



**Environmental Quality Board**  
**Mandatory Categories Rulemaking**  
**Preliminary Rule**

**Minnesota Rule Chapter 4410.4300, Mandatory EAW Categories**

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The proposed changes to Minnesota Rules 4410.4300 herein are preliminary.

The Environmental Quality Board (EQB) staff have made the preliminarily proposed changes available for public comment. For more information on how to comment and the Mandatory Categories Rulemaking, please visit [EQB Mandatory Categories Rulemaking](#) webpage.

The preliminary rules are formatted as such:

- ~~Strikethrough~~ indicates a deletion
- Underline indicates new language
- **DISCUSSION** boxes follow the proposed rule changes and provide a brief description of the purpose of the deletion or addition of rule language
- Footnotes are intended to assist the reader in the preliminary rules and will not be included in the file rule

PRELIMINARY

## 4410.4300 MANDATORY EAW CATEGORIES.

### Subpart 1. Threshold test.

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

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

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

### Subp. 2. Nuclear fuels and nuclear waste.

Items A to F designate the RGU for the type of project listed:

A. For construction or expansion of a facility for the storage of high level nuclear waste, other than an independent spent-fuel storage installation, the EQB shall be the RGU.

B. For construction or expansion of a facility for the storage of low level nuclear waste for one year or longer, the MDH shall be the RGU.

C. For expansion of a high level nuclear waste disposal site, the EQB shall be the RGU.

D. For expansion of a low level nuclear waste disposal site, the MDH shall be the RGU.

E. For expansion of an away-from-reactor facility for temporary storage of spent nuclear fuel, the EQB shall be the RGU.

F. For construction or expansion of an on-site pool for temporary storage of spent nuclear fuel, the EQB shall be the RGU.

### DISCUSSION: Subp. 2. Nuclear fuels and nuclear waste.

Change clarifies that for a specific type of storage facility for high level nuclear waste – an independent spent-fuel storage installation – the Minnesota Legislature has directed that the Minnesota Department of Commerce prepare an environmental impact statement in Minnesota Statute 116C.83.

### Subp. 3. Electric generating facilities.

Items A and B designate the RGU for the type of project listed:

A. For construction of an electric power generating plant and associated facilities designed for or capable of operating at a capacity of between 25 megawatts or more and less than 50 megawatts and for which an air permit from the MPCA is required, the MPCA shall be the RGU. ~~and 50 megawatts, the EQB shall be the RGU.~~

B. For construction of an electric power generating plants and associated facilities designed for and capable of operating at a capacity of 25 megawatts or more and less than 50 megawatts and for which an air permit from the MPCA is not required ~~or more~~, the PUC shall be the RGU. Environmental review shall be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.

48 **DISCUSSION: Subp. 3. Electric generating facilities.**

49 Changes remove the EQB as the RGU for electric power generating plants with a capacity of between 25 and 50  
50 megawatts (MW) and replaces the EQB with the PCA or the PUC. This change aligns the environmental review with the  
51 agency with the greatest permitting or approval authority for the project.

52  
53 The replacement of the EQB as RGU with the PCA and PUC eliminates the need for the EQB to designate an RGU on a  
54 project-by-project basis.

55 **Subp. 4. Petroleum refineries.**

56 For expansion of an existing petroleum refinery facility (as defined in Minnesota Statutes 115C.02, subp. 10a)<sup>1</sup> that  
57 increases its capacity by 10,000 or more barrels per day, the PCA shall be the RGU.

58 **DISCUSSION: Subp. 4. Petroleum refineries.**

59 Insert definition for greater specificity.

60 **Subp. 5. Fuel conversion facilities.**

61 Items A and B designate the RGU for the type of project listed:

- 62
- 63 A. For construction of a facility (as defined in Minnesota Rules 7855.0010)<sup>2</sup> for the conversion of coal, peat, or  
64 biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 25,000 dry tons or more  
65 per year of input, the PCA shall be the RGU.
- 66
- 67 B. For construction or expansion of a facility (as defined in Minnesota Rules 7855.0010)<sup>3</sup> for the production of  
68 alcohol fuels which would have or would increase its capacity by 5,000,000 or more gallons per year of alcohol  
69 produced, the PCA shall be the RGU.
- 70
- 71 C. A mandatory environmental assessment worksheet shall not be required for the expansion of an ethanol plant, as  
72 defined in Minn. Stat. 41A.09, subdivision 2a, paragraph b, or the conversion of an ethanol plant to a biobutanol  
73 facility (as defined in Minnesota Laws 2016 Chapter 189, Article 2, Section 15<sup>4</sup>) or the expansion of a biobutanol  
74 facility, based on the capacity of the expanded or converted facility to produce alcohol fuel, but must be required  
75 if the ethanol plant or biobutanol facility meets or exceeds thresholds of other categories of actions for which  
76 environmental assessment worksheets must be prepared

77 **DISCUSSION: Subp. 5. Fuel conversion facilities.**

78 Inserting definitions in items A and B for greater specificity. The new language in item C is the result of a change in  
79 Minn. Stat. 116D.04, Subd. 2a (a).

80  
81 “(a) A mandatory environmental assessment worksheet shall not be required for the expansion of an ethanol plant, as  
82 defined in section 41A.09, subdivision 2a, paragraph (b), or the conversion of an ethanol plant to a biobutanol facility or  
83 the expansion of a biobutanol facility as defined in section 41A.15, subdivision 1a, based on the capacity of the expanded  
84 or converted facility to produce alcohol fuel, but must be required if the ethanol plant or biobutanol facility meets or  
85 exceeds thresholds of other categories of actions for which environmental assessment worksheets must be prepared. The

<sup>1</sup> Subd. 10a. Petroleum refinery. "Petroleum refinery" means a facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oil, lubricants, or other products through distillation of petroleum or through redistillation, cracking, or reforming of unfinished petroleum derivatives. "Petroleum refinery" includes fluid catalytic cracking unit catalyst regenerators, fluid catalytic cracking unit incinerator-waste heat boilers, fuel gas combustion devices, and indirect heating equipment associated with the refinery.

<sup>2</sup> & <sup>4</sup> Subp. 16. Fuel conversion facility. "Fuel conversion facility" means any facility intended to convert coal, peat, wood, or any other material, excepting fissile, fertile, or fissionable nuclear material, into another combustible fuel and having the capacity to process 22.7 metric tons (25 tons) of the material per hour at its peak capacity. A fuel conversion facility shall include any storage facility needed for operation of the facility at the design capacity. A coal-cleaning or coal-agglomerating facility shall not be considered a fuel conversion facility, unless its operation causes a change in the molecular structure of the input coal.

