



## DEPARTMENT OF PUBLIC WORKS

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May 31, 2019

Erik Cedarleaf Dahl  
Planning Director  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155

**Re: Proposed Amendment to Rules Governing Environmental Review, *Minnesota Rules*,  
4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926,  
4410.4600**

Dear Mr. Cedarleaf Dahl,

Thank you for the opportunity to review the proposed amendment listed above. The City of Cloquet is in favor of reducing regulatory duplication and applauds the Environmental Quality Board (EQB) in this effort.

The City of Cloquet also supports the draft rules as revised and approved by the EQB Board at its meeting on May 15, with an exclusion for highway projects.

Sincerely,

Caleb Peterson, PE  
Public Works Director  
City of Cloquet



11800 Town Center Drive NE, Suite 300 • St. Michael, MN 55376 • (763) 497-2041 • Fax (763) 497-5306 • [www.ci.st-michael.mn.us](http://www.ci.st-michael.mn.us)

May 31, 2019

Erik Cedarleaf Dahl  
Planning Director  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155

**Re: Proposed Amendment to Rules Governing Environmental Review, *Minnesota Rules*,  
4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926,  
4410.4600**

Dear Mr. Cedarleaf Dahl,

Thank you for the opportunity to review the proposed amendment listed above. The City of St. Michael is in favor of reducing regulatory duplication and applauds the Environmental Quality Board (EQB) in this effort.

The City of St. Michael also supports the draft rules as revised and approved by the EQB Board at its meeting on May 15, with an exclusion for highway projects.

Sincerely,

Steven G. Bot, P.E.  
City Administrator/Public Works Director

May 31, 2019

Erik Cedarleaf Dahl  
Planning Director  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155



[www.ci.brainerd.mn.us](http://www.ci.brainerd.mn.us)

**Re: Proposed Amendment to Rules Governing Environmental Review, *Minnesota Rules*, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600**

Dear Mr. Cedarleaf Dahl,

Thank you for the opportunity to review the proposed amendment listed above. The City of Brainerd is in favor of reducing regulatory duplication and applauds the Environmental Quality Board (EQB) in this effort.

The City of Brainerd also supports the draft rules as revised and approved by the EQB Board at its meeting on May 15, with an exclusion for highway projects.

Sincerely,

A handwritten signature in black ink that reads "Paul Sandy". The signature is written in a cursive, flowing style.

Paul Sandy, PE – City Engineer  
City of Brainerd

**Dahl, Erik (EQB)**

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**From:** Terry Neff <tneff@co.aitkin.mn.us>  
**Sent:** Wednesday, May 22, 2019 8:15 AM  
**To:** Dahl, Erik (EQB)  
**Subject:** Mandatory Category Rulemaking:Comment  
**Attachments:** .Letterhead\_\_\_\_\_.doc; eqbresolution2019.doc

Erik,

Attached are my comments and a resolution that was passed by the Aitkin County Board of Commissioners which opposes the proposed changes to MN Rules 4410.4300, Subp.27, B as is currently written. These are the same comments that I submitted back in December 2018. Feel free to contact me with any questions.

Terry Neff  
Environmental Services Director  
Phone: 218-927-7342  
Fax: 218-927-4372

**Aitkin County Environmental Services Planning and Zoning**  
**209 Second Street NW**  
**Room 100**  
**Aitkin, MN 56431**  
Phone: 218-927-7342  
Fax: 218-927-4372



December 27, 2018

Erik Cedarleaf Dahl  
Environmental Quality Board  
520 Lafayette Rd  
St. Paul, MN 55101

Mr. Dahl:

The purpose of this letter is to comment on the proposed amendments to the Rules Governing Environmental Review. Aitkin County realizes the need to periodically review the Rules and make updates when necessary, however, we do oppose the amendments proposed in 4410.4300, Subp.27, B. As currently written in rule, any project that changes or diminishes the course, current or cross section of 40% or more or 5 acres or more of type 3 through 8 wetland of 2.5 acres or more ... must complete an EAW. 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 through 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.

Aitkin County has a land area of 1.17 million acres and approximately 725,000 acres are wetlands. Dropping the threshold from 5 acres of impact to 1 acre, and expanding the types of wetland to include types 1 and 2 is not practical for Aitkin County, or many other counties with a large portion of their land area still remaining in wetlands.

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.

Aitkin County feels it is important that if the proposed language remains as it is currently written, then Aitkin County formally requests that the rule changes go through the public hearing process.

Aitkin County appreciates your consideration of these concerns and hope that the EQB will be receptive to the request to keep 4410.4300, Subp.27, B as it is currently written in rule.

Sincerely,

Terry Neff  
Environmental Services Director

Steve Hughes  
Aitkin County SWCD Manager

cc: County Board of Commissioners  
c:\eqbcomments

**CERTIFIED COPY OF RESOLUTION OF COUNTY BOARD OF AITKIN COUNTY,  
MINNESOTA**

ADOPTED     January 8, 2019

By Commissioner: xx

**20190108-0xx**

**Opposition to Amendments to MN Rules 4410.4300, Subp 27**

**WHEREAS**, Aitkin County has a land area of 1.17 million acres and approximately 725,000 acres are wetlands, and

**WHEREAS**, Aitkin County is the Local Governing Unit for the Wetland Conservation Act (WCA), and

**WHEREAS**, on November 13, 2018, the Minnesota Environmental Quality Board published Notice of Intent to adopt proposed amendments to the Rules Governing Environmental Review, and

**WHEREAS**, MN Rules 4410.4300, Subp 27, Wetland and Public Waters are being proposed to be amended, and

**WHEREAS**, the proposed amendments to MN Rules 4410.4300, Subp 27, will reduce the allowed wetland impact amount from 5 acres to 1 acre, and the types of wetland are now increased from type 3 through 8 to type 1 through 8, and

**WHEREAS**, the proposed amendments to MN Rules 4410.4300, Subp 27, will have a significant impact on the time and cost in our road projects and other large scale projects, and

**WHEREAS**, the proposed amendments to MN Rules 4410.4300, Subp 27, will require an EAW for accessing suitable building sites for some residential properties, and

**WHEREAS**, through the WCA, all of these wetland activities are reviewed and must follow an approved process. We believe that the proposed language, with added and duplicative wetland scrutiny, is unnecessary, and

**WHEREAS**, reducing the threshold from 5 acres of impact to 1 acre, and expanding the types of wetland to include types 1 and 2 is not practical for Aitkin County, or many other counties with a large portion of their land area still remaining in wetlands.

**BE IT RESOLVED**, that the Aitkin County Board of Commissioners opposes any amendment to MN Rules 4410.4300, Subp 27.

Commissioner xx moved the adoption of the resolution and it was declared adopted upon the following vote

**FIVE MEMBERS PRESENT**

**All Members Voting Yes**

**STATE OF MINNESOTA}  
COUNTY OF AITKIN}**

I, Jessica Seibert, County Administrator, Aitkin County, Minnesota do hereby certify that I have compared the foregoing with the original resolution filed in the Administration Office of Aitkin County in Aitkin, Minnesota as stated in the minutes of the proceedings of said Board on the 8<sup>th</sup> day of January 2019, and that the same is a true and correct copy of the whole thereof.

