State of Minnesota
Environmental Quality Board
Attachment 2 to EQB Post-Hearing Response to Public Comments
EQB Detailed Responses to Public Comments
July 16, 2019.

This document supplements information in the Statement of Need and Reasonableness (SONAR; Hearing Exhibit D) in the matter of proposed revisions of Minnesota Rules, Minnesota Rules, chapters 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, and 4410.4600, Relating to Rules Governing Environmental Review.

This document contains the Environmental Quality Board's (EQB) detailed responses to public comments submitted during the pre-hearing comment periods (November 13, 2018 to Feb 4, 2019 and May 20, 2019 to June 21, 2019) and during the public hearings held on May 31, 2019 and June 26, 2019. The comments are numbered and organized for review in Exhibit Q.1.

The EQB thoroughly reviewed public comments, participated in the hearings, and reviewed the transcripts of the hearings. This review revealed comments on multiple topics, which are addressed in detail in this document. 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.

The comment topics specifically addressed are:

Contents

Comments supporting adoption of the proposed amendments

Relates to:
Addition of the definition of Part 4410.0200, subp. 5a. Auxiliary Lane.
Proposed change to Part 440.4300, subp. 8. Transfer facilities.
Proposed change to Part 4410.4300, subp. 22. Highway Projects, item B.
Proposed change to Part 4410.0200, subp. 93. Wetland.
Proposed change to Part 4410.4300, subp. 27. Wetlands and Public Waters. (after May 31, 2019 proposed revisions)

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;
Section V. Reasonableness of the amendments, pages 17-18

Summary of Comments:
Multiple commenters expressed support for the proposed amendments to Minn. R. 4410.0200 and 4410.4300. Multiple commenters supported the proposed definitional addition of Auxiliary Lane because it will update the rule and improve environmental review efficiency. Multiple commenters supported the proposed change to the mandatory "Highway Category" (subp. 22) because it will update the rule and improve environmental review efficiency. After the proposed revision to the wetlands category (May 31, 2019), several commenters responded with support.
(Comments: 1, 22, 67, 69, 73, 77, 79, 81, 83, 85, 87, 89, 93, 103, 114, 116, 118, 120, 122, 132, 134, 187, 189, 195, 197, 211, 213, 255, 256, 260, 275, 307, 344, 351, 357, 406, 417, 418, 419, 420, 421, 424, 425)

EQB response to Comments:
The primary goal of this rulemaking is to streamline environmental review through both technical and housekeeping changes. The desired outcome is to make environmental review more efficient and effective by adding clarity and specificity and thereby reducing ambiguous or confusing application of the environmental review rules. The proposed changes are needed, both to increase certainty for project proposers, RGUs and the public, and to assure that certain proposed projects are receiving environmental review.

Comments related to M.R. part 4410.0200, Definitions.

Relates to:
All proposed definitions within Minnesota Rule 4410.0200

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;
Section V. Reasonableness of the amendments, pages 17-21

Summary of Comments:

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Dual-notice Comment Period	Exhibit I.106. Comment 258	"Putting the definition of wetlands based on state code is reasonable."
Dual notice Comment Period	Exhibit I.106. Comment 255	"Does "Auxiliary lane" apply to bike lanes on roadways?"

EQB response:
The primary goal of this rulemaking is to streamline environmental review through both technical and housekeeping changes. The desired outcome is to make environmental review more efficient and effective by adding clarity and specificity and thereby reducing ambiguous or confusing application of the environmental review rules. The proposed changes are needed, both to increase certainty for project proposers, RGUs and the public, and to assure that certain proposed projects are receiving environmental review.

Response to Comment 255: Bike lanes on roadways are not included within the definition of "Auxiliary lane". The third paragraph of the SONAR (pages 17-21) in Part 4410.0200, subp. 5.a. explains that the proposed new definition of auxiliary lane is limited to just the lanes listed in the definition; i.e., speed change, turning, storage for turning, weaving, and truck climbing. Bike lanes on roadways would not serve any of the purposes listed in the definition.

Comments related to M.R. part 4410.0500, RGU Selection Procedures.

Relates to:
RGU Selection procedures in Minn. R. 4410.0500, subp. 6.

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;
Section V. Reasonableness of the amendments, pages 22-23

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Dual-notice Comment Period	I.9., 31	"I believe the whole board should be involved so maximize transparency in decision-making and furthermore, that the time period should be retained."
Dual-notice Comment Period	I.13, 49	"demand that the following proposed changes be rejected"
Dual-notice Comment Period	I.36., 95	"I do not agree with the following rules that have been proposed: 4410.4300, subp. 6"
Dual-notice Comment Period	I.61., 130; I.67., 143; I.70., 149; I.81., 180; I.104., 252; I.108., 272; I.142., 337; 406	"I object to the proposed following rules: 4410.0500 subp.6. (RGU Selection Procedures)It is important for the full Board to retain this decision-making authority for the sake of accountability, so the public can watch and comment.
Dual-notice Comment Period	I.73., 158	"I am concerned about the following proposed rules enough to strongly object to them. I want other citizens to hear about my concerns at Public Hearings. Here are the rules that worry me: 4410.0500 subp. 6)RGU Selection Procedures)
Dual-notice Comment Period	I.102., 249	*The City's Planning Commission is concerned by the proposed change to allow the EQB Chair to unilaterally determining the RGU. Strike the language

Dual-notice Comment Period	I.106., 257	"Putting the power in the chair to determine the RGU seems to make it easier to have a different RGU. Prefer to remove chair's ability to singularly make the determination on the RGU, or at least have a chance for an RGU to appeal."
Dual-notice Comment Period	I.9., 31; Comment 409	"I believe the whole board should be involved so maximize transparency in decision-making and furthermore, that the time period should be retained."
May 31, 2019 Hearing (page 48-50)	Comments 369, 409, 410,	4410.0500, subp. 6 • Opposes Chair making decision • Time limit should be 30 days • Propose we go to letting the whole Board make the decisions on things rather than just one person. Because the EQB chair is appointed by the governor. So when there is a change in governor, you know, there could be a change in political atmosphere and we could get somebody who is not so good with the environment. We've seen that with some of the administrations we have nationally • Why eliminate that time period? You know, perhaps you could make the time period 30 days so it matches the board meetings. And I would like to finally add that there were 44 comments out of the 190 that asked for this change to be discarded.
May 31, 2019 Hearing (page 115-117)	Comment 408	"I know you guys designate what is an RGU, what is a Responsible Governmental Unit. I think that we have got to look at the indigenous people as an RGU. They should be a recognized and Responsible Governmental Unit and recognized as such in all these things that are written now."
May 31, 2019 Hearing (page 115-117)	Comment 409	"4410.0500 subp 6: Propose we go to letting the whole Board make the decisions on things rather than just one person. Because the EQB chair is appointed by the governor. So when there is a change in governor, you know, there could be a change in political atmosphere and we could get somebody who is not so good with the environment. We've seen that with some of the administrations we have nationally."
May 31, 2019 Hearing (page 115-117)	Comment 410	"Why eliminate that time period? You know, perhaps you could make the time period 30 days so it matches the board meetings. And I would like to finally add that there were 44 comments out of the 190 that asked for this change to be discarded."

EQB response:

The proposed change to allow the EQB chair to re-designate an RGU ensures that the request will be processed more timely. No change is proposed to MR 4410.0500 subp. 1 through 5, which describe the criteria for how that decision should be made by the EQB chair or the Board. Because the request will be published in the EQB Monitor for one week prior to approval, there will be an opportunity for the public to request review and approval by the Board.

If a request is submitted to the Board, the decision will be made at a regularly scheduled monthly Board meeting. Depending on the timing of the request, there may be unpredictable constraints that limit when the decision can be placed on the monthly Board meeting agenda. Therefore, a specific timeline has not been proposed, as flexibility is needed to ensure compliance with this regulatory requirement.

Comments related to M.R. part 4410.4300, subp. 3. Electric-generating facilities.

Relates to:
Part 4410.4300, subp. 3. Electric-generating facilities.

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;
Section V. Reasonableness of the amendments, pages 23-24

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Dual-notice Comment Period	I.106., 258	*State Code Chap.7854 says the PUC permit takes the place of an EAW, but text in the EQB rules seems to indicate an EAW is still needed. Thus unclear.
May 31, 2019 Hearing (page 44-47)	Comment 366	"There is no environmental review for wind projects."

EQB response:
Wind energy conversion systems (wind turbines) are included in Minnesota Rules Chapter 4410.4300, subp. 3 solely for informational purposes.

Local governments and citizens with questions about the environmental review required for wind turbines are not likely to be familiar with or to look at Minnesota Statute § 216F or Minnesota Rules Chapter 7854. However, they are likely to be familiar with and aware of Minnesota Rule 4410, as the touchstone for environmental review in Minnesota. When local governments and citizens review Minnesota Rule 4410.4300 looking for information regarding wind turbines, they will be appropriately directed to Minnesota Rule 7854.

The current version of Minnesota Rules 4410.4300, subp. 3 includes similar informational references for the reader – i.e., for electric power generating plants operating at a capacity of 50 megawatts or more, environmental review is conducted according to Minnesota Rules parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600. There is no EAW prepared; rather, environmental review is conducted according to these separate rules.

The inclusion of the proposed changes will be helpful in directing local governments and citizens to the applicable environmental rules.

Comment 366:
The commenter asserts that there is no environmental review for wind farm projects. This is not the case. Environmental review for wind farm projects is conducted according to Minnesota Rule Chapter 7854, as noted in the proposed rule.

In 1995, the Minnesota legislature passed the Wind Siting Act, Minnesota Statutes Chapter 216F. The act was designed to ensure the development of wind turbine farms in "an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources."[1] The act defined large wind energy conversion systems (LWECS) and directed, at the time, the Environmental Quality Board (EQB), to adopt rules governing the consideration of an application for a site permit for an LWECS including "requirements for environmental review of the LWECS."[2]

The EQB subsequently developed and adopted rules for the siting of LWECS. Minnesota Rules Chapter 7854. These rules were subsequently transferred to the Minnesota Public Utilities Commission (Commission) in 2005. Chapter 7854 is currently administered by the Commission.

Minnesota Rules Section 7854.0500, subp. 7, requires applicants for an LWECS site permit to submit a detailed analysis of potential human and environmental impacts of the project. subp. 7 then notes:

> The analysis of the environmental impacts required by this subp. satisfies the environmental review requirements of chapter 4410, parts 7849.1000 to 7849.2100, and Minnesota Statutes, chapter 116D. No environmental assessment worksheet or environmental impact statement shall be required on a proposed LWECS project.

Thus, Minnesota Rules Chapter 7854 includes environmental review for proposed LWECS projects. Environmental review for LWECS projects is included in Chapter 7854, and this environmental review is noted in the proposed rule. The sufficiency of the environmental review required by Chapter 7854 and whether Chapter 7854 should be revised or amended is beyond this scope of this rulemaking.

[1] Minnesota Statute § 216F.03.
[2] Minnesota Statute § 216F.05.

Comments related to M.R. part 4410.4300, subp. 4 (EAW) & part 4410.4400, subp. 4 (EIS). Petroleum Refineries.

Relates to:
Petroleum Refineries Mandatory EAW Category 4410.4300, subp. 4 and 4410.4400, subp. 4 (EIS).

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;
Section V. Reasonableness of the amendments, pages 24 & pages 49-50

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Dual-notice Comment Period	I.9., 34	"Refinery expansions of 10,000 barrels per day should be subject to mandatory EIS requirements"
Dual-notice Comment Period	I.9., 35	"In addition to requiring EIS for construction of new refineries, major rebuilds (such as the one in Duluth) should be subject to mandatory EIS."
May 31, 2019 Hearing	Comment 373	*Biggest concern is Husky refinery explosion
May 31, 2019 Hearing (page 97 - 98)	Comment 403	"Stronger language in the petroleum refinery section 4410.4300 subp. 4, should also include major rebuilds and expansion of capacity I would say that there is new evidence on the books that no longer supports the idea that a refinery increasing their capacity by 10,000 barrels per day should only be an EAW. I think it should be an EIS. The rule just talks about construction of a new refinery is an EIS or expansion is an EAW. So I think we need to have another category called major alteration, major rebuilds."
May 31, 2019 Hearing (page 73)	Comment 381	"There should be a more rigid review process for the refineries and any modifications. That there should be some oversights that can take into consideration their impact on the region in terms of climate change, in terms of air quality and so on and so forth, and that it should always be more rigid and that careful consideration one way or another in the language should be given to having oversight over chemicals that they use on sites such as hydrogen fluoride gas."
May 31, 2019	Comment 400	* We should have mandatory EISs for oil facilities and wind facilities, because we are going to have a lot more wind facilities, as well as for Husky, and also rules for

Hearing (page 93-95)		monitoring and isolation uranium. I also want to add in we should have a mandatory EIS for natural gas facilities as well.
May 31, 2019 Hearing	Comment 370	*4410.4300, subpart 4 – need a stronger rule, should also include major rebuilds and expansion of capacity
Dual-notice Comment Period	I.81., 181	"As we face rapid climate change, we must require that refinery expansion applications also are required to be in the EIS category."
Dual-notice Comment Period	I.81., 184	"Given the explosion in Superior this autumn, any major refinery rebuilds MUST be required to provide EIS and therefore should fall in the mandatory EIS category. The current language requires and EIS only for new construction."

EQB response:

Thank you to everyone that took the time to review the proposed rule changes and submit comments for consideration in future rulemaking. All comments received that are not related to proposed changes identified in the current rulemaking have been compiled, considered and are included in the formal rulemaking record.

According to Minnesota Statute § 14.05. subd. 2. Authority to modify proposed rule. (a) An agency may modify a proposed rule in accordance with the procedures of the Administrative Procedure Act. However, an agency may not modify a proposed rule so that it is substantially different from the proposed rule in the notice of intent to adopt rules or notice of hearing.

Comments related to M.R. part 4410.4300, subp. 5. Fuel Conversion Facilities.

Relates to:
Fuel Conversion Facility Mandatory Category 4410.4300, subp. 5

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;
Section V. Reasonableness of the amendments, pages 25

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Dual-notice Comment Period	I.106., 259	*Could be interpreted that even if the projects types meet another EAW threshold, they would be exempt from an EAW. I believe the intent is to say the project types in of themselves are not mandatory EAW categories. I would suggest either deleting 5.14-5.15 or rewriting to something like "The project types described in MN Statutes, section 116D.04, subdivisions 2a, paragraph (b) are not mandatory EAW categories under this subp., but are subject to a mandatory EAW if the project meets or exceeds thresholds of other categories of actions for which environmental assessment worksheets must be prepared". I support having the project types, if exceeding EAW thresholds, to do an EAW.

EQB Response:
For item B, the reference to Minn. Stat. § 116D.04, subd. 2a paragraph (b) is appropriate as it aligns the environmental review rules with the requirements passed by the Minnesota Legislature in 2011.

The full context of the statutory language is in the referenced statute thus eliminating any misinterpretation. In addition, Minnesota Rules, Chapter 4410.1000, subp. 2 of the environmental review rules already states that environmental review must be conducted for any project that meets or exceeds the thresholds of any of the EAW or EIS categories.

Comments related to M.R. part 4410.4300, subp. 6. Transmission Lines.

Related to:
Transmission Line EAW Category 4410.4300, subp. 6

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;
Section V. Reasonableness of the amendments, pages 25-26

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
May 31, 2019 Hearing (page 47)	Comment 367	"4410.4300, subp. 6, looks like it requires a petition to get an EAW on this."
May 31, 2019 Hearing (page 47)	Comment 367	"Language of 4410.4300, subp. 6 ought to be clearer that it does not require an act of the PUC or a petition to get that done."

EQB Response:
As noted in the proposed rule, environmental review for high voltage transmission lines must be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600. No environmental assessment worksheet (EAW) is prepared.

Local governments and citizens with questions about the environmental review required for transmission lines are not likely to be familiar with or to look at Minnesota Statute § 216E (the Power Plant Siting Act) or Minnesota Rules 7849 and 7850. However, they are likely to be familiar with and aware of Minnesota Rules 4410, as the touchstone for environmental review in Minnesota. When local governments and citizens review Minnesota Rules 4410.4300 looking for information regarding transmission lines, they will be appropriately directed to Minnesota Rules 7849 and 7850.

Transmission lines are included in the current version of Minnesota Rules 4410.4300, subp. 6. No change to this inclusion is suggested in the proposed rule. To EQB staff's knowledge, the inclusion of information in Minnesota Rule 4410 regarding project types for which environmental review has been prescribed by the legislature – as is the case for high voltage transmission lines – has not, to date, caused confusion for users of the rules. Rather, the inclusion has been helpful in directing local governments and citizens to the applicable environmental rules.

Comments related to M.R. part 4410.4300, subp. 7 (EAW) and part 4410.4400, subp. 24 (EIS) Pipelines.

Relates to:
Pipeline Mandatory EAW Category 4410.4300, subp. 7.
Pipeline Mandatory EIS Category 4410.4400, subp. 24.