<sup>4</sup>Subd. 2d. Biobutanol facility. "Biobutanol facility" means a facility at which biobutanol is produced.

responsible governmental unit for an ethanol plant or biobutanol facility project for which an environmental assessment worksheet is prepared shall be the state agency with the greatest responsibility for supervising or approving the project as a whole.”

### Subp. 6. Transmission lines.

~~For construction of a transmission line at a new location with a nominal capacity of between 70 kilovolts and 100 kilovolts with 20 or more miles of its length in Minnesota, the EQB shall be the RGU.~~ For transmission lines and associated facilities (as defined in Minnesota Rules Chapter 7850.1000) designed for and capable of operating at a nominal voltage of 100 kilovolts or more, ~~the PUC shall be the RGU.~~ Environmental review shall be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.

### DISCUSSION: Subp. 6. Transmission lines.

Deletion to align rule language with rule application. Currently voltages between 70 and 100 kV are not utilized for transmission lines in Minnesota. Transmission lines with a nominal capacity of 100 kV and greater have environmental review conducted according to Minnesota Statute 216E and Minnesota Rule Chapter 7850.

### Subp. 7. Pipelines.

Items A to D designate the RGU for the type of project listed:

A. For routing of a pipeline, greater than six inches in diameter and having more than 0.75 miles of its length in Minnesota, used for the transportation of coal, crude petroleum fuels, or oil or their derivatives, the EQB shall be the RGU.

B. For the construction of a pipeline for distribution of natural or synthetic gas under a license, permit, right, or franchise that has been granted by the municipality under authority of Minnesota Statutes, section 216B.36, designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than:

- (1) five miles if the pipeline will occupy streets, highways, and other public property; or
- (2) 0.75 miles if the pipeline will occupy private property; the EQB or the municipality is the RGU.

C. For construction of a pipeline to transport natural or synthetic gas subject to regulation under the federal Natural Gas Act, United States Code, title 15, section 717, et. seq., designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than:

- (1) five miles if the pipeline will be constructed and operated within an existing right-of-way; or
- (2) 0.75 miles if construction or operation will require new temporary or permanent right-of-way;

the EQB is the RGU. This item shall not apply to the extent that the application is expressly preempted by federal law, or under specific circumstances when an actual conflict exists with applicable federal law.

D. For construction of a pipeline to convey natural or synthetic gas that is not subject to regulation under the federal Natural Gas Act, United States Code, title 15, section 717, et seq.; or to a license, permit, right, or franchise that has been granted by a municipality under authority of Minnesota Statutes, section 216B.36; designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than 0.75 miles, the EQB is the RGU.

Items A to D do not apply to repair or replacement of an existing pipeline within an existing right-of-way or to a pipeline located entirely within a refining, storage, or manufacturing facility.

132 **Subp. 8. Transfer facilities.**

133 Items A and B designate the RGU for the type of project listed:

- 134
- 135 | A. For construction of a transfer facility designed for or capable of transferring 300 tons or more of coal per hour or
- 136 | with an annual throughput of 500,000 tons of coal from one mode of transportation to a similar or different mode
- 137 | of transportation; or the expansion of an existing facility by these respective amounts, the PCA shall be the RGU.
- 138
- 139 | B. For construction of a new transfer facility or the expansion by 50 percent or more of an existing facility for the
- 140 | bulk transfer of hazardous materials with the capacity of 10,000 or more gallons per transfer, if the facility is
- 141 | located in a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers district
- 142 | Minnesota River Project Riverbend area, or the Mississippi headwaters area, the PCA shall be the RGU.

143 **DISCUSSION: Subp. 8. Transfer facilities.**

144 Align rule text with category heading for greater specificity.

145 **Subp. 9. Underground storage.**

146 Items A and B designate the RGU for the type of project listed:

- 147
- 148 | A. For expansion of an underground storage facility for gases or liquids that requires a permit, pursuant to Minnesota
- 149 | Statutes, section 103I.681, subdivision 1, paragraph (a), the DNR shall be the RGU.
- 150
- 151 | B. For expansion of an underground storage facility for gases or liquids, using naturally occurring rock materials,
- 152 | that requires a permit pursuant to Minnesota Statutes, section 103I.681, subdivision 1, paragraph (b), the DNR
- 153 | shall be the RGU.

154 **Subp. 10. Storage facilities.**

155 | Items A to FC designate the RGU for the type of project listed:

- 156
- 157 | A. For construction of a facility designed for or capable of storing more than 7,500 tons of coal or with an annual
- 158 | throughput of more than 125,000 tons of coal; or the expansion of an existing facility by these respective
- 159 | amounts, the PCA shall be the RGU.
- 160
- 161 | B. For construction of a new major facility (as defined in Minnesota Rules Chapter 7151.1200, 22<sup>5</sup>) that results in
- 162 | storage of 1,000,000 gallons or more of hazardous materials (as defined in Federal Regulations, title 49, section
- 163 | 172.101), on a single site designed for or capable of storing 1,000,000 gallons or more of hazardous materials, the
- 164 | PCA shall be the RGU.
- 165
- 166 | C. For expansion of an existing major facility (as defined in Minnesota Rules Chapter 7151.1200 Subp. 22<sup>6</sup>) with a
- 167 | current operating capacity of 1,000,000 gallons or more of hazardous materials (as defined in Federal
- 168 | Regulations, title 49, section 172.101) and the expansion adds a net increase of 1,000,000 gallons or more of
- 169 | hazardous materials, the PCA shall be the RGU.
- 170
- 171 | B-D. For expansion of a facility (Minnesota Rules 7151.1200 Subp. 14a) that has less than a 1,000,000 in total
- 172 | storage capacity that results in 1,000,000 gallons or more, the PCA shall be the RGU.
- 173

<sup>5</sup> Subp. 22. Major facility. "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.

<sup>6</sup> Subp. 22. Major facility. "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.

174 E. For construction of a facility designed for or capable of storing on a single site 100,000 gallons or more of  
175 liquefied natural gas (as defined by Minn. Stat. 299F.56, Subd. 14<sup>7</sup>), synthetic gas (as defined by Minn. Stat.  
176 216B, Subd. 6b<sup>8</sup>), or anhydrous ammonia, the PCA-PUC shall be the RGU.

177  
178 F. For construction of a facility designed for or capable of storing on a single site 100,000 gallons or more of  
179 anhydrous ammonia, the MDA shall be the RGU.