**Witness my hand and seal this 8th day of January 2019**

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Jessica Seibert  
County Administrator

**Dahl, Erik (EQB)**

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**From:** Paul Blackburn <paul@honorearth.org>  
**Sent:** Wednesday, June 19, 2019 12:07 PM  
**To:** Wilson, Denise (EQB); Dahl, Erik (EQB)  
**Cc:** Winona Laduke; frankbibeau@gmail.com; 'Tara Houska'; 'Nicolette Slagle'  
**Subject:** Mandatory Category Rulemaking: Comment  
**Attachments:** 2019-06-19 PACKAGE HTE Comments on EQB Mandatory EAW Category Pipeline.pdf

Denise & Eric –

Please find attached the comments of Honor the Earth on the Proposed Permanent Rules Relating to Environmental Review: Mandatory Categories, Revisor ID: R-4157, Minn. R. 4410.4300.

Thank you for your consideration.

Very truly yours,

Paul Blackburn

Staff Attorney

Honor the Earth





PO BOX 63, 607 MAIN AVE, CALLAWAY MN 56521  
INFO@HONOREARTH.ORG | WWW.HONOREARTH.ORG

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**VIA EMAIL TO:**

[Denise.wilson@state.mn.us](mailto:Denise.wilson@state.mn.us)

[Erik.Dahl@state.mn.us](mailto:Erik.Dahl@state.mn.us)

June 19, 2019

Denise Wilson and Erik Dahl  
Environmental Quality Board  
Attn: Mandatory Category Rulemaking  
520 Lafayette Road North  
St. Paul, MN 55155

**Re: Mandatory Category Rulemaking: Comment on Proposed Permanent Rules  
Relating to Environmental Review: Mandatory Categories  
Revisor ID: R-4157, Minn. R. 4410.4300**

Dear Ms. Wilson and Mr. Dahl:

Honor the Earth appreciates this opportunity to comment on the above-captioned rulemaking, published on November 13, 2018, State Register, on pages 531 to 546, and in the December 31, 2018, State Register, on pages 775 to 778.

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.

As you are no doubt aware, the scope of environmental review for pipelines has been controversial. So far, this controversy has resulted in a Minnesota Court of Appeals decision<sup>1</sup> that overturned a decision of the Minnesota Public Utilities Commission ("PUC") for failure to comply with the Minnesota Environmental Policy Act, Minn. Stat. Ch. 116D ("MEPA") for the proposed Sandpiper Pipeline Project. The source of this controversy derives from historical acts of the EQB and PUC that improperly implemented the alternative environmental review standards contained in Minn. R. 4410.3600, which acts have created an ongoing lack of integrity in PUC decision making related to environmental review for pipeline projects. Unfortunately, the

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<sup>1</sup> *In re North Dakota Pipeline Co.*, 869 N.W.2d 693 (Minn. Ct. App. 2015), *review denied* (Dec. 15, 2015) ("Sandpiper Decision").

EQB's proposed Mandatory EAW Rule is an extension of past agency deficiencies and could increase the risk of future litigation.

## BACKGROUND ON PIPELINES AND MEPA

In 1989, the EQB considered and approved the pipeline routing rules, then Minn. R. Ch. 4415, now Minn. R. Ch. 7852 ("Routing Rules"), as an alternative form of environmental review for pipeline routing permits pursuant to Minn. R. 4410.3600.<sup>2</sup> It appears from the SONAR for that rulemaking that the EQB failed to consider whether the Routing Rules were an adequate form of review for other administrative approvals required for pipeline projects, including the PUC's Certificate of Need ("CN"), Minn. Stat. § 216B.243; Minn. R. Ch. 7853; the Minnesota Pollution Control Agency's water quality certification, Minn. R. 7001.1400-1470; and a variety of other water and land protection permits and licenses. As a result, the EQB did not consider these other government actions in its 1989 rulemaking, such that it also did not approve use of the Routing Rules as an alternative MEPA review process for these other government actions.

The EQB's 1989 approval is problematic because the plain language of the Routing Permit ("RP") statute and regulations make clear that their scope is limited to route-related impacts, alternatives, and mitigation. This, after all, is the limited purpose of these laws. But this limitation in the language of the RP laws also means that their scope understandably does not include issues and policy concerns unrelated to route, including non-route impacts, alternatives, and mitigation. For example, the Routing Rule's process for selecting alternatives is contained in Minn. R. 7852.1400; Minn. R. 7852.1600; Minn. R. 7852.1500; 7852.2600, subp. 2; 7852.3100, but these rules relate solely to the selection of alternative routes. The Routing Rules do not contemplate or provide any process whatsoever related to the identification and selection of non-route alternatives, such as the use of alternative technologies, expansion of existing pipelines, or petroleum conservation, all of which are required alternatives for pipeline decisions under the CN statute and regulations. While it makes sense to limit the RP process to consideration of only route-related impacts, alternatives, and mitigation, such limitations when applied to MEPA review for other non-route governmental actions illegally constrain the scope of the MEPA review for these other actions.

An attempt by the PUC to apply the environmental review contemplated by the Routing Rules to, for example, the Commission's CN process could result in PUC creation of an *ad hoc* regulatory structure to expand the scope of its RP process beyond that expressly described in the RP statute and regulations. Such *ad hoc* expansion would create a substantial future litigation

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<sup>2</sup> *In the Matter of the Proposed Amendments to the Rules Governing the Environmental Review Program*, Report of the Administrative Law Judge (Jan. 5, 1989); Memorandum, Larry Hartman to EQB Board Members, Request for Approval of EQB Pipeline Routing Rules, Chapter 4415, as an Alternative Form of Environmental Review (Feb. 9, 1989); (Attached).

risk. Improper reliance by the PUC on the EQB's alternative review process for pipeline routing permits was the cause of the PUC's decision to not prepare any environmental documents prior to issuing a CN for the Sandpiper Pipeline Project, which decision was ultimately reversed by the Court of Appeals.

The Routing Rules also provide for:

- A non-conditional exclusion for pipeline replacement and expansions projects ("This chapter does not apply to . . . replacement of an existing pipeline within an existing right-of-way, [and] "associated facilities when they are being constructed as an addition to an existing pipeline . . . ." Minn. R. 7852.0300, subp. 1.C and G);
- a conditional exclusion stating that the Routing Rules do not apply at all to construction of a new pipeline in a pre-July 1, 1988, right of way, and apply to construction of a new pipeline in a post-July 1, 1988, right of way only if the PUC finds that such pipeline has "a significant chance of an adverse effect on the environment," Minn. R. 7852.0300, subp. 2;<sup>3</sup>
- a partial exemption "if the commission determines that the proposed pipeline will not have a significant impact on humans or the environment." Minn. R. 7852.0600-0700;

These exclusions and exemptions are incompatible for use in defining the scope of MEPA review for non-route governmental actions related to crude oil pipelines. The non-conditional exclusion would entirely exempt pipeline replacement and expansion projects from RP review, and therefore from MEPA review, even if such projects would have the potential for significant environmental effects. The conditional exclusions authorize the PUC to entirely exclude proposed new pipelines constructed in pre-July 1, 1988, rights of way from RP review, regardless of whether such project has the potential to result in significant environmental effects. Although RP review could be required for new pipeline projects proposed to be built in post-July 1, 1988, rights of way, if such projects would have the chance of an adverse effect on the environment, such review is not certain and this rule essentially means that the PUC would determine the applicability of the Routing Rules to such pipelines on a case-by-case basis. The

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<sup>3</sup> Minn. R. 7852.0300 excludes all new pipelines proposed to be constructed in a right of way before July 1, 1988 (includes both the Enbridge Mainline corridor and the Minnesota Pipeline Corridor), as well as new pipelines constructed in a corridor approved by the Commission after July 1, 1988, "except when the commission determines that there is a significant chance of an adverse effect on the environment or that there has been a significant change in land use or population density in or near the right-of-way since the first construction of a pipeline within the right-of-way, or since the commission first approved the route within which the right-of-way is located." With regard to construction of new pipelines in older corridors, all such construction is entirely exempted from RP review. Proposed pipelines in more recently approved corridors requires RP review only if the PUC finds that there is "a significant chance of an adverse effect on the environment or that there has been a significant change in land use or population density in or near the right-of-way . . . ."

only pipeline projects that are always subject to a full RP review are new pipelines in new corridors that would potentially have a significant impact. As a result, use of the Routing Rules to determine the need for an EAW or EIS of necessity would result in total exclusion from RP review, and therefore MEPA review, of pipeline replacement and expansion projects, and would also exclude proposed construction of new pipelines in older corridors – regardless of their environmental effects. It would also allow the Commission to determine whether a full RP review, and therefore a full MEPA review, is required for a new pipeline in a post-July 1, 1988 right of way, or in a new right of way, on a case-by-case basis, which is contrary to the purpose of establishing “mandatory” EAW and EIS categories.

