel members.

⁸ Ibid.

⁹ For more information on the process of developing consensus, see Hartnett, Tim. The Basics of Consensus Decision-Making. <https://www.consensusdecisionmaking.org/#TheBasics>, accessed July 17, 2018.

The full panel met monthly over the course of one year (February 2017 to February 2018), with two workgroups meeting in March and June 2018. The full panel's last meeting took place in August 2018. Each panel meeting was about three hours long and was held at the Minnesota Pollution Control Agency in Saint Paul, with the exception of the August 2017 meeting which was held in Duluth. Panel meetings were open to the public and each meeting included a public comment period, typically about 15 to 30 minutes toward the end of the meeting. The EQB documented the panel process on its website, where it posted proposed meeting dates, meeting agendas, minutes, and supporting documents.¹⁰

Discussion topics

Based on the advice of the panel, the following schedule of topics was established for each month's panel discussion:

1. Climate change considerations, including greenhouse gas calculations (April and May 2017).
2. Mandatory category rulemaking (June 2017).
3. Relationship between approval processes (permitting and planning) and environmental review (July 2017).
4. Health impact (August 2017).
5. Meaningful engagement in the ER process (September 2017).
6. Flexibility and alternatives to the ER process (November and December 2017).
7. Engagement, education, and outreach (January 2018).

The first two meetings in February and March 2017 were used to establish panel ground rules, explore panel members' visions of success, and solicit feedback on discussion topics. The October 2017 and February 2018 meetings were used to vet draft recommendations with the panel. During the final panel meeting in August 2018, the panel reviewed and finalized the report.

To build on the progress made by the panel, some panel member volunteers and EQB staff met to augment the panel agenda. Two workgroups were formed on climate change considerations and streamlining and alternative review to further refine panel recommendations. These workgroups met in March and June 2018. EQB staff also reached out to panel members in between meetings to solicit feedback on draft recommendations and future panel meetings.

Panel recommendations and considerations by topic

Below is a summary of recommendations and considerations that the panel discussed by topic. The recommendations generally reflect the views of a majority of panel members, although the makeup of the majority varies from topic to topic.¹¹ The panel did not reach consensus on a complete set of recommendations¹² nor does the report present every recommendation the panel discussed. Each section of the

¹⁰ See EQB's website for links to these materials and a list of meeting details:
<https://www.eqb.state.mn.us/content/environmental-review-advisory-panel>.

¹¹ The panel did not take formal votes on individual recommendations.

¹² Consensus is defined here as a proposed solution or recommendation that is acceptable to all and that everyone can live with even if it is not necessarily their preferred option.

report covers these recommendations and considerations in more detail, including alternative views. Sections also detail topics or questions that might need further discussion.

Climate change considerations, including greenhouse gas calculations

Problem statement: There isn't a consistent approach for assessing climate change-related impacts in the ER process.

Panel recommendations:

1. To support RGUs in the quantification of their GHG emissions in metric tons of carbon dioxide equivalent for all mandatory categories, the EQB should develop and disseminate guidance and tools, including a consistent and simple calculation method.
2. All EAWs should provide a narrative discussion of the project's climate adaptation planning and emission mitigation opportunities.¹³
3. Additional stakeholder engagement should take place before any recommendations are implemented.

The panel had considerable discussion as to whether recommendations #1 and #2 should be applied to all mandatory categories, all types of RGUs (state and local), and all project types as well as projects with different levels of significance.

Mandatory category rulemaking

Problem statement: Some mandatory categories and thresholds may be confusing and not align with recent program updates.

Panel discussion included the following considerations:

1. Broaden the scope of categories that were identified in the proposed 2017 rulemaking to include panel recommendations for specific categories (see page 17).
2. Identify all categories that have thresholds for applicability and affirm with RGUs with permitting authority if those thresholds are still appropriate; make changes if needed.
3. Evaluate and eliminate some existing categories, if those project types no longer have the potential for significant environmental effects.
4. Ensure mandatory categories are easily understood and the thresholds are relevant.

¹³ Question #16 on the current EAW form includes the following on emission mitigation: "Stationary source emissions - Describe the type, sources, quantities and compositions of any emissions from stationary sources such as boilers or exhaust stacks. Include any hazardous air pollutants, criteria pollutants, and *any greenhouse gases*. Discuss effects to air quality including any sensitive receptors, human health or applicable regulatory criteria. Include a discussion of any methods used assess the project's effect on air quality and the results of that assessment. *Identify pollution control equipment and other measures that will be taken to avoid, minimize, or mitigate adverse effects from stationary source emissions.*" (emphasis added).

Streamlining the process, flexibility, and alternatives

Problem statements:

- The intersection between federal, state and local permitting requirements can sometimes result in redundancies that needlessly slow the process.
- The current ER process might not allow enough flexibility when potential environmental effects are evaluated under multiple regulatory processes.

Panel recommendations:

1. The EQB should review and update as needed, existing guidance and rules relative to developing a scoped EAW.
2. The EQB should consider a pilot for a new process for an application for exception to an EAW when an EAW is mandatory pursuant to Minnesota Rules 4410.1000.
3. Instead of an “expedited” process, a new process for an “application for exception” should be created.¹⁴
 - The process would be similar to the petition process, except that it would be initiated by a project proposer for an exception.
 - A project proposer could submit an application, with sufficient information that an RGU would be able to use the criteria in Minnesota Rules 4410.1700 to decide whether an EAW must be prepared because the project may have has the potential for significant environmental effects.

Other workgroup considerations for developing an application for exception process included:

- The ability of the public to file an “objection” to the decision, and appeal directly to the EQB.
- Using similar criteria for the decision as the petition process found in Minnesota Rules 4410.1100.

Health impact

Problem statement: There isn’t a consistent approach for assessing all aspects of health in the ER process.

Panel discussion:

The panel was not able to reach agreement on recommendations around health impact but discussed the following topics and potential options:

- Panel members disagreed to what extent health is currently incorporated into environmental review. Some panel members believe health is incorporated through air, noise, and water standards, whereas other panel members noted that health equity or community-wide health impacts are currently not (consistently) addressed in the ER process.
- Panel members discussed how to define health in environmental review but could not reach agreement.
- The panel discussed Health Impact Assessments (HIAs) as a tool to augment environmental review in certain situations.

¹⁴ The panel discussed possible draft rule language for such an exception, which can be found in Appendix B.