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;
Section V. Reasonableness of the amendments, pages 26-27 (EIS not discussed in SONAR)

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Dual-notice Comment Period	I.8., 26	"The intent, then, of the proposed rule revision appears to be to require mandatory EISs for larger pipelines, and mandatory EAWs for the smaller ones, and to use the thresholds in section 216G.01 and 216.02 to make that determination. That makes sense, and Friends of the Headwaters ("FOH") could support that change. Unfortunately, that is not all the proposed rule revision does."
Dual-notice Comment Period	I.8., 27; I.79., 170; I.79., 169; I.79., 171; I.79., 172; I.79., 174;	"...in the proposed new Minn. R. 4410.4300, subp. 7, there is a completely new sentence: "Environmental review must be conducted according to chapter 7852 and Minnesota Statutes, chapter 216G." That new sentence was not in the preliminary draft rules, it is not mentioned in the SONAR, and its rationale is not explained anywhere in the documents EQB has made public. Our concern is that this additional sentence might create a new argument for reversing, the decision of the Minnesota Court of Appeals in In re North Dakota Pipeline Co., 869 N.W.2d 693 (Minn. Ct. App. 2015), and sanctioning, by rule, the PUC's old "comprehensive environmental assessment" alternative to normal environmental review for pipeline projects."
Dual-notice Comment Period	I.8., 28	"FOH is not arguing that EQB's rules for alternative review processes be changed in this rulemaking process, or that any previous authorizations be overturned by rule. The question of whether applicant-prepared CEA's under Minnesota Rules, chapter 7852, are adequate alternatives to full EISs in pipeline cases should be decided on the facts by the EQB, not by trying to slip in rule language through a technical amendments package."
Dual-notice Comment Period	I.8., 29	"The second issue has to do with the mandatory EIS category for pipelines. The new mandatory EAW category uses the phrase "[f]or construction, as defined in Minnesota Statutes, chapter 216G.01, subdivision 2," but the old mandatory EIS category will still use "[f]or routing." That potentially limits the scope of a pipeline EIS to issues not covered by a certificate of need, which is confusing and inconsistent with the North Dakota Pipeline Co. ruling."

Dual-notice Comment Period	I.8., 30	"FOH therefore recommends that the last sentence in the proposed new subp. 7 of Minn. R. 4410.4300 be deleted. FOH further recommends that EQB replace the word "routing" in the current Minn. R. 4410.4400, with the word "construction" or with the phrase "construction, as defined in Minnesota Statutes, chapter 216G.01, subdivision 2."
Dual-notice Comment Period	I.9., 32	"Pipelines should have a mandatory EIS for the application as well as the certificate of need and routing. Also, gas pipelines should still be under the rules, either EAW or EIS."
Dual-notice Comment Period	I.9., 33	"This should be assessed for legality - it likely runs contrary to MEPA law and MN Court of Appeals Ruling."
Dual-notice Comment Period	I.71., 155	"4410.4400 (Mandatory EIS Categories) Pipelines should be included for both CON and routing."
Dual-notice Comment Period	I.81., 181; I.86., 193	"The change in this section for oil pipelines from routing to construction in the Environmental Assessment Worksheet (EAW) should not be made, and gas pipelines should not be removed. Futher, oil pipelines should not be in the EAW category but continue to be in the mandatory Environmental Impact Statement (EIS) category for both Cert of Need and routing applications."
Dual-notice Comment Period	I.81., 182; I.86., 193	"This proposed rule may not be legal; it goes against MEPA law and the MN Court of Appeals Ruling. It should be rejected."
Dual-notice Comment Period	I.99.e., 219; I.127., 310;	"I oppose the rules being changed in section 4410.4300. These changes would allow for a more streamlined process to create new pipelines, which would be especially damaging to wetland areas of Minnesota. This type of ecosystems is critical to MN wildlife and makes Minnesota unique, and the damaging of these areas cannot be permitted. In addition, this new proposed process hinders the people's ability to protest in a timely manner, and doesn't permit for enough time to properly research how much damage could be caused by such constructions."
Dual-notice Comment Period	I.99.g., 221	"I am requesting a public hearing on the rule changes in section 4410.4300. I am opposed to these changes because of the severe potential negative consequences they could have by making it easier to construct new, harmful oil pipelines in Minnesota that threaten the health of our environment and the wellbeing of our communities."
Dual-notice Comment Period	I.99.i., 223	"Oil pipelines are a threat to the earth and to people and we should not make their construction any easier."

Dual-notice Comment Period	I.99.j., 224; I.99.r., 232; I.99.t., 234; I.99.cc., 243;	"Pipelines and other fossil-fuel infrastructures have horrendous impacts on the environment and communities, and they accelerate the progression of climate change. The Environmental Quality Board should not encourage and quicken the construction of fossil-fuel infrastructure."
Dual-notice Comment Period	I.61., 130; I.64., 137; I.65., 139; I.66., 141; I.67., 143; I.68., 145; I.69., 147; I.70., 149; I.71., 151; I.71. 152; I.73., 157; I.74., 160; I.75., 162; I.76., 164; I.78., 168; I.80., 177; I.89., 200; I.92., 204; I.104., 251; I.142., 337;	"I object to the proposed following rules: 4410.0500 Subp.6. (RGU Selection Procedures)It is important for the full Board to retain this decision-making authority for the sake of accountability, so the public can watch and comment. 4410.4300 (Mandatory EAW Categories) Oil pipelines shouldn't be in the EAW category but instead should be in the mandatory environmental impact statement category for both the route permit and certificate of need. Gas pipelines should be either in the EIS or EAW category. 4410.4400 (Mandatory EIS Categories) In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling"
Dual-notice Comment Period	I.108., 271	*Omits any reference to MN Appeals Court ruling, SONAR should disclose party requesting the change: "The Appeals Court determined current state statutes and rule require the preparation of a full environmental impact statement (EIS), especially when questions of need and routes of a proposed pipeline decision was to be made. The court appears also to have rendered an even broader opinion declaring that pipeline routing, whether combined with Certificate of Need review process or not was very likely subject to the mandatory requirement for an EIS under MEPA as well. The PUC rules do not appear to be MEPA compliant and no such declaration, finding or opinion either granting, affirming or discounting this position is offered in the SONAR."
May 31, 2019 Hearing (page 103)	Comment 405	"We also support the decision to drop many of the proposed revisions to the pipeline rules and are grateful for the thoughtfulness that staff exercised in making that decision in response to the initial round of comments."
May 31, 2019 Hearing (page 103)	Comment 405	*Because we should be increasing the mandatory EIS categories across the board. But the specific places I want to limit my commentary to is fossil fuel infrastructure. • I will second the comments that Kathy made around that we should make sure that those types of projects of refinery expansion actually need mandatory EISs not EAWs.

		The same concern would apply to that same Section 4410.0500, subp. 7 on pipeline infrastructure with the same proposed change.
Post-hearing Comment Period	Comment 416	"Regarding the proposed wording by EQB, on Page 27 of the pdf file - Sonar - Proposed Revisions of Minnesota Rule Chapters for part 4410.4300 on Pipelines, I respectfully suggest that this additional statement be added to the EQB language. Pipeline replacement projects, pipeline abandonment projects, and new pipeline projects require an Environmental Impact Statement conducted by an independent 3rd party."
Post-hearing Comment Period	Comment 422	"These comments relate specifically to the proposed amendments to Minn. R. 4410.4300, subp. 7 ("Mandatory EAW Rule"), which establishes mandatory Environmental Assessment Worksheet ("EAW") categories for pipelines. Honor the Earth is aware that the EQB intends to strike the amendment of the Mandatory EAW Rule from this rulemaking, but believes that the following comments support this action and provide additional information on the history and source of conflicts related to MEPA review for pipeline projects, as well as the litigation risks that the proposed rule would create."
Post-hearing Comment Period	Comment 423	"The Mandatory EAW Rule as written would illegally exempt and exclude pipeline projects from MEPA review and is contrary to the intent of establishing a "mandatory" rule. Therefore, the EQB should strike its proposed Mandatory EAW Rule and instead consider amendment of both the Mandatory EAW and EIS Rules so that they are fully in compliance with MEPA."

EQB Response:
In response to concerns raised by commenters, EQB is withdrawing the proposed changes to this subp. from this rulemaking.

Changes to Minnesota Rules Chapter 4410.4400, subp. 24, were not proposed during this rulemaking and are out of the scope of the current rulemaking process.

According to Minnesota Statute § 14.05. subd. 2. Authority to modify proposed rule. (a) An agency may modify a proposed rule in accordance with the procedures of the Administrative Procedure Act. However, an agency may not modify a proposed rule so that it is substantially different from the proposed rule in the notice of intent to adopt rules or notice of hearing.

Comments related to M.R. part 4410.4300, subp. 8. Transfer facilities.

Relates to:
Part 4410.4300, subp. 8. Transfer facilities.

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;
Section V. Reasonableness of the amendments, pages 28-31

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Post-hearing comment period	Comment 441	"4410.4300 Subp. 8. Rule change would add sizable silica sand projects to the mandatory EAW category and name the PCA as the RGU. Long overdue, mystifying as to how this type of project could go so long without being added to the mandatory category. Places like the Kasota Prairie have been brutalized by silica sand mining at will."

Response to comment 441:
Thank you for your comment.

Comments related to M.R. part 4410.4300, subp. 10. Storage Facilities

Relates to:
Part 4410.4300, subp. 10. Storage Facilities.

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;
Section V. Reasonableness of the amendments, pages 31-33

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
May 31, 2019	Comment 371	*On the hazardous materials storage facilities rule 4410.4300, subparagraph 10B, C and D, I think it's important to keep the phrase "designed for or capable of storing" before the quantity of a 1,000,000 gallons. Otherwise, a new facility with a slated design of less than a 1,000,000 but capable of storing more could bypass an EAW altogether.
May 31, 2019 Hearing (page 50)	Comment 371	*4410.4300, subp. G, expansion of facilities and increasing storage tanks should require a mandatory EAW or EIS as well.
May 31, 2019 Hearing (page 95-99)	Comment 404	"I would also like to point out in the rule on hazardous materials storage 4410.4300, subp. 10B, C and D, again, I support keeping the language that exists there existing. The language is "designed for or capable of storing." Instead it's been substituted for "designed storage capacity." And my concern is that if someone puts on an EAW, well, it only has a designed storage capacity of 999,000, which is less than the 1,000,000 threshold but it actually has a larger storage capacity that unless somebody is tracking very carefully that storage facility of hazardous materials could easily fall out of the category of the EAW."

EQB Response:
Multiple types of storage facilities are covered under this subpart. The proposed items b., c., and d address above ground storage tanks (AST) regulated by the MPCA. To align with the MPCA AST permit program, the new language in items b. and c. adds the term "major facility" as defined in Minn. Rules Chapter 7151.1200, subp. 22:

> "Major facility" means an assemblage of one or more aboveground storage tanks, including any indoor tanks, together with any associated secondary containment areas, appurtenances, and substance transfer areas, that are located at a single property or multiple contiguous properties and where the total substance **design storage capacity** of all such tanks at the site is 1,000,000 gallons or greater.

Note this definition does not include the phrase "or capable of storing" that exists in the current EQB rules; instead it uses the term "design storage capacity" as used in AST permits. This term was also used in item d. to be consistent with language in items b. and c.

Using a reference to an existing definition provides greater clarity and consistency in determining if environmental review is required for a proposed project and ensures that Minn. Rules Ch. 4410 will stay current when other applicable State regulatory requirements are updated. Using the same terms also helps the public with review when environmental review documents and draft permits are co-noticed.

The MPCA takes into consideration the details of a proposed project and its likely expansion when evaluating a project for the need for environmental review. In accordance with Minn. Rules Ch. 4410.4300, subp. 1, 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. This is known as a phased action as defined in 4410.0200, subp. 60, or connected action as defined in 4410.0200, subp. 9c. in addition, Minn. Rules Ch. 4410.1000, subp. 4, states in connected actions and phased actions where it is not possible to adequately address all the project components or stages at the time of the initial EAW, a new EAW must be completed before approval and construction of each subsequent project component or stage. Furthermore, the MPCA has the authority to take enforcement actions if it were to learn a facility exceeded its reported design storage capacity.

Comment 371:
4410:4300, subp. 10, item g.
Per the proposed rule, an EAW is required for all projects listed in 4410.4300 (unless otherwise indicated), including the storage facilities noted in subp. 10, item g.

Comments related to M.R. part 4410.4300, subp. 17. Solid Waste.

Relates to:
Part 4410.4300, subp. 17. Solid Waste.

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;
Section V. Reasonableness of the amendments, pages 36

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Dual-notice comment period	I.106., 261	"Replace "25 percent" with "10%" and then drop F on 12.1."

EQB Response:
Item B, for expansion by 25% or more for facilities with a capacity of up to 100,000 cubic yards of waste fill per year, is intended for smaller facilities and allows for greater expansion before triggering the need for a mandatory EAW.

Item F, for expansion between 10-25% for facilities with a capacity of 100,000 cubic yards or more of waste fill per year, is intended for larger facilities and allows for less expansion before triggering the need for a mandatory EAW.

Comments related to M.R. part 4410.4300, subp. 22. Highway projects.

Relates to:
Part 4410.4300, subp. 22. Highway projects

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;
Section V. pages 39-41.

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Post-hearing Comment Period	Comment 442	"4410.4300 Subp. 22. Mandatory EAW threshold would go from one to two miles, and auxiliary lanes are excluded. At a time when ecosystems along side roads are experiencing increasing negative effects from deicing chemicals, right-of-way ATV riders and exhaust it seems this is a step backwards in Environmental Review. If anything, the mandatory threshold project mileage should be reduced."

EQB Response
EQB proposes that "through lanes" be clarified by excluding "auxiliary lanes." Auxiliary lanes serve specific purposes over short distances and their primary purpose is not to expand capacity but to improve traffic flow. In addition, EQB determined that "passing lanes" should be specifically excluded from auxiliary lanes because, although passing lanes are also auxiliary lanes of short distances, there are some projects in which passing lanes can extend for many miles, thus increasing the potential for impact.

EQB is proposing a change from 1 to 2 miles after reviewing MnDOT project data from the last 10 years. The data showed that EAWs from this category and of a distance between 1 and 2 miles were: (1) not resulting in EIS Need Decisions, and (2) not considered controversial.

Comments related to M.R. part 4410.4300, subp. 24 Water Appropriations and Impoundments.

Relates to:
Part 4410.4300, subp. 24 Water appropriations and impoundments

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Dual-notice Comment Period	I.159., Comment 430	"It would seem that separating "appropriation" and "impoundments" into more separate and independent subdivisions. There really is minimal if any relationship between the two activities and it would be good to make the difference clearer by separations rather than just segmenting within the same subdivision. B. • The threshold of 160 acres in the Red River of the North river basin is far too small. A more practical and reasonable threshold taking into consideration the Red River Valley Flood Damage Reduction Mediation Agreement (MWG) would be 1000 acres or to not have a threshold at all for projects that are following the Mediation Agreement. • The 1000 acres is reasonable threshold when you consider that the Mediation Process already provided a major public process for distributed water retention projects and the LTFS plan of the RRBC calls for a 20% reduction in peak flood flows with allocations to all major watersheds in the RRB to secure 1,000,000 acre feet of storage. • Each WD has a comprehensive strategy to achieve their respective allocation and most every project will be far greater than 160 acres. It is an antiquated threshold. See the reference to appropriate documents above. Most of these water retention/detention projects also incorporate various natural resource enhancements for the benefit of fish; wildlife; recreation; birding; etc. The Mediation process provides for extensive involvement of citizens, landowners, state and federal agencies and various diverse interest groups as you can see by the membership on the Mediation Work Group. C. • The threshold for the projects related to the Mediation Agreement should be eliminated or at a minimum the provision relate only to construction of a High Hazard Dam."

EQB Response:
Changes to this subpart were not proposed to substantively alter the way the current requirements are interpreted or implemented.

Thank you to everyone that took the time to review the proposed rule changes and submit comments for consideration in future rulemaking. All comments received that are not related to proposed changes identified in the current rulemaking have been compiled, considered and are included in the formal rulemaking record.

According to Minnesota Statute § 14.05. subd. 2. Authority to modify proposed rule. (a) An agency may modify a proposed rule in accordance with the procedures of the Administrative Procedure Act. However, an agency may not modify a proposed rule so that it is substantially different from the proposed rule in the notice of intent to adopt rules or notice of hearing.

Comments related to M.R. part 4410.4300, subp. 26, Stream Diversion.

Relates to:
Part 4410.4300, subp. 26, stream diversion

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;
Section V. Reasonableness of the amendments, pages 41-42

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Post-hearing Comment Period	Comment 431	"• In the Red River Valley the threshold is really not applicable since the major river systems in the RRV have been channelized by the Federal and State Government efforts in the 50's and 60's. Current efforts are restoring the altered and channelized streams to more natural stream corridors and meandering of the river systems. These types of restorations should not be required to go through the mandatory EAW process. • Another way to address this issue is to interpret these channelized rivers and streams or "altered natural watercourses" as defined in 103G to be exempt from the mandatory EAW process. 103G.005 DEFINITIONS: Subd. 3. Altered natural watercourse. "Altered natural watercourse" means a former natural watercourse that has been affected by artificial changes to straighten, deepen, narrow, or widen the original channel. • We should be encouraging the restoration of these channelized river and stream systems rather than putting unreasonable processes in place that can only make these projects more costly, but also act as a disincentive. The special reference to trout streams is fine."
Post-hearing Comment Period	Comment 411	"I oppose Subpart 26 Stream Diversion Rule for two reasons. The first reason for my opposition is the vague nature of three key definitions (Diversion, Realignment and Channelization) that are listed in the rule, which triggers EAW compliance. Diversion and Channelization are relatively standard in the industry and specifically refer to flood control or drainage projects, however the term "Realignment" has many different meanings to regulators and causes confusion"
Post-hearing Comment Period	Comment 412	"The Stream Diversion rule needs to provide clear definition of terms, especially "Realignment". The 1997 SONAR (Attachment 2, page 2) defines realignment as "often meaning straightening". The vague "Realignment" definition leaves this term open to wide and variable interpretation. Regulators are now starting to look up their own definitions for "Realignment" and apply it for require an EAW. This results in equal enforcement by regulators."
Post-hearing	Comment 413	"The second reason for my opposition to the Stream Diversion rule is the intent was to provide additional environmental review for projects that impact streams. These impacts may include dam construction, flood control, agriculture use, etc.