The EQB’s approval of use of the Routing Rules as an alternative review process under MEPA was deeply flawed, because the EQB failed to consider whether or not the specialized review contained in the Routing Rules was legally available to serve and was of sufficient scope to serve as the general environmental review for all other pipeline permitting processes. The EQB’s failure to recognize that the Routing Rules do not “address substantially the same issues as the EAW and EIS process” for non-route government actions, as required by Minn. R. 4410.3600, subp. 1, has resulted in the PUC attempting to bootstrap the use of Routing Rules as the MEPA process for its CN decisions, as well as for all other pipeline related governmental actions by other government agencies, even though in 1989 the EQB did not consider or approve such use. As noted, such bootstrapping resulted in the PUC failing to complete an EIS for the proposed Sandpiper Pipeline Project before it issued a CN for that project, which decision resulted in reversal by the Court of Appeals.<sup>4</sup> The proposed Mandatory EAW Rule is yet another bad result of the EQB’s thoughtlessness in 1989.

### **THE PROPOSED MANDATORY EAW RULE VIOLATES MEPA**

The EQB proposes to amend the Mandatory EAW Rule to state:

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 chapter 7852 and Minnesota Statutes, chapter 216G.

This proposed amendment must be read in light of Minn. R. 4410.4400, subp. 24, related to mandatory pipeline EISs, which states: “For routing of a pipeline subject to the full route selection procedures under Minnesota Statutes, section 216G.02, the Public Utilities Commission is the RGU.” (“Mandatory EIS Rule”).

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<sup>4</sup> *Sandpiper Decision*.

The proposed language starts off badly because it does not clearly demarcate projects that are subject to mandatory EAWs from those subject to mandatory EISs. The EQB probably intends that mandatory EAWs be prepared for projects that fall within the definitions of “construction,” § 216G.01, subd. 2, and the two definitions of “pipeline” contained in § 216G.01, subd. 3, or § 216G.02, subd. 1, but that are not “subject to the full route selection procedures” under § 216G.02, as required by the Mandatory EIS Rule. But the Mandatory EAW Rule does not itself state this. It can be understood only in the context of the Mandatory EIS Rule.

The first sentence of the proposed Mandatory EAW Rule is problematic because it does not address the need for MEPA review of pipeline projects that are exempt or excluded from review under the Routing Rules. See Minn. R. 7852.0300, subp. 1; Minn. R. 7852.0300, subp. 1; Minn. R. 7852.0600-0700. The Routing Rules give the PUC considerable discretion about which proposed new pipeline projects are subject to full route selection procedures. As a result, the proposed Pipeline EAW Rule is inherently vague and does not clearly demarcate when an EAW is mandatory, thereby converting the Mandatory EAW Rule into a discretionary rule.

The first sentence is also problematic because the referenced definition of “construction” appears to exclude the “replacement” of existing pipelines in existing rights-of-way from the Routing Permit process, Minn. Stat. § 216G.01, subd. 2, which would also exclude all such projects from the Mandatory EIS category. Yet, the full replacement of an existing major pipeline in an existing right-of-way would almost certainly have the potential for substantial adverse environmental effects, which is the trigger for a full EIS, much less a full EAW, under MEPA.

Also, the first sentence of the Mandatory EAW Rule references jurisdictional definitions of “pipeline” in the Routing Permit statute that differ significantly from the jurisdictional definitions found in other statutes and regulations, for example, the definition of “large energy facility,” which triggers the PUC’s CN process. Minn. Stat. § 216B.2421, Subd. 2(4); Minn. R. 7853.0010, subp. 14; Minn. R. 7853.0030.D (CN required for expansions of existing pipelines). As a result, the proposed Mandatory EAW Rule is inapposite to the jurisdictional reach of non-route governmental actions, such that the proposed language creates substantial regulatory ambiguity of the type that resulted in the *Sandpiper Decision*.

The second sentence of the proposed Pipeline EAW Rule is also problematic. It states: “Environmental review must be conducted according to chapter 7852 and Minnesota Statutes, chapter 216G.” But, these RP laws exempt the following types of pipeline projects from all review under chapter 7852 and Minn. Stat. Ch. 216G:

- all pipeline replacements in the same right-of-way, Minn. R. 7852.0300, subp. 1.C;

- all pipeline expansions, in that Minn. R. 7852.0300, subp. 1.G, exempts “associated facilities when they are being constructed as an addition to an existing pipeline;”
- all new pipelines proposed to be constructed in pre-July 1, 1988, rights-of-way, Minn. R. 7852.0300, subp. 2; and
- proposed new pipelines in post-July 1, 1988, rights-of-way that the PUC determines do not have a “significant chance of an adverse effect on the environment,” Minn. R. 7852.0300, subp. 2.

The PUC cannot conduct an environmental review for pipeline expansions and replacements and new pipelines in pre-July 1, 1988, rights-of-way “according to chapter 7852” when the language of this same law requires the PUC to entirely exempt these projects from the Routing Permit process.

Although the PUC could conduct a routing review for a proposed new pipeline in an existing post-July 1, 1988, right-of-way, and for new pipelines proposed to be constructed in new rights-of-way, the PUC could limit such review to less than a full routing review pursuant to Minn. R. 7852.0600-0700, the partial exemption provisions of the Routing Rule. The partial exemption rule allows the PUC to exempt a project from compliance with “pipeline route selection procedures.” Minn. R. 7852.0600, subp. 1. Such decision would remove a project from the mandatory EIS category. Although the law is not explicit with regard to the exact scope of this exemption, it would appear that the PUC could exempt an existing-corridor pipeline project from the requirements contained in all of Chapter 7852’s subheading “Pipeline Route Selection Procedures,” which includes:

7852.0800 Application Procedures and Requirements;  
7852.0900 Application Acceptance Notice.  
7852.1000 Citizen Advisory Committees Authorized.  
7852.1100 Citizen Advisory Committee Membership.  
7852.1200 Public Adviser.  
7852.1300 Public Information Meetings.  
7852.1400 Route Proposal Acceptance.  
7852.1500 Alternative Route Analysis.  
7852.1600 Published Notice of Routes Accepted.  
7852.1700 Public Hearings.  
7852.1800 Route Selection and Commission Decision.  
7852.1900 Criteria for Pipeline Route Selection.

Granting such partial exemption would radically reduce the PUC environmental review process for a new major pipeline project to well below MEPA standards.