- The panel agreed that the EQB should provide more guidance on how to incorporate human health impacts into environmental review. Moreover, this guidance should provide a variety of options, including but not limited to how to complete the EAW form with greater human health impacts considered in each question; using EAWs as a screening tool for an HIA; including HIAs in EISs—particularly in scoping of the EIS and any other method that could better integrate a human health perspective into ER.
- A number of panel members commented on how to gather additional stakeholder input on this topic, suggesting such opportunities for additional input could address some of the questions around health.

Meaningful engagement in the ER process

Problem statement: Competing needs and different levels of understanding between project proposers, RGUs, and the public can result in ineffective public engagement in the ER process.

Panel recommendations:

1. The EQB should more actively recruit tribal representatives on future panels as the panel observed a lack of representation of tribal voices in the ER process.
2. The ER program should intentionally recruit and engage diverse audiences, with particular emphasis on people who are traditionally underrepresented and underserved.
3. Recommend RGUs to use accepted best practices for public engagement that are appropriate for their project needs.
 - The EQB should continually identify, document, and disseminate define best practices through its website; trainings or workshops for RGUs, project proposers, and consultants; and supporting documents.
4. Encourage RGUs to bring the public into project discussions early in the process and provide guidance for initiating conversations with the public.
5. Add a question on the EAW form that asks project proposers and RGUs to describe the public engagement process.
 - The form should also specify opportunities for public participation in other approval processes.
6. A concise summary in plain language should be provided at the beginning of the ER document.

Education and outreach

Problem statement: Project proposers, RGUs, and the public need more information and training about the ER process, how environmental review relates to other regulatory processes, and best practices for public engagement.

Panel recommendations:

1. The EQB should develop best practices around notification policy, including tribal notification.
2. EQB should facilitate technical support from state experts for topic areas outside of their permitting authority.

3. The EQB should build capacity among RGUs, project proposers, and consultants to advance effective public engagement.
 - The EQB should continuously identify, document, and disseminate best practices through its website; trainings for RGUs, project proposers, and consultants; workshops for sharing best practices among practitioners; and supporting documents.
4. Provide training for local RGUs to ensure consistent approaches for implementing Minnesota Rules 4410.
5. Convene a practitioners group of RGUs, specialized consultants, and other interested parties for recurring meetings to increase information sharing and identification of new and emerging issues.

The following sections document the panel discussions and recommendations by topic, including dissenting views, additional work needed, and next steps.

Climate change considerations, including greenhouse gas calculations

During the April and May 2017 meetings, the panel discussed the use of greenhouse gas (GHG) calculations and climate change analysis in the ER process. The panel also discussed the use of GHG calculations as a threshold for the EAW Air Pollution category. Specifically, the panel discussed the following questions:

- What does a GHG calculation tell us?
- What does a climate change analysis tell us?
- How does that information fulfill MEPA's purpose?
- What are the challenges to doing GHG calculations?
- What are the challenges to doing a climate change analysis?
- How does this group define a climate change analysis in environmental review?
- At a minimum, what should be considered in a climate change analysis?
- Which project types/EAW and EIS categories should complete a GHG calculation?
- Which project types/EAW and EIS categories should complete a broader climate change analysis?

Problem statement

The panel agreed upon the following problem statement:

There isn't a consistent approach for assessing climate change-related impacts in the environmental review process.¹⁵

Panel recommendations

Based on initial panel discussions during the April and May 2017 meetings, and additional work by the workgroup on climate change, the following recommendations emerged:

1. To support RGUs in the quantification of their GHG emissions in metric tons of carbon dioxide equivalent for all mandatory categories, the EQB should develop and disseminate guidance and tools, including a consistent and simple calculation method.
2. All EAWs should provide a narrative discussion of the project's climate adaptation planning and emission mitigation opportunities.¹⁶

¹⁵ During the March 2018 meeting of the workgroup on climate change, panel members discussed whether this was the appropriate problem statement, with one member arguing it should also reference the role of environmental review in providing solutions to the problem. Another member disagreed, arguing the role of environmental review is not to solve problems but to assess and gather information. No alternative problem statements were offered.

¹⁶ Question #16 on the current EAW form includes the following on emission mitigation: "Stationary source emissions - Describe the type, sources, quantities and compositions of any emissions from stationary sources

3. Additional stakeholder engagement should take place before any recommendations are implemented.

The panel had considerable discussion as to whether recommendations #1 and #2 should be applied to all mandatory categories, all types of RGUs (state and local), and all project types as well as projects with different levels of significance.

The workgroup on climate change offered the following additional considerations:

- There is value in requiring projects to provide climate impact information in an EAW.
- No new mandatory category is needed; all existing mandatory categories should be required to provide the same information, using a consistent method.
 - Consider a *de minimis* threshold for requiring climate impact analyses, rather than making any mandatory category “optional.”
- Some type of adaptation assessment should be required, but more work with stakeholders and technical experts is needed for developing the specific approach.
- The following issues should be further evaluated by technical experts:
 1. How will the analyses be done?
 2. What will the analyses be used for?
 - Consider how the analyses will be relevant and provide context (a point of reference).
 - Consider legal implications to RGUs for what type of requirements are implemented.
 3. Consider how to balance the burden of doing analysis with benefit.
 4. Analyses should include assessment methods for agriculture and land conversion.

The EAW Air Pollution category

During the May 2017 meeting, the panel discussed the EAW Air Pollution category, which uses GHGs as a threshold. The full panel agreed that additional evaluation is needed on whether GHG emissions should be a stand-alone mandatory category threshold. Most panel members also agreed that some form of the EAW Air Pollution category should remain in rule.

There was no agreement, however, on changes to the threshold. A subset of panel members thinks the threshold should be lowered to 25,000 tons per year of GHG to align it with federal reporting requirements. Another subset wants the EQB to gather more data before changing the threshold. A final subset believes there should be no stand-alone GHG mandatory threshold due to rescission of the GHG Tailoring Rule, which served as the basis for EQB adopting the threshold and that the EQB should eliminate the EAW Air Pollution category.

The panel further discussed the connection between federal permitting and environmental review, recognizing the difference between the two processes and that the air pollution EAW category should not be connected to a federal air permit.

such as boilers or exhaust stacks. Include any hazardous air pollutants, criteria pollutants, and *any greenhouse gases*. Discuss effects to air quality including any sensitive receptors, human health or applicable regulatory criteria. Include a discussion of any methods used assess the project’s effect on air quality and the results of that assessment. *Identify pollution control equipment and other measures that will be taken to avoid, minimize, or mitigate adverse effects from stationary source emissions.*” (emphasis added).

