

**State of Minnesota
Environmental Quality Board**

In the Matter of Proposed Amendment to Rules
Governing Environmental Review, Minnesota
Rules, 4410.0200, 4410.0500, 4410.4300,
4410.4400, 4410.5200, 4410.7904, 4410.7906,
4410.7926, 4410.4600; OAH Docket # 80-9008-
35532; Revisor ID RD-04157.

EQB Post-Hearing Response to Public
Comments

July 16, 2019

Environmental Quality Board (EQB) Response to Public Comments Submitted During Dual Notice Public Comment Period and at the Public Hearing.

I. Introduction

A. Notice and public hearing

The Environmental Quality Board (EQB or Board) noticed its intent to adopt the above referenced proposed rule amendments in a Dual Notice published in the *State Register* on November 13, 2018 (43 SR 20). The Notice provided for the submission of comments and requests to hold a rule hearing from the date of publication through January 7, 2019.

Because of the change in administration and subsequent Board transition, EQB staff and Board members needed additional time to review comments and consider revisions included in this rulemaking. On December 31, 2018 the EQB published an amended Dual Notice in the *State Register* (43 SR 27) that extended the comment period from January 7, 2019 to February 4, 2019 and changed the rule hearing dates for March 8 and March 12, 2019. Due to the lack of a chair and therefore, the Board not being able to meet, the EQB staff issued a final Notice of Hearing on February 25, 2019 in the *State Register* (43 SR 35) setting the hearing date for May 31, 2019 at 1:30pm. During the comment period, EQB received numerous requests for an additional hearing date and time. On May 20, 2019, the EQB staff issued an additional Notice of Hearing in the *State Register* (43 SR47) setting the additional hearing date in St. Cloud at 5:30pm on June 26, 2019.

The EQB received a sufficient number of requests to hold a rule hearing and a rule hearing was held by Administrative Law Judge Laura Sue Schlatter of the Office of Administrative Hearings on May 31, 2019 and June 26, 2019. The EQB presented information demonstrating that the proposed amendments are needed and reasonable as required by Minn. Stat. § § 14.131 and 14.14, subd. 2, through an affirmative presentation of facts at the public hearing, and exhibits introduced at the hearing including Hearing Exhibit D, the Statement of Need and Reasonableness (SONAR).

B. EQB review of comments and organization of EQB's response to comments

This memorandum and attachments, hereinafter called the Response, contain EQB's detailed responses to comments submitted during the dual notice public comment period and at the hearings (May 31, 2019 and June 26, 2019). The Response is considered a supplement to the information in the SONAR.

All comments received during the pre-hearing comment period, and the public hearing transcripts, are posted in their entirety on the EQB webpage for this rulemaking at:

<https://www.eqb.state.mn.us/content/eqb-mandatory-categories-rulemaking>

Attachment 1 (Exhibit Q.1.) is a spreadsheet compilation of the written comments received during the dual notice public comment period and oral comments submitted at the public hearings. The EQB participated in the hearings and reviewed the transcripts of the hearing.

Attachment 1 either directly excerpts or paraphrases written comments received during the dual notice public comment period and at the hearings. A single written comment letter may address multiple parts of the proposed rule. Each distinguishable comment within a letter has been labeled as a separate line in Attachment 1.

Attachment 1 contains information on the rule part or parts each comment relates to, when identifiable.

Attachment 1 also identifies the SONAR pages on which the rule part or topic is addressed. The SONAR references are provided because the SONAR addresses many comments in detail sufficient to establish the need and reasonableness of the proposed rule part on which the comment is made.

During its review of comments, the EQB categorized the comments by topic as noted on Attachment 1 in the column titled "Comment topic".

More detailed responses to multiple comments on a topic are included in Attachment (Exhibit Q) 2.

II. EQB Proposed Modification to Rule Amendments as Published in the November 13, 2018 *State Register*.

After review and careful consideration of comments received during the comment period from November 13, 2018 to February 4, 2019, the EQB proposed several changes to the rules as published in the Minnesota *State Register* on November 13, 2018. The need and reasonableness of the each proposed rule section is established in the SONAR. Any additional statements of need and reasonableness for the proposed changes are included below and are considered a supplement to the SONAR.

Minnesota Stat. § 14.05, subd. 2, establishes the standard to assess if a change is substantially different than the proposed rule. The changes proposed below are not substantially different than the rule as published because:

- The changes are within the scope of the matter announced in the notice of hearing;
- The changes are a direct and logical outgrowth of comments submitted in response to the notice of hearing;

- The notice of hearing provided fair notice to persons interested in and affected by the rule amendments that the additional changes would be part of the rule in question;
- The additional changes do not change in any way the group of persons who will be affected by the rule;
- The subject matter of the additional changes is the same as the subject matter contained in the notice of hearing; and
- The additional changes do not alter the effects of the rule proposed in the hearing notice.