Limiting the applicability of a route selection process when a pipeline is proposed to be expanded or replaced, or when a new pipeline is proposed to be constructed in an existing route, has a rational policy basis because in these circumstances selection of a new route is not required. However, limiting the scope of the MEPA review needed in such circumstances is an entirely different matter. The need for a new route should not be used as a policy factor to entirely exempt pipeline expansions, replacements, and certain new pipeline projects from MEPA review. Construction of any new major pipeline, even those in existing corridors, would almost certainly have the potential for significant environmental effects and require a full EIS, even if the PUC found that such projects do not require “full route selection procedures.” As such, the existing language of the Mandatory EIS Rule could lead to violations of MEPA.

The fundamental conceptual flaw here is that the EQB’s proposed Mandatory EAW Rule (as well as the existing Mandatory EIS Rule) are based on the Routing Rule’s internal applicability analysis, the purpose of which is to exempt and limit RP review for projects that do not require a new corridor. In contrast, the scope of MEPA review is based on the potential for significant environmental effects, regardless of whether a proposed project is an expansion, a replacement, or is proposed to be located in an existing corridor. The need for a new corridor is just one factor in determining whether or not a proposed pipeline project would have the potential for substantial environmental effects. MEPA does not allow it to be the only factor.

The use of the Routing Rule to define the scope of MEPA review is also problematic because the PUC has separate jurisdiction over pipelines under the Certificate of Need law, Minn. Stat. § 216B.243, which jurisdiction is based on different jurisdictional definitions.

Pipeline expansions must acquire a CN if they “within a period of two years, would expand an existing large petroleum pipeline in excess of either 20 percent of its rated capacity or 10,000 barrels per day, whichever is greater.” Minn. R. 7853.0030.D. Approval of a CN for a pipeline expansion is a government action requiring MEPA review. *See Sandpiper Decision*. The proposed Mandatory EAW Rule illegally ignores the requirement for a MEPA review of pipeline expansions subject to a CN. By exempting all such projects from the RP process, and therefore from MEPA review, the proposed rule essentially assumes that all pipeline expansions would not have “the potential for significant environmental effects.” Minn. R. 4410.1000, subp. 3. Such blanket exemption is contrary to MEPA.

New pipelines above the CN jurisdictional size must acquire a CN regardless of whether or not a new right-of-way is needed and regardless of whether they are characterized as “replacement” projects. Minn. Stat. § 216b.2421, subd. 2(4), Minn. R. 7853.0010, subp. 14; Minn. R. 7853.0030.B. Since approval of a CN for a new pipeline in an existing right-of-way is a governmental action requiring MEPA review, and since construction of a major new pipeline in an existing right-of-way, whether characterized as a “replacement” or not, would likely have

the potential for significant environmental effects under Minn. R. 4410.1700, it is inappropriate to completely exempt or severely limit the scope of MEPA reviews for such projects based solely on the need for a new right-of-way.

Further, the proposed amendment would in effect make the “mandatory” EAW and EIS categories contingent on a finding by the Commission on whether or not a new pipeline in a post-July 1, 1988, right-of-way, or in a new right-of-way, would have potential significant environmental effects. It makes no logical sense to create a “mandatory” category that is in fact not mandatory because it is contingent on a PUC judgment about the degree of adverse effects.

The root of this situation derives from the fact that the EQB approved the use of the routing permit process to be an alternative form of environmental review under Minn. R. 4410.3600, but only for the routing permit process itself (see attached EQB records related to approval of the routing law as an alternative review). The EQB’s records show that it did not consider or approve the use of the routing permit process to serve as an alternative review for the CN process or any other non-route state permitting processes. If the EQB had considered the fact that a RP is just one of many governmental actions for major crude oil pipelines that trigger MEPA review, it would likely have realized that the need for a routing permit is not triggered by the same factors as trigger the need for a CN and other permits, and that the scope of impacts, alternatives, and mitigation for a route permit analysis differs from that needed for governmental approvals unrelated to route.

The RP laws cannot be used to address impacts, alternatives, and mitigation not related to route, because their language allows consideration of only route-related impacts, alternatives, and mitigation. All of the language in the RP laws is related exclusively to route-related matters. Thus, the RP laws do not allow consideration of, for example, climate change impacts, air pollution impacts, and socioeconomic impacts outside of the immediate route, or alternatives such as expansion of existing pipelines, use of conservation, or use of alternative technologies such as rail. Yet, all of these non-route impacts and alternatives must be considered by the PUC during the CN review, and therefore within its MEPA review for CN decisions. Thus, the Routing Rules are not an appropriate form of MEPA review for the PUC’s CN process or other agency processes unrelated to route. Future efforts by the PUC to bootstrap use of the Routing Rules to serve as MEPA review for non-route governmental actions would result in litigation risks.

The EQB is laboring under the misperception that it approved use of the route permit process as an environmental review for all pipeline-related governmental actions, when its 1989 alternative review SONAR shows that the EQB entirely failed to consider whether or not the route permit process would be available and adequate for use as an alternative environmental review for other major government actions, such as approval of a CN, 401 water quality



certification, and public land right of way licenses. The EQB and PUC cannot now bootstrap the 1989 approval of the route permit alternative review process for use as the MEPA review for all other pipeline related permits, nor may the EQB define the Mandatory EAW and EIS rules by reference solely to the RP laws.

Further, defining the Mandatory EAW Rule and Mandatory EIS Rule by reference to the Routing Rules is deeply problematic because of the exclusion and exemption language in the Routing Rules. This language converts these “mandatory” categories into discretionary categories, creates significant regulatory ambiguity, and appears to violate MEPA.

### **RECOMMENDATIONS**

Rather than tie the EAW and EIS mandatory categories for pipelines exclusively to the applicability of the RP process, the EQB should recognize the existence of the CN law and other permits required for major pipeline expansions and new construction. Given the need for MEPA review of the permits required by non-route laws, the EQB should:

- strike all reference in the Mandatory EAW Rule and the Mandatory EIS Rule to the RP process, because the various exemptions and exclusions in the RP process are either based on PUC determination of the significance of environmental effects such that they are not “mandatory,” or are incompatible with MEPA jurisdiction particularly with regard to pipeline expansions, replacements, and new pipeline construction in existing corridors, and because reference to the relatively complex RP procedural rules creates substantial regulatory uncertainty with regard to the process and scope of review required to comply with MEPA, which is contrary to the intent of promulgation of “mandatory” categories;
- require an EAW for all pipeline expansions below the CN and other regulatory thresholds;
- require EISs for all new pipelines, whether or not characterized as “replacements,” and pipeline expansions that require a CN; and
- rescind its 1989 order approving an alternative review process for pipeline RP applications, because this defective rulemaking will continue to trigger disputes related to the appropriate MEPA process for pipeline projects that are subject to multiple agency permit approvals, and because in the long run it would be more efficient to simply apply the MEPA rules themselves to complex, multi-agency, and multi-permit crude oil projects, than it is to attempt to bootstrap the Routing Rules into a comprehensive environmental review process, which they are not.

The EQB should amend the Mandatory EIS Rule, by striking all reference to the RP statute and rules. It should amend this rule to state that an EIS is required for all pipeline projects as defined by Minn. Stat. § 216B.2421, subd. 2(4) that are subject to CN review (the standard for CN

review is “any pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of coal, crude petroleum or petroleum fuels or oil, or their derivatives; . . . “. It should also state that all pipeline expansions subject to review under Minn. R. 7853.0030.D require preparation of an EIS. These CN thresholds are based on clear and unambiguous physical characteristics and are unencumbered by complicated exceptions and exemptions.