Additional perspectives

Panel members shared the following additional feedback and dissenting views:

- The GHG and climate change assessment methods should be easy to evaluate with limited GHG expertise. Assessments also need to be easy to compute and not require consulting experts.
- Calculation methods and results should be meaningful and help inform decision makers.
- Potential climate-related impacts should be easily understood by the public. However, the panel offered varied opinions about what would be done with this information. Some panel members expressed large concern about how this would be mitigated and how it would impact significance.
- The EQB should consider how to include an assessment of the social cost of carbon for EIS analyses.
- Environmental review should allow for the tracking of cumulative impacts of projects on climate change.
- The EQB should consider a generic EIS for regenerative agriculture alternatives.
- EQB technical experts should review more scientific literature to provide a more realistic, factual basis on which to determine an appropriate threshold for mandatory EAWs and EISs.
- Current science should inform mitigation and restoration efforts.

Additional work needed

The panel identified the following items that need additional work:

- More information is needed for how offsets should be used.
- More work should be done to determine what data is available/needed for assessing cumulative impacts.

Mandatory categories

During the June 2017 meeting, the panel discussed a number of mandatory categories for environmental review. Before the meeting took place, panel members filled out a survey sent out by EQB staff to collect feedback on the current mandatory categories. Based on the survey results (see Appendix C), the panel discussed the following mandatory categories:

- Minnesota Rules 4410.4300, subp.2 and 4410.4400, subp.2 – Nuclear fuels (EAW and EIS).
- Minnesota Rules 4410.4300, subp.11 – Metallic mineral mining and processing (EAW).
- Minnesota Rules 4410.4300, subp.12 – Nonmetallic mineral mining (EAW).
- Minnesota Rules 4410.4300, subp. 15 – Air Pollution (EAW).
- Minnesota Rules 4410.4300, subp.19 and 4410.4400, subp.14 – Residential development (EAW and EIS).
- Minnesota Rules 4410.4300, subp.19a and 4410.4400, subp.14a – Residential development in shoreland outside Twin Cities (EAW and EIS).
- Minnesota Rules 4410.4300, subp.20 – Resorts, campgrounds, and RV parks in shoreland (EAW).
- Minnesota Rules 4410.4300, subp.22 – Highway projects (EAW).
- Minnesota Rules 4410.4300, subp.24 – Water appropriations and impoundments (EAW).
- Minnesota Rules 4410.4300, subp.19 – Animal feedlots (EAW).
- Minnesota Rules 4410.4300, subp.33 – Communication towers (EAW).
- Minnesota Rules 4410.4300, subp.36a – Land conversions in shoreland (EAW).

Other themes that emerged from the survey results included:

- Whether the ER program be applied broadly or narrowly to capture many or few projects, including whether to:
 - Exclude environmental improvement projects from environmental review.
 - Have fewer mandatory categories and more RGU discretion to order EAWs or AUARs.
 - Decide if natural resources (such as wetlands, natural areas) and historical properties remain discrete categories just like project-type categories (such as nuclear fuels or residential developments).
- Clarification of the role of science when setting mandatory category thresholds.
- Clarification of the relationship between permitting and environmental review.

Problem statement

The panel agreed upon the following problem statement:

Some mandatory categories and thresholds may be confusing and not align with recent program updates.

Panel recommendation and discussion

The panel discussed the following mandatory categories and recommends EQB staff follows up with additional work on these categories:¹⁷

- Minnesota Rules 4410.4300, subp.11 – Metallic mineral mining and processing (EAW)
- Minnesota Rules 4410.4300, subp.12 – Nonmetallic mineral mining (EAW)
- Minnesota Rules 4410.4300, subp.19 and 4410.4400, subp.14 – Residential development (EAW and EIS)
- Minnesota Rules 4410.4300, subp.24 – Water appropriations and impoundments (EAW)

The panel further discussed the following considerations:

1. Identify all categories that have thresholds for applicability and affirm with RGUs with permitting authority if those thresholds are still appropriate; make changes if needed.
2. Evaluate and eliminate some existing categories, if those project types no longer have the potential for significant environmental effects.
3. Ensure mandatory categories are easily understood and the thresholds are relevant.

The panel affirmed that while more evaluation of mandatory categories and thresholds is needed, panel members varied in the level of technical expertise and there is a need for RGUs with expertise in mandatory categories to be part of any potential revisions.

Additional work needed

- The EQB will need to work with applicable RGUs for newly recommended categories to affirm the need and recommendations for additional mandatory category changes.
- Additional evaluation by EQB and MPCA is needed to determine if GHG emissions should remain a stand-alone mandatory ER category and if the GHG threshold should be amended.

¹⁷ Some panel members recognized they did not have the technical expertise to evaluate the mandatory categories.

Streamlining the process, flexibility, and alternatives

During the November and December 2017 meetings, the panel discussed approaches to streamlining the ER process, flexibility, and alternatives. Specifically, the panel discussed the following ideas for additional flexibility and alternatives to the ER process:

1. Allow RGUs and project proposers to scope what will be included in the EAW.
2. Allow other state processes, such as permit requirements and/or comprehensive plans, to substitute for, or (partially) satisfy, portions of the ER process.
3. Create “off-ramps” and “exclusions” for RGUs to use at their discretion.
4. Allow for a variance process or exemption petition.
5. Create an additional process—a hybrid between an EAW and an EIS.
6. Alternative public engagement process that could substitute for the current public notice requirements.

Problem statement

The panel agreed upon the following problem statements:

The intersection between federal, state, and local permitting requirements can sometimes result in redundancies that needlessly slow the process.

The current ER process might not allow enough flexibility when potential environmental effects are evaluated under multiple regulatory processes.

Panel discussion and potential recommendations

While most panel members recognized the potential need for an alternative process, there was ongoing disagreement over how an alternative could be structured. There was also some lack of clarity and awareness about current alternatives allowed for in rule, and how information can be incorporated by reference.