180  
181 In applying items E and F, if a proposed facility designed for or capable of storing on a single site 100,000 gallon or more  
182 of a combination of liquefied natural gas, synthetic gas, or anhydrous ammonia, the PCA shall be the RGU.

### 183 **DISCUSSION: Subp. 10. Storage facilities.**

184 Inserting definitions found in Minnesota Rules and Statutes as well as Federal laws throughout this category will add  
185 specificity and align with statutory changes. A change to the RGU aligns the environmental review with the agency with  
186 the greatest permitting or approval authority for the project.

### 187 **Subp. 11. Metallic mineral mining and processing.**

188 Items A to C designate the RGU for the type of project listed:

- 189  
190 A. For mineral deposit evaluation of metallic mineral deposits other than natural iron ore and taconite, the DNR shall  
191 be the RGU.  
192  
193 B. For expansion of a stockpile, tailings basin, or mine by 320 or more acres, the DNR shall be the RGU.  
194  
195 C. For expansion of a metallic mineral plant processing facility that is capable of increasing production by 25 percent  
196 per year or more, provided that increase is in excess of 1,000,000 tons per year in the case of facilities for  
197 processing natural iron ore or taconite, the DNR shall be the RGU.

### 198 **Subp. 12. Nonmetallic mineral mining.**

199 Items A to C designate the RGU for the type of project listed:

- 200  
201 A. For development of a facility for the extraction or mining of peat which will result in the excavation of 160 or  
202 more acres of land during its existence, the DNR shall be the RGU.  
203  
204 B. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals,  
205 other than peat, which will excavate 40 or more acres of land to a mean depth of ten feet or more during its  
206 existence, the local government unit shall be the RGU.  
207  
208 C. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals,  
209 other than peat, which will excavate 20 or more acres of forested or other naturally vegetated land in a sensitive  
210 shoreland area or 40 acres of forested or other naturally vegetated land in a nonsensitive shoreland area, the local  
211 governmental unit shall be the RGU.

### 212 **Subp. 13. Paper or pulp processing mills.**

213 For expansion of an existing paper or pulp processing facility that will increase its production capacity by 50 percent or  
214 more, the PCA shall be the RGU.

<sup>7</sup> Subd. 14. **Liquefied natural gas.** "Liquefied natural gas" means natural gas or synthetic gas having methane (CH<sub>4</sub>) as its major constituent that has been changed to a liquid or semisolid.

<sup>8</sup> "Synthetic gas" means flammable gas created from (1) gaseous, liquid, or solid hydrocarbons, or (2) other organic or inorganic matter. Synthetic gas includes hydrogen or methane produced through processing, but does not include propane.

215 **Subp. 14. Industrial, commercial, and institutional facilities.**

216 Items A and B designate the RGU for the type of project listed, except as provided in items C and D:

- 217  
218 A. For construction of a new or expansion of an existing warehousing or light industrial facility equal to or in excess  
219 of ~~the 600,000 square feet~~~~following thresholds~~, expressed as gross floor space, the local governmental unit shall  
220 be the RGU.:

- 221  
222 ~~(1) unincorporated area, 150,000;~~  
223 ~~(2) third or fourth class city, 300,000;~~  
224 ~~(3) second class city, 450,000;~~  
225 ~~(4) first class city, 600,000.~~

- 226  
227 B. For construction of a new or expansion of an existing industrial, commercial, or institutional facility, other than a  
228 warehousing or light industrial facility, equal to or in excess of ~~the 400,000 square feet~~~~following thresholds~~,  
229 expressed as gross floor space, the local government unit shall be the RGU.:

- 230  
231 ~~(1) unincorporated area, 100,000 square feet;~~  
232 ~~(2) third or fourth class city, 200,000 square feet;~~  
233 ~~(3) second class city, 300,000 square feet;~~  
234 ~~(4) first class city, 400,000 square feet.~~

- 235  
236 C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if  
237 there are mandatory categories specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400,  
238 subparts 2 to 10, 12, 13, 15, or 17, for two or more of the components, regardless of whether the project in  
239 question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be  
240 compared to the thresholds specified in items A and B to determine the need for an EAW. If the project meets or  
241 exceeds the thresholds specified in any other subpart as well as that of item A or B, the RGU must be determined  
242 as provided in part 4410.0500, subpart 1.

- 243  
244 D. This subpart does not apply to projects for which there is a single mandatory category specified in subparts 2 to  
245 13, 16, 17, 20, 23, 25, 29, or 34, or part 4410.4400, subparts 2 to 10, 12, 13, 17, or 22, regardless of whether the  
246 project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an  
247 EAW must be determined by comparison of the project to the threshold specified in the applicable subpart, and  
248 the RGU must be the governmental unit assigned by that subpart.

249 **DISCUSSION: Subp. 14. Industrial, commercial, and institutional facilities.**

250 Deletion reflects concerns with the threshold change corresponding to the size of the city. Adding “square feet” as the unit  
251 of measurement in part A as it was incidentally omitted from previous rulemaking.

252 **Subp. 15. Air pollution.**

253 ~~Items A and B designate the RGU for the type of project listed.~~

254  
255 For construction of a stationary source facility that:

- 256  
257 A. ~~generates 250 tons or more per year or~~ modification of a stationary source facility that increases generation by  
258 250 tons or more per year of any single air pollutant, ~~other than those air pollutants described in item B, after~~  
259 ~~installation of air pollution control equipment~~, the PCA shall be the RGU.

- 260  
261 ~~B. For construction of a stationary source facility that generates a combined 100,000 tons or more per year or~~  
262 ~~modification of a stationary source facility that increases generation by a combined 100,000 tons or more per year~~  
263 ~~of greenhouse gas emissions, after installation of air pollution control equipment, expressed as carbon dioxide~~

264 equivalents, the PCA shall be the RGU. For purposes of this subpart, "greenhouse gases" include carbon dioxide,  
265 methane, nitrous oxide, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride, and their  
266 combined carbon dioxide equivalents shall be computed by multiplying the mass amount of emissions for each of  
267 the six greenhouse gases in the pollutant GHGs by the gas's associated global warming potential published in  
268 Table A-1 to subpart A of Code of Federal Regulations, title 40, part 98, Global Warming Potentials, as amended,  
269 and summing the resultant value for each.

### 270 **DISCUSSION: Subp. 6. Air pollution.**

271 The deletion brings state environmental review rules in line with federal air permitting rules for greenhouse gases  
272 (GHGs). Rule 4410.4300, subpart 15 (B) was adopted in September of 2011 to better align state rules with the U.S.  
273 Environmental Protection Agency (EPA) rules that required a Prevention of Significant Deterioration (PSD) permit when  
274 GHG emissions exceeded 100 tons. Rule 4410.4300, subp. 15(B) conformed to EPA's GHG "Tailoring Rule". However,  
275 in 2014, the Supreme Court invalidated the requirement for a PSD permit when GHG emissions were the only air  
276 pollutants above PSD thresholds, even the "tailored" thresholds for GHGs.