With regard to the Mandatory EAW Rule, the EQB should clearly demarcate pipeline projects that require only an EAW due to limitations in their physical diameter, length, or capacity, in light of the thresholds contained in Minn. Stat. § 216B.2421, subd. 2(4), and Minn. R. 7852.0030.D, and any other jurisdictional definitions contained in other state regulatory processes. Again, the Mandatory EAW Rule should be based on clear physical characteristics and avoid reliance on agency discretion.

Finally, if the EQB seeks to entirely exempt certain classes of pipeline expansions, pipeline replacements, or new pipelines, it should do so expressly by adding these to the list of project-specific exemptions contained Minn. R. 4410.4600. Creating *de facto* back door exemptions for pipeline projects via action of the Routing Rules or agency discretion, rather than clear express exemptions, is poor regulatory practice, unfair, and misleading to the public. The creation of indirect exemptions for certain pipeline projects would violate Minn. Stat. § 116D, subd. 2a(b), which requires that the EQB “by rule establish . . . categories of actions for which no environmental review is required under this section.” Therefore, the EQB may not indirectly exempt entire categories of pipeline projects from MEPA review.

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.

Thank you for your consideration of these comments.

Very truly yours,

  
Paul C. Blackburn  
Staff Attorney  
Honor the Earth

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA ENVIRONMENTAL QUALITY BOARD

In the Matter of the Proposed  
Amendments to the Rules Governing  
the Environmental Review Program  
JUDGE

REPORT OF THE  
ADMINISTRATIVE LAW

Minn. Rules pts 4415.0010 to  
4415.0215

(PART 2)

The above entitled matter came on for hearing before Administrative Law Judge Allan W. Klein on November 1b, 1988 in St. Paul.

This Report is the second part of a controversial rule hearing proceeding held pursuant to Minn. Stat. Sec. 14.01 through 14.28 (1986), to determine whether the environmental rules relating to pipelines should be adopted by the Environmental Quality Board. The first portion of this hearing was held on October 12, 1988 and the results of that hearing are embodied in the Report of the Administrative Law Judge (Part 1) which was issued on November 8, 1988. This report deals exclusively with the two subparts omitted from the first report, part 4415.4300, subpart 7 and 4415.4400, subpart 24.

The Board was represented by Eldon G. Kaul, Assistant Attorney General, 520 Lafayette Road, St. Paul, Minnesota 55155. Appearing at the hearing from the Board staff was Larry Bruce Hartman, 380 Centennial Office Building, 685 Cedar Street, St. Paul, Minnesota 55155.

Five persons signed the hearing register. Thirty-five numbered exhibits were received prior to the hearing. All persons desiring to testify were given an opportunity to do so. The record remained open through December 5, 1988, for the submission of comments. Six written comments were received prior to the close of the record. One comment was received late. The late comment merely restated oral comments made at the hearing, so the issues raised in that comment are addressed below. The Board submitted no post-hearing written comments. On December 8, 1988, the record finally closed for all purposes.

This Report must be available for review to all affected individuals upon request for at least five working days before the Board takes any further action on the rule(s). The Board may then adopt a final rule or

modify or withdraw its proposed rule. If the Board makes changes in the rule other than those recommended in this report, it must submit the rule with the complete hearing record to the Chief Administrative Law Judge for a review of the changes prior to final adoption. Upon adoption of a final rule, the Board must submit it to the Revisor of Statutes for a review of the form of the rule. The Board must also give notice to all persons who requested to be informed when the rule is adopted and filed with the Secretary of State.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

##### Procedural Requirements

1. The first report contains the Findings relating to the procedural requirements met by the Board for promulgation of the proposed rule. This examination will not be repeated here. The hearing on the subparts which are at issue in this report was continued from the October 12, 1988 hearing by the agreement of the participants. Notice of the continued hearing was sent to all persons and associations requesting notice of the proposed adoption of rules by the Board. The Administrative Law judge finds that notice of the continued hearing was proper.

##### Other Considerations

2. The first report dealt with considerations such as the impact of The rules on small businesses, agricultural land fiscal issues and the general background and overview of the rules. The discussion of those issues is incorporated herein.

##### Statutory Authority

3. The Board's statutory authority to adopt the rules is set forth in Minn. Stat. § 116D.04, subd. 2a(a), 4a, 5a, 8 and 9. Further, Minn. Stat. § 116D.045, as amended by Laws of Minnesota 1988, chapter 501, also grants rulemaking authority to the Board which was utilized for these rules. The Administrative Law Judge finds that the Board has the necessary statutory authority to adopt the proposed amendments.

##### General

4. The two subparts at issue in this report regulate the production of environmental assessment worksheets (EAW) and environmental impact statements (EIS) for pipeline projects. Matters concerning both subparts will be resolved first, followed by a discussion of each subpart individually. Reference will be made to a Report being issued concerning pipeline routing rules proposed by the Board. That report is identified as the Pipeline Routing Rules Report issued contemporaneously with this report.

Part 4415.4300 Subpart ,7 and  
Part 4415.4400 subpart 24 Federal Preemption

5. The Board and the interested parties reached a compromise set forth in the Joint Statement of Resolution. of Potential Dispute Over Applicable State and Federal Jurisdiction. EQB Exhibit 36. The Board

agreed to amend Part 4415.4300 subpart 7 (hereinafter "Subpart 1") as will be discussed, infra and the representatives of interstate natural gas pipelines agreed not to oppose that subpart. Both the Board and the interested parties reserved the right to brief and argue the issue of preemption in the appropriate forum. The issue of federal preemption arose in the pipeline routing rulemaking process. As was stated in that rule report, for the issue of federal preemption to be decided, the proper tribunal would be a state or federal court, not this rulemaking process.

#### Part 4410.4300 Subpart 7 -Mandatory EAW Categories - Pipelines

6. This provision requires an Environmental Assessment Worksheet (EAW) be prepared for a project if the any of the stated thresholds are met, unless a more intense review (EIS) is warranted. Controversy was generated by the proposed reduction of the length of the pipeline project triggering mandatory EAW review from 50 miles to .75 miles. Interested parties argued that this reduction exceeds the statutory authority of the Board. An examination of the authorizing statutes reveals no specific minimum length of pipeline which triggers the environmental review intended by the Legislature. The only specific length mentioned with regard to pipelines is in the routing statute, Minn. Stat. - 1161.015 subd. 3(c), which excludes minor relocations of an existing pipeline of less than .75 miles from the routing requirements. The Board has demonstrated that it has the authority to act as it has proposed.

7. A further objection was raised that the reduction of length is Arbitrary. The Board responded that: 1) the original 50 mile figure was set merely to conform with existing certificate of need process; 2) the Board had very little experience with environmental review of pipelines in 1982 (when the 50 mile figure was set); 3) projects of much less than 50 miles in length can have severe environmental impacts; and, 4) the length of pipeline triggering environmental review has been, in fact, shorter than 50 miles. EQB Exhibit 35. The Board is not precluded from amending an existing rule once it is promulgated. Minn.Stat. sec.14.05 subd. 1 (1986).

B. The Board's justification for reducing the threshold was set forth in the Statement of Need and Reasonableness (SONAR) and supplemented at the hearing and in its post-notice comments. EQB Exhibit

35. The Board presented supplemental data at the hearing because interested parties had not raised any objection to the .75 mile standard until after preparation of the SONAR. Further, the Board believed that the pipeline companies were in agreement with the board's proposal to

conform the length standard with the pipeline routing rules. EQB  
Exhibit

35. In general, failure to set forth any factual basis for a  
rulemaking  
decision is a defect. G. Beck, E. Bakken & T. Muck, Minnesota  
Administrative Procedure 389 (1987). in this instance, however, the  
board has presented enough information in the SONAR and supplemented it  
at the hearing to demonstrate the need and reasonableness of the rule.  
Finding 9, infra. The concepts of the justification used were in the  
SONAR, and thus, available to all interested parties. The  
Administrative  
Law Judge finds that the failure to include all of the data for  
reducing  
the threshold from 50 miles to .75 miles in the SONAR is not a  
procedural  
defect.