Comment Period		This intent is clearly outlined in the 1982 SONAR (Attachment 3, Page 2), which states that flood control and drainage projects do not consider broad or long range environmental implications and an environmental review will facilitate a comprehensive analysis. The reason I oppose the Stream Diversion rule as written is it is now being applied to stream restoration projects. This rule was never intended to provide additional environmental review of a restoration project."
Post-hearing Comment Period	Comment 414	"A flood relief or drainage project, by definition, cannot be considered a stream restoration project. Trout stream restoration projects also have a detailed multi-agency review that is required prior to the start of restoration work. So the need for a broad review of long range environmental implications is unnecessary, since these implications are already being reviewed in greater detail in order to obtain a project approvals. Trout stream restoration projects are already reviewed on a Local Level by County Zoning and Soil and Water Conservation District Agents, on a State Level by DNR Fisheries, DNR Waters and DNR Stream Specialists and the Board of Soil and Water Resources and on a Federal Level by the Army Corp. of Engineers, so a comprehensive analysis and review is already being undertaken to obtain the project's approval. Since County, State and Federal regulators are already involved with regulating the project, a lesser secondary County environmental review is redundant. The Army Corp of Engineers is required to publicly post all Stream Restoration projects for Public Comment. Posting the same project through the EAW process is unnecessary and redundant. The majority of these projects are funded by State or Federal tax dollar through the Grant process. This Grant selection process consists of the submittal of a competitive project proposal, a Grant presentation and applicant interview and an award by a Grant committee, so a submittal public review and determination has already taken place. These Grant projects have a set dollar amount that cannot be exceeded, so money used for additional reviews and approvals take away money budgeted for the actual restoration work, which waste valued taxpayer dollars. Stream Restoration is a very specialized field that most regulators do not understand how or why many aspects of a project need to be performed. This makes the approval process much longer than necessary."
Post-hearing Comment Period	Comment 415	"Language Changes to Solve the Problems Exempt all stream restoration project that are regulated by Department of Natural Resource and Army Corp of Engineer rules."

EQB Response:
Changes to this subpart were not proposed to substantively alter the way the current requirements are interpreted or implemented, other than the designation of the DNR as an RGU.

Thank you to everyone that took the time to review the proposed rule changes and submit comments for consideration in future rulemaking. All comments received that are not related to proposed changes identified in the current rulemaking have been compiled, considered and are included in the formal rulemaking record.

According to Minnesota Statute § 14.05. subd. 2. Authority to modify proposed rule. (a) An agency may modify a proposed rule in accordance with the procedures of the Administrative Procedure Act. However, an agency may not modify a proposed rule so that it is substantially different from the proposed rule in the notice of intent to adopt rules or notice of hearing.

Comments related to M.R. part 4410.4300, subp. 27. Wetlands and Public Waters.

Relates to:
Part 4410.4300, subp. 27. Wetlands and Public Waters.

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;
Section V. Reasonableness of the amendments, pages 42

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Response # (below table)	**Comment #** (Comment numbers correspond to the spreadsheet Exhibit Q.1.)	**Summary of comment (note: comments that are paraphrased are indicated with *)**
1 & **3**	2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 66, 68, 72, 76, 78, 80, 82, 84, 86, 88, 91, 92, 102, 113, 115, 117, 119, 121, 131, 135, 166, 186, 188, 190, 191, 196, 198, 201, 205, 206, 207, 208, 210, 212, 276, 301, 308, 341, 345, 352, 355, 356, 358, 360, 361,	"The proposed revisions to subp. 27, item B would significantly increase the number of projects that trigger preparation of an EAW"
4		*The types of wetlands included have been expanded
5		*The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts.
2		*Does not meet streamlining goal
6		"Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbed area, or the Mississippi headwaters area, this clause eliminates relatively few of our county highway projects that impact one or more acre of wetland."
7		"subp. 27 item B, especially as revised, does not meet the core purposes of Minnesota's environmental review rules and may detract from their effectiveness for other projects. In our experience the environmental review process can serve as a meaningful project planning tool when applied to projects that have a variety of potential impacts and alternatives."
9		"The proposed revisions to subp. 27 item B are inconsistent with the intent of this rulemaking"
8		Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that "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 parts 4410.0200 to 4410.6500 is to aid in providing that

		understanding through the preparation and public review of environmental documents." The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding. Part 4410.1000, subp. 1 "Purpose of EAW" states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27.
10		"The proposed revisions to subp. 27 item B would result in new costs"
11		"Per Minn. R. 14.131 the agency must consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government."
12		"In addition to the expense of preparing an EAW for additional projects, one of our biggest concerns is the negative impact this category as revised would have on project delivery timelines, likely leading to project implementation delays of 12 months or more."
13		"Preparing an EAW for projects that do not require review based on any other category (i.e. they only trigger an EAW due to impacts to public waters or wetlands) does not increase environmental protection because it duplicates environmental review efforts already required by state and federal regulations governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts."
14		*Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW.
15		*Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review.
16		"The proposed changes to subp. 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016."
17		"Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR "an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.""
28		"recommends that EQB delete 4410.4300 subp. 27 from the rules in its entirety to eliminate duplication"

10, 11, 12, 18	I.10.,36	"The proposed rule change is unwarranted and will impose enormous new costs on local governmental units and rural Minnesota property owners due to the significant expansion of the number of Environmental Assessment Worksheets that will be required if the proposed change is adopted."
18	I.10.,37	"All Minnesota governmental agencies and private property owners are subject to the wetland definitions contained in MN Rules Part 8420.0111, including subp. 32 and 72 referenced in the proposed rule change. There is no need to repeat the definitions or single out individual wetland definitions that are already contained in MN Rule 8420.0111."
19	I.10.,38	"The EQB would be acting beyond the scope of its authority should it elect to impose new more restrictive acreage and wetland type parameters than currently exist in MN Rules 4410.4300 subp. 27.B."
20	I.10.,39	"The EQB lacks legislative direction to change specific the wetland acreage parameters. To do so without specific legislative direction disregards the spirit and intent of EQB' s existing rule making authority."
21	I.10.,40	"This proposed change lacks sufficient justification, provides insufficient analysis of the new mandated costs it will impose on LGU' s and private citizens and is being proposed without the opportunity for adequate public input from those that would be impacted by the change and thus must not be adopted."
22, 29	I.10.,41	"The proposed change will impose significant new cost on local government units by increasing the number of EA W's required for activities that might impact a wetland. Those costs will have to be paid by local taxpayers at the township, small city and county levels for processing the large number of additional EA W's this change would generate."
12, 23	I.10.,42	"The proposed change will also impose delays and new costs on road construction, road maintenance, and storm water infrastructure construction and maintenance"
22	I.10.,43	"The proposed change imposes a tremendous new unfair tax burden on the citizens of north and north central Minnesota where most of the pre-settlement wetlands remain intact and are already well protected by existing federal, state and local regulations."
21, 23	I.10.,44	"The proposed change singles out the private property owners and business operations in northern and north central Minnesota for a new round of unwarranted costs and delays should they attempt to make even small improvements to private property or business infrastructure."
24	I.10.,45	"This proposal if adopted will significantly increase the number of EAW's required of citizens in many cases for minor building additions, new building construction or improvements to residential and business driveways that may have only minor involvement of a wetland."

1, 11, 12	I.21.,63	"we respectfully object to the proposed rule amendments as they result in an unnecessary environmental review and financial burdens on project proposers, local government units, and RGUs. Specifically, there are several deficiencies in Part 4410.4300 subp. 27. Wetlands and public waters."
10, 11, 12, 21, 23, 30	I.21.,64	"The proposed addition of "a total of one acre or more of wetlands" will increase costs to project proposers and local governments units due to the additional staff time and resources needed for initial data/information gathering to determine and quantify post-construction wetland impacts (if any) from indirect impacts, such as partial drainage."
26, 31	I.21.,65	"...the proposed one acre or more wetland impact threshold when combined with "if any part of the wetland basin is within" language creates an over reaching and unnecessary EAW result. Under this language, the entire one acre or more wetland impact could occur outside of these locations, however, a small portion of the non-impacted wetland basin may be located within these features, and thus would require an EAW."
1	I.35.,90	"This change will result in RGUs completing more EAWs and there does not seem to be an environmental benefit."
32	I.35.91	"The rule change seems redundant in its environmental protection, as wetland impacts are already subject to regulatory programs review (WCA, USACE Section 404, etc.) which require wetland impacts avoidance and minimization."
33	I.35.,92	"We do recognize the need to make this section less confusing. However, we recommend removing this change to the rules as needing an EAW when you impact one acre or more of wetlands is onerous and already covered with WCA rules. We suggest a higher threshold such as three acres for non-transportation projects and five acres for transportation project."
34, 40	I.99.a.,214	"In regard to Section 4410.4300 subp. 27 B, I am against changing, "the 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" to, "cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands" because part 8420.0111 only provides protections for wetland types 3 through 5 so this language change would remove protections for wetland types 6 through 8."
35	I.99.dd., 244; I.107., 268, 269,	"Minnesota Rules 4410.4300, subp. 27, item A. This change proposes to add the DNR as a potential RGU for projects that require an EAW. Current Minnesota Rules provide that the local governmental unit (LGU) is the responsible governmental unit (RGU). Drainage projects may be delayed and incur additional cost if this rule change is adopted and the LGU and the DNR need to confer and determine responsibility for the project. Furthermore, if agreement cannot be reached, then the EQB is involved in a process that will most certainly delay the project."

35, 36, 40,	I.99.dd., 245; I.107., 268, 269,	"Current Minnesota Rules provide that the project must "…change or diminish the course, current, or cross section…." This proposed change will increase costs to projects and local governmental units such as Drainage Authorities due to the additional staff time and resources needed for initial data/information gathering to determine and quantify impacts (if any). In some cases, partial drainage of wetlands does not result in a measurable change. The additional time needed to prepare an EAW may also risk or delay third party funding and government programs that support the proposed project. Furthermore, Minnesota Statutes (Section 103E.015) already requires the Drainage Authority to consider a list of criteria – including water quality, wetlands, and environmental impact – before establishing projects. This proposed change unnecessarily duplicates environmental consideration in a way that adds cost and time without additional environmental benefit."
19, 36	I.100.,246; I.153., 354	*Agrees with clarifying wetland terms, changing the threshold to 1-acre presents overly burdensome requirements without corresponding environmental benefits. Substantial increase in regulatory burden.
41	I.103.,250	*Opposes language change. Significantly increase the number of road projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment. Its scope duplicates state (WCA) and federal (EPA) laws, rules and permitting programs for work in public waters, wetlands and tributaries. Also, the area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts. Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances.
37	I.106.,262	"Seems it would be better to say that any cumulative combination of impacts to an acre or more of public waters, public waters wetland, or wetlands triggers an EAW. Seems the description in 15.1 to 15.11 has a loophole where a development that impacts part of a public water wetland and then part of a wetland – for instance locating a 1.9 acre project so 0.95 acres is in the public water wetland, and 0.95 acres is in the wetland – could be exempt. Suggest addition right before "items A…" : "For projects that will impact one acre or more of any combination of public waters, public waters wetland, or wetlands exceeding, items…""
38	I.106.,263	"Unclear when the DNR or local government is the RGU."
44	I.106.,264	"Smaller threshold is a good addition. 1 acre instead of 2 acres"
45	I.106.,266	*Line 22.24: No mention of wetland – seems it should include "wetlands"

39	I.159.,363	"Throughout the document, it is noted that the DNR may possibly be the RGU if it is believed the DNR has similar or greater expertise. The RRWMB is concerned with the lack of clarity on how the EQB will designate who is the RGU if there is similar or greater expertise in analyzing the potential impacts on flood damage reduction projects by watershed districts within the RRWMB."
39, 43	I.159., 364	"Regarding Wetlands and Public Waters (Part 4410.4300, subpart 27), the RRWMB has concerns about lowering the standard for wetlands from 2.5 acres to 1 acre. First, this is inconsistent with the EQB's draft mandatory categories changes. The EQB has stated throughout the document that the rule changes would be consistent with the Minnesota Wetland Conservation Act (WCA). This change takes the draft rules out of line with the WCA. Minnesota Rules Chapter 8420.0100 already achieves the intended purpose of minimizing impacts to wetlands. Second, flood damage reduction projects in the Red River Basin have demonstrated that more wetlands can be created than are impacted. "
32	I.144., 340	*Opposes rules because it is neither necessary or reasonable. WCA fullfills each and every purpose of an EAW. Wetland rule should be deleted.
49	Comment 387	"Can we add "or projects below the threshold in part 4410.4300, subpart 22" to 4410.4300, subp. 27 B?"
46	Comment 379	"Use of the definition of "impact" will result in unintended consequences, allowing projects to be done to wetlands types 6 through 8 without environmental assessment. The problem with this definition is that projects that result in the loss of quantity, quality or biological diversity but do not result in wetlands filling, draining or conversion to non-wetland will not require an environmental review if done to types 6, 7 or 8."
47	Comment 379	"We propose that the Board change the definition of "impact" to read: Impact means the loss in the quantity, quality or biological diversity of a wetland caused by draining or filling of wetlands wholly or partially or by the excavation of either permanently and semi-permanently flooded areas of types 3, 4, 5, 6, 7 and 8 wetlands as defined in subp. 75 and in all wetland types if excavation results in filling, draining or conversion to non-wetland."
48	Comment 380	"As a consequence of the proposed rule change, a project can remove peat moss from the surface of a bog without an environmental review so long as it did not actually result in the draining or filling of the bog."
50	Comment 386	*We support the rule that is on the docket before you today

50	Comment 387, 417, 418, 419, 424, 425	*I want to refer to Carol Andrews in St. Louis County, her testimony. I will mimic that. Just so you can put that in. Whatever she said, I would also go for.
49	Comment 387	*The whole wetland category should be eliminated
42	Comment 421	"Aitkin County strongly encourages deleting the proposed amendments to this subpart. If the language remains we suggest allowing counties with greater than 80% of their pre-settlement wetlands to use the existing rule standards."
41	Comment 420	*As proposed in the amendments, the amount of wetland impact is being reduced from 5 acres to 1 acre, and the types of wetland are now increased from type 3 though 8 to type 1 through 8. This will have a significant impact on the time and cost in our road projects and other large scale projects. Even accessing suitable building sites for residential properties will now require an EAW. Through the Wetland Conservation Act (WCA), all of these wetland activities are reviewed and must follow an approved process. We believe that this proposed language, with added and duplicative wetland scrutiny, is unnecessary

EQB Response:
Below, please find responses to the following comments (bold or italic emphasis are from the original comments):

1. COMMENT: "The proposed changes to **4410.4300, subpart 27, item B** "Wetlands and Public Waters" as currently written. In summary, the proposed revision to item B would significantly increase the number of projects that trigger preparation of an EAW due to wetland impact with no resulting benefit to the environment and negative consequences to project proposers."

   Response to Comments (these comment numbers correspond to the spreadsheet Exhibit Q.1.): 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 63, 66, 68, 72, 76, 78, 80, 82, 84, 86, 88, 90, 91, 92, 102, 113, 115, 117, 119, 121, 131, 135, 166, 186, 188, 190, 191, 196, 198, 201, 205, 206, 207, 208, 210, 212, 276, 301, 308, 341, 345, 352, 355, 356, 358, 360, 361:

   EQB does not anticipate the proposed rule language revision to item B will significantly increase the number of projects that trigger preparation of an EAW. This category only applies to specific overlay districts that comprise a very narrow portion of land in Minnesota.

   Item B does not apply to public waters wetlands (these apply in 4410.4300, subp. 27, item A). Projects must be within a specific "overlay" district in order for this threshold to apply. These overlay districts have not changed and include:
   - Shoreland area
   - Delineated floodplain

- State or federally designated wild and scenic rivers district
- Mississippi River Project Riverbend Area
- Mississippi headwaters area

In addition, applicable road and bridge projects will be excluded from environmental review. This exclusion language can be found in Exhibit L.1. ("Item B does not apply to projects exempted by part 4410.4600, subpart 14.") which references M.R., 4410.4600, subpart 14 as noted in response to no. 1. This was clarified with the proposed revision introduced to the record at the May 31, 2019 Hearing (Exhibit L.1.).

Subp. 14. Highway projects.

A. Highway safety improvement projects are exempt.
B. Installation of traffic control devices, individual noise barriers, bus shelters and bays, loading zones, and access and egress lanes for transit and paratransit vehicles is exempt.
C. Modernization of an existing roadway or bridge by resurfacing, restoration, or rehabilitation that may involve the acquisition of minimal amounts of right-of-way is exempt.
D. Roadway landscaping, construction of bicycle and pedestrian lanes, paths and facilities within the existing right-of-way is exempt.
E. Any stream diversion or channelization within the right-of-way of an existing public roadway associated with a bridge or culvert replacement is exempt.
F. Reconstruction of modification of an existing bridge structure on essentially the same alignment or location that may involve the acquisition of minimal amounts of right-of-way is exempt.

Additional public notice and review of proposed projects that do trigger the threshold to prepare an EAW will benefit from public participation in the process and further review of the proposed projects that trigger an EAW.

Changes proposed in this rulemaking provide the benefit of clarity and certainty for EQB, project proposers, RGUs and citizens. Often, changes to the proposed rules that increase clarity and certainty for EQB, project proposers, and RGUs also reduce costs due to a reduction in process time. In addition, the proposed rule language clarity will benefit proposers and the RGU by making it easier to know when a proposed project requires environmental review.