### 277 **Subp. 16. Hazardous waste.**

278 Items A to D designate the RGU for the type of project listed:

- 279
- 280 A. For construction or expansion of a hazardous waste (as defined in Minnesota Statutes 116.06, Subd. 11<sup>9</sup>) disposal  
281 facility (as defined in Minnesota Statutes 115A.03, Subd. 10<sup>10</sup>), the PCA shall be the RGU.
- 282
- 283 B. For construction of a hazardous waste storage (as defined by Minnesota Rules 7045.0020, subpart 87<sup>11</sup>) or  
284 treatment (as defined by Minnesota Rules 7045.0020, subpart 97<sup>12</sup>) processing facility, that is generating and/or  
285 receiving 1,000 kilograms or more per month of hazardous waste or 1 kilogram or more per month of acute  
286 hazardous waste (Minnesota Rules 7045.0020, Subp. 3a) per month with a capacity of 1,000 or more kilograms  
287 per month, the PCA shall be the RGU.
- 288
- 289 C. For expansion of a hazardous waste processing storage (as defined by Minnesota Rules 7045.0020, subpart 87) or  
290 treatment (as defined by Minnesota Rules 7045.0020, subpart 97) facility that increases its capacity by ten percent  
291 or more, the PCA shall be the RGU.
- 292
- 293 D. For construction or expansion of a facility that sells hazardous waste storage services to generators other than the  
294 owner and operator of the facility or construction of a facility at which a generator's own hazardous wastes will be  
295 stored for a time period in excess of 90 days, if the facility is located in a water-related land use management  
296 district, or in an area characterized by soluble bedrock, the PCA shall be the RGU.

### 297 **DISCUSSION: Subp. 16. Hazardous waste.**

298 For clarification and consistency, insertions clarify the language in the existing rule regarding thresholds for mandatory  
299 EAWs for hazardous waste facilities.

<sup>9</sup> Subd. 11. Hazardous waste. "Hazardous waste" means any refuse, sludge, or other waste material or combinations of refuse, sludge or other waste materials in solid, semisolid, liquid, or contained gaseous form which because of its quantity, concentration, or chemical, physical, or infectious characteristics may (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Categories of hazardous waste materials include, but are not limited to: explosives, flammables, oxidizers, poisons, irritants, and corrosives. Hazardous waste does not include source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.

<sup>10</sup> Subd. 10. Disposal facility. "Disposal facility" means a waste facility permitted by the agency that is designed or operated for the purpose of disposing of waste on or in the land, together with any appurtenant facilities needed to process waste for disposal or transfer to another waste facility.

<sup>11</sup> Subp. 87. Storage. "Storage" means the holding of hazardous waste for a temporary period at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

<sup>12</sup> Subp. 97. Treatment. "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste, or so as to recover energy or material resources from the waste, or so as to render the waste nonhazardous, or less hazardous, safer to transport, store, or dispose of, or amenable for recovery, amenable for storage, or reduced in volume.

300 **Subp. 17. Solid waste.**

301 Items A to G designate the RGU for the type of project listed:

- 302
- 303 A. For construction or expansion of a mixed municipal solid waste disposal facility (as defined by Minnesota Rules  
304 7035.0300, subpart 6<sup>13</sup>) for up to 100,000 cubic yards of waste fill/air space per year, the PCA is the RGU.
- 305
- 306 B. For expansion by 25 percent or more of previous permitted capacity of a mixed municipal solid waste disposal  
307 facility for up to 100,000 cubic yards of waste fill/air space per year, the PCA is the RGU.
- 308
- 309 C. For construction or expansion of a mixed municipal solid waste transfer station for 300,000 or more cubic yards  
310 per year, the PCA is the RGU.
- 311
- 312 D. For construction or expansion of a mixed municipal solid waste energy recovery facility as defined by Minnesota  
313 Rules 7035.0300, subpart 35<sup>14</sup> or incinerator, or the utilization of an existing facility for the combustion of mixed  
314 municipal solid waste or refuse-derived fuel (as defined by Minnesota Rules 7035.0300, subpart 91<sup>15</sup>), with a  
315 permitted capacity of 30 or more tons per day of input, the PCA is the RGU.
- 316
- 317 E. For construction or expansion of a mixed municipal solid waste compost facility (as defined by Minnesota Rules  
318 7035.0300, subpart 19<sup>16</sup>) or a refuse-derived fuel production facility (as defined by Minnesota Rules 7035.0300,  
319 subpart 91<sup>17</sup>) with a permitted capacity of 50 or more tons per day of input, the PCA is the RGU.
- 320
- 321 F. For expansion by at least ten percent ~~but less than 25 percent~~ of previous permitted capacity of a mixed municipal  
322 solid waste disposal facility for 100,000 cubic yards or more of waste fill/air space per year, the PCA is the RGU.
- 323
- 324 G. For construction or expansion of a mixed municipal solid waste energy recovery facility ash landfill receiving ash  
325 from an incinerator that burns refuse-derived fuel or mixed municipal solid waste, the PCA is the RGU.

326 **DISCUSSION - Subp. 17. Solid waste.**

327 Proposed changes bring the EQB mandatory category language up to date with current solid waste permit terminology.

328 **Subp. 18. Wastewater systems.**

329 Items A to C designate the RGU for the type of project listed:

- 330
- 331 A. For expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in  
332 design average daily flow of any part of that system by 1,000,000 gallons per day or more if the discharge is to a  
333 wastewater treatment facility with a capacity less than 20,000,000 gallons per day or for expansion, modification,  
334 or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of  
335 any part of that system by 2,000,000 gallons per day or more if the discharge is to a wastewater treatment facility  
336 with the capacity of 20,000,000 gallons or greater, the PCA shall be the RGU.
- 337

<sup>13</sup> Subp. 64. Mixed municipal solid waste land disposal facility. "Mixed municipal solid waste land disposal facility" means a site used for the disposal of mixed municipal solid waste in or on the land.

<sup>14</sup> Subp. 35. Energy recovery facility. "Energy recovery facility" means a facility used to capture the heat value of solid waste for conversion to steam, electricity, or immediate heat by direct combustion or by first converting it into an intermediate fuel product. Municipal solid waste combustors are included in the definition of energy recovery facilities.