9. The board cannot set standards through rulemaking without the standards being needed and reasonable. *Manufacture -Housing Institute v. I Petersen* , 347 N.W.2d 238, 246 (Minn. 1984). The Board has presented statistical evidence to show that the original rule was not effective in its intended purpose and that , de facto the rule was being enforced at a lower threshold than the 50 mile standard. The Board has shown that the proposed .75 mile standard is consistent with the proposed routing rules. Using a standard identical to another rule, while not in itself reasonable, renders compliance with the two rules easier. The Board has shown the potential for significant environmental impact from pipelines less than 50 miles long. The Board has demonstrated the need and reasonableness of the .75 mile threshold for environmental review.

10. The Board has proposed to modify the provisions of item B and add items C and D to permit flexibility in the rule for natural or synthetic gas pipelines. Common elements of items B and C provide for a 5 mile exemption from the mandatory EAW requirement, under certain circumstances. This exemption is permitted since the exempt pipeline is either federally regulated and on public property or federally regulated and located on existing right of way. if those standards are not met, then the .75 mile threshold for an EAW is required. The Board has demonstrated the need and reasonableness for the Modification. The modification is not a substantial change.

Part 4410.4400 Sub art 24 Mandatory EIS Categories - Pipelines

11. As originally proposed, this provision threatened to supplant the less restrictive standard of Subpart 7. The Board has modified the language of Subpart 24 to clarify that only those pipelines subject to the full routing process require a mandatory EIS. The modification is not a substantial change.

12. At the hearing, objection was made to the establishment of a mandatory EIS requirement for pipelines on the ground that the Board lacks statutory authority to make this change. The objection hinges upon no mention of EIS requirements having been made in the routing statute,

Minn. Stat. 1161.015 (1987). The statutory authority of the Board in adopting these rules has been cited in the first report and in Finding 3, supra,. The objection fails to recognize that the Board has two different grants of authority. The first is the long-standing grant of authority to establish Categories for environmental review. Minn. Stat. 116.04 (1986). The second grant is to establish permitting authority for pipeline routes. Minn. Stat. 1161.015 (1987). Although the timing of the Board's revision of its EAW/EIS rules is coincidental with the promulgation of the rating rules, the statutory bases for these two actions are distinctly different. As mentioned above, the Board has the statutory authority to amend the rules as proposed.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. That the Minnesota Environmental Quality Board gave proper notice of the hearing in this matter.

2. That the Board has fulfilled the procedural requirements of Minn. Stat. SS 14.14, and all other procedural requirements of law or rule .

3. That the Board has documented its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. SS 14.05, subd. 1, 14.15, subd. 3 and 14.50 (i) and (ii).

4. That the board has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. 14.14, subd. 2 and 14.50 (iii).

5. That the additions and amendments to the proposed rules which were suggested by the Board after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. 14.15, subd. 3, Minn- Rule 1400.1000, Subp. I and 1400.1100.

6. That any Findings which might properly be termed Conclusion and any Conclusions which might properly be termed Findings are hereby adopted as such.

7. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Board from further modification of the rule based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

It is hereby recommended that the proposed rules be adopted consistent with the Findings and Conclusions made above.

Dated this 5th day of January, 1989.

ALLAN W. KLEIN  
Administrative Law Judge



## MINNESOTA ENVIRONMENTAL QUALITY BOARD

300 Centennial Building • 658 Cedar Street • St. Paul, Minnesota 55155  
612-296-2603

February 9, 1989

TO: EQB MEMBERS

FROM: Larry Hartman *LH*  
EQB Staff

RE: Request for Approval of EQB Pipeline Routing Rules, Chapter 4415, as an Alternative Form of Environmental Review

### Summary

EQB staff is requesting EQB approval of the Pipeline Routing Rules, Chapter 4415, as an alternative form of environmental review. Approval of this request will provide for more timely environmental review and eliminate duplication. The EQB may approve an alternative form of environmental review when it meets the eight conditions set forth in Minn. Rules pt. 4410.3600, subp. 1. Staff has examined the review procedures in the pipeline routing rules and the conditions that must be met. Approval of alternative review is recommended.

### Background

Minnesota Statutes 116I.015, Subd. 3. (1988) requires the EQB to adopt rules governing the routing of pipelines. On January 19, 1989, approximately one year after initiating rulemaking, the EQB adopted pipeline routing rules. Following action by the Board, the rules were submitted to and approved by the Office of the Revisor of the Statutes (copy attached). Notice of adoption and publication in the State Register is scheduled for February 20, 1989. The pipeline routing rules take effect five working days after notice of adoption appears in the State Register.

While the pipeline routing rules meet the requirements of Minn. Stat. section 116I.015, the development of these rules also relied on the direction provided by Minn. Stat. section 116D.03, subd. 1., which states that "the legislature authorizes and directs that, to the fullest extent practicable the policies, regulations and public laws of the state shall be interpreted and administered in accordance with the policies set forth in section 116D.01 to 116D.06", which is the State Environmental Policy Act.

Critical to development and approval of pipeline routing rules was incorporation of equivalent environmental review requirements to provide for timely review and eliminate duplication.

EQB Members

Page 2

To accomplish this EQB staff specifically included requirements that would provide for board approval of Pipeline Routing Rules, Chapter 4415, as an alternative form of environmental review.

Under this approach, pipelines subject to the routing rules would not actually be reviewed through environmental assessment worksheets (EAWs) or environmental impact statements (EISs), but would receive equivalent review under the routing and permitting process established in the pipeline routing rules.

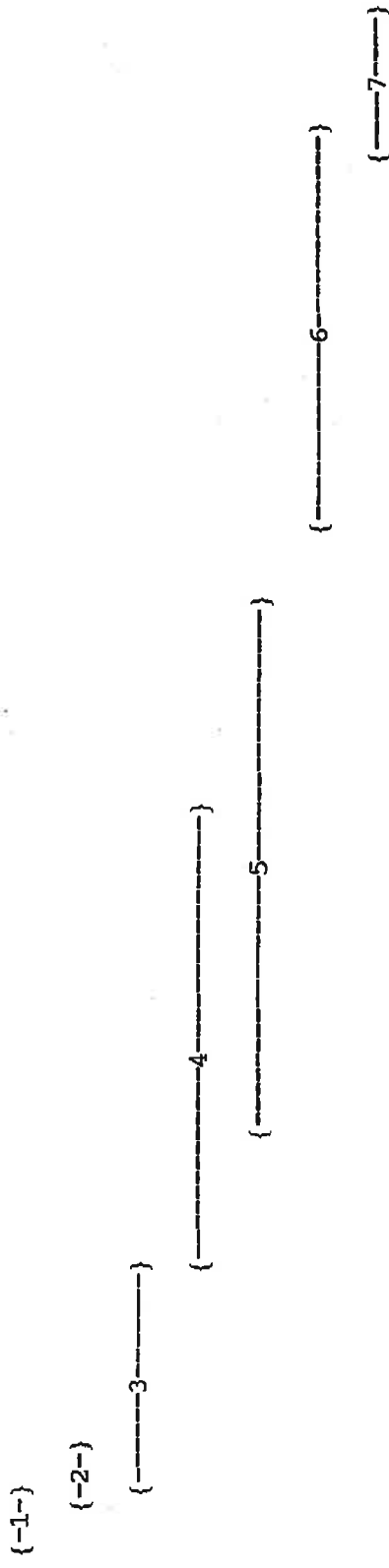
The pipeline routing rules provide for equivalent: 1) EAW review requirements in the partial exemption from pipeline route selection procedures, part 4415.0035; and 2) EIS review requirements, parts 4415.0045 to 4415.0095. For information purposes, the equivalent EAW and EIS review procedures are summarized and attached.