2. COMMENT: "This proposed revision does not meet the stated rule revision streamlining goal."

Response to Comments (these comment numbers correspond to the spreadsheet Exhibit Q.1.): 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 66, 68, 72, 76, 78, 80, 82, 84, 86, 88, 91, 92, 102, 113, 115, 117, 119, 121, 131, 135, 166, 186, 188, 190, 191, 196, 198, 201, 205, 206, 207, 208, 210, 212, 276, 301, 308, 341, 345, 352, 355, 356, 358, 360, 361:

The goal of the proposed rule language revision is to change a confusing formula and replace it with a straightforward threshold with updated language that aligns with the Wetland Conservation Act. The proposed revisions to rule language simplifies the determination process while maintaining the current lowest threshold (40% of 2.5 acres is equal to 1 acre). This meets the intent of the rulemaking to create greater efficiency and EQB's general authority to periodically update categories.

3. COMMENT: "The proposed revisions to subpart 27, item B would significantly increase the number of projects that trigger preparation of an EAW."

   Response to Comments (these comment numbers correspond to the spreadsheet Exhibit Q.1.): 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 66, 68, 72, 76, 78, 80, 82, 84, 86, 88, 91, 92, 102, 113, 115, 117, 119, 121, 131, 135, 166, 186, 188, 190, 191, 196, 198, 201, 205, 206, 207, 208, 210, 212, 276, 301, 308, 341, 345, 352, 355, 356, 358, 360, 361:

   EQB does not anticipate this revision will significantly increase the number of projects that trigger preparation of an EAW. This category only applies to a very narrow scope of land (see overlay districts in category) in Minnesota as addressed in response to #1.

   In addition, applicable road and bridge projects will be excluded from environmental review. This exclusion language can be found in Exhibit L.1. ("Item B does not apply to projects exempted by part 4410.4600, subpart 14.") which references M.R., 4410.4600, subpart 14 as noted in response to # 1. This was clarified with the proposed revision introduced to the record at the May 31, 2019 Hearing (Exhibit L.1.).

4. COMMENT: "The types of wetlands included have been expanded to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to "types 3 through 8 wetlands… excluding public waters wetlands." The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states "public waters wetlands means all types 3, 4 and 5 wetlands … that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas." In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands."

   Response to Comments (these comment numbers correspond to the spreadsheet Exhibit Q.1.): 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 66, 68, 72, 76, 78, 80, 82, 84, 86, 88, 91, 92, 102, 113, 115, 117, 119, 121, 131, 135, 166, 186, 188, 190, 191, 196, 198, 201, 205, 206, 207, 208, 210, 212, 276, 301, 308, 341, 345, 352, 355, 356, 358, 360, 361:

   This is incorrect (currently Item B includes types 3-8 wetlands). The current threshold for part B is unclear due to a confusing formula for determining if a proposed project triggers the threshold. The category also uses terminology specific to public waters and public water wetlands that currently is not applicable to Wetland Conservation Act ("2.5 acres", "typing" and

"course, current or, cross-section") for determining if a wetland is counted toward the threshold. Circular 39 is an older wetland classification system that was developed by the U.S. Fish and Wildlife Service that typed wetlands primarily based on waterfowl habitat. For the most part the Wetland Conservation Act does not distinguish wetland functions and values based on type or size.

The proposed language is an attempt to simplify the category so that when a proposed project that is in a specific overlay district, impacts a wetland (no matter the type), a simple calculation in acreage is all that is required to determine if a proposed project meets a mandatory threshold.

5. COMMENT: "The area of wetland impact that triggers an EAW has been significantly reduced to one acre made up by accumulating smaller wetland impacts. Under the existing rule language one acre of impact only becomes the applicable threshold under limited circumstances. The existing rule allows a threshold area of impact up to five acres depending on the size of the entire affected wetland."

   Response to Comments (these comment numbers correspond to the spreadsheet Exhibit Q.1.): 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 66, 68, 72, 76, 78, 80, 82, 84, 86, 88, 91, 92, 102, 113, 115, 117, 119, 121, 131, 135, 166, 186, 188, 190, 191, 196, 198, 201, 205, 206, 207, 208, 210, 212, 276, 301, 308, 341, 345, 352, 355, 356, 358, 360, 361:

   The proposed change to one acre reflects the lowest size threshold established by the current rule (40 percent of 2.5 acres). This also aligns with the threshold for public waters and public water wetlands under 4410.4300, subpart 27, item A. All of these changes are needed to better reflect the changes that have occurred to wetland programs in the state since the original 1982 EAW category was written (Wetland Conservation Act (WCA), Minnesota Rules Ch. 8420, Executive Order 19-17 (Exhibit Q.2.)).

6. COMMENT: "Although both the existing and amended rule language limit the applicability of this category to projects where any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, **this clause eliminates relatively few of our county highway projects** that impact one or more acre of wetland."

   Response to Comments (these comment numbers correspond to the spreadsheet Exhibit Q.1.): 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 66, 68, 72, 76, 78, 80, 82, 84, 86, 88, 91, 92, 102, 113, 115, 117, 119, 121, 131, 135, 166, 186, 188, 190, 191, 196, 198, 201, 205, 206, 207, 208, 210, 212, 276, 301, 308, 341, 345, 352, 355, 356, 358, 360, 361:

   Applicable road and bridge projects will be excluded from environmental review. This exclusion language can be found in Exhibit L.1. ("Item B does not apply to projects exempted by part

4410.4600, subpart 14.") which references M.R., 4410.4600, subpart 14 as noted in response to #1. This was clarified with the proposed revision introduced to the record at the May 31, 2019 Hearing (Exhibit L.1.).

7. COMMENT: "Subpart 27 item B, especially as revised, does not meet the core purposes of Minnesota's environmental review rules and may detract from their effectiveness for other projects."

Response to Comments (these comment numbers correspond to the spreadsheet Exhibit Q.1.): 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 66, 68, 72, 76, 78, 80, 82, 84, 86, 88, 91, 92, 102, 113, 115, 117, 119, 121, 131, 135, 166, 186, 188, 190, 191, 196, 198, 201, 205, 206, 207, 208, 210, 212, 276, 301, 308, 341, 345, 352, 355, 356, 358, 360, 361:

Minnesota Rule Ch. 4410.0300, Subp. 3, Purpose**.**

> 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 parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents.
>
> Environmental documents shall contain information that addresses the significant environmental issues of a proposed action. This information shall be available to governmental units and citizens early in the decision making process.
>
> Environmental documents shall not be used to justify a decision, nor shall indications of adverse environmental effects necessarily require that a project be disapproved. Environmental documents shall be used 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.

Revising this section does not impede the core purpose of Environmental Review. It informs the public about a particular projects, provides permit information, and helps reduce the overall project impact.

The 1982 SONAR indicates that this category was proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Those same concerns still hold true, among others. Revising the language to coincide with WCA and to reduce confusion so that its applied correctly will ensure effectiveness and make sure that the function of the environmental review program to avoid and minimize damage to the States' resources are met.

8. COMMENT: "Minn. R. 4410.0300 Authority, Scope, Purpose and Objective, subp. 3 says that "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 parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents." The impact that a project involving wetland impacts will have on the environment is assessed and quantified in detail to meet state and federal wetland protection regulations. This includes consideration of alternatives that would avoid or minimize impacts and establishment of a plan to mitigate impacts. Preparing an EAW does not lead to further understanding.

   Part 4410.1000, subp. 1 "Purpose of EAW" states that the EAW serves primarily to aid in the determination of whether an Environmental Impact Statement (EIS) is needed for a proposed project and to serve as a basis to being the scoping process for an EIS. It is our understanding none of the six to eight projects that have triggered preparation of an EAW under subpart 27 from 2015 through 2017 went on to require preparation of an EIS, which brings into question the usefulness of subpart 27."

   Response to Comments (these comment numbers correspond to the spreadsheet Exhibit Q.1.): 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 66, 68, 72, 76, 78, 80, 82, 84, 86, 88, 91, 92, 102, 113, 115, 117, 119, 121, 131, 135, 166, 186, 188, 190, 191, 196, 198, 201, 205, 206, 207, 208, 210, 212, 276, 301, 308, 341, 345, 352, 355, 356, 358, 360, 361:

   Minn. R. 4410.1000, subp. 1
   "**Purpose of EAW**. The EAW is a brief document prepared in worksheet format which is designed to rapidly assess the environmental effects which may be associated with a proposed project."

   The number of EAWs does not determine usefulness. The fact that an EIS is not required following review of an EAW (regardless of the category) has no bearing on its usefulness but rather a tribute to the size and scope of the projects. In addition, there is no mandatory EIS category, therefore, it's a case-by-case decision on the need for an EIS as determined by the RGU

   Furthermore, the objective of Environmental Review and thus an EAW is stated in Minn. R. 4410.0300, subp. 4. **Objectives.** The process created by parts 4410.0200 to 4410.6500 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.

9. COMMENT: "The proposed revisions to subpart 27 item B are inconsistent with the intent of this rulemaking."

Response to Comments (these comment numbers correspond to the spreadsheet Exhibit Q.1.): 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 66, 68, 72, 76, 78, 80, 82, 84, 86, 88, 91, 92, 102, 113, 115, 117, 119, 121, 131, 135, 166, 186, 188, 190, 191, 196, 198, 201, 205, 206, 207, 208, 210, 212, 276, 301, 308, 341, 345, 352, 355, 356, 358, 360, 361:

The Board's statutory authority to adopt the rule amendments is given in the Minnesota Environmental Policy Act, Minn. Stat. 116D.04, subdivisions 2a(b) and 5a and Minn. Stat. 116C.04. Under these provisions, the Board has the necessary statutory authority to adopt the proposed rules amendments. In particular, Minn. Stat. 116D.04, subdivision 2a(b) (Exhibit #4) directs the Board to establish mandatory categories for EAWs, EISs and exemptions by rule. In 2015 the legislature directed the EQB to streamline environmental review efficiency (2015 Special Session Law, Chapter 4, Article 3, Section2). Revisions to subpart 27 does just that in updating language and reducing a confusing formula.

10. COMMENT: *The proposed revisions to subpart 27 item B would result in new costs.

"The Minnesota County Engineers Association (MCEA) has estimated the proposed revisions would cost Minnesota counties at least an additional $2,000,000 or more per year (aggregated statewide) for routine road safety improvement projects that qualify for the Local Road Wetland Replacement Program."

Response to Comments (these comment numbers correspond to the spreadsheet Exhibit Q.1.): 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 66, 68, 72, 76, 78, 80, 82, 84, 86, 88, 91, 92, 102, 113, 115, 117, 119, 121, 131, 135, 166, 186, 188, 190, 191, 196, 198, 201, 205, 206, 207, 208, 210, 212, 276, 301, 308, 341, 345, 352, 355, 356, 358, 360, 361, I.10., 36:

Applicable road and bridge projects will be excluded from environmental review. This exclusion language can be found in Exhibit L.1. ("Item B does not apply to projects exempted by part 4410.4600, subpart 14.") which references M.R., 4410.4600, subpart 14 as noted in response to #1. This was clarified with the proposed revision introduced to the record at the May 31, 2019 Hearing (Exhibit L.1.).

11. COMMENT: "Per Minn. R. 14.131 the agency must consult with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government. The SONAR indicates that EQB intends to, but has not yet, consulted with the MMB office. Given the potential for a significant increase in costs, we believe

that a consultation with MMB should have occurred before the proposed amendment to Subpart 27 was placed on public notice."

Response to Comments (these comment numbers correspond to the spreadsheet Exhibit Q.1.): 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 63, 66, 68, 72, 76, 78, 80, 82, 84, 86, 88, 91, 92, 102, 113, 115, 117, 119, 121, 131, 135, 166, 186, 188, 190, 191, 196, 198, 201, 205, 206, 207, 208, 210, 212, 276, 301, 308, 341, 345, 352, 355, 356, 358, 360, 361:

The EQB did consult with MMB. The current version of the SONAR is in error. The letter received from MMB was dated September 4, 2018—the letter was included in the EQB Board packet when the Board authorized the rulemaking at a public meeting on September 19, 2018. The MMB consultation and correspondence was included with the SONAR as Exhibit 5. The consultation letter states, "the EQB is uncertain if the amendment to part 4410.4300, subpart 27 regarding wetlands and public waters will increase costs for local governments. Because this amendment clarifies and simplifies rule language, local government units will potentially apply the rule more frequently and incur additional costs."

12. COMMENT: "In addition to the expense of preparing an EAW for additional projects, **one of our biggest concerns is the negative impact** this category as revised would have **on project delivery timelines**, likely leading to project implementation delays of 12 months or more. **Delaying project delivery by a year results in increased construction, safety, social and economic impacts and costs** that should be factored into the MMB assessment. Costs associated with delaying a typical $800,000 bridge replacement project for one year are estimated to be $25,000 to $40,000 (3 to 5%), with this amount being significantly higher for the occasional very large road construction project."

Response to Comments (these comment numbers correspond to the spreadsheet Exhibit Q.1.): 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 63 66, 68, 72, 76, 78, 80, 82, 84, 86, 88, 91, 92, 102, 113, 115, 117, 119, 121, 131, 135, 166, 186, 188, 190, 191, 196, 198, 201, 205, 206, 207, 208, 210, 212, 276, 301, 308, 341, 345, 352, 355, 356, 358, 360, 361:

An EAW is a brief document that should not delay project delivery timelines.

> Minn. R. 4410.1000, subp. 1
> "**Purpose of EAW**. The EAW is a brief document prepared in worksheet format which is designed to rapidly assess the environmental effects which may be associated with a proposed project."
>
> Furthermore, the objective of Environmental Review and thus an EAW is stated in Minn. R. 4410.0300, subp. 4. **Objectives.** The process created by parts 4410.0200 to 4410.6500 is designed to:
>
> F. provide usable information to the project proposer, governmental decision makers and the public concerning the primary environmental effects of a proposed project;

G. 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;
H. delegate authority and responsibility for environmental review to the governmental unit most closely involved in the project;
I. reduce delay and uncertainty in the environmental review process; and
J. eliminate duplication.

Applicable road and bridge projects will be excluded from environmental review. This exclusion language can be found in Exhibit L.1. ("Item B does not apply to projects exempted by part 4410.4600, subpart 14.") which references M.R., 4410.4600, subpart 14 as noted in response to #1. This was clarified with the proposed revision introduced to the record at the May 31, 2019 Hearing (Exhibit L.1.).

13. COMMENT: "**Preparing an EAW for projects that do not require review based on any other category** (i.e. they only trigger an EAW due to impacts to public waters or wetlands) **does not increase environmental protection** because **it duplicates environmental review efforts already required by state and federal regulations** governing work in wetlands and public waters that require the project proposer to avoid, minimize, and mitigate such impacts. Such **comprehensive environmental review, however, already occurs through the process of obtaining DNR and United States Army Corps of Engineer (USACE) permits**. DNR review of a permit application to authorize work in public waters includes determining whether projects that entail work in a Federal Emergency Management Agency (FEMA) mapped floodplain could worsen flooding. DNR permits also require avoiding negative impacts to recreation and wildlife habitat. DNR, USACE permits and Minnesota Pollution Control Agency (MPCA) 401 certifications all contain requirements related to erosion control and water quality. The content of EAWs would likely focus on the same topics covered by the Section 404 wetland and public waters permitting process such as potential impacts to threatened and endangered species or historic property."

Response to Comments (these comment numbers correspond to the spreadsheet Exhibit Q.1.): 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 66, 68, 72, 76, 78, 80, 82, 84, 86, 88, 91, 92, 102, 113, 115, 117, 119, 121, 131, 135, 166, 186, 188, 190, 191, 196, 198, 201, 205, 206, 207, 208, 210, 212, 276, 301, 308, 341, 345, 352, 355, 356, 358, 360, 361:

The purpose of the MEPA process is to provide usable information to the project proposer, government decision makers and the public about the potential environmental effects of a project. For this reason, state law and rules require that environmental review of projects occur before any government approvals can be granted (Minn. Stat. § 116D.04, subd. 2b; Minn. R. 4410.3100 subd. 2). Another crucial component of environmental review is publication of the environmental review documents, which gives an opportunity for public comment. Permit decisions should reflect the discussions, modifications, and mitigation suggested during early coordination and in public comments solicited as part of the environmental review process.

14. COMMENT: "**Many projects undertaken by road authorities, in particular, would not benefit from preparing an EAW.** For the stream crossing projects that make up the majority of our projects impacting wetlands, **there are typically few realistic alternatives** to replacing the bridge or culvert and upgrading the approaches (road widening) to meet current safety standards. As such there is no benefit to preparing a detailed description and assessment of alternatives to the proposed project. The state legislature and Board of Water and Soil Resources (BWSR) recognized this when they streamlined the wetland impact mitigation requirements by establishing the Local Road Wetland Replacement program that provides wetland credits created or purchased by BWSR that can be used to mitigate certain public transportation project wetland impacts for which the main purpose of the project is safety improvement (not an increase in capacity; reference Minn. R. 8420.0544). EQB rules do include an exemption for highway safety improvement projects (4410.4600, subp. 14); however, the exemption does not currently apply to projects that meet or exceed thresholds set out in 4410.4300 and 4410.4400."