<sup>15</sup> Subp. 91. Refuse-derived fuel. "Refuse-derived fuel" means the product resulting from techniques or processes used to prepare solid waste by shredding, sorting, or compacting for use as an energy source.

<sup>16</sup> Subp. 19. Compost facility. "Compost facility" means a site used to compost or cocompost solid waste, including all structures or processing equipment used to control drainage, collect and treat leachate, and storage areas for the incoming waste, the final product, and residuals resulting from the composting process.

<sup>17</sup> Subp. 91. Refuse-derived fuel. "Refuse-derived fuel" means the product resulting from techniques or processes used to prepare solid waste by shredding, sorting, or compacting for use as an energy source.

- 338 | B. For expansion or ~~reconstruction~~ modification of an existing municipal or domestic wastewater treatment facility  
339 | which results in an increase by 50 percent or more and by at least 200,000 gallons per day of its average wet  
340 | weather design flow capacity, or construction of a new municipal or domestic wastewater treatment facility with  
341 | an average wet weather design flow capacity of 200,000 gallons per day or more, the PCA shall be the RGU.  
342 |  
343 | C. For expansion or ~~reconstruction~~ modification of an existing industrial process wastewater treatment facility which  
344 | increases its design flow capacity by 50 percent or more and by at least 200,000 gallons per day or more, or  
345 | construction of a new industrial process wastewater treatment facility with a design flow capacity of 200,000  
346 | gallons per day or more, 5,000,000 gallons per month or more, or 20,000,000 gallons per year or more, the PCA  
347 | shall be the RGU. This category does not apply to industrial process wastewater treatment facilities that discharge  
348 | to a publicly-owned treatment works or to a tailings basin reviewed pursuant to subpart 11, item B.  
349 |

350 | **DISCUSSION Subp. 18 – Wastewater systems.**

351 | Deletion will eliminate confusion in applying the rule. It is more accurate to use the term modification, as proposers are  
352 | more likely to add on new components to, or significantly alter a portion of a wastewater treatment facility in order to  
353 | increase treatment capacity.

354 | **Subp. 19. Residential development.**

355 |  
356 | An EAW is required for residential development if the total number of units that may ultimately be developed on all  
357 | contiguous land owned or under an option to purchase by the proposer, except land identified by an applicable  
358 | comprehensive plan, ordinance, resolution, or agreement of a local governmental unit for a future use other than  
359 | residential development, equals or exceeds a threshold of this subpart. In counting the total number of ultimate units, the  
360 | RGU shall include the number of units in any plans of the proposer; for land for which the proposer has not yet prepared  
361 | plans, the RGU shall use as the number of units the product of the number of acres multiplied by the maximum number of  
362 | units per acre allowable under the applicable zoning ordinance or, if the maximum number of units allowable per acre is  
363 | not specified in an applicable zoning ordinance, by the overall average number of units per acre indicated in the plans of  
364 | the proposer for those lands for which plans exist. If the total project requires review but future phases are uncertain, the  
365 | RGU may review the ultimate project sequentially in accordance with part 4410.1000, subpart 4.  
366 |

367 | If a project consists of mixed unattached and attached units, an EAW must be prepared if the sum of the quotient obtained  
368 | by dividing the number of unattached units by the applicable unattached unit threshold, plus the quotient obtained by  
369 | dividing the number of attached units by the applicable attached unit threshold, equals or exceeds one.  
370 |

371 | The local governmental unit is the RGU for construction of a permanent or potentially permanent residential development  
372 | of:

- 373 |  
374 | A. 50 or more unattached or 75 or more attached units in an unsewered unincorporated area or 100 unattached units  
375 | or 150 attached units in a sewerred unincorporated area;  
376 |  
377 | B. 100 unattached units or 150 attached units in a city that does not meet the conditions of item D;  
378 |  
379 | C. 100 unattached units or 150 attached units in a city meeting the conditions of item D if the project is not  
380 | consistent with the adopted comprehensive plan; or  
381 |  
382 | D. 250 unattached units or 375 attached units in a city within the seven-county Twin Cities metropolitan area that has  
383 | adopted a comprehensive plan under Minnesota Statutes, section 473.859, or in a city not located within the  
384 | seven-county Twin Cities metropolitan area that has filed with the EQB chair a certification that it has adopted a  
385 | comprehensive plan containing the following elements:  
386 |

- 387 (1) a land use plan designating the existing and proposed location, intensity, and extent of use of land and  
388 water for residential, industrial, agricultural, and other public and private purposes;  
389 (2) a transportation plan describing, designating, and scheduling the location, extent, function, and  
390 capacity of existing and proposed local public and private transportation facilities and services;  
391 (3) a sewage collection system policy plan describing, designating, and scheduling the areas to be served  
392 by the public system, the existing and planned capacities of the public system, and the standards and  
393 conditions under which the installation of private sewage treatment systems will be permitted;  
394 (4) a capital improvements plan for public facilities; and  
395 (5) an implementation plan describing public programs, fiscal devices, and other actions to be undertaken  
396 to implement the comprehensive plan, and a description of official controls addressing the matters of  
397 zoning, subdivision, private sewage systems, and a schedule for the implementation of those controls.  
398 The EQB chair may specify the form to be used for making a certification under this item.

399 **Subp. 19a. Residential development in shoreland outside of the seven-county Twin Cities**  
400 **metropolitan area.**

- 401
- 402 A. The local governmental unit is the RGU for construction of a permanent or potentially permanent residential  
403 development located wholly or partially in shoreland outside the seven-county Twin Cities metropolitan area of a  
404 type listed in items B to E. For purposes of this subpart, "riparian unit" means a unit in a development that abuts a  
405 public water or, in the case of a development where units are not allowed to abut the public water, is located in the  
406 first tier of the development as provided under part 6120.3800, subpart 4, item A. If a project is located partially  
407 in a sensitive shoreland area and partially in nonsensitive shoreland areas, an EAW must be prepared if the sum of  
408 the quotient obtained by dividing the number of units in the sensitive shoreland area by the applicable sensitive  
409 shoreland area threshold, plus the quotient obtained by dividing the number of units in nonsensitive shoreland  
410 areas by the applicable nonsensitive shoreland area threshold, equals or exceeds one. If a project is located  
411 partially in shoreland and partially not in shoreland, an EAW must be prepared if the sum of the quotients  
412 obtained by dividing the number of units in each type of area by the applicable threshold for each area equals or  
413 exceeds one.  
414
- 415 B. A development containing 15 or more unattached or attached units for a sensitive shoreland area or 25 or more  
416 unattached or attached units for a nonsensitive shoreland area, if any of the following conditions is present:  
417
- 418 (1) less than 50 percent of the area in shoreland is common open space;  
419 (2) the number of riparian units exceeds by at least 15 percent the number of riparian lots that would be  
420 allowable calculated according to the applicable lot area and width standards for riparian unsewered  
421 single lots under part 6120.3300, subparts 2a and 2b; or  
422 (3) if any portion of the project is in an unincorporated area, the number of nonriparian units in shoreland  
423 exceeds by at least 15 percent the number of lots that would be allowable on the parcel calculated  
424 according to the applicable lot area standards for nonriparian unsewered single lots under part  
425 6120.3300, subparts 2a and 2b.  
426
- 427 C. A development containing 25 or more unattached or attached units for a sensitive shoreland area or 50 or more  
428 unattached or attached units for a nonsensitive shoreland area, if none of the conditions listed in item B is present.  
429
- 430 D. A development in a sensitive shoreland area that provides permanent mooring space for at least one nonriparian  
431 unattached or attached unit.  
432
- 433 E. A development containing at least one unattached or attached unit created by the conversion of a resort, motel,  
434 hotel, recreational vehicle park, or campground, if either of the following conditions is present:  
435