Based on initial panel discussions during the November and December 2017 meetings, and additional work by the workgroup on Streamlining, Flexibility, and Alternatives, the panel offered the following recommendations:

1. The EQB should review, and update as needed, existing guidance and rules relative to developing a scoped EAW.
2. The EQB should consider a pilot for a new process for an application for exception to an EAW when an EAW is mandatory pursuant to Minnesota Rules 4410.1000.
3. Instead of an “expedited” process, a new process for an “application for exception” should be created.
 - o The process would be similar to the petition process, except that it would be initiated by a project proposer for an exemption.

- A project proposer could submit an application, with sufficient information that an RGU would be able to use the criteria in Minnesota Rules 4410.1700 to decide whether an EAW must be prepared because the project may have has the potential for significant environmental effects.

RGU Discretion to Except Project from Mandatory EAW

During the final panel meeting in August 2018, the panel discussed potential rule language drafted by a subset of panel members for a process to allow RGU discretion to except a project from a mandatory EAW. During the discussion of this draft rule language, the panel members strongly disagreed on a number of items, including:

- Whether an exception process is needed. Some panel members raised the question of what historical data exist to support the need for an exception process.
- What projects would be good candidates for an exception.
- How an objection should be considered, such as the number of people needed to sign onto an objection and the level of substantiation and materiality of the objection.
- Whether this should be a pilot program or not.
- The terminology used in the rule language, in particular the word “exception” versus “exemption” and the application of each term.

The panel did not come to an agreement on draft rule language; the version that was discussed in the final meeting (annotated to show disagreement) can be found in Appendix B.

Additional perspectives

Some panel members expressed that they do not agree with the premise of the topic of alternative review.

Workgroup considerations for developing an application for exemption process included:

- The ability of the public to file an “objection” to the decision, and appeal directly to the EQB.
- Using similar criteria for the decision as the petition process found in Minnesota Rules 4410.1100.

The workgroup also discussed a number of options to introduce more flexibility into the ER process, including:

1. A pilot for exemption.
2. A pilot for a simplified EAW form.
3. EQB guidance on how to complete an EAW minimally, with more outreach to local RGUs.
4. A check list to determine project eligibility for an alternative process.

The proposed alternative form would only apply to proposed projects that:

- Can demonstrate that they would not meet the criteria for requiring an EAW (Minnesota Rules 4410.1700 subp.7);
- Are non-controversial; and
- Have already undergone a sufficient public review process.

The framework for the proposed alternative review process should consider:

- Timeliness: If the alternative process takes as long as the EAW process, then this approach have no value.
- Scope of review: The evaluation should be comprehensive enough to ensure that it can demonstrate the potential for significance.
- The opportunity for the public to participate in the approval decision.

Health impact

During the August 2017 meeting, the panel discussed human health considerations in environmental review. As part of the panel meeting, a representative from the Minnesota Department of Health provided overviews of current health and environmental regulation and the use of Health Impact Assessments (HIAs). Following this presentation, representatives from the Minnesota Academy of Family Physicians shared with the panel their request to the EQB to include HIAs for all projects undergoing environmental review.

The panel then discussed the following questions:

- From the perspective of each panel member, to what extent are human health considerations currently incorporated into environmental review?
- How should health be defined in the context of environmental review?
- What value does a health impact assessment have in environmental review?
- What do we not know?
- What else does the EQB need to know to move forward?

Problem statement

The panel agreed upon the following problem statement:

There isn't a consistent approach for assessing all aspects of health in the environmental review process.

Panel discussion

The panel was not able to reach agreement on recommendations around health impact but discussed a number of topics and potential options for the EQB.

Panel members disagreed to what extent health is currently incorporated into environmental review. Some panel members believe health considerations are already conservatively protected through development of environmental criteria standards (air, noise, and water standards), permitting and regulatory requirements, and existing mandatory category risk assessment tools. Other panel members noted that health equity or community-wide health impacts are currently not (consistently) addressed in the environmental review process. Panel members discussed how to define health in environmental review but could not reach agreement.

Each panel member also provided an individual recommendation to the EQB at the end of the meeting. MAD summarized the panel discussion and panel member recommendations as follows:

The panel did not recommend one method for incorporating human health impact into environmental review. However, there was consensus among panel members that more guidance on how to incorporate certain human health considerations into environmental review should be provided. Panel members provided a variety of options for the guidance, including but not limited to: how to complete the EAW form with greater consideration for human health impacts for each question; using EAWs as a screening tool for HIA; and including HIAs in EISs—particularly in scoping of the EIS and any other method that could better integrate a human health

perspective into environmental review. Some panel members, however, expressed opposition to the idea of including HIAs in EISs. A number of panel members also commented on how to get stakeholder input on this topic, suggesting that better opportunities for input in the current process would address some of the questions around health.

The topic was revisited during the February 2018 meeting with further discussion around the following considerations. A minority of panel members agreed these should move forward.

- Require projects that have the potential for health impacts to follow the same protocol for assessing those impacts and reporting them on the EAW form.
- Develop a consistent approach for including an assessment of social and other applicable determinants of health.
- Technical assessment requirements should include sufficient guidance, so that RGUs will be able to perform the analyses and the public will understand the potential environmental effects.

Panel members who disagreed with these considerations provided the following feedback:

- Panel members noted that MDH currently does not have a recommendation on whether a Health Impact Assessment be required for environmental review.
- Previous discussions on health in environmental review have had no effect on decision makers.
- A discussion is needed about how incorporation of health considerations would be done in the EAW.
- Health is addressed in many other ways in the ER process—adding health to the EAW will not provide new information to move forward.
- Health considerations are redundant—they are already the basis of environmental review.
- Key (of the ER process) is scoping. EIS scoping already allows for inclusion of HIA components if determined to be appropriate and beneficial.
- The ER program should not dictate the process that an RGU must use within an EAW or EIS to assess or evaluate specific potential environmental (or health) impact.

The panel then suggested that the EQB engage with stakeholders beyond MDH for a broader set of views and methods and with a deeper understanding of how environmental review works.

Additional work needed

- The EQB may need to conduct training and outreach for RGUs before recommendations around health impact are implemented.
- MDH should provide recommendations on which mandatory categories and projects should consider health impacts.

Meaningful public engagement, education, and outreach

During the September 2017 and January 2018 meetings, the panel discussed meaningful public engagement, education, and outreach.

The panel addressed the following questions on meaningful public engagement:

- To what extent does the ER process enable conditions for meaningful engagement?
 - Why is environmental review not already achieving meaningful engagement?
- What needs to change and how does the ER program make change?