    Response to Comments (these comment numbers correspond to the spreadsheet Exhibit Q.1.): 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 66, 68, 72, 76, 78, 80, 82, 84, 86, 88, 91, 92, 102, 113, 115, 117, 119, 121, 131, 135, 166, 186, 188, 190, 191, 196, 198, 201, 205, 206, 207, 208, 210, 212, 276, 301, 308, 341, 345, 352, 355, 356, 358, 360, 361:

    Applicable road and bridge projects will be excluded from environmental review. This exclusion language can be found in Exhibit L.1. ("Item B does not apply to projects exempted by part 4410.4600, subpart 14.") which references M.R., 4410.4600, subpart 14 as noted in response to #1. This was clarified with the proposed revision introduced to the record at the May 31, 2019 Hearing (Exhibit L.1.).

15. COMMENT: "Preparing a state level EAW for a project with wetland impacts duplicates federal environmental review. Projects that will result in impacts to wetlands or other waters of the US covered by a United States Army Corps of Engineers (USACE) permit are considered federal actions subject to the National Environmental Protection Act (NEPA). According to the USACE web site "USACE often uses a regional general permit (RGP) to authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources, separately or on a cumulative basis." USACE prepares a programmatic Environmental Assessment for each USACE regional general permit. A regional general permit contains specific terms and conditions, all of which must be met for project-specific actions to be covered by the permit.

    The majority of county road projects with wetland impacts are covered under the Transportation RGP for MN and WI. The RGP requires submittal of a preconstruction notice (PCN, similar to an application) that triggers project-specific review to confirm the project meets the RGP requirements intended to limit adverse environmental impacts. A PCN is required for projects with wetland impact that exceed given thresholds as well as for projects that may impact any Type 8 wetlands (bogs), species protected under the Endangered Species Act, or historic properties protected under Section 106 of the National Historic Preservation Act. We can provide additional background information at a hearing regarding the process that the USACE went through while drafting the Transportation RGP so that covered projects comply with the National Environmental Policy Act (NEPA)."

Response to Comments (these comment numbers correspond to the spreadsheet Exhibit Q.1.): 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 66, 68, 72, 76, 78, 80, 82, 84, 86, 88, 91, 92, 102, 113, 115, 117, 119, 121, 131, 135, 166, 186, 188, 190, 191, 196, 198, 201, 205, 206, 207, 208, 210, 212, 276, 301, 308, 341, 345, 352, 355, 356, 358, 360, 361:

Not all projects affecting wetlands fall under USACE regulatory jurisdiction nor is there federal environmental review for all of the impacts that are subject to USACE jurisdiction. Because of this, it is incorrect to assume that the federal environmental review process duplicates the level of environmental review provided by the State of Minnesota. In addition, a PCN is not an application but a notification to USACE that the project proponent has determined the activity complies with the terms and conditions of a general permit (in this case an (RGP). The information provided with the PCN is not intended to support a substantive environmental review. Rather, it allows USACE to determine that the proposed wetland impacts are consistent with the conditions of the RGP. The substantive environmental review on the RGP is done prior to issuance of the general permit based on programmatic data collected at a national level along with state data collected and analyzed by the USACE, St. Paul District. To suggest that USACE is performing a comprehensive and case specific environmental review of activities that are authorized under the RGP is incorrect.

16. COMMENT: "**The proposed changes to subpart 27 item B were not included in the required notifications to the public and the entities identified for the following dates listed on the EQB website as July 22, 2013; November 9, 2015; or October 24, 2016.** The public engagement section also lists that the EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, and 22, 2016, these meetings did not include information on the proposed changes to subpart 27 item B."

    Response to Comments (these comment numbers correspond to the spreadsheet Exhibit Q.1.): 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 66, 68, 72, 76, 78, 80, 82, 84, 86, 88, 91, 92, 102, 113, 115, 117, 119, 121, 131, 135, 166, 186, 188, 190, 191, 196, 198, 201, 205, 206, 207, 208, 210, 212, 276, 301, 308, 341, 345, 352, 355, 356, 358, 360, 361:

    The first Request for Comments published in the State Register on July 22, 2013 included a list of possible categories or subjects that may be part of this rulemaking as well as a statement that "This rulemaking may also include revisions that may come up as a result of public comments and further review of Chapter 4410." The second Request for Comments published in the State Register on November 9, 2015 included a list of possible categories or subjects that may be part of this rulemaking as well as a statement that "This rulemaking may also include revisions that may come up as a result of public comments and further review of Chapter 4410." The third Request for Comments published in the State Register on October 24, 2016 included a list which included all subparts within 4410.4300 as well as a statement that "This rulemaking may also include revisions that may come up as a result of public comments and further review of Chapter 4410."

The EQB hosted informational meetings, open to the public, but specifically focused on implications to local units of government on March 18, 21, 22, 2016, at the EQB offices in St. Paul, MN and via WebEx.

On June 28, 2016, the EQB also hosted a Mandatory Categories Rulemaking Open House and Workshop at the EQB offices in St. Paul, MN and via WebEx (which offers audio and visual interactions with participants from any location with internet access).

On August 15, 2018, EQB staff presented preliminary rule language to the EQB Board. The preliminary rule language included the changes currently proposed in this rulemaking. On September 19, 2018, EQB staff presented draft rules and Statement of Need and Reasonableness. At the EQB Board meeting, the public was invited to attend and provide feedback to the EQB Board on the proposed rule language; at this meeting the EQB received no comments on the proposed changes to 4410.4300, subp. 27 A or B. The proposed rule language included the changes currently proposed in 4410.4300, subp. 27 A and B.

On November 13, 2018, the EQB published the Notice of Intent to Adopt Rules without a Public Hearing in the State Register. This publication included the full proposed rule language which included subpart 27 item B as well as opened the comment period. On December 31, 2018, the EQB published an AMENDED Notice of Intent to Adopt Rules without a Public Hearing which extended the comment period and changed the Hearing dates. On February 25, 2019, the EQB published a Notice of Hearing in the State Register and emailed/mailed all commenters regarding the Notice of Hearing, locations and time.

17. COMMENT: "Minn. Stat. § 14.131 requires that an agency proposing rules include in the SONAR "an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference. The SONAR addresses this requirement on page 69 (included below).

    "It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments."

    As noted elsewhere in this letter the proposed change to subpart 27 would likely result in many additional projects triggering an EAW and such projects already go through wetland permitting that

includes environmental review under National Environmental Policy Act (NEPA). Thus the SONAR statement that there are "few cases where dual review is needed" is no longer correct. Subpart 27 should not be revised in a manner that will affect more projects due to impacts to wetlands and public waters without conducting an assessment of the differences between the proposed rule and existing federal rules, including the likely content of resulting EAWs, which we assert would bring to light the same topics covered by the Section 404 permitting process such as potential impacts to threatened and endangered species or historic property."

Response to Comments (these comment numbers correspond to the spreadsheet Exhibit Q.1.): 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 66, 68, 72, 76, 78, 80, 82, 84, 86, 88, 91, 92, 102, 113, 115, 117, 119, 121, 131, 135, 166, 186, 188, 190, 191, 196, 198, 201, 205, 206, 207, 208, 210, 212, 276, 301, 308, 341, 345, 352, 355, 356, 358, 360, 361:

This comment incorrectly assumes that the changes to subpart 27 would result in many additional projects triggering an environmental review. The revisions to subpart 27 would only require an EAW for a narrow set of projects with wetland impacts greater than one acre that also fall into one of the listed categories. Although a detailed analysis of wetland permitting data was not undertaken, the majority of projects authorized today involve less than an acre of impact and typically are not located in any of the listed categories. The intent of the revision was to ensure adequate environmental review occurs in circumstances where the impacts to wetlands may be more significant from a state public value perspective (as represented by specific categories of wetlands). Finally, while environmental review under NEPA may take place for these projects, that review may not necessarily focus on the basis for inclusion of the wetland in subpart 27. For example, a NEPA review may be undertaken for a wetland impact greater than one acre in a shoreland area but the federal evaluation may be silent on the importance of the wetland being located in such an area. Since the importance of wetlands in these areas is recognized under state law it is entirely appropriate for additional evaluation to be undertaken under MEPA to make sure that the potential effects of the proposed impacts are thoroughly evaluated.

18. COMMENT: "**Change is unwarranted:** All Minnesota governmental agencies and private property owners are subject to the wetland definitions contained in MN Rules Part 8420.0111, including subparts 32 and 72 referenced in the proposed rule change. There is no need to repeat the definitions or single out individual wetland definitions that are already contained in MN Rule 8420.0111."

Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): Exhibit I.10., comment 37

Providing specific definitions adds clarity as to how the terms are applied in the chapter and ease for the project proposer and RGU in determining the definition that will be used.

19. COMMENT: "The EQB would be acting beyond the scope of its authority should it elect to impose new more restrictive acreage and wetland type parameters than currently exist in MN Rules 4410.4300 subpart 27.B."

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): Exhibit I.10., comment 38; I.100., 246; I.153., 354;

    The revisions are not imposing more restrictive acreage. The one acre threshold is the lowest threshold that is intended to apply to projects in the current rule. For the most part the Wetland Conservation Act does not distinguish wetland functions and values based on type or size. The proposed language is an attempt to simplify the category so that when a proposed project that is in an overlay district, impacts a wetland (no matter the type), a simple calculation in acreage is all that is required to determine if a proposed project meets a mandatory threshold.

20. COMMENT: "The EQB lacks legislative direction to change specific the wetland acreage parameters. To do so without specific legislative direction disregards the spirit and intent of EQB's existing rule making authority."

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): Exhibit I.10., comment 39

    See response to question #9. The Board's statutory authority to adopt the rule amendments is given in the Minnesota Environmental Policy Act, Minn. Stat. 116D.04, subdivisions 2a(b) and 5a and Minn. Stat. 116C.04. Under these provisions, the Board has the necessary statutory authority to adopt the proposed rules amendments. In particular, Minn. Stat. 116D.04, subdivision 2a(b) (Exhibit #4) directs the Board to establish mandatory categories for EAWs, EISs and exemptions by rule. In 2015 the legislature directed the EQB to streamline environmental review efficiency (2015 Special Session Law, Chapter 4, Article 3, Section2). Revisions to subpart 27 does just that in updating language and reducing a confusing formula.

21. COMMENT: "This proposed change lacks sufficient justification, provides insufficient analysis of the new mandated costs it will impose on LGU's and private citizens and is being proposed without the opportunity for adequate public input from those that would be impacted by the change and thus must not be adopted."

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): Exhibit I.10., comment 40

    See response to question #16. EQB held a Request for Comments on the rules from November 13, 2018 through February 4, 2019. Another comment period was added from May 20, 2019 to June 21, 2019. Hearings were held on May 31, 2019 and June 26, 2019.

22. COMMENT: "The proposed change imposes a tremendous new unfair tax burden on the citizens of north and north central Minnesota where most of the pre-settlement wetlands remain intact and are already well protected by existing federal, state and local regulations."

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): Exhibit I.10., comment 43

    See response to question #1, #3, and #8

23. COMMENT: "**New mandated costs to property owners and businesses:** The proposed change singles out the private property owners and business operations in northern and north central Minnesota for a new round of unwarranted costs and delays should they attempt to make even small improvements to private property or business infrastructure."

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): Exhibit I.10., comment 44 and comment 42

    There is no change to the lowest threshold that is intended to apply to the projects in the current rule. The rule does not single out any specific geographic location or category. The intent is to clarify the language in rule so more people understand when it should be applied. See responses to #1, #3, #4 and #5.

24. COMMENT: "This proposal if adopted will significantly increase the number of EAW's required of citizens in many cases for minor building additions, new building construction or improvements to residential and business driveways that may have only minor involvement of a wetland."

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): Exhibit I.10., comment 45

    There is no change to the lowest threshold that is intended to apply to the projects in the current rule. The rule does not single out any specific geographic location or category. The intent is to clarify the language in rule so more people understand when it should be applied. See response to question #1, #3, and #5.

25. COMMENT: "This proposal puts an unfair burden on the citizens located in counties that contain significant amounts of wetland and is especially damaging to those counties that retain most of their presettlement wetlands, such as Aitkin and Crow Wing counties and all counties to their north and west. The reward for doing a good job protecting wetlands should not be increased restrictions."

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): Exhibit I.10., comment 43

There is no change to the lowest threshold that is intended to apply to the projects in the current rule. The rule does not single out any specific geographic location or category. The intent is to clarify the language in rule so more people understand when it should be applied. Also see responses to #1, #3, and #5.

26. COMMENT: "The proposed one acre or more wetland impact threshold when combined with "if any part of the wetland basin is within" language creates an over reaching and unnecessary EAW result. Under this language, the entire one acre or more wetland impact could occur outside of these locations, however, a small portion of the non-impacted wetland basin may be located within these features, and thus would require an EAW. The following deletion in language is recommended to clarify the applicability of this EAW threshold:

B. For projects that will cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands if any part of the wetland basin is within a shoreland area, delineated floodplain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or Mississippi headwaters area", the local government unit is the RGU."

Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): Exhibit I.21., comment 65

One acre is the lowest threshold that is intended to apply to projects in the current rule. The "within" language is not a proposed change and is commonly used throughout Minnesota Rules Chapter 4410 (4410.4300, subp. 19; 4410.4300, subp. 28; 4410.4300, subp. 30; 4410.4300, subp. 31; 4410.4300, subp. 33).

27. COMMENT: "The types of wetlands included have been expanded to include type 1 and 2 wetlands, which are common wetland types. The current rule language limits this category to "types 3 through 8 wetlands… excluding public waters wetlands." The EQB rule definition for public waters wetlands (4410.0200 subp. 70) references Minn. Statute 103G.005 subd. 15a which states "public waters wetlands means all types 3, 4 and 5 wetlands … that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas." In other words, item B of the existing rule applies only to type 6, 7 or 8 wetlands."

Response to Comments (these comment numbers correspond to the spreadsheet Exhibit Q.1.): 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 66, 68, 72, 76, 78, 80, 82, 84, 86, 88, 91, 92, 102, 113, 115, 117, 119, 121, 131, 135, 166, 186, 188, 190, 191, 196, 198, 201, 205, 206, 207, 208, 210, 212, 276, 301, 308, 341, 345, 352, 355, 356, 358, 360, 361:

See response to #4 and #5.

28. COMMENT: "A more practical means of streamlining EQB rules may be to delete subpart 27 Part B altogether, due to its duplication of state and federal laws, rules and permitting programs for work in wetlands. Currently, when impacts to wetlands are proposed with a project, a Technical Evaluation Panel, which includes representation from the Local Governing Unit, Department of

Natural Resources, the local soil and water conservation district, Board of Water and Soil Resources and the U.S. Army Corps of Engineers, is convened to evaluate the sequencing and justification for the proposed impact. This process is established through the Wetland Conservation Act and serves as a precise and detailed review of the impacts to the effected water bodies. The proposed rule, in expanding triggers for a mandatory EAW based solely on area of wetland impacts, would now enlist a full review of the cumulative potential effects to land use, natural resources (wetlands, forest, grassland, etc.), geology, soils and topography, water resources, hazardous materials, fish/wildlife/plant communities, sensitive ecological resources, air, historic properties, noise, transportation, and other local permits."

Response to Comments (these comment numbers correspond to the spreadsheet Exhibit Q.1.): 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 66, 68, 72, 76, 78, 80, 82, 84, 86, 88, 91, 92, 102, 113, 115, 117, 119, 121, 131, 135, 166, 186, 188, 190, 191, 196, 198, 201, 205, 206, 207, 208, 210, 212, 276, 301, 308, 341, 345, 352, 355, 356, 358, 360, 361:

Out of scope. The recommendation will be part of the record for future consideration. Additionally, see response to #8.

29. COMMENT: "The proposed change will impose significant new cost on local government units by increasing the number of EA W's required for activities that might impact a wetland. Those costs will have to be paid by local taxpayers at the township, small city and county levels for processing the large number of additional EA W's this change would generate."

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): Exhibit I.10., comment 41

    A few more EAWs could occur associated with clarifying language in the rule. The current, existing rule wording is very difficult to interpret the threshold. Existing language is confusing and has not been applied consistently. Also see responses to #3 and #10

30. COMMENT: "The proposed addition of "a total of one acre or more of wetlands" will increase costs to project proposers and local governments units due to the additional staff time and resources needed for initial data/information gathering to determine and quantify post-construction wetland impacts (if any) from indirect impacts, such as partial drainage."

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): Exhibit I.21., comment 64

    There is no change to the lowest threshold that is intended to apply to the projects in the current rule. The rule does not single out any specific geographic location or category. The intent is to clarify the language in rule so more people understand when it should be applied. Also see responses to #1, #3 and #10

31. COMMENT: "...the proposed one acre or more wetland impact threshold when combined with "if any part of the wetland basin is within" language creates an over reaching and unnecessary EAW result. Under this language, the entire one acre or more wetland impact could occur outside of these locations, however, a small portion of the non-impacted wetland basin may be located within these features, and thus would require an EAW."

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): Exhibit I.21., comment 65

    One acre is the lowest threshold that is intended to apply to projects in the current rule. The "within" language is not a proposed changed and is commonly used throughout Chapter 4410.

32. COMMENT: "The rule change seems redundant in its environmental protection, as wetland impacts are already subject to regulatory programs review (WCA, USACE Section 404, etc.) which require wetland impacts avoidance and minimization."

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): Exhibit I.35., comment 91; I.144., 340

    See response to #13, 1, #7 and #8

33. COMMENT: "We do recognize the need to make this section less confusing. However, we recommend removing this change to the rules as needing an EAW when you impact one acre or more of wetlands is onerous and already covered with WCA rules. We suggest a higher threshold such as three acres for non-transportation projects and five acres for transportation project."

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): Exhibit I.35., comment 92

    One acre is the lowest threshold that is intended to apply to projects in the current rule. See response to #1.

34. COMMENT: "In regard to Section 4410.4300 Subpart 27 B, I am against changing, "the 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" to, "cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands" because part 8420.0111 only provides protections for wetland types 3 through 5 so this language change would remove protections for wetland types 6 through 8."