- 436 (1) the number of nonriparian units in shoreland exceeds by at least 15 percent the number of lots that  
437 would be allowable on the parcel calculated according to the applicable lot area standards for  
438 nonriparian unsewered single lots under part 6120.3300, subparts 2a and 2b; or  
439 (2) the number of riparian units exceeds by at least 15 percent the number of riparian lots that would be  
440 allowable calculated according to the applicable lot area and width standards for riparian unsewered  
441 single lots under part 6120.3300, subparts 2a and 2b.  
442

443 F. An EAW is required for residential development if the total number of units that may ultimately be developed on  
444 all contiguous land owned or under an option to purchase by the proposer, except land identified by an applicable  
445 comprehensive plan, ordinance, resolution, or agreement of a local governmental unit for a future use other than  
446 residential development, equals or exceeds a threshold of this subpart. In counting the total number of ultimate  
447 units, the RGU shall include the number of units in any plans of the proposer. For land for which the proposer has  
448 not yet prepared plans, the RGU shall use as the number of units the number of acres multiplied by the maximum  
449 number of units per acre allowable under the applicable zoning ordinance or, if the maximum number of units  
450 allowable per acre is not specified in an applicable zoning ordinance, by the overall average number of units per  
451 acre indicated in the plan of the proposer for those lands for which plans exist.

## 452 **Subp. 20. Campgrounds and RV parks.**

453 For construction of a seasonal or permanent recreational development, accessible by vehicle, consisting of 50 or more  
454 sites, or the expansion of such a facility by 50 or more sites, the local government unit shall be the RGU.

## 455 **Subp. 20a. Resorts, campgrounds, and RV parks in shorelands.**

456 The local government unit is the RGU for construction or expansion of a resort or other seasonal or permanent  
457 recreational development located wholly or partially in shoreland, accessible by vehicle, of a type listed in item A or B:  
458

- 459 A. construction or addition of 25 or more units or sites in a sensitive shoreland area or 50 units or sites in a  
460 nonsensitive shoreland area if at least 50 percent of the area in shoreland is common open space; or  
461  
462 B. construction or addition of 15 or more units or sites in a sensitive shoreland area or 25 or more units or sites in a  
463 nonsensitive shoreland area, if less than 50 percent of the area in shoreland is common open space.  
464

465 If a project is located partially in a sensitive shoreland area and partially in nonsensitive shoreland areas, an EAW must be  
466 prepared if the sum of the quotient obtained by dividing the number of units in the sensitive shoreland area by the  
467 applicable sensitive shoreland area threshold, plus the quotient obtained by dividing the number of units in nonsensitive  
468 shoreland areas by the applicable nonsensitive shoreland area threshold, equals or exceeds one. If a project is located  
469 partially in shoreland and partially not in shoreland, an EAW must be prepared if the sum of the quotients obtained by  
470 dividing the number of units in each type of area by the applicable threshold for each area equals or exceeds one.

## 471 **Subp. 21. Airport projects.**

472 Items A and B designate the RGU for the type of project listed:  
473

- 474 A. For construction of a paved, new airport runway, the DOT, local governmental unit, or the Metropolitan Airports  
475 Commission shall be the RGU.  
476  
477 B. For construction of a runway extension that would upgrade an existing airport runway to permit usage by aircraft  
478 over 12,500 pounds that are at least three decibels louder than aircraft currently using the runway, the DOT, local  
479 government unit, or the Metropolitan Airports Commission shall be the RGU. The RGU shall be selected  
480 according to part 4410.0500, subpart 5.  
481

482 **Subp. 22. Highway projects.**

483 Items A to C designate the RGU for the type of project listed:

- 484
- 485 A. For construction of a road on a new location over one mile in length that will function as a collector roadway, the
- 486 DOT or local government unit shall be the RGU.
- 487
- 488 B. For construction of additional travel-through lane(s) or passing lane(s) on an existing road for a length of one-two
- 489 or more miles, the DOT or local government unit shall be the RGU.
- 490
- 491 C. For the addition of one or more new interchanges to a completed limited access highway, the DOT or local
- 492 government unit shall be the RGU.

493 **DISCUSSION: Subp. 22. Highway projects.**

494 The proposed change from “travel lane” to “through lane(s) or passing lane(s)” reflect current terminology in the

495 transportation industry and more accurately defines the intent of the category. “Through lanes” are further clarified by

496 excluding “auxiliary lanes.”

497 **Subp. 23. Barge fleetings.**

498 For construction of a new or expansion of an existing barge fleetings facility, the DOT or port authority shall be the RGU.

499 **Subp. 24. Water appropriation and impoundments.**

500 Items A to C designate the RGU for the type of project listed:

- 501
- 502 A. For a new appropriation for commercial or industrial purposes of either surface water or ground water averaging
- 503 30,000,000 gallons per month; or a new appropriation of either ground water or surface water for irrigation of 540
- 504 acres or more in one continuous parcel from one source of water, the DNR shall be the RGU.
- 505
- 506 B. For a new permanent impoundment of water creating additional water surface of 160 or more acres or for an
- 507 additional permanent impoundment of water creating additional water surface of 160 or more acres, the DNR
- 508 shall be the RGU.
- 509
- 510 C. For construction of a dam with an upstream drainage area of 50 square miles or more, the DNR shall be the RGU.

