

Guide to tracking modifications in this document: The proposed rule amendments as published in the State Register on November 13, 2018 are shown in black text and black underline or black strike out. Modifications to the proposed rule amendments that EQB is considering are in red text, red underline, or red strike out. Red text without underlining indicates text that was indicated for removal in the rule amendments as published, but which are now suggested to not be removed. Red underline indicates new text suggested for addition that was not in the rule amendment as published. Red strike out text indicates text from the rule amendment as published that is suggested for removal.

1. Part 4410.4300, subpart 7. Pipelines.

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.

~~For construction, as defined in Minnesota Statutes, section 216G.01, subdivision 2, of a pipeline, as defined in Minnesota Statutes, section 216G.01, subdivision 3 or 216G.02, subdivision 1, the PUC is the RGU. Environmental review must be conducted according to Minnesota Rules, chapter 7852 and Minnesota Statutes, chapter 216G.~~

Justification for revision to Part 4410.4300 subpart 7. Pipelines.

The proposed changes to this subpart are removed from consideration. The proposed changes were intended to add greater understanding for when environmental review is required. However, based on the comments received, more discussion is warranted on the potential impacts of the proposed changes. The withdrawal of the proposed change will result in the language reverting back to the current language in Minnesota rule chapter 4410.4300: <https://www.revisor.mn.gov/rules/4410.4300/>.

2. Part 4410.4300, subpart 27. Wetlands and public waters.

~~**Wetlands and Public waters, public water wetlands and wetlands.**~~ Items A and B designate the RGU for the type of project listed:

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

- B. For projects that will ~~change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more~~ cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated flood plain floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local governmental unit ~~shall be~~ is the RGU. Item B does not apply to projects exempted by part 4410.4600, subpart 14.

Justification for Part 4410.4300, subpart 27. Public waters, public water wetlands and wetlands.

The changes that are proposed for this subpart are intended to provide greater understanding for when environmental review is required and update the requirements to better align with descriptions in the

Wetland Conservation Act. At the time the category was created, the Wetland Conservation Act was not promulgated.

During the public comment period, we received information from government agencies that have the responsibility and expertise for evaluating these projects. They indicated that the proposed changes may now include projects that don't have the potential for significant environmental effects.

As a result of this information, we are now proposing to add a sentence to be clear that these types projects do not apply to this subpart, by referencing projects described in MN Rule chapter 4410.4600.

Because the change is highlighting information already in rule and aligns with our intent for the original amendments, we don't consider this a substantive change

3. Part 4410.4400, subpart 8. Metallic mineral mining and processing.

Metallic mineral mining and processing. Items A to C designate the RGU for the type of projected listed:

- A. For mineral deposit evaluation involving the extraction of 1,000 tons or more of material that is of interest to the proposer principally due to its radioactive characteristics, the DNR shall be the RGU.
- B. For construction of a new facility for mining metallic minerals or for the disposal of tailings from a metallic mineral mine, the DNR ~~shall be~~ is the RGU.
- C. For construction of a new metallic mineral processing facility, the DNR ~~shall be~~ is the RGU.

Justification for Part 4410.4400, subpart 8. Metallic mineral mining and processing.

The proposed changes to this subpart are removed from consideration. The proposed changes were intended to add greater understanding for when environmental review is required. However, based on the comments received, more discussion is warranted on the potential impacts of the proposed changes. The withdrawal of the proposed change will result in the language reverting back to the current language in Minnesota rule chapter 4410.4300: <https://www.revisor.mn.gov/rules/4410.4300/>.

4. Part 4410.4300, subpart 3. Electric-generating facilities.

- D. For construction of a wind energy conversion system, as defined in Minnesota Statutes section 216F.01, designed for and capable of operating at a capacity of ~~25~~ 5 megawatts or more, the PUC is the RGU and environmental review must be conducted according to chapter 7854.

Justification for Part 4410.4600, subpart 3. Electric-generating facilities.

The environmental review and permitting threshold noted in Minnesota Rule 4410.4300, Subpart 3, for wind energy conversion systems (part D) should be 5 megawatts (MW). This threshold has been

established by the legislature in Minnesota Statute 216F. Minnesota Rule 4410.4300, Subpart 3 should be edited to ensure consistency with the statute. The threshold included in the Revisor's draft of the proposed mandatory category rules (25 MW) was a scrivener's or clerical error.