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): Exhibit I.99.a., 214

This statement is not correct, WCA regulates all wetlands regardless of type as described in the WCA Scope as per Minn. Rule 8420.0105. There are exclusions for incidental wetlands and those inventoried and regulated by the DNR as public water wetlands.

35. COMMENT: "Minnesota Rules 4410.4300, Subpart 27, Item A. This change proposes to add the DNR as a potential RGU for projects that require an EAW. Current Minnesota Rules provide that the local governmental unit (LGU) is the responsible governmental unit (RGU). Drainage projects may be delayed and incur additional cost if this rule change is adopted and the LGU and the DNR need to confer and determine responsibility for the project. Furthermore, if agreement cannot be reached, then the EQB is involved in a process that will most certainly delay the project."

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): I.99.dd., 244; I.107., 268, 269:

    This proposal was included in the rulemaking docket in order to facilitate a simpler transfer of RGU status between LGU and the DNR in situations where the LGU may have little or no authority over a proposed project. Some recent examples of LGUs requesting that DNR act as RGU in this category include Spider Creek Restoration Project, Boulanger Bend to Lock and Dam 2 Maintenance Project, and Lock and Dam 1 Scour Repair. In these situations, DNR is not identified as RGU by Minnesota Rules chapter 4410, so DNR may only take on the role of RGU if designated by EQB. This designation process occurs according to Minn. R. 4410.0500 Subpart 6, and can take up to 60 days to complete. The EAW process cannot be initiated by DNR until designation has occurred by EQB, which can mean a significant delay in a project timeline.

    However, there are currently multiple categories in Minn. R. 4410.4300 that identify more than one RGU, and projects can sometimes exceed thresholds for more than one category, possibly implicating one or more RGUs. In these cases, Minnesota Rules 4410.0500 directs potential RGUs to either determine which RGU has greater approval authority over the project as a whole, or designate by agreement the RGU for the project. In cases where no agreement can be reached, the question is submitted to the EQB chairperson, who shall designate the RGU. The rule directs that the agreement between RGUs or decision by the EQB chairperson must completed within five days of receipt, a significantly shorter project delay.

36. COMMENT: "Current Minnesota Rules provide that the project must "…change or diminish the course, current, or cross section…." This proposed change will increase costs to projects and local governmental units such as Drainage Authorities due to the additional staff time and resources needed for initial data/information gathering to determine and quantify impacts (if any). In some cases, partial drainage of wetlands does not result in a measurable change. The additional time needed to prepare an EAW may also risk or delay third party funding and government programs that support the proposed project. Furthermore, Minnesota Statutes (Section 103E.015) already requires the Drainage Authority to consider a list of criteria – including water quality, wetlands, and environmental impact – before establishing projects. This proposed change unnecessarily duplicates

environmental consideration in a way that adds cost and time without additional environmental benefit."

Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): I.99.dd., 245; I.107., 268, I.100., 246; I.153., 354; 269:

Removing the reference to "change or diminish the course, current, or cross section" shouldn't change the current practice of how the rule is applied. If anything changing the term to "impact" is more specific and would narrow the overall scope. There are a fair amount of agricultural and drainage exemptions currently in WCA (MN Rules 8420.0420 subp. 2 and 3) that may apply and do not require a formal decision. If a project met those conditions and no decision was required the project should not trigger an EAW under this category.

37. COMMENT: "Seems it would be better to say that any cumulative combination of impacts to an acre or more of public waters, public waters wetland, or wetlands triggers an EAW. Seems the description in 15.1 to 15.11 has a loophole where a development that impacts part of a public water wetland and then part of a wetland – for instance locating a 1.9 acre project so 0.95 acres is in the public water wetland, and 0.95 acres is in the wetland – could be exempt. Suggest addition right before "Items A…" : "For projects that will impact one acre or more of any combination of public waters, public waters wetland, or wetlands exceeding, items…""

Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): I.106., 262:

This is out of scope for this rulemaking.

38. COMMENT: "Unclear when the DNR or local government is the RGU."

Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): I.106., 263:

See response to #35

39. COMMENT: "The proposed changes do not adequately explain how an RGU will be designated where there is similar or greater expertise for flood damage reduction projects by watershed districts within the RRWMB. Because the RRWMB coordinates with state agencies and other LGUs routinely, there is concern that the rule revision as proposed will amount to an encroachment on LGU authorities."

Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): I.159., 363, 364

While the proposed rule revision does not provide guidance on specific projects or situations, there are currently multiple categories in Minn. R. 4410.4300 that identify more than one RGU,

and projects can sometimes exceed thresholds for more than one category, possibly implicating one or more RGUs. In these cases, Minnesota Rules 4410.0500 directs potential RGUs to either determine which RGU has greater approval authority over the project as a whole, or designate by agreement the RGU for the project. In cases where no agreement can be reached, the question is submitted to the EQB chairperson, who shall designate the RGU. The rule directs that the agreement between RGUs or decision by the EQB chairperson must completed within five days of receipt. This process is currently in existence and in use routinely.

40. COMMENT: "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 wetland except for those to be drained without a permit pursuant according to Minnesota Statutes, chapter 103G, unless exempted by part 4410.4600, subpart 14, item E, or subpart 17, DNR or the local government unit shall be the RGU unless the local government requests that DNR serve as RGU.

    The rule should clarify that the LGU determines whether DNR is asked to serve as RGU. Without this change the rule implies that, for every project that triggers this category threshold, the DNR and LGU must negotiate from equal footing which entity will serve as RGU. Clarifying that the LGU has first right of refusal simplifies the process. The exemptions afforded for stream diversions, another type of project impacting public waters, are equally applicable to this category."

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): I.99.a.,214; I.99.dd., 245; I.107., 268, 269:

    This proposal was included in the rulemaking docket in order to facilitate a simpler transfer of RGU status between LGU and the DNR in situations where the LGU may have little or no authority over a proposed project. Some recent examples of LGUs requesting that DNR act as RGU in this category include Spider Creek Restoration Project, Boulanger Bend to Lock and Dam 2 Maintenance Project, and Lock and Dam 1 Scour Repair. In these situations, DNR is not identified as RGU by Minnesota Rules chapter 4410, so DNR may only take on the role of RGU if designated by EQB. This designation process occurs according to Minn. R. 4410.0500 Subpart 6, and can take up to 60 days to complete. The EAW process cannot be initiated by DNR until designation has occurred by EQB, which can mean a significant delay in a project timeline.

    However, there are currently multiple categories in Minn. R. 4410.4300 that identify more than one RGU, and projects can sometimes exceed thresholds for more than one category, possibly implicating one or more RGUs. In these cases, Minnesota Rules 4410.0500 directs potential RGUs to either determine which RGU has greater approval authority over the project as a whole, or designate by agreement the RGU for the project. In cases where no agreement can be reached, the question is submitted to the EQB chairperson, who shall designate the RGU. The rule directs that the agreement between RGUs or decision by the EQB chairperson must completed within five days of receipt, a significantly shorter project delay.

41. COMMENT: "As proposed in the amendments, the amount of wetland impact is being reduced from 5 acres to 1 acre, and the types of wetland are now increased from type 3 though 8 to type 1

through 8. This will have a significant impact on the time and cost in our road projects and other large scale projects. Even accessing suitable building sites for residential properties will now require an EAW. Through the Wetland Conservation Act (WCA), all of these wetland activities are reviewed and must follow an approved process. We believe that this proposed language, with added and duplicative wetland scrutiny, is unnecessary."

Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): 420; I.103., 250

Please see responses to #1, #4, #5 and #13.

42. COMMENT: "Aitkin County strongly encourages deleting the proposed amendments to this subpart. If the language remains we suggest allowing counties with greater than 80% of their pre-settlement wetlands to use the existing rule standards."

Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): 421

Thank you for the comment. EQB does not anticipate the proposed rule language revision to item B will significantly increase the number of projects that trigger preparation of an EAW. This category only applies to specific overlay districts that contribute to a very narrow portion of land in Minnesota.

It also does not apply to public waters wetlands. Projects must be within a specific "overlay" area in order for this threshold to apply. These overlay areas have not changed and include:

- Shoreland area
- Delineated floodplain
- State or federally designated wild and scenic rivers district
- Mississippi River Project Riverbend Area
- Mississippi headwaters area

In addition, applicable road and bridge projects will be excluded from environmental review. This exclusion language can be found in Exhibit L.1. ("Item B does not apply to projects exempted by part 4410.4600, subpart 14.") which references M.R., 4410.4600, subpart 14 as noted in response to no. 1. This was clarified with the proposed revision introduced to the record at the May 31, 2019 Hearing (Exhibit L.1.).
4410.4600, subp. 17. Highway projects.

A. Highway safety improvement projects are exempt.
B. Installation of traffic control devices, individual noise barriers, bus shelters and bays, loading zones, and access and egress lanes for transit and paratransit vehicles is exempt.
C. Modernization of an existing roadway or bridge by resurfacing, restoration, or rehabilitation that may involve the acquisition of minimal amounts of right-of-way is exempt.
D. Roadway landscaping, construction of bicycle and pedestrian lanes, paths and facilities within the existing right-of-way is exempt.

E. Any stream diversion or channelization within the right-of-way of an existing public roadway associated with a bridge or culvert replacement is exempt.
F. Reconstruction of modification of an existing bridge structure on essentially the same alignment or location that may involve the acquisition of minimal amounts of right-of-way is exempt.

43. COMMENT: "Regarding Wetlands and Public Waters (Part 4410.4300, subpart 27), the RRWMB has concerns about lowering the standard for wetlands from 2.5 acres to 1 acre. First, this is inconsistent with the EQB's draft mandatory categories changes. The EQB has stated throughout the document that the rule changes would be consistent with the Minnesota Wetland Conservation Act (WCA). This change takes the draft rules out of line with the WCA. Minnesota Rules Chapter 8420.0100 already achieves the intended purpose of minimizing impacts to wetlands. Second, flood damage reduction projects in the Red River Basin have demonstrated that more wetlands can be created than are impacted."

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): I.159., 364:

    Please see responses to #4, and #5

44. COMMENT: "Smaller threshold is a good addition. 1 acre instead of 2 acres."

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): I.106., 264:

    Thank you for the comment.

45. COMMENT: *Line 22.24: No mention of wetland – seems it should include "wetlands"

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): I.106., 264:

    Thank you for the comment.

46. COMMENT: Levi Gregg & Connor Lange
    "Use of the definition of "impact" will result in unintended consequences, allowing projects to be done to wetlands types 6 through 8 without environmental assessment.

    The problem with this definition is that projects that result in the loss of quantity, quality or biological diversity but do not result in wetlands filling, draining or conversion to non-wetland will not require an environmental review if done to types 6, 7 or 8."

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.) 379:

The assertion that a project can occur within wetland types 6 through 8 without an environmental assessment is not true. The term impact should not change the current scope of assessing the requirements of environmental review. The terms "Course, current, and cross section" pre dates WCA and are not defined or used within the WCA. The term of "Impact" is more specific and is more applicable to local units of governments that administer the WCA. Draining or filling of all types of wetlands (Types 1-8) would be defined as an impact as per Minn. Rule Chapter 8420. However, the activity of excavating in a wetland may or may not be defined as an impact depending on the scope and wetland type. Excavation in types 3, 4, and 5 would be considered an impact. Whereas, excavation in types 1,2,6,7, and 8 would not be considered an impact unless the excavation results in filling, draining, or conversion to non-wetland. The use of the term "impact" shouldn't change current practices even though it's more specific and narrow in scope.

47. COMMENT: "We propose that the Board change the definition of "impact" to read: Impact means the loss in the quantity, quality or biological diversity of a wetland caused by draining or filling of wetlands wholly or partially or by the excavation of either permanently and semi-permanently flooded areas of types 3, 4, 5, 6, 7 and 8 wetlands as defined in subpart 75 and in all wetland types if excavation results in filling, draining or conversion to non-wetland."

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.) 379:

    The suggested change to the definition deviates from current WCA Rule and would create confusion among local governments that administer the WCA. Alterations beyond the scope of the definition of "impact" as defined in WCA would not trigger a governmental action under the WCA.

48. COMMENT: "As a consequence of the proposed rule change, a project can remove peat moss from the surface of a bog without an environmental review so long as it did not actually result in the draining or filling of the bog."

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.) 380:

    The proposed rule change should not have any effect as to how peat mining is assessed for environmental review. As per Minn. Rule 8420.0930 Subp. 4. C., peat mining does not apply to the WCA as defined under Minnesota Statutes 93.461 if the mining operation is over 40 acres in size and subject to a DNR mine permit and reclamation requirements under Minn. Stat. 93.44 to 93.51. Mining operations of 40 acres or less are subject to WCA and could be considered an impact requiring some type of decision/approval under WCA and potential environmental review depending on the method of operation. In addition a peat mine operation resulting in excavation of 160 or more acres of land would trigger a mandatory EAW under nonmetallic mineral mining, Minn. Rule 4410.4300 Subpart 12.

49. COMMENT: "Can we add "or projects below the threshold in part 4410.4300, subpart 22" to 4410.4300, subpart 27 B?"

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.) 387:

    According to Minnesota Statute 14.05. Subd. 2. Authority to modify proposed rule. (*a) An agency may modify a proposed rule in accordance with the procedures of the Administrative Procedure Act. However, an agency may not modify a proposed rule so that it is substantially different from the proposed rule in the notice of intent to adopt rules or notice of hearing.*

    The change you are suggesting will need to be proposed in a separate rulemaking process.

50. COMMENT: *We support the rule that is on the docket before you today.

    Response to Comment (comment number correspond to the spreadsheet Exhibit Q.1.): comment 386, 387,417, 418, 419, 424, 425:

    Thank you for the comment.

Comments related to M.R. part 4410.4300, subp. 28. Forestry

Relates to:
Part 4410.4300, subp. 28. Forestry

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;
Section V. page 43-44

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Dual-notice Comment Period	I.106., 265	"What is "critical area"? Maybe "critical concern area", but not clear."

EQB Response to Comment:
Comment 265: Minnesota Statute 116G.02 describes these areas as "….*certain areas of the state possessing important historic, cultural, or esthetic values, or natural systems which perform functions of greater than local significance*….."

Comments related to M.R. part 4410.4300, subp. 36, Land Use Conversion.

Relates to:
Part 4410.4300, subp. 36, Land use conversion

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Post-hearing comment period	Comment 432	**"A** • No problem with the golf courses or residential development of this category. However, the permanent conversion of 80 or more acres of agricultural land or natural vegetation is not reasonable or practical for projects that are implemented through and under the terms of the Mediation Agreement in the RRV. In almost all instances the water resources projects implemented through the Mediation Agreement are on agricultural land and involve more than 80 acres. There is significant public engagement and involvement with the project development and implementation. Either change this number to 1000 acres or eliminate the mandatory requirement for those projects implemented under the Mediation Agreement. • In addition there should be consistency with other natural resources projects that result in conversion of 80 or more acres of agricultural lands. What about BWSR RIM Reserve program and DNR's WMA and habitat programs that acquire agricultural lands and convert them to nonagricultural land. It is also suggested that the RGU for these projects involving conversion of agricultural lands should be the MN Department of Agriculture. **B** The same reasoning for raising the threshold to 2000 acres or eliminating the category for all projects implemented consistent with the Mediation Agreement."
Post-hearing Comment Period	Comment 439	"The wording in 4410.4300 Subp.36.A. and B. should be modified to reflect the fact that installation of center pivot agriculture is a permanent conversion and should be considered the same as a golf course. The investment in such irrigation methods means converted land will stay that way until the profit motive is gone. This would give local government units better oversight of local impacts, in that an 80 acre threshold would trigger an EAW, instead of the often approached, but seldom crossed, square mile (640 acre) threshold that has done almost nothing to protect resources and ecology. Also agriculture, native prairie, forest, and naturally vegetated land designations were in the past considered one and the same in the state's eyes but this is no longer a tenable view, since one is overtaking the others to the detriment of all. Industrial agriculture, in

		particular, makes this very clear and creates the need to separate that designation from the others."

EQB response:
Changes to this subpart were not proposed to substantively alter the way the current requirements are interpreted or implemented.

Thank you to everyone that took the time to review the proposed rule changes and submit comments for consideration in future rulemaking. All comments received that are not related to proposed changes identified in the current rulemaking have been compiled, considered and are included in the formal rulemaking record.

According to Minnesota Statute 14.05. subd. 2. Authority to modify proposed rule. (a) An agency may modify a proposed rule in accordance with the procedures of the Administrative Procedure Act. However, an agency may not modify a proposed rule so that it is substantially different from the proposed rule in the notice of intent to adopt rules or notice of hearing.

Comments related to M.R. part 4410.4300, subp. 36a, Land Use Conversion in Shoreland.

Relates to:
Part 4410.4300, subp. 36a, Land use conversion in shoreland

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Post-hearing comment period	Comment 433	"A. • Requires a mandatory EAW for a project that impacts more than 1320 feet of a shoreline in a nonsensitive shoreland area. This does not make any practical sense when trying to restore an existing channelized public waters watercourse that is also shorelands. This provision should apply ONLY to natural unaltered shoreland watercourses and exempt altered natural watercourses. 103G.005 DEFINITIONS: subd. 3. Altered natural watercourse. "Altered natural watercourse" means a former natural watercourse that has been affected by artificial changes to straighten, deepen, narrow, or widen the original channel. B. • Same comments apply to this category as applies to 4410.4300 subp 36. For streams the shore impact zone is 50 feet and for stream restoration efforts for an existing channelized shoreland watercourse this mandatory category makes no practical sense and should be clarified to exempt impacts related to channelized/altered watercourses and should apply ONLY to shorelands on natural watercourses and exempt altered natural watercourses. 103G.005 DEFINITIONS: Subd. 13. Natural watercourse. "Natural watercourse" means a natural channel that has definable beds and banks capable of conducting confined runoff from adjacent land. C. • As with subps A and B this category is inappropriate for nonsensitive shoreland areas that are channelized watercourses. In many instances you have CRP land or in some instances RIM Reserve easement lands that would be altered with the restoration of the watercourse. In the end you will have far greater buffers and natural vegetation that exists today. Activities for nonsensitive areas in this category should be exempt for channelized shoreland watercourse areas or altered natural watercourses."