511 **Subp. 25. Marinas.**

512 For construction or expansion of a marina or harbor that results in a 20,000 or more square foot total or a 20,000 or more

513 square foot increase of water surface area used temporarily or permanently for docks, docking, or maneuvering of

514 watercraft, the local government unit shall be the RGU.

515 **Subp. 26. Stream diversion.**

516 For a diversion, realignment, or channelization of any DNR designated trout stream, or DNR designated tributary to a

517 trout stream, or affecting greater than 500 feet of natural watercourse with a total drainage area of ten or more square

518 miles unless exempted by part 4410.4600, subpart 14, item E, or 17, the DNR or local government unit shall be the RGU.

519 **DISCUSSION: Subp. 26. Stream diversion.**

520 The addition of “designated tributary to a trout stream” is consistent with Minn. Stat. 103G and Minn. R. 6264.0050. The

521 addition of DNR as an optional RGU reduced the need to request the designation of a different RGU from EQB in the

522 future.

523

524 **Subp. 27. ~~Wetlands and public waters.~~Public waters, public water wetlands and wetlands.**

525 Items A and B designate the RGU for the type of project listed:

526  
527 A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public  
528 water or public waters wetland except for those to be drained without a permit pursuant to Minnesota Statutes,  
529 chapter 103G, the DNR or local government unit shall be the RGU.

530  
531 B. For projects that will change or diminish the course, current, or cross section of 40 percent or more or five or  
532 more acres of type 3 through 8 wetland of 2.5 acres or more, excluding public waters wetlands, if any part of the  
533 wetland is within a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers  
534 district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local unit of  
535 government shall be the RGU.

536 **DISCUSSION: Subp. 27. Public waters and wetlands.**

537 Addition of DNR as an RGU will reduce the number of times that EQB will have to designate a different RGU in the  
538 future.

539 **Subp. 28. Forestry.**

540 ~~Items A and B designate the RGU for the type of project listed:~~

541  
542 For harvesting of timber for commercial purposes on public lands within a state park, historical area, wilderness area,  
543 scientific and natural area, wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi  
544 headwaters area, or critical area that does not have an approved plan under Minnesota Statutes, section 86A.09 or  
545 116G.07, the DNR shall be the RGU.

546  
547 ~~B.A. For a clearcutting of 80 or more contiguous acres of forest, any part of which is located within a shoreland~~  
548 ~~area and within 100 feet of the ordinary high water mark of the lake or river, the DNR shall be the RGU.~~

549 **DISCUSSION: Subp. 28. Forestry.**

550 The development of the Forestry Generic Environmental Impact Statement has prevented this category from being used.

551 **Subp. 29. Animal feedlots.**

552 The PCA is the RGU for the types of projects listed in items A and B unless the county will issue the feedlot permit, in  
553 which case the county is the RGU. However, the county is not the RGU prior to January 1, 2001.

554  
555 A. For the construction of an animal feedlot facility with a capacity of 1,000 animal units or more or the expansion of  
556 an existing facility by 1,000 animal units or more if the facility is not in an area listed in item B.

557  
558 B. For the construction of an animal feedlot facility of more than 500 animal units or expansion of an existing animal  
559 feedlot facility by more than 500 animal units if the facility is located wholly or partially in any of the following  
560 sensitive locations: shoreland; a delineated flood plain, except that in the flood plain of the Red River of the North  
561 the sensitive area includes only land within 1,000 feet of the ordinary high water mark; a state or federally  
562 designated wild and scenic river district; the Minnesota River Project Riverbend area; the Mississippi headwaters  
563 area; or an area within a drinking water supply management area delineated under chapter 4720 where the aquifer  
564 is identified in the wellhead protection plan as vulnerable to contamination; or within 1,000 feet of a known  
565 sinkhole, cave, resurgent spring, disappearing spring, Karst window, blind valley, or dry valley.

566  
567 The provisions of part 4410.1000, subpart 4, regarding connected actions do not apply to animal feedlots. The provisions  
568 of part 4410.1000, subpart 4, regarding phased actions apply to feedlots.

569 With the agreement of the proposers, the RGU may prepare a single EAW to collectively review individual sites of a  
570 multisite feedlot proposal.

571 **Subp. 30. Natural areas.**

572 For projects resulting in the permanent ~~physical encroachment~~conversion on lands within a national park, state park,  
573 wilderness area, state lands and waters within the boundaries of the Boundary Waters Canoe Area, scientific and natural  
574 area, ~~or state trail corridor~~ when the ~~encroachment~~permanent conversion is inconsistent with laws applicable to or the  
575 management plan prepared for the recreational unit, the DNR or local government unit shall be the RGU.

576 **DISCUSSION: Subp. 30. Natural areas.**

577 Deletion of “physical encroachment” as no definition was ever developed. Addition of “permanent conversion” updates  
578 the rule language with the current application of the rule.

579 **Subp. 31. Historical places.**

580 For the destruction, in whole or part, or the moving of a property that is listed on the National Register of Historic Places  
581 or State Register of Historic Places, the permitting state agency or local unit of government shall be the RGU.

582  
583 ~~, except that~~ This does not apply to projects reviewed under section 106 of the National Historic Preservation Act of 1966,  
584 United States Code, title 16, section 470, or the federal policy on lands, wildlife and waterfowl refuges, and historic sites  
585 pursuant to United States Code, title 49, section 303, or reviewed under Minnesota Statute, section 138, or projects  
586 reviewed by a local heritage preservation commission certified by the State Historic Preservation Office pursuant to Code  
587 of Federal Regulations, title 36, sections 61.5 and 1.7.

588  
589 This subpart also does not apply to a property located within a designated historic district if the property is listed as  
590 "noncontributing" in the official district designation or if the State Historic Preservation Office issues a determination that  
591 the property is noncontributing.

592 **DISCUSSION: Subp. 31. Historic places.**

593 Changes increase readability of the rule and greater specificity.

594 **Subp. 32. Mixed residential and industrial-commercial projects.**

595 If a project includes both residential and industrial-commercial components, the project must have an EAW prepared if  
596 the sum of the quotient obtained by dividing the number of residential units by the applicable residential threshold of  
597 subpart 19, plus the quotient obtained by dividing the amount of industrial-commercial gross floor space by the applicable  
598 industrial-commercial threshold of subpart 14, equals or exceeds one. The local governmental unit is the RGU.

599 **Subp. 33. Communications towers.**

600 For construction of a communications tower equal to or in excess of 500 feet in height, or 300 feet in height within 1,000  
601 feet of any public water or public waters wetland or within two miles of the Mississippi, Minnesota, Red, or St. Croix  
602 rivers or Lake Superior, the local governmental unit is the RGU.