Recommendation

The Pipeline Routing Rules, Chapter 4415, meet all the conditions for approval as a substitute form of environmental review as provided by Minn. Rules, pt. 4410.3600, subp. 1., items A. to H. Therefore, staff is recommending approval of EQB Pipeline Routing Rules, Chapter 4415, as an alternative form of environmental review.

EQB PIPELINE ROUTING RULES  
 PARTIAL EXEMPTION FROM PIPELINE ROUTE SELECTION PROCEDURES (Minn. Rules pt. 4415.0035)

DAYS 0 5 10 15 20 25 30 35 40 45 50 55 60 65 70 75 80 85 90 95 100



1. Applicant submits application 21 days prior to EQB meeting (Minn Rule pt. 4415.0105 Subp. 4.).
2. EQB accepts or rejects application (Minn. Rule pt 4415.0105 Subp.4.). 90 day review process begins.
3. Within 15 days of acceptance, applicant publishes notice of exemption, distributes application and procedures for objection (Minn. Rules pt. 4415.0035 Subp. 2).
4. Required 30 day period for objections to exemption application (Minn. Rules pt 4415.0035 Subp. 3.).
5. Public information meetings held in each county (Minn. Rules pt. 4415.0035 Subp. 4).
6. Review of record and preparation of documents for EQB decision on partial exemption application (Minn. Rules pt. 4415.0035 Subp. 5).
7. Permit distribution by applicant within 10 days of receipt from EQB (Minn Rules pt. 4415.0175 Subp. 2.).

EQB PIPELINE ROUTING RULES  
PIPELINE ROUTE SELECTION PROCEDURES  
Minn. Rules pts. 4415.0045 to 4415.0095

MONTHS 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11

{-1-}  
  {-2-}  
    {--3--}  
      {---4---}  
        {-----5-----}  
          {-----6-----}  
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              {---8---}  
                {---9---}  
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                    {--11--}  
                      {--12--}

1. Applicant submits application 21 days prior to EQB meeting (Minn Rule pt. 4415.0105 Subp. 4.).
2. EQB accepts or rejects application (Minn. Rule pt 4415.0105 Subp.4.). Nine month review process begins.
3. Within 20 days of acceptance notice must be published in each county in which a route is proposed (Minn. Rules pt. 4415.0050).
4. Board appoints a public advisor (Minn. Rules. pt 4415.0055) and may appoint a advisory committe to evaluate routes (Minn. Rules pt. 4415.0055).
5. EQB notices and holds public information in each county in which a route is proposed (Minn. Rules pt. 4415.0070).
6. Time frame for route proposals from agencies, advisory committees, interested persons (Minn. Rules pt 4415.0075).
7. EQB accepts and identifies routes to be considered at public hearings. Notices published in newspapers (Minn. Rules pt. 4415.0085).
8. Comparative analysis of alternative routes prepared (Minn. Rules pt. 4415.0080).
9. Second round of information meetings and public hearings (Minn. Rules pts. 4415.0070 and 4415.0090).
10. Hearing examiners prepares findings of fact.
11. EQB reviews hearing record, designates route, and issues pipeline routing permit.
12. Applicant distributes pipeline routing permit within 10 days of receipts from EQB (Minn Rules pt. 4415.0175 Subp. 2.).

STATE OF MINNESOTA  
ENVIRONMENTAL QUALITY BOARD

In the Matter of  
the Approval of EQB  
Pipeline Routing Rules,  
Chapter 4415, as an  
Alternative Form of  
Environmental Review

FINDINGS OF FACT,  
CONCLUSIONS, AND  
ORDER OF APPROVAL

Based on the information in the record of this proceeding, the Minnesota Environmental Quality Board makes the following:

FINDINGS OF FACT

1. Minnesota Statutes, section 116D.04, subd. 4a and 5a (g) (1988) and Minnesota Rules, pt. 4410.3600 authorize the EQB to approve and provide for alternative forms of environmental review.
2. Minn. Rules, pt. 4410.3600, subpart 1., items A to H., state the conditions that must be met to obtain approval as an alternative form of environmental review.
3. The Pipeline Routing Rules, chapter 4415, provide for four different types of review procedures: 1) emergency procedures; 2) conditional exclusion; 3) partial exemption from route selection procedures; and 4) pipeline route selection procedures. The EQB may permit certain actions in an emergency situation; however, when the emergency has passed, the pipeline is subject to review under chapter 4415. When an applicant requests a conditional exclusion from the Board, under Minn. Rules, pt. 4415.0030, the applicant must complete the environmental assessment worksheet (EAW) review procedures as provided in parts 4410.1000 to 4410.1700, prior to the board taking action on whether to grant a conditional exclusion. The applicant must also comply with the requirements of Minn. Stat., sections 116I.02 and 117.49. The partial exemption from pipeline route selection procedures, part 4415.0030, is equivalent to the EAW review requirements and pipeline route selection, parts 4415.0045 to 4415.0095, is equivalent to the EIS review requirements.



4. Findings 5 to 12 contain the conditions in Minn. Rules, pt. 4410.3600, subpart 1., items A. to H., that must be met to qualify for board approval as an alternative form of environmental review and demonstrate how the procedures in the pipeline routing rules comply with each condition.
5. "A. the process identifies the potential environmental impacts of each proposed project;"

The pipeline routing rules at part 4415.0145 require an applicant to submit an analysis of the potential human and environmental impacts that may be expected from pipeline right-of-way preparation and construction practices and operation and maintenance procedures. These impacts include but are not limited to the impacts for which criteria are specified in part 4415.0040 or 4415.0100. The criteria that the board must consider in making a decision include but are not limited to: human settlement, existence and density of populated areas; the natural environment; features with historical, archaeological, and cultural significance; natural resources and features; the extent to which human or environmental effects are subject to mitigation by regulatory control and by application of the permit conditions in part 4425.0185.

Pipeline route selection procedures provide for identification of other environmental effects by: appointment of citizen advisory committees to advise the board, part 4415.0055; public information meetings, part 4415.0070; additional pipeline route proposals, part 4415.0075; environmental analysis of alternative routes, part 4415.0080; and public hearings, part 4415.0090.

For the partial exemption procedures, part 4415.0035, other possible environmental effects may be identified during the required 30-day comment period. A copy of the application for partial exemption must be sent to all persons identified in part 4415.0105, subp. 6 and to all affected landowners and governmental units. Part 4415.0035, subp. 2. A. requires published notice in each county in which a route is proposed. Part 4415.0035, subp. 4. requires a public information meeting in each county.

6. "B. the aspects of the process that are intended to substitute for an EIS process address substantially the same issues as an EIS and uses procedures similar to those used in preparing an EIS but in a more timely or more efficient manner;"

A pipeline routing permit application, parts 4415.0115 to 4415.0170, covers the subjects and information required in an EIS by part 4410.2300. The information required in the pipeline routing permit application must include but is not limited to: general background information, description of proposed pipeline and associated facilities, land requirements, right-of-way preparation procedures and construction activity sequence, location of preferred pipeline route, environmental impact of the preferred route, right-of-way protection and restoration

measures, operation and maintenance, list of government agencies and permits, and evidence of consideration of alternative routes.