EQB response:
The proposed changes include a clarification within the rule text [proposing a permanent conversion] that this category applies to projects involving a land conversion, such as from a natural area to a residential use or industrial use. If no land conversion is involved with the project proposal, then the category would not apply. Following the rule change, this would mean that most restoration projects would not exceed this particular threshold, although a subset of projects still might, if they are part of other projects components, such as housing, certain recreational uses, or industrial uses that would involve a land conversion. This language clarification does not preclude the possibility that restoration projects may still exceed thresholds in other mandatory categories.

Comments related to M.R. part 4410.4300, subp. 37. Recreational Trails.

Relates to:
Part 4410.4300, subp. 37. Recreational Trails.

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;
Section V. Reasonableness of the amendments, pages 46-48

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Dual-notice Comment Period	I.11., 46	"...issue on line 18.5. To lessen confusion and potential conflict, we believe if you struck "newly designated" on that line it would help clear up the language. By leaving it in, it seems to imply that newly designated trails would also count towards the 25 mile threshold for a mandatory EAW, while under part B., line 17.20 – 17.25, the new rule specifically states that it doesn't count towards the 25 miles."
Dual-notice Comment Period	I.101., 248; I.105., 254; I.110., 278; I.111., 280; I.112., 282; I.113., 284; I.114., 286; I.115., 288; I.117., 291; I.118., 293; I.119., 295; I.120., 297; I.122., 300; I.124., 303; I.128., 312; I.129., 314; I.131., 317; I.132., 319; I.133., 321; I.134., 323; I.135., 325; I.137., 328; I.138., 330;	*Every proposed route or trail should undergo a mandatory environmental review.

	I.139., 332; I.140., 334; I.141., 336; I.143., 339; I.146., 343; I.148., 347; I.149., 349;	
May 31, 2019 Hearing (page 60-64)	Comment 375	"10 to 25 mile change is in direct conflict with 1982 and 2004 SONAR"
May 31, 2019 Hearing (page 60-64)	Comment 376	"To increase the length from 10 miles to 25 miles is to intentionally increase the potential risk to resources as stated by the EQB itself in the 2918 and 2004 SONARs"
May 31, 2019 Hearing (page 60-64)	Comment 378	*environmental impacts of item B. Categorically adding recreational motorized traffic to any already motorized road without first considering the existing natural resources and wildlife along it and the impacts of adding additional motorized traffic volume is not an environmentally sustainable approach to creating motorized vehicle trails.
May 31, 2019 Hearing (page 74-76)	Comment 382	"Line 17.10 of subp. 37, Recreational Trails. It says if a project listed in items A through F will be built on state-owned land. Does this also include county tax court wetlands, which are actually state lands held in trust by the county? "
May 31, 2019 Hearing (page 74-76)	Comment 383	"Definition of a trail is vague. It should be defined as this. A trail is defined by it being specifically constructed for use. Simple use by OHVs does not define a trail."
May 31, 2019 Hearing (page 74-76)	Comment 384	"Line 17:20, designating at least 25 miles of an existing trail for a new motorized recreational use other than snowmobiling. Again, invasive, nesting and hatching disruptions. This should be held to a much lower distance than 25 miles."
May 31, 2019 Hearing (page 86-92)	Comment 388	"The statement of general reasonableness given by the EQB for the current proposed changes of items A and B under recreational trails is that because the legislature has requested these changes be made three separate times to support review efficiency and streamline the environmental process they are generally reasonable."
May 31, 2019 Hearing (page 86-92)	Comment 389	"I do not agree and do not think this justifies the changes proposed in items A and B. Proposed changes in items A and B would facilitate the degradation of the environment, waters, wildlife and not protect them. This does not fulfill the spirit, intent or reason or purpose for the creation of the Minnesota Environmental Review program and the Environmental Quality Board to protect our natural resources."

May 31, 2019 Hearing	Comment 390	"I also take issue with the statement of need for these proposed changes regarding recreational trails. The stated need and desired outcome of these current proposed rule changes is to provide clarity and specificity, to reduce ambiguous and confusing application of the environmental rules. In my view, the language in item B remains vague and too broad."
May 31, 2019 Hearing	Comment 391	"What exactly compromises an existing corridor in current use by motor vehicles? Does this mean that any public roadway could be used? A public road could be defined as an existing corridor in current use by motor vehicles."
May 31, 2019 Hearing	Comment 392	"The language regarding road types in item B needs to be very specific and precise to not allow interpretation by the proposer to take advantage of this proposed vague wording and use roads that are known to be more environmentally damaging than other road types, such as all logging roads and unmaintained United States Forest Service Operational maintenance level 2 roads without requiring mandatory environmental review."
May 31, 2019 Hearing	Comment 393	"The other stated need for the current proposed changes to a mandatory rule is that changes are needed to streamline the environmental review because the majority of the EAW and the EIS categories were established in the 1980s and 1990s and do not reflect the modern regulatory system or project types."
May 31, 2019 Hearing	Comment 394	"In item B, the proposed rule changes historically established the mileage rule application with the potential to add significant unaccounted mileage to a route without an environmental review simply because the road already has motorized use."
May 31, 2019 Hearing	Comment 395	"Assumes established motorized roads have no environmental impacts and therefore should not be counted in the proposed threshold. This is not true."
May 31, 2019 Hearing	Comment 396	"To add another motorized use to a road like this with historically low traffic volume would expose these resources to increased fugitive dust, pollution and sedimentation that could have significant detrimental environmental impacts and even extricate sensitive cold water species that are pollution intolerant from streams such as brook trout."
May 31, 2019 Hearing	Comment 397	"I strongly believe that today's science in road ecology and its material environmental advocates dictate that an added motorized use to such roads now demands an environmental review to protect natural resources. Therefore, I strongly believe all mileage for a new motorized use should count towards a threshold."
May 31, 2019 Hearing	Comment 398	"I strongly feel that items A and B should remain unchanged regarding the requirements for motorized recreational trails and mandatory review. This is in direct conflict with the 2017 Minnesota statute of environmental policy's stated purpose and the stated requirement of action by state agencies in Chapter 116D."
May 31, 2019 Hearing (page 61-62)	Comment 377	"Administrative streamlining financial operation and the duration of procedural process concerns just supersedes specific established and environmentally justified environmental protection thresholds is counter to the very purpose of creating the Environmental Quality Board and the establishment of the Minnesota Environmental Policy Act."

EQB response:
The current rule change to item A. and B. is necessary to fulfill a directive by the Legislature to update environmental review rules to allow certain trails to be built or designated without requiring environmental review.

Changes to items A – B will fulfill the Legislative directive to update rule language with statutory language:

> *Minn. Laws 2015, Ch. 4, section 33. RULEMAKING; MOTORIZED TRAIL ENVIRONMENTAL REVIEW.*
> *(a) The Environmental Quality Board shall amend Minnesota Rules, chapter 4410, to allow the following without preparing a mandatory environmental assessment worksheet:*
> *(1) constructing a Recreational trails less than 25 miles long on forested or other naturally vegetated land for a recreational use;*
> *(2) adding a new motorized recreational use or a seasonal motorized recreational use to an existing motorized Recreational trails if the treadway width is not expanded as a result of the added use; and*
> *(3) designating an existing, legally constructed route, such as a logging road, for motorized Recreational trails use.*

The current changes to A. and B. will fulfill the intent of the 2015 legislation by utilizing commonly understood language for trails and motorized corridors while maintaining the integrity of the intent of the legislation—to allow trails to be constructed or designated without requiring an EAW or environmental review.

Specific Responses:
Exhibit I.11., 46:
In order for the formula of newly designated and newly constructed trails to work, "newly designated" needs to be included. A designation does not count toward the mileage total if it meets any of the specific criteria laid out in item B.

Response to comment 375, 376:
It is unknown whether the Legislature considered the wording of the 1982 and 2004 SONARs when developing the 2015 Legislation. The SONAR language referenced was used (in 1982 and 2004) to justify length-based thresholds for transmission lines, pipelines and highways. The original establishment of 10 miles as a threshold for new recreational trail development was justified as a reasonable number that had a similar relationship to the exemption size.

Response to comments I.101., 248; I.105., 254; I.110., 278; I.111., 280; I.112., 282; I.113., 284; I.114., 286; I.115., 288; I.117., 291; I.118., 293; I.119., 295; I.120., 297; I.122., 300; I.124., 303; I.128., 312; I.129., 314; I.131., 317; I.132., 319; I.133., 321; I.134., 323; I.135., 325; I.137., 328; I.138., 330; I.139., 332; I.140., 334; I.141., 336; I.143., 339; I.146., 343; I.148., 347; I.149., 349; 377; 378; 384; 388; 390; 392; 393; 394; 396; 397; 398 :

The specific reasonableness is detailed on page 46-48 of the Statement of Need and Reasonableness. It is also detailed on pages 15-16 in the "General Reasonableness" section of the Statement of Need and Reasonableness. These amendments are generally reasonable because the MN legislature has requested that these changes be made. See *Minn. Laws 2015, Ch. 4, section 33.*

Response to comment 382:
This does not include "county tax court wetlands". While not defined by Minnesota Rules 4410, as stated by the commenter, these are lands that are held in trust by the county. Therefore, it has been interpreted by RGUs that these are not considered state-owned land.

Response to comment 383:
A "trail" or "existing trail" is defined in Minnesota Rules 4410.4300, subp. 37: "For purposes of this subp., "existing trail" means an established corridor in current legal use." EQB's proposed draft rule language utilizes the phrase "existing corridor in current legal use" to align with a commonly understood phrase. The definition of an existing trail, meaning "an established corridor in current legal use" is not proposed for revisions during this rulemaking. This definition has been included in this subpart since its development (15 years). The current definition was explained in the 2004 SONAR:

> "The final sentence of this paragraph is a provision to define the meaning of "existing trail" as used in items A and B. It is intended to provide the RGU with a standard for distinguishing legitimate trails now in existence from unplanned or unauthorized tracks or pathways through forests or other lands which, although they may physically resemble legitimate trails, should not be recognized as acceptable routes for future recreational travel…"

Response to comment 391:
An existing corridor in current legal use is defined in the 2004 SONAR. This language further limits this to current legal use by motor vehicles. A public road is a possible example of an existing corridor that would be eligible for this type of exclusion.

Response to comment 392:
EQB provides support to RGUs, proposers, and citizens to ensure that the rules are interpreted consistently. While greater specificity is one goal in rulemaking, the rule must also be written broadly enough to consider a variety of situations and conditions. This proposed change will fulfill the intent of the legislative directive.

Comments related to M.R. part 4410.4400, subp. 8. Metallic Mineral Mining and Processing.

Relates to:
Part 4410.4400, subp. 8. Metallic Mineral Mining

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;
Section V. Reasonableness of the amendments, pages 51-52

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Dual-notice Comment Period	I.4., 20; I.7., 25; I.15., 53; I.15., 54; I.17., 58; I.19., 60; I.20, 61; I.125., 305;	"Failure of the Minnesota Environmental Quality Board to retain the language presently contained in 4410.4400 subp. 8 Lines 20.1 through 20.3, as is hereby requested by the North American Water Office would be an unconscionable dereliction of duty and a murderous betrayal of the public's trust in the Minnesota Environmental Quality Board to protect public health and safety."
Dual-notice Comment Period	I.27., 75	"...the Minnesota Environmental Quality Board is seeking to eliminate the monitoring of radioactive materials in mining waste. This seems to be an omission tailor-made to pave the way for the Polymet mine proposed in northern Minnesota. This rule change is being requested based on the false assertion that there are no radioactive materials in Minnesota"
May 31, 2019 Hearing (page 77)	Comment 385	"More rules must be promulgated to properly monitor and isolate radioactive materials."
June 26, 2019 Hearing (page 171-172)	Comment 429	"Under 4410.4400 subpart 8, the DNR should not be the RGU."

EQB response:
In response to concerns raised by commenters, EQB is withdrawing the proposed changes to this subp. from this rulemaking.

Comments related to M.R. part 4410.4400, subp. 18. Water Appropriations and Impoundments.

Relates to:
Part 4410.4400, subp. 18. Water appropriations and impoundments

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Post-hearing comment period	Comment 434	• "For a project that is implemented consistent with the Mediation Agreement it would be appropriate to eliminate this or exempt this category. The Mediation Agreement process the involvement of the regulatory agencies and local interests certainly takes the place of the purposes of the EAW. In addition the DNR's rigor when a Class 1, High Hazard Dam, is proposed. • These thresholds were established many years ago and since that time DNR rules and regulations have significantly changes also warranting changes to the EIS provisions. • Again consider separating the impoundments from the appropriations provisions as separate subdivisions."

EQB response:

Changes to this subpart were not proposed.

Thank you to everyone that took the time to review the proposed rule changes and submit comments for consideration in future rulemaking. All comments received that are not related to proposed changes identified in the current rulemaking have been compiled, considered and are included in the formal rulemaking record.

According to Minnesota Statute § 14.05. subd. 2. Authority to modify proposed rule. (a) An agency may modify a proposed rule in accordance with the procedures of the Administrative Procedure Act. However, an agency may not modify a proposed rule so that it is substantially different from the proposed rule in the notice of intent to adopt rules or notice of hearing.

Comments related to M.R. part 4410.4400, subp. 27. Land Conversion in Shorelands.

Relates to:
Part 4410.4400, subp. 27. Land conversion in shorelands

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Post-hearing comment period	Comment435	"This mandatory EIS category may be appropriate for sensitive shoreland areas that are lakes or public waters wetlands, however, in the RRV is has very little practical application as it relates to 80 acres or more of nonsensitive shoreland areas that are channelized rivers and streams. This type of provision can deter or be a disincentive for the restoration of altered and channelized stream and river systems back to the natural meandered and buffered conditions that enhance natural resources. These provisions should be clarified to eliminate the application to "altered natural watercourses"."

EQB response:

Changes to this subpart were not proposed.

Thank you to everyone that took the time to review the proposed rule changes and submit comments for consideration in future rulemaking. All comments received that are not related to proposed changes identified in the current rulemaking have been compiled, considered and are included in the formal rulemaking record.

According to Minnesota Statute § 14.05. subd. 2. Authority to modify proposed rule. (a) An agency may modify a proposed rule in accordance with the procedures of the Administrative Procedure Act. However, an agency may not modify a proposed rule so that it is substantially different from the proposed rule in the notice of intent to adopt rules or notice of hearing.

Comments related to M.R. part 4410.4600, subp. 15. Water Impoundments.

Relates to:
Part 4410.4600, subp. 15. Water impoundments

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Post-hearing comment period	Comment 436	"This exemption maybe redundant depending on the actions taken with respect to the mandatory categories. May also be appropriate to exempt all water impoundments, which include wetland restorations, of 1000 acres or less when done under the state and federal wetland restoration programs and those impoundment projects implemented consistent with the RRV FDR Mediation Agreement."

EQB response:

Changes to this subpart were not proposed.

Thank you to everyone that took the time to review the proposed rule changes and submit comments for consideration in future rulemaking. All comments received that are not related to proposed changes identified in the current rulemaking have been compiled, considered and are included in the formal rulemaking record.

According to Minnesota Statute § 14.05. subd. 2. Authority to modify proposed rule. (a) An agency may modify a proposed rule in accordance with the procedures of the Administrative Procedure Act. However, an agency may not modify a proposed rule so that it is substantially different from the proposed rule in the notice of intent to adopt rules or notice of hearing.

Comments related to M.R. part 4410.4600, subp. 17. Ditch Maintenance or Repair.

Relates to:
Part 4410.4600, subp. 17. Ditch maintenance or repair

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Post-hearing comment period	Comment 437	"This exemption deserves clarification as it has limitations and constraints that are not consistent with current provisions of 103E and there seems to be a 20 year provision that seems to be trying to reference provisions of the Wetland Conservation Act that applies only to wetlands. It would be appropriate to clarify this exemption to include all maintenance and repair drainage systems period. So the provision would read "Maintenance and repair of a public drainage system under 103E and maintenance and repair of a private drainage system with the limits of its original construction flow capacity." "103G.245 WORK IN PUBLIC WATERS: Subd. 2. Exceptions. A public waters work permit is not required for: (1) work in altered natural watercourses that are part of drainage systems established under chapter 103D or 103E if the work in the waters is undertaken according to chapter 103D or 103E; (2) a drainage project for a drainage system established under chapter 103E that does not substantially affect public waters; or (3) culvert restoration or replacement of the same size and elevation, if the restoration or replacement does not impact a designated trout stream.""

EQB response:
Changes to this subpart were not proposed.

Thank you to everyone that took the time to review the proposed rule changes and submit comments for consideration in future rulemaking. All comments received that are not related to proposed changes identified in the current rulemaking have been compiled, considered and are included in the formal rulemaking record.

According to Minnesota Statute § 14.05. subd. 2. Authority to modify proposed rule. (a) An agency may modify a proposed rule in accordance with the procedures of the Administrative Procedure Act. However, an agency may not modify a proposed rule so that it is substantially different from the proposed rule in the notice of intent to adopt rules or notice of hearing.