The EQB proposed to modify the rule amendments as published in the *State Register* as shown in the table below. The black text, including black underlines and black strikethrough font, shows the applicable rule provisions as published. The red text, including red underlines and red strikethrough font, shows the EQB’s proposed modifications to those provisions. Red text with no underlined font is text that the EQB, in the rule amendments as published, initially proposed to remove from existing rule provisions but has since decided to retain. Red underlined font shows new text the EQB is proposing to adopt that was not in the rule amendments as published. Red strikethrough font shows newly-proposed text in the rule amendments as published that the MPCA now proposes to remove.

Proposed Change to Rule Amendments as Published	Action
<p>Pipelines. Items A to D designate the RGU for the type of project listed:</p> <p>A. For routing of a pipeline, greater than six inches in diameter and having more than 0.75 miles of its length in Minnesota, used for the transportation of coal, crude petroleum fuels, or oil or their derivatives, the EQB shall be the RGU.</p> <p>B. For the construction of a pipeline for distribution of natural or synthetic gas under a license, permit, right, or franchise that has been granted by the municipality under authority of Minnesota Statutes, section 216B.36, designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than:</p> <p style="padding-left: 40px;">(1) five miles if the pipeline will occupy streets, highways, and other public property; or</p> <p style="padding-left: 40px;">(2) 0.75 miles if the pipeline will occupy private property; the EQB or the municipality is the RGU.</p> <p>C. For construction of a pipeline to transport natural or synthetic gas subject to regulation under the federal Natural Gas Act, United States Code, title 15, section 717, et. seq., designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than:</p> <p style="padding-left: 40px;">(1) five miles if the pipeline will be constructed and operated within an existing right-of-way; or</p> <p style="padding-left: 40px;">(2) 0.75 miles if construction or operation will require new temporary or permanent right-of-way;</p> <p>the EQB is the RGU. This item shall not apply to the extent that the application is expressly preempted by federal law, or under specific</p>	<p>Withdraw proposed change.</p>

<p>circumstances when an actual conflict exists with applicable federal law.</p> <p>D. For construction of a pipeline to convey natural or synthetic gas that is not subject to regulation under the federal Natural Gas Act, United States Code, title 15, section 717, et seq.; or to a license, permit, right, or franchise that has been granted by a municipality under authority of Minnesota Statutes, section 216B.36; designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than 0.75 miles, the EQB is the RGU.</p> <p>Items A to D do not apply to repair or replacement of an existing pipeline within an existing right-of-way or to a pipeline located entirely within a refining, storage, or manufacturing facility.</p> <p>For construction, as defined in Minnesota Statutes, section 216G.01, subdivision 2, of a pipeline, as defined in Minnesota Statutes, section 216G.01, subdivision 3 or 216G.02, subdivision 1, the PUC is the RGU. Environmental review must be conducted according to Minnesota Rules, chapter 7852 and Minnesota Statutes, chapter 216G.</p>	
<p>Part 4410.4400, subpart 8. Metallic mineral mining and processing.</p> <p>Metallic mineral mining and processing. Items A to C and B designate the RGU for the type of projected listed:</p> <p><u>A.</u> For mineral deposit evaluation involving the extraction of 1,000 tons or more of material that is of interest to the proposer principally due to its radioactive characteristics, the DNR shall be is the RGU.</p> <p><u>B.</u> For construction of a new facility for mining metallic minerals or for the disposal of tailings from a metallic mineral mine, the DNR shall be <u>is</u> the RGU.</p> <p><u>C.</u> For construction of a new metallic mineral processing facility, the DNR shall be <u>is</u> the RGU</p>	<p>Withdraw proposed change.</p>
<p>Part 4410.4300, subpart 27. Wetlands and public waters.</p> <p>Wetlands and Public waters, <u>public water wetlands and wetlands.</u> Items A and B designate the RGU for the type of project listed:</p> <p>A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetlands except for those to be drained without a permit pursuant to Minnesota Statutes, chapter 103G, <u>DNR or</u> the local <u>governmental</u> unit shall be <u>is</u> the RGU.</p>	<p>Insert "Item B does not apply to projects exempted by part 4410.4600, subpart 14".</p>

<p>B. For projects that will change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated flood plain floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local governmental unit shall be is the RGU. <u>Item B does not apply to projects exempted by part 4410.4600, subpart 14.</u></p>	
<p>Part 4410.4300, subpart 3. Electric-generating facilities.</p> <p>A. For construction of a wind energy conversion system, as defined in Minnesota Statutes section 216F.01, designed for and capable of operating at a capacity of 25 <u>5</u> megawatts or more, the PUC is the RGU and environmental review must be conducted according to chapter 7854.</p>	<p>Insert "5" and remove "25"; scrivener's or clerical error.</p>

III. Conclusion

After thorough consideration of comments made on the proposed rule, and as required by Minn. Stat. § 14.131, 14.14, subd. 2, and 14.15, subd 4, and Minn. Rules § 1400.2100, the EQB has shown the rules as proposed with the additional modifications detailed in Section II. of this document are needed and are reasonable as demonstrated by and affirmatively shown by facts presented by the EQB in the hearing record.