The panel addressed the following questions on education and outreach:

- Education/outreach documents are primarily developed for RGUs—should this be expanded?
- How should the EQB help others better understand the process?
- Is there a gap in knowledge for:
 - RGUs?
 - Public?
 - Project proposers?
- Who should lead education/outreach efforts for the public, project proposers?
 - EQB or locally led?
 - How?
- What changes do you recommend?
- What is needed for RGUs that only prepare EAW/EIS documents infrequently?

Problem statements

The panel agreed upon the following problem statements:

Competing needs, and different levels of understanding, between project proposers, RGUs, and the public can result in ineffective public engagement in the ER process.

Project proposers, RGUs, and the public need more information and training about the ER process, how environmental relates to other regulatory processes, and best practices for public engagement.

Panel recommendations

Meaningful public engagement

The panel agreed upon the following recommendations for meaningful public engagement:

1. The EQB should more actively recruit tribal representatives on future panels as the panel observed a lack of representation of tribal voices in the ER process.
2. The ER program should intentionally recruit and engage diverse audiences, with particular emphasis on people who are traditionally underrepresented and underserved.
3. Recommend RGUs to use accepted best practices for public engagement that are appropriate for their project needs.
 - The EQB should continually identify, document, and disseminate define best practices through its website; trainings or workshops for RGUs, project proposers, and consultants; and supporting documents.
4. Encourage RGUs to bring the public into project discussions early in the process and provide guidance for initiating conversations with the public.
5. Add a question on the EAW form that asks project proposers and RGUs to describe the public engagement process.
 - The form should also specify opportunities for public participation in other approval processes.
6. A concise summary in plain language should be provided at the beginning of the ER document.

Education and outreach

The panel agreed upon the following recommendations for education and outreach:

1. The EQB should develop best practices around notification policy, including tribal notification.
2. EQB should facilitate technical support from state experts for topic areas outside of their permitting authority.
3. The EQB should build capacity among RGUs, project proposers, and consultants to advance effective public engagement.
 - The EQB should continuously identify, document, and disseminate best practices through its website; trainings for RGUs, project proposers, and consultants; workshops for sharing best practices among practitioners; and supporting documents.
4. Provide training for local RGUs to ensure consistent approaches for implementing Minnesota Rules 4410.
5. Convene a practitioners group of RGUs, specialized consultants, and other interested parties for recurring meetings to increase information sharing and identification of new and emerging issues.

Additional perspectives

Panel members shared the following additional feedback and dissenting views:

- Engaging diverse communities is important.
 - The EQB should reflect on the advisory panel process.
 - There is a need to make diverse communities feel comfortable and empowered to speak their minds.
 - The ER program should carefully consider such engagement and be intentional.
 - The ER program should go where other people and groups are.
- The EQB needs to consider ways to more intentionally and proactively include tribal governments.
- The EQB needs to consider cultural variation in crafting engagement and communications strategies.
- The EQB should consider development of material that is Minnesota-specific versus using other states' materials.
- The EQB could organize the sharing of best practices.
- The current audience for education and outreach are RGUs; the public also needs to be targeted.
- The EQB should define what “significant” impact means.
- A discussion of “cumulative impacts” should be included in outreach and education.
 - Some panel members noted that this might be a bigger discussion topic than education and outreach.
- The EQB could consider developing an RGU certification process that is required in order to prepare environmental documents. This would likely increase consistency and quality of environmental documents but could also affect the effort and costs of preparing environmental documents.

Additional work needed

Meaningful public engagement

- Research, develop, and disseminate guidance for best practices for public engagement.
- Need to reach out to identify ways to ensure public trust in the ER process.

Education and outreach

- Reach out to RGUs (state and local) to identify tools and training needs and provide updated information on environmental review to encourage identification of new and emerging issues.
- The EQB needs to better understand the additional needs for guidance and tools for implementing Minnesota Rules 4410.

Appendix A: Advisory panel membership

Full panel membership

- Jason Aagenes, Cleveland-Cliffs, Inc.
- James Atkinson, ALLETE, Inc.
- Randall Doneen, Minnesota Department of Natural Resources
- Josh Fitzpatrick, Federal Aviation Administration
- Kathryn Hoffman, Minnesota Center for Environmental Advocacy (alternate: Kevin Reuther)
- Peder Larson, Larkin Hoffman Attorneys
- Willis Mattison, Citizen
- Louise Miltich, Minnesota Department of Commerce
- Andi Moffatt, WSB & Associates, Inc.
- Timothy Nelson, Cook County
- Michele Ross, Sambatek
- Halston Sleets, City of Minneapolis
- Lucas Sjostrom, Minnesota Milk Producers
- Carissa Slotterback, University of Minnesota
- David Zoll, Lockridge Grindal Nauen P.L.L.P.

Workgroup membership

Climate change

- Jason Aagenes
- Kathryn Hoffman
- Willis Mattison
- Louise Miltich
- Tim Nelson

Streamlining the process, flexibility, and alternatives

- | | |
|-------------------|-----------------------|
| • Jason Aagenes | • Tim Nelson |
| • Randall Doneen | • Kevin Reuther |
| • Peder Larson | • Lucas Sjostrom |
| • Willis Mattison | • Carissa Slotterback |
| • Louise Miltich | • David Zoll |

Appendix B: Possible draft rule language

“RGU Discretion to Except Project from Mandatory EAW”

Panel discussion about this draft rule language

The panel did not agree on a final version of possible draft rule language for an exception process. Some panel members questioned the need for an exception process in the first place and believe EQB should provide more information and evidence of the problem that the exception process is trying to address. Other panel members recommended that any exception process first be a pilot program. Others strongly supported the implementation of an exception process as described in the draft rule language below, with slight changes.

Other unresolved issues include the breadth of issues the RGU must address to support an exception, whether the proposed exception would be applicable to all or only some mandatory EAW categories, what terminology to use (“exemption” or “exception”), and how comments or objections to the exception impact the RGU’s proposal to not prepare an EAW for a project.

Possible draft rule language

4410.4300 MANDATORY EAW CATEGORIES.

Subpart 1. Threshold test.

A. An EAW must be prepared for projects that meet or exceed the threshold of any of subparts 2 to 37, unless the project meets or exceeds any thresholds of part 4410.4400, in which case an EIS must be prepared.