7. "C. alternatives to the proposed project are considered in light of their potential environmental impacts in those aspects of the process that are intended to substitute for an EIS process;"

Pipeline route selection procedures, parts 4415.0045 to 4415.0095, and the application requirement at part 4415.0170 requires the applicant to present a preferred route and evidence of consideration of alternatives and provide a summary discussion of the environmental impact of pipeline construction along the alternative routes consistent with the requirements of part 4415.0140 to 4415.0145 and the rationale for rejection of the routing alternatives. Environmental review under route selection procedures provides for consideration of other route alternatives at part 4415.0075. This part allows the board to accept for consideration at public hearing any other route or route segment it considers appropriate for further consideration. Other route or route segment proposals may be made by board member agencies, board staff and the citizen advisory committee. Any other person may also propose an alternative route or route segment by providing the information required at part 4415.0075, subps. 3. and 4.

8. "D. measures to mitigate the potential environmental impact are identified and discussed;"

The pipeline routing rules, part 4415.0150, requires the applicant to describe what measures will be taken to protect the right-of-way or mitigate the adverse impact of right-of-way preparation, pipeline construction, and operation and maintenance on the human and natural environment. This part also requires the applicant to describe what measures will be taken to restore the right-of-way and other areas adversely affected by construction of the pipeline. The pipeline routing permit at part 4415.0175 specifies permit conditions that apply to pipeline right-of-way preparation, construction, cleanup and restoration that mitigate potential environmental impacts. Measures to mitigate impact are also addressed in the criteria that the board must consider in determining the route of a pipeline, part 4415.0100 or whether to grant a partial exemption from the pipeline route selection procedures, part 4415.0040.

9. "E. a description of the proposed project and analysis of potential impacts, alternatives (in those aspect of the process intended to substitute for an EIS), and mitigating measure are provided to other affected or interested governmental units and the general public;"

All of the information required by item "E." will be distributed to affected or interested governmental units and the general public as required by part 4415.0105, subp. 6. and as required by part 4415.0035, subp. 2.

10. "F. the governmental unit shall provide notice of the availability of environmental documents to the general public in at least the area affected by the project (a copy of environmental documents on projects reviewed under an alternative review procedure shall be submitted to the EQB; the EQB shall be responsible for publishing notice of the availability of the documents in the EQB Monitor);"

For pipeline route selection procedures notice of application acceptance is provided for at part 4415.0050; notice of routes accepted for public hearing at part 4415.0085; and notice of public hearing at part 4415.0090. Notice for partial exemption from pipeline route selection procedures is provided for in the rules at part 4415.0035, subd. 2., which requires the board to provide published notice of the proposed project, including size and type, and a map of the proposed pipeline route in each county in which the route is proposed to be located. Because the EQB is the RGU for chapter 4415, notice of availability and other notices provided for in these rules will be published in the EQB Monitor.

11. "G. other governmental units and the public are provided with a reasonable opportunity to request environmental review and to review and comment on the information concerning the project (the process must provide for RGU response to timely substantive comments relating to issues discussed in environmental documents relating to the project);"

Route selection procedures require public hearings, part 4415.0090, which afford all persons the opportunity to submit written or oral testimony on any aspect of the project. In the partial exemption procedure at part 4415.0035, any person may file comments with the board within 30 days after giving notice as required by part 4415.0035, subp. 2.

12. "H. the process must routinely develop the information required in items A. to E. and provide the notification and review opportunities in items F. and G. for each project that would be subject to environmental review;"

The review procedures in the pipeline routing rules provide the information required in items A. to E. and are discussed in Findings 5. to 9., while the notification and review opportunities in items E. and F. are discussed in Findings 10. and 11.

13. The review procedures in the Pipeline Routing Rules, Chapter 4415, meet the conditions for approval as an alternative form of environmental review pursuant to Minn. Rules, pt. 4410.3600, subp. 1., items A. to H.

#### CONCLUSIONS OF LAW

1. The EQB is authorized by Minnesota Statutes, section 116D.04 subd. 4a and 5a (g) and pursuant to Minn. Rules, pt. 4410.3600,

subp. 1., items A. to H., may approve alternative forms of environmental review.

2. The process for environmental review contained in the Pipeline Routing Rules, Chapter 4415, meets the conditions for approval of an alternative form of environmental review pursuant to Minn. Rules, pt. 4410.3600.

#### ORDER OF APPROVAL

Based on the Findings of Fact and Conclusions contained herein and the entire record of the proceeding:

1. The Environmental Quality Board hereby approves the process contained in the Pipeline Routing Rules, Chapter 4415, as an alternative form of environmental review.
2. Upon the effective date of this Order of Approval all pipeline routing projects subject to and within the purview of the Pipeline Routing Rules, Chapter 4415, shall be exempt from environmental review under Minn. Rules, pt. 4410.1100 to 4410.1700, and 4410.2100 to 4410.3000.
3. The Chair is hereby directed to provide for periodic review of the alternative process for the applicable pipeline routing projects to ensure compliance with environmental review requirements and intent.
4. The Chair shall report to the EQB and provide for the EQB's consideration of the withdrawal of the approved alternative process for pipeline routing projects, if the Chair's review of the alternative process indicates that it no longer fulfills the intent and requirements of the Minnesota Environmental Policy Act and Minn. Rules, pts. 4410.0200 to 4410.7800.
5. The Chair shall reasonably ensure that appropriate notice of this Order of Approval is provided to persons involved with pipeline routing projects subject to the alternative process and to other potentially interested persons.
6. This Order of Approval shall be effective on the same date as the Pipeline Routing Rules, Chapter 4415, become effective as having the force and effect of law.

Approved and adopted \_\_\_\_\_.

State of Minnesota  
Environmental Quality Board

\_\_\_\_\_  
John C. Ditmore, Chair



## MINNESOTA ENVIRONMENTAL QUALITY BOARD

300 Centennial Building • 658 Cedar Street • St. Paul, Minnesota 55155  
612-296-2603

### RESOLUTION OF THE MINNESOTA ENVIRONMENTAL QUALITY BOARD PIPELINE ROUTING ALTERNATIVE REVIEW PROCESS

WHEREAS, Minn. Stat. section 116D.04, subd. 4a and 5a (g) and Minn. Rules pt. 4410.3600 provide for alternative forms of environmental review; and

WHEREAS, the EQB staff is requesting EQB approval of an alternative form of review for pipeline routing;

WHEREAS, review under EQB Pipeline Routing Rules, Chapter 4415, provides for more timely environmental review and eliminates duplication;

WHEREAS, the environmental review procedures in Chapter 4415 meet the conditions for approval provided in Minn. Rules pt. 4410.3600 subp. 1. items A. to H.; and

WHEREAS, the EQB has considered the proposed Findings of Fact, Conclusions, and Order in the matter of approving Minn. Rules pts. 4415.0010 to 4415.0215 as an alternative form of environmental review.

NOW THEREFORE BE IT RESOLVED that the EQB approves and adopts the attached Findings of Fact, Conclusions, and Order of Approval; and

BE IT FURTHER RESOLVED that the EQB Pipeline Routing Rules, Chapter 4415, are approved as an alternative form of environmental review pursuant to Minn. Rules pt. 4410.3600 and the Order of Approval.

The Chair of the EQB, is hereby authorized to execute the attached Findings of Fact, Conclusions, and Order of Approval on behalf of the EQB in the matter of approving Minn. Rules pts. 4415.0010 to 4415.0215 as an alternative form of environmental review.