Comments related to M.R. part 4410.4600, subp. 18. Forestry.

Relates to:
Part 4410.4600, subp. 21. Construction projects

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Post-hearing comment period	Comment 440	"4410.3600 Subp. 18. B. Currently lists public and private forest management projects, other than clear-cutting or applying pesticides, involving less than 20 acres as exempt. If enforcement of MN statutes were taken seriously this would be a reasonable exemption, but projects that involve clear-cutting and applying pesticides take place on a massive scale, regularly converting (without attention from RGUs) thousands of acres of forest to field, particularly in the sandy outwash plains of central MN like the Pineland Sands Area."

EQB Response:
As discussed in the statement of Need and Reasonableness, changes to Minnesota Rules Chapter 4410.4600 subpart 18B reflect the state of Minnesota Revisor's Office recommendations to improve clarity for interpreting the rule. If you have specific information about noncompliance of Minnesota rules, please forward the information to the appropriate regulatory agency. Otherwise, your comments have been compiled, considered and are included in the formal rulemaking record.

Comments related to M.R. part 4410.4600, subp. 21. Construction Projects

Relates to:
Part 4410.4600, subp. 21. Construction projects

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Post-hearing comment period	Comment 438	**"C**. • This provision seems to be subject to significant interpretation of when O & M can be done and what constitutes "substantial" impact. If you are doing maintenance and repair to a flood damage reduction project that requires some significant improvements to ensure the long-term sustainability of the structure, who determines if that is substantial or not? It might be more appropriate to just say "Operation, maintenance, or repair work to existing authorized projects and structures is exempt." Many water resource projects constructed under authorized state and federal permits require that the projects be properly operated and maintained. **D**. • This provision seems to be missing one element of authorization in the exemption. The provision should include "maintenance and repair" in addition to "Restoration or reconstruction". It seems that this provision may be appropriate for historic buildings; however, the provision is clearly not appropriate to limit restoration and construction or maintenance and repair to water resources projects that have been lawfully permitted. In addition the permits require that the authorized projects be appropriately maintained."

EQB Response:
Changes to this subpart were not proposed.

Thank you to everyone that took the time to review the proposed rule changes and submit comments for consideration in future rulemaking. All comments received that are not related to

proposed changes identified in the current rulemaking have been compiled, considered and are included in the formal rulemaking record.

According to Minnesota Statute § 14.05. subd. 2. Authority to modify proposed rule. (a) An agency may modify a proposed rule in accordance with the procedures of the Administrative Procedure Act. However, an agency may not modify a proposed rule so that it is substantially different from the proposed rule in the notice of intent to adopt rules or notice of hearing.

Comments related to M.R. part 4410.4600, subp. 27. Recreational Trails.

Relates to:
Part 4410.4600, subp. 27. Recreational Trails.

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;
Section V. Reasonableness of the amendments, pages 57-58

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Dual-notice Comment Period	I.106., 267	"Should set a distance threshold for Railroad grade trails requiring EIS. Reads as any conversion of abandoned rail way would need one, even if very small."

EQB response:

Minnesota Rules Chapter 4410.4600 is the "Exemptions" section of Environmental Quality Board rules for Environmental Review. This section is not setting an EIS threshold, it is setting an exemption for this certain type of project for a Recreational Trail on an abandoned railway.

Comments related to a general objection to all rules M.R. part 4410

Relates to:
All rules.

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;
Section V. Reasonableness of the amendments, pages 17-59

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)—many commenters made same comment

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Dual-notice Comment Period	I.61., 130; I.64., 137; I.65., 139; I.66., 141; I.67., 143; I.70., 149; I.71., 151; I.73., 157; I.74., 159; I.74., 160; I.75., 162; I.76., 164; I.78., 168; I.89., 200; I.92., 204; I.104., 252; I.142., 337;	"I object to the proposed following rules: 4410.0500 subp.6. (RGU Selection Procedures) 4410.4300 (Mandatory EAW Categories) 4410.4400 (Mandatory EIS Categories) In addition, I question the legality of the proposed changes to 4410.4300 and 4410.4400 in regards to their compliance with existing law and court ruling"
Dual-notice Comment Period	I.12., 48	"I am specifically opposed to EQB's "Proposed Amendment to Rules Governing Environmental Review, Minnesota Rules, 4410.0200, 4410.0500, 4410.4300, 4410,4400, 410,5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600"."
Dual-notice Comment Period	I.13., 50; I.13., 51; I.36., 96; I.36., 97;	"demand that the following proposed changes be rejected" *4410.4300 & 4410.4400

	I.37., 99; I.38., 100; I.39., 101; I.41., 104; I.42., 105; I.43., 106; I.44., 107; I.45., 108; I.46., 109; I.47., 110; I.48., 111; I.49., 112; I.55., 123; I.56., 124; I.57., 125; I.58., 126; I.60., 128; I.71., 150; I.74., 159;	
Dual-notice Comment Period	I.16., 56; I.81., 178; I.116., 289; I.121., 298;	"I oppose the entire rule."
Dual-notice Comment Period	I.17., 58	"I request that in the Minnesota Environmental Quality Board's recent proposed changes to Minnesota Rules 4410.0200 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, and 4410.4600, the proposed changes to Rule 4410.4400 Subpart 8 Lines 20.1 through 20.3 must be rejected, and the original language of the rule must be retained."
Dual-notice Comment Period	I.108., 274	"Notify EQB staff and the ALJ that I plan to contest the legality of several parts of the propose rule changes. More detail on that challenge of legality with more specificity on which rules are being challenged will follow in the supplementary comments I plan to submit before the close of the comment period in February."
May 31, 2019 Hearing (page 110-114)	Comment 407	"EQB apparently wants to exempt itself from having to demonstrate exemplary improvement or achievement by the administration of its laws as prescribed by the Administrative Procedures Act, the SONAR makes no mention of whether or not the proposed changes will result in superior attainment of the objectives stated in MEPA."
May 31, 2019 (page 93-95)	Comment 399	*I would like to also echo the need for --the whole basis of this rule change is economy and efficiency. These shouldn't be the guiding principles here.

EQB response:
According to Minnesota Statute § 14.002 the legislature recognizes the important and sensitive role for administrative rules in implementing policies and programs created by the legislature. However, the legislature finds that some regulatory rules and programs have become overly prescriptive and inflexible, thereby increasing costs to the state, local governments, and the regulated community and decreasing the effectiveness of the regulatory program. Therefore, whenever feasible, state agencies must develop rules and regulatory programs that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

No additional information has been provided that indicates a violation of these procedural requirements.

Comments related to additional rule changes.

Relates to:
Additional rule changes.

Hearing Exhibit D (SONAR) discussion at:
Section IV. Introduction and statement of general need, pages 8-10 and pages 15-16;

Summary of Comments: Summary of comment (note: comments that are paraphrased are indicated with *)

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Dual-notice Comment Period	I.108., 273	*Absence of Proposed Rule Changes Citizens Have Called For: Civic Engagement, GHG Emissions, Natural Carbon Sequestration, Energy Source and Use Efficiencies
Dual-notice Comment Period	I.125.,306	"The rule of most concern to Minnesotans everywhere should be 4410.4300 subp.36.B that allows for removal of forest or natural vegetation from up to one square mile (640 acres) of land without environmental review. This archaic rule and it's assignment to small (sometimes inept) or unduly influenced LGU's has done as close to nothing as possible for the ecology of Minnesota. The idea that one square mile can be completely stripped of vegetation without dire consequences to ecology is ludicrous, and even this extremely high threshold is ignored by RGU's and large companies."
May 31, 2019 Hearing (page 94)	Comment 400	We should have mandatory EISs for oil facilities and wind facilities, because we are going to have a lot more wind facilities, as well as for Husky, and also rules for monitoring and isolation uranium. I also want to add in we should have a mandatory EIS for natural gas facilities as well.

EQB response:
Thank you to everyone that took the time to review the proposed rule changes and submit comments for consideration in future rulemaking. All comments received that are not related to proposed changes identified in the current rulemaking have been compiled, considered and are included in the formal rulemaking record.

According to Minnesota Statute § 14.05. subd. 2. Authority to modify proposed rule. (a) An agency may modify a proposed rule in accordance with the procedures of the Administrative Procedure Act. However, an agency may not modify a proposed rule so that it is substantially different from the proposed rule in the notice of intent to adopt rules or notice of hearing.

Comments related to process:

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
Dual-notice Comment Period	I.6., 24; I.36., 98; I.37., 99; I.38., 100; I.39., 101; I.41., 104; I.42., 105; I.43., 106; I.44., 107; I.45., 108; I.46., 109; I.47., 110; I.48., 111; I.49., 112; I.55., 123; I.56., 124; I.57., 125; I.58., 126; I.60., 128; I.71., 150;	"There seems to be an inconsistency between the language in the Notice and in Admin rules for comment and requesting hearings when legality of a rule may be in question. Your Notice seems to require that any comment addressing legality of a rule change must be stated as such." *questions the legality of the proposed changes
Dual-notice Comment Period	1.2., 18	"Changing or making new rules should always be made to the public. The biggest problem with the way it is set up is that most of the time the rural population feel like we have no choice. Everything is done in St. Paul!"
May 31, 2019 Hearing	Comment 365	Purpose of advisory panel is to review the proposed rules ahead of formal rulemaking process
May 31, 2019 Hearing (page 96)	Comment 401	When I read through the SONAR and I clicked on the links, which you conveniently provided to the statutes you were citing, I agree with you -- I saw on the slide that there was one statute about recreational trails, there was another statute about Silica Sand and then you cited 2015 special statute -- special session law. And then when I clicked on that, I noticed that it was an appropriation rather than a statute citation. What is the wording in connection with a one-time appropriation? Does that convey the same power as the statute law? Is that codified in law?

May 31, 2019 Hearing (page 97)	Comment 402	How does that apply in 2019 when it was a 2015 appropriation? Are we running biennium, so presumably that would apply to 2016 and 2017, but it wouldn't have the force of law now? So I questioned the underlying basis for this concept of we need to streamline environmental review. Because it's not based soundly in statute. Or at least it wasn't documented in statute in the SONAR.

EQB response:

Thank you to everyone that took the time to review the proposed rule changes and submit comments for consideration in future rulemaking. All comments received that are not related to proposed changes identified in the current rulemaking have been compiled, considered and are included in the formal rulemaking record.

According to Minnesota Statute § 14.05. subd. 2. Authority to modify proposed rule. (a) An agency may modify a proposed rule in accordance with the procedures of the Administrative Procedure Act. However, an agency may not modify a proposed rule so that it is substantially different from the proposed rule in the notice of intent to adopt rules or notice of hearing.

Specific Responses:

Response to comments I.6., 24; I.36., 98; I.37., 99; I.38., 100; I.39., 101; I.41., 104; I.42., 105; I.43., 106; I.44., 107; I.45., 108; I.46., 109; I.47., 110; I.48., 111; I.49., 112; I.55., 123; I.56., 124; I.57., 125; I.58., 126; I.60., 128; I.71., 150: EQB understands this comment to be referring to the following statement in the "Notice of Additional Hearing June 26, 2019 5:30pm," that was published on May 20, 2019: "Any comments that you have about the legality of the proposed rules must also be made during this comment period." This statement was intended to encourage commenters to submit all comments they have on the proposed rules, including comments about the legality of the proposed rules, during the open comment period. The statement was not intended to require comments to be labeled or categorized by commenters when submitting their comments.

Response to comments 18 & 24:

EQB followed the Administrative Procedure Act (APA), Minnesota Statutes § Chapter 14. with this rulemaking.

Response to comment 365:
Minnesota Statutes § 14.101, subdivision 2 states, "Each agency may also appoint committees to comment, before publication of a notice of intent to adopt or a notice of hearing, on the subject matter of a possible rulemaking under active consideration within the agency." The Silica Sand Rule Advisory Panel met from January 2014 to February 2015 and discussed rule subjects related to silica sand mining, processing and storage throughout these meetings. More information can be found here: https://www.eqb.state.mn.us/content/silica-sand-rule-advisory-panel

Response to comments 401-402: from the SONAR page 15 and 16:

The Board's statutory authority to adopt the rule amendments is given in the Minnesota Environmental Policy Act, Minn. Stat. 116D.04, subdivisions 2a(b) and 5a (Exhibit #4) and Minn. Stat. 116C.04 (Exhibit #4). Under these provisions, the Board has the necessary statutory authority to adopt the proposed rules amendments. In particular, Minn. Stat. 116D.04, subdivision 2a(b) (Exhibit #4) directs the Board to establish mandatory categories for EAWs, EISs and exemptions by rule.

Many of the proposed rule amendments are technical and housekeeping changes to the existing rules, which reflect the changes to corresponding Minnesota rules and statutes. The proposed rule amendments include updates to the thresholds in EAW and EIS categories to reflect the EQB's experience in applying the process. Rule updates are needed to keep the rules relevant and more easily understood by project proposers, RGUs and citizens.

The need for these amendments is further supported by the 2015 Minnesota Legislature which set aside funding for EQB to "streamline the environmental review." There is a need to provide consistency with other state rules and statutes to reduce delay and confusion for project proposers, RGUs and the public by clearly establishing whether the environmental review rules must be applied.

Furthermore, the proposed changes need to address updates to the definitions and project specific terminology to better reflect changes in the corresponding regulatory programs. These definitions and terms are used by project proposers, RGUs and the public while working on environmental review. The proposed amendments are needed to provide clear and consistent rules that will clarify the environmental review process.

General Comments

Comment Period	Exhibit, Comment #	Summary of comment (note: comments that are paraphrased are indicated with *)
May 31, 2019 Hearing (pages 51-53)	Comment 372	*a. WQ stds. for Fond Du Lac are not in the SONAR b. 1854 Treaty isn't in SONAR
May 31, 2019 Hearing (pages 56-60)	Comment 374	*a. EQB doesn't have any authority to make decisions on ceded or reservation lands b. You need to speak to the people not elected officials
May 31, 2019 Hearing (page 61-62)	Comment 377	"Administrative streamlining financial operation and the duration of procedural process concerns just supersedes specific established and environmentally justified environmental protection thresholds is counter to the very purpose of creating the Environmental Quality Board and the establishment of the Minnesota Environmental Policy Act."
June 26, 2019 Hearing	Comment 426	*• Request in rule would be that fossil fuel infrastructure be given the stricter level of environmental review possible and that climate change be central to any aspect of that review • Would urge that whatever rules are made regarding expansion of petroleum refineries, oil and natural gas pipelines, hazardous materials and so on, that those have central to them climate considerations. • When residential development is considered, that climate is central to that. • Suggest that we move towards clarity of what aspects of this Board's responsibility that have impacts on climate and that those are vividly illustrated in the rules
June 26, 2019 Hearing	Comment 427	*• Want to support the need for an EIS sooner, rather than moving projects from an EIS review to an EAW review. • Projects like expansion of petroleum refineries, oil and gas pipeline projects, expansions of hazardous material storage sites should get EAWs • There should be more projects that require an EIS review
June 26, 2019 Hearing	Comment 428	*• Need mandatory EISs for more categories of full projects with full considerations of climate impacts • Any oil or gas line projects should be required to prepare an EIS • Appreciate the rollback of the proposed rule changes for pipelines • New information has come forward since the start of the rulemaking process, which means we need more scrutiny on the fossil fuel industry: o The superior refinery explosion showing dangers of hydrogen fluoride even in a relatively small refinery o Recent climate change data that shows we have 11 years to transition all fossil fuels.

EQB Response to Comments:

Response to comment 372: The types of projects subject to the Minnesota Environment Policy Act's (MEPA) environmental review requirements are generally referred to as the mandatory EAW categories and mandatory EIS categories. This rulemaking amends rules governing mandatory EAW categories and mandatory EIS categories, definitions to support those categories, and responsible governmental unit (RGU) determinations. The lists of projects that are exempt for MEPA's environmental review requirements are referred to as "exemptions categories" or sometimes just "exemptions," and this rulemaking also amends rules governing the exemption categories. The Board's statutory authority to adopt the rule amendments is given in MEPA, Minn. Stat. § 116D.04, subdivisions 2a(b) and 5a and Minn. Stat. § 116C.04. Based on the purpose, statutory authority, and substance of this rulemaking, the topics of water quality standards for Fond du Lac and the 1854 Treaty are outside the scope of this rulemaking.

Response to comment 374: Changes that are proposed in this rulemaking would apply to projects proposed on ceded lands that are subject to requirements in Minnesota Rules Chapter 4410. However, they do not apply to projects that are proposed on reservation lands.

EQB's statutory authority to adopt the rule amendments is given in MEPA, Minn. Stat. § 116D.04, subdivisions 2a(b) and 5a and Minn. Stat. § 116C.04. EQB solicited input from all interested persons in a variety of ways, including requests for comments published in the State Register on July 22, 2013; November 9, 2015; and October 24, 2016; and hearings held on May 31, 2019 and June 26, 2019. EQB additionally hosted informational meetings and open houses to notify interested parties about the draft rules and solicit their input on rule language.

Response to comments 426, 427, 428: Thank you to everyone that took the time to review the proposed rule changes and submit comments for consideration in future rulemaking. All comments received that are not related to proposed changes identified in the current rulemaking have been compiled, considered and are included in the formal rulemaking record.

According to Minnesota Statute § 14.05. subd. 2. Authority to modify proposed rule. (a) An agency may modify a proposed rule in accordance with the procedures of the Administrative Procedure Act. However, an agency may not modify a proposed rule so that it is substantially different from the proposed rule in the notice of intent to adopt rules or notice of hearing.