If the proposed project is an expansion or additional stage of an existing project, the cumulative total of the proposed project and any existing stages or components of the existing project must be included when determining if a threshold is met or exceeded if construction was begun within three years before the date of application for a permit or approval from a governmental unit for the expansion or additional stage but after April 21, 1997, except that any existing stage or component that was reviewed under a previously completed EAW or EIS need not be included.

Multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when comparing the project or projects to the thresholds of this part and part 4410.4400.

Subpart 2. RGU determination of EAW Mandatory Category Exception.

- A. As provided in part 4410.1000, an EAW serves primarily to aid in the determination of whether an EIS is needed for a proposed project and serve as a basis to begin the scoping process for an EIS. An RGU may determine that an EAW would not serve those purposes for a project and except the project from a

mandatory EAW if it finds that there is no potential for significant environmental effects arising from the project despite the project exceeding the threshold of any of subparts 2 to 37. Such a finding does not preclude preparation of a discretionary EAW pursuant to part 4410.1000 or ordering an EAW following a petition pursuant to part 4410.1000.

B. Decision document content.

The RGU must prepare a document supporting its decision to except a project from a mandatory EAW. The document must include:

1. identification including project name, project proposer, and project location;
2. procedural details including identification of the RGU, RGU contact person, and instructions for interested persons wishing to submit comments;
3. a brief description of the applicable mandatory category;
4. 4 description and location of the project, the purpose of the project, methods of construction, quantification of physical characteristics and impacts, project site description, and land use and physical features of the surrounding area;
5. known governmental approvals, reviews, or financing required, applied for, or anticipated and the status of any applications made, including permit conditions that may have been ordered or are being considered;
6. if the project will be carried out by a governmental unit, a brief explanation of the need for the project and an identification of benefits of the project;
7. an assessment of the compatibility of the project with government entity approved plans for the site;
8. a statement that the project does not have the potential for significant environmental effects despite the project exceeding a threshold of the applicable mandatory EAW category. The statement must include:
 - (a) a description of prior government actions that address the potential for significant environment effects arising from the project.
 - (b) a description of government approvals that address the potential for significant environment effects arising from the project including applicable permits for the project and public notice, public comment and public meeting opportunities related to any government approval; and,
 - (c) other information related to the nature and location of the project supporting the conclusion that the project does not have the potential for significant environment effects.

C. Publication and Notification of Proposed Decision to Except.

The RGU decision document described in subpart B. shall be published and distributed in the same manner required for publication and distribution of an EAW in subpart 4410.1500.

D. Comment and objection period.

1. A 30-day period for review and comment on the RGU decision document shall begin the day the availability notice is published in the EQB Monitor.
2. Written comments shall be submitted to the RGU during the 30-day review period. The comments shall address the accuracy and completeness of the material contained in the RGU decision document, potential impacts arising from the project characteristic that is the subject of the mandatory EAW threshold that may warrant further investigation before the project is commenced, and the need for an EAW on the proposed project due to the potential for significant environment effects arising from the project.
3. Written comments may object to the proposal to except a project from a mandatory EAW.
4. The RGU may hold one or more public meetings to gather comments on the RGU decision document if it determines that a meeting is necessary or useful. Reasonable public notice of the meetings shall be given prior to the meetings. All meetings shall be open to the public.

E. Final Decision on Exception from Mandatory EAW.

The RGU may except the project from a mandatory EAW if it determines based on the record before it that there is no potential for significant environmental effects arising from the project considering the standard and factors provided in part 4410.1700, subparts 6 & 7. 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.

F. Time limits.

The RGU has 30 days from the end of the comment period to decide whether to except the project from a mandatory EAW. If the decision must be made by a board, council, or other body which meets only on a periodic basis, the time period may be extended by the RGU for an additional 15 days.

G. Notice of decision.

Within five days of its decision the RGU shall notify the EQB staff of its decision. The EQB staff shall publish notice of the RGU's decision in the EQB Monitor.

H. Review.

Review of a final decision under this subpart by the RGU shall be available as provided in Minnesota Statutes Section 116D.04, subdivision 10.

Appendix C: Panel survey results mandatory categories

Survey results proposed changes to existing EAW and EIS Categories

The EQB Environmental Review Advisory Panel members suggested via a survey that 25 existing environmental assessment worksheet (EAW) and 7 existing environmental impact statement (EIS) categories change by either modifying the existing rule, eliminating the rule or raising and lowering the threshold. The proposed changes submitted via the survey are in the table below. Four new EAW categories were also proposed. The EQB Environmental Review staff assisted by facilitators sorted the survey data.

Rule	Category	Action	Comment	Mand. Cat. Rulemaking Proposed Change
4410.4300, subp.2	Nuclear fuels (EAW)	Eliminate	Given the controversy that is associated with any nuclear fuel or nuclear waste project, they all should be subject to the mandatory EIS category.	Align with statutory changes
4410.4400, subp.2	Nuclear fuels (EIS)	Lower threshold	All nuclear fuel/waste projects should require an EIS given the controversy surrounding such projects. They are going end up with an EIS anyway.	Align with statutory changes
4410.4300, subp.3	Electric generating facilities (EAW)	Other	RGU should be PUC to allow more consistency of process across the state particularly as we continue to see growth in distributed generation in this 25-50 MW range and a high degree of variability of process across different LGU jurisdictions.	RGU change
4410.4300, subp.5	Fuel conversion facilities (EAW)	Eliminate	These facilities are heavily regulated. If an EAW is desired it can be ordered by the EQB in response to a petition or ordered by a government agency with permitting authority.	Align with statutory changes
4410.4300, subp.7	Pipelines (EAW)	Other	Mandatory EIS (4410 rules) for pipelines requiring certificate of need and/or route permit.	Align with statutory changes
4410.4400, subp.24	Pipelines (EIS)	Other	Require mandatory EIS for pipelines that require CN and/or route permit.	Align with statutory changes
4410.4300, subp.11	Metallic mineral mining and processing (EAW)	Eliminate	Mineral deposit evaluation isn't inherently concerning. If the size or location of the project causes concerns an EAW can be ordered. Setting a 320 acre threshold for expansion of stockpiles, tailings basins or mines is arbitrary. All are heavily regulated and an EAW can be ordered if desired. Similarly, the thresholds for an expansion are arbitrary. The facilities are heavily regulated and an EAW can be ordered if desired.	N/A
4410.4300, subp.11	Metallic mineral mining and processing (EAW)	Other	Subpart 11b currently requires a mandatory EAW for expansion of a stockpile, tailings basin or mine by 320 or more acres. Propose modifying the trigger to exclude in-pit tailings storage because it promotes beneficial reuse of already impacted land.	N/A
4410.4400, subp.8	Metallic mineral mining and processing (EIS)	Other	Delete (A.)	Deletion of part A