603 **Subp. 34. Sports or entertainment facilities.**

604 For construction of a new sports or entertainment facility designed for or expected to accommodate a peak attendance of  
605 5,000 or more persons, or the expansion of an existing sports or entertainment facility by this amount, the local  
606 governmental unit is the RGU.

607 **Subp. 35. Release of genetically engineered organisms.**

608 For the release of a genetically engineered organism that requires a release permit from the EQB under chapter 4420, the  
609 EQB is the RGU. For all other releases of genetically engineered organisms, the RGU is the permitting state agency. This  
610 subpart does not apply to the direct medical application of genetically engineered organisms to humans or animals.

611 **Subp. 36. Land use conversion, including golf courses.**

612 Items A and B designate the RGU for the type of project listed:  
613

- 614 A. For golf courses, residential development where the lot size is less than five acres, and other projects resulting in  
615 the permanent conversion of 80 or more acres of agricultural, native prairie, forest, or naturally vegetated land, the  
616 local government unit shall be the RGU, except that this subpart does not apply to agricultural land inside the  
617 boundary of the Metropolitan Urban Service Area established by the Metropolitan Council.  
618
- 619 B. For projects resulting in the conversion of 640 or more acres of forest or naturally vegetated land to a different  
620 open space land use, the local government unit shall be the RGU.

621 **Subp. 36a. Land conversions in shoreland.**

- 622
- 623 A. For a project that alters 800 feet or more of the shoreline in a sensitive shoreland area or 1,320 feet or more of  
624 shoreline in a nonsensitive shoreland area, the local governmental unit is the RGU.  
625
- 626 B. For a project that alters more than 50 percent of the shore impact zone if the alteration measures at least 5,000  
627 square feet, the local governmental unit is the RGU.  
628
- 629 C. For a project that permanently converts 20 or more acres of forested or other naturally vegetated land in a  
630 sensitive shoreland area or 40 or more acres of forested or other naturally vegetated land in a nonsensitive  
631 shoreland area, the local governmental unit is the RGU.

632 **Subp. 37. Recreational trails.**

633

634 If a project listed in items A to ~~F-H~~ will be built on state-owned land or funded, in whole or part, by grant-in-aid funds  
635 administered by the DNR, the DNR is the RGU. For other projects, if a governmental unit is sponsoring the project, in  
636 whole or in part, that governmental unit is the RGU. If the project is not sponsored by a unit of government, the RGU is  
637 the local governmental unit. For purposes of this subpart, "existing trail" means an established corridor in current legal  
638 use.  
639

- 640 A. Constructing a trail at least ~~ten~~ 25 miles long on forested or other naturally vegetated land for a recreational use  
641 ~~other than snowmobiling or cross-country skiing~~, unless exempted by part 4410.4600, subpart 14, item D, ~~or~~  
642 ~~constructing a trail at least 20 miles long on forested or other naturally vegetated land exclusively for~~  
643 ~~snowmobiling or cross-country skiing.~~  
644
- 645 B. Designating at least 25 miles of an existing trail for a new motorized recreational use other than snowmobiling.  
646

647 In applying items A and B, if a proposed trail will contain segments of newly constructed trail and segments that will  
648 follow an existing trail but be designated for a new motorized use, an EAW must be prepared if the sum of the quotients  
649 obtained by dividing the length of the new construction by ~~ten~~ 25 miles and the length of the existing but newly  
650 designated trail by 25 miles, equals or exceeds one. Item C and D segments do not apply to this formula.  
651

- 652 C. When adding a new motorized recreational use or seasonal motorized recreational use to an existing motorized  
653 recreational trail if the treadway width is not expanded as a result of the added use; a mandatory environmental  
654 assessment worksheet (EAW) shall not be required.  
655
- 656 D. When designating an existing, legally constructed route for motorized recreational use, a mandatory  
657 environmental assessment worksheet (EAW) shall not be required.  
658
- 659 E. Paving ten or more miles of an existing unpaved trail, unless exempted by part 4410.4600, subpart 27, item B or  
660 F. Paving an unpaved trail means to create a hard surface on the trail with a material impervious to water.  
661

- 662 F. Constructing an off-highway vehicle recreation area of 80 or more acres, or expanding an off-highway vehicle  
663 recreation area by 80 or more acres, on agricultural land or forested or other naturally vegetated land.  
664
- 665 G. Constructing an off-highway vehicle recreation area of 640 or more acres, or expanding an off-highway vehicle  
666 recreation area by 640 or more acres, if the land on which the construction or expansion is carried out is not  
667 agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human  
668 activities such as mineral mining.  
669
- 670 H. Some recreation areas for off-highway vehicles may be constructed partially on agricultural naturally vegetated  
671 land and partially on land that is not agricultural, is not forested or otherwise naturally vegetated, or has been  
672 significantly disturbed by past human activities. In that case, an EAW must be prepared if the sum of the quotients  
673 obtained by dividing the number of acres of agricultural or naturally vegetated land by 80 and the number of acres  
674 of land that is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed  
675 by past human activities by 640, equals or exceeds one.

676 **NOTE - Subp. 37. Recreational trails.**

677 Changes to this category are a result of changes identified in 2015 MN legislative session law:

678 Minn. Laws 2015, Ch. 4, section 33. RULEMAKING; MOTORIZED TRAIL ENVIRONMENTAL REVIEW.

679 (a) The Environmental Quality Board shall amend Minnesota Rules, chapter 4410, to allow the following without  
680 preparing a mandatory environmental assessment worksheet:

681 (1) constructing a recreational trail less than 25 miles long on forested or other naturally vegetated  
682 land for a recreational use;

683 (2) adding a new motorized recreational use or a seasonal motorized recreational use to an existing  
684 motorized recreational trail if the treadway width is not expanded as a result of the added use; and

685 (3) designating an existing, legally constructed route, such as a logging road, for motorized  
686 recreational trail use.  
687

688 (b) The board may use the good cause exemption rulemaking procedure under Minnesota Statutes, section 14.388,  
689 subdivision 1, clause (3), to adopt rules under this section, and Minnesota Statutes, section 14.386, does not apply  
690 except as provided under Minnesota Statutes, section 14.388.

691 **Statutory Authority:** *MS s 116C.94; 116D.04; 116D.045; L 1998 c 401 s 54*

692 **History:** *11 SR 714; 13 SR 1437; 13 SR 2046; 17 SR 139; 21 SR 1458; 24 SR 517; 28 SR 951; 30*  
693 *SR 319; 31 SR 539; 34 SR 721; 36 SR 567*

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