Rule	Category	Action	Comment	Mand. Cat. Rulemaking Proposed Change
4410.4300, subp.12	Nonmetallic mineral mining (EAW)	Other	The "mean depth of ten feet" is confusing for RGU's. Would suggest going with a volume calculation that gets to the intent of this rule rather than a "mean depth".	N/A
4410.4300, subp.14	Industrial, commercial, and institutional facilities (EAW)	Eliminate	These projects are all subject to the requirements of local government comprehensive plans, zoning and permitting. An EAW can be ordered if desired.	Addition of units of measurement
4410.4300, subp.15	Air pollution (EAW)	Eliminate	No potential environmental impact is more strictly regulated than air emissions. That is particularly true of major facilities. The MPCA has sufficient authority to regulate these facilities to avoid the potential for significant environmental impacts. An EAW can be ordered if desired.	Deletion of part B
4410.4300, subp.15	Air pollution (EAW)	Lower threshold	25,000 Metric ton CO ₂ -e threshold for GHG emissions = mandatory EAW	Deletion of part B
4410.4300, subp.15	Air pollution (EAW)	Eliminate	The stand-alone air emission EAW trigger should be eliminated for certain classes of facilities that are already covered under mandatory EAW categories (6 classes). Certain facilities should not be subject to a stand-alone air emission increase mandatory EAW trigger. The justification for this request is based on the following: • these facilities already have industry-specific EAW triggers described in Minn. R. 4410.4300; • these facilities and projects are still be subject to an EAW for a host of other triggers; • these facilities are already subject to Part 70 air permits and all of the associated Clean Air Act requirements are designed to be protective of human health and the environment; • projects that result in air emission increases above applicable thresholds must already undergo rigorous air permitting amendments with public notice components; • projects that result in air emission increases above PSD thresholds are subject to Best Available Control Technology are already subject to federal NEPA environmental review requirements; • in previous EQB SONARs, MPCA stated it believes that the air emissions permitting program adequately addresses all major and minor concerns regarding air pollutants from new or expanding sources; and • in previous EQB SONARs, EQB stated there has been little or no relationship between air emission increases and other environmental issues for projects that triggered an EAW based solely on air emission increases.	Deletion of part B
4410.4300, subp.16	Hazardous waste (EAW)	Eliminate	Hazardous waste facilities are subject to sufficient MPCA authority to avoid the potential for significant environmental effects from these projects. An EAW can be ordered if desired.	Addition of definitions, units of measurement; align with permitting program
4410.4400, subp.12	Hazardous waste (EIS)	Eliminate	These projects are sufficiently regulated by the MPCA. An EIS can be ordered if desired.	Addition of definitions, units of measurement; align with permitting program

Rule	Category	Action	Comment	Mand. Cat. Rulemaking Proposed Change
4410.4300, subp.17	Solid waste (EAW)	Eliminate	Solid waste facilities are subject to sufficient MPCA authority and local government zoning and permitting requirements to avoid the potential for significant environmental effects from these projects. An EAW can be ordered if desired.	Addition of unit of measurement; align with permitting program
4410.4400, subp.13	Solid waste (EIS)	Eliminate	These projects are sufficiently regulated by the MPCA. An EIS can be ordered if desired.	Addition of unit of measurement; align with permitting program
4410.4300, subp.18	Wastewater systems (EAW)	Eliminate	Wastewater facilities are subject to sufficient MPCA authority to avoid the potential for significant environmental effects from these projects. An EAW can be ordered if desired.	Language clarification for readability
4410.4300, subp.19	Residential development (EAW)	Other	The language for making the determination is over-complicated and should be simplified, and consideration should be given to simplify any contiguous lands determination.	N/A
4410.4400, subp.14	Residential development (EIS)	Other	The thresholds (A - D) are fine, the contiguous land portion in the first paragraph is not practical, and should be simplified or eliminated.	N/A
4410.4300, subp.19a	Residential development in shoreland outside of the seven-county Twin Cities metropolitan area (EAW)	Other	The first paragraph is too over-complicated for making the determination, consider simplifying the formula and eliminate the distinction between sensitive and non-sensitive shoreland.	N/A
4410.4400, subp.14a	Residential development in shoreland outside of the seven-county Twin Cities metropolitan area (EIS)	Eliminate	The language for making the determination is over-complicated. Allow the EAW to determine whether an EIS is needed, stick with the thresholds in Subp. 14 (A -D). Eliminate distinction between sensitive and non-sensitive shoreland.	N/A
4410.4300, subp.20	Campgrounds and RV parks	Eliminate	This category, like several others, seems unnecessary. If a particular project has the potential to cause significant adverse environmental impacts, a discretionary EAW can be ordered. Narrowing the list of mandatory categories would be a significant step toward streamlining the environmental review process.	N/A
4410.4300, subp.20	Resorts, campgrounds, and RV parks in	Eliminate	This category, like several others, seems unnecessary. If a particular project has the potential to cause significant adverse environmental impacts, a discretionary EAW can be ordered. Narrowing the	N/A

Rule	Category	Action	Comment	Mand. Cat. Rulemaking Proposed Change
	shorelands (EAW)		list of mandatory categories would be a significant step toward streamlining the environmental review process.	
4410.4300, subp.20	Resorts, campgrounds, and RV parks in shorelands (EAW)	Other	Eliminate the distinction between sensitive and non-sensitive shoreland, all shoreland is sensitive. Eliminate the threshold of common open space.	N/A
4410.4400, subp.26	Resorts, campgrounds, and RV parks in shorelands (EIS)	Raise threshold	The 100 units threshold is too low, 200 is a more realistic number. The EAW will determine if there is a need for further review.	N/A
4410.4300, subp.22	Highway projects.	Other	I have wanted to have the MEPA and FHWA's rules coincide to streamline the process. However, FHWA and MnDOT are vague with triggers of: "Projects in this class are generally new construction, reconstruction projects adding lanes, possibly with any of the following: • Large amounts of R/W • Access modifications • Controversial environmental encroachments • More than minimal channel change. This path requires, at a minimum, offering an opportunity for a public hearing, and may require a public hearing."	Increase threshold
4410.4300, subp.24	Water appropriations and impoundments	Eliminate	Water appropriations are subject to sufficient DNR authority to avoid the potential for significant environmental effects from these projects. An EAW can be ordered if desired.	N/A
4410.4300, subp.24	Water appropriations and impoundments	Other	surface water for irrigation should be tied to Groundwater Management Areas - so it should say from a single source water or groundwater management area". Consider a more stringent threshold in these groundwater management areas.	N/A
4410.4300, subp.24	Water appropriations and impoundments	Raise threshold	Subpart 24a – suggest increasing the trigger for an EAW for water appropriations to higher than the current threshold of 30,000,000 gallons per month (~700gpm). Consider exemption for mining pit dewatering purposes.	N/A
4410.4300, subp.26	Stream diversion	Other	An EAW should not be required for projects that are implemented as the result of a regulatory requirements (e.g restoration of a stream which was required by the 404 permit) or other projects the purpose of which is to improve environmental conditions.	Addition of RGU; Exclusion for habitat improvement
4410.4300, subp.26	Stream diversion	Raise threshold	The linear foot requirement should be raised for projects that are proposing realignment to improve habitat conditions.	Addition of RGU; Exclusion for habitat improvement
4410.4300, subp.27	Wetland and public waters (EAW)	Other	Add DNR as additional RGU. Perhaps increase category to capture additional wetland areas	Addition of RGU; change for readability

Rule	Category	Action	Comment	Mand. Cat. Rulemaking Proposed Change
4410.4300, subp.27	Wetland and public waters (EAW)	Eliminate	Wetland impacts are sufficiently regulated under WCA and Sections 404 and 401 of the Clean water act to avoid the potential for significant environmental effects. An EAW can be ordered if desired.	Addition of RGU; change for readability
4410.4400, subp.20	Wetland and public waters (EIS)	Eliminate	These projects are sufficiently regulated by the federal, state and local governments. An EIS can be ordered if desired.	Change to RGU
4410.4300, subp.19	Animal feedlots (EAW)	Raise threshold	In today's modern farms, profitable practices mesh with best environmental practices. Rather than animal units, simply checking a list of Best Management Practices plus monitoring as part of a permit for the largest farms would be a better use of everyone's time. The largest farms, due to new technologies, are often the best users of nutrients, not worst.	N/A
4410.4300, subp.19	Animal feedlots (EAW)	Other	Animal unit thresholds are arbitrary and should be based on actual quantifiable impacts.	N/A
4410.4300, subp.30	Natural areas (EAW)	Other	Delete state trail corridor	Deletion of state trail corridor – comment addressed
4410.4300, subp.31	Historical properties (EAW)	Other	See DNR recommendation on mandatory category rulemaking	Changes for readability – comment addressed
4410.4300, subp.31	Historical properties (EAW)	Eliminate	Because it makes no sense to require a complete EAW for these projects absent other environmental concerns.	Changes for readability
4410.4300, subp.32	Mixed residential and industrial-commercial projects (EAW)	Eliminate	This category, like several others, seems unnecessary. If a particular project has the potential to cause significant adverse environmental impacts, a discretionary EAW can be ordered. Narrowing the list of mandatory categories would be a significant step toward streamlining the environmental review process.	N/A
4410.4300, subp.33	Communication towers (EAW)	Raise threshold	Keep the category for sensitive areas (wild and scenic rivers, wilderness areas, etc.). It seems unnecessary for most other areas.	N/A
4410.4300, subp.34	Sports or entertainment facilities (EAW)	Other	This category, like several others, seems unnecessary. If a particular project has the potential to cause significant adverse environmental impacts, a discretionary EAW can be ordered. Narrowing the list of mandatory categories would be a significant step toward streamlining the environmental review process.	N/A
4410.4300, subp.36a	Land conversions in shoreland	Other	"Land Conversion" should be clearly defined, and consideration should be given to the local comprehensive plan	Exclusion for habitat improvement

Rule	Category	Action	Comment	Mand. Cat. Rulemaking Proposed Change
4410.4300, subp.36a	Land conversions in shoreland	Other	See DNR Rulemaking comments.	Exclusion for habitat improvement
4410.4300, subp.37	Recreational trails	Other	See DNR recommendation under EAW mandatory category rulemaking. Align and interpret session law.	Align with statutory changes

Survey results proposed new EAW categories

Category: Rail/Transit: Laying new track, perhaps 20 miles or longer.

Justification: I have previously found rail and transit have major environmental justice issues as well as wetland issues with proposed connected actions that lead to greater impact. A connected action may be the construction of a rail yard.

Should there be a corresponding EIS category? Please explain: Yes. Perhaps change the threshold category to 50 miles of track.

Category:

Highly Important Natural Resources - An EAW should be required for projects that impact or encroach an resources that is rare or unique, difficult or impossible to replace and particularly significant in terms of Minnesota's ecosystem or natural history. Specific definition of guidance would be needed to assist RGUs in identifying Highly Important Natural Resources

Justification:

Highly Important Natural Resources - These can be important areas that may or may not be identified in other categories and not specifically regulated under existing permitting programs.

Should there be a corresponding EIS category? Please explain: No. None.

Category:

Drainage in and to public waters - A mandatory EAW should be required for any drainage project under Minnesota Statutes 103E or 103D with a drainage area greater than two square miles as measured at the system outlet that would increase the two-year storm discharge by more than 10 percent within 500 feet of a public waters basin, watercourse, or wetland, the LGU shall be the RGU.

Justification:

Drainage Potential impacts include: downstream erosion, flooding, structure impacts (bridges, culverts, road banks), water quality. Most drainage projects don't require a WCA or public waters permit. The public waters permits, if needed, are mostly geared toward physical impacts resulting from the outlet, sediment removal, storage basins, etc.

Should there be a corresponding EIS category? Please explain: No. None.

Category:

Solar Farms - A mandatory category should be required for solar farms in excess of 3-MW, or convert land designated as prime agriculture through a comprehensive planning process.

Justification:

Solar Farms - The concern with solar farms is both the overall land area taken up, and the possible loss of prime agricultural land.

Should there be a corresponding EIS category? Please explain: Not sure. Should let the results of the EAW dictate whether an EIS is necessary.