

Environmental Quality Board

STATEMENT OF NEED AND REASONABLENESS

In the Matter of Proposed Revisions of Minnesota Rule Chapters
4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904,
4410.7906, 4410.7926, and 4410.4600

Revisor Number ID: RD-04157

The *State Register* notice, this Statement of Need and Reasonableness (SONAR) and the proposed rule will be available during the public comment period at the Environmental Quality Board (EQB) website <http://www.eqb.state.mn.us>

Alternative Format:

Upon request, this document can be made available in an alternative format.

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Notice Regarding the Excerpted Language in this SONAR:

The EQB has excerpted language from the draft rules and included those excerpts in this SONAR at the point that the reasonableness of each provision of the rules is discussed. This was done to assist the reader in connecting the rule language with its justification. However, there may be slight discrepancies between the excerpted language and the rule amendments as they are proposed. The EQB intends that the rule language published in the *State Register* at the time the rules are formally proposed is the rule language that is justified in this SONAR.

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Acronyms or abbreviations

Administrative Procedures Act	APA
Administrative Law Judge	ALJ
Chapter	ch.
Code of Federal Regulations	CFR
Department of Agriculture	MDA
Department of Natural Resources	DNR
Department of Transportation	MnDOT
Environmental Assessment Worksheet	EAW
Environmental Impact Statement	EIS
Environmental Quality Board	EQB or Board
Local Governmental Unit	LGU
Minnesota Environmental Policy Act	MEPA
Minnesota Rules	Minn. Rules
Minnesota Statutes	Minn. Stat.
Minnesota Management and Budget	MMB
Minnesota	MN
Minnesota Association of Townships	MAT
National Environmental Policy Act	NEPA
Office of Administrative Hearings	OAH
Pollution Control Agency	PCA
Public Utilities Commission	PUC
Responsible Governmental Unit	RGU
Section	§
Statement of Need and Reasonableness	SONAR
Soil and Water Conservation District(s)	SWCD
Watershed Management Organization(s)	WMO
Wetland Conservation Act	WCA

I. Introduction and background

A. Introduction

The Environmental Quality Board (EQB or Board) is proposing amendments to rules relating to environmental review. This rulemaking will amend rules governing mandatory categories for environmental assessment worksheets (EAW) and environmental impact statements (EIS), definitions to support those categories, responsible governmental unit (RGU) determinations, and categories of exemptions from environmental review. (Revisor's ID Number R-04157)

In this rulemaking the EQB is also addressing two previously initiated rulemaking efforts.

- Rules relating to silica sand projects. These amendments include the mandatory categories related to mining facilities, transfer facilities, processing facilities and storage facilities related to silica sand projects. These amendments will adopt the threshold levels for silica sand projects established by the Minnesota Legislature through [Laws of Minnesota 2013, Chapter 114, Article 4, Section 92](#). In 2014, the EQB began rulemaking to address silica sand projects (Revisor's ID Number RD-4305).
- Rules relating to Recreational trails. These amendments include thresholds for different types of recreational trails that require preparation of an EAW. In the 2015 Minnesota legislative session, [Laws of Minnesota 2015, Chapter 4, Article 5, Section 33](#), the Minnesota Legislature passed legislation changing the EAW thresholds applicable to motorized trails. In 2015, the EQB began rulemaking to address Recreational trails projects. (Revisor's ID Number RD-4381).

This Statement of Need and Reasonableness (SONAR) explains the need for and reasonableness of proposed amendments to the environmental review rules, specifically Minnesota Rules (Minn. R.) part(s) [4410.0200, 4410.0500, 4410.4300, 4410.4400, and 4410.4600](#) and satisfies the requirements of Minnesota Statutes (Minn. Stat.) section (§) 14.131 and Minn. R. part 1400.2070.

B. Background

In 1969, the United States Congress enacted the National Environmental Policy Act, creating a program for assessing the environmental impacts of Federal actions. In 1973, Minnesota followed suit and passed the Minnesota Environmental Policy Act (MEPA). MEPA established the State's Environmental Review program and created the Environmental Quality Board to govern and implement its requirements. The Environmental Quality Board consists of a Governor's representative acting as chair, nine state agency heads, and eight citizen members (one citizen member from each congressional district).

EQB Member Agencies:

- Board of Water and Soil Resources
- Department of Administration
- Department of Agriculture
- Department of Commerce
- Department of Employment and Economic Development
- Department of Health
- Department of Natural Resources
- Department of Transportation
- Pollution Control Agency

The MEPA environmental review process was designed to investigate public or private projects that have the potential to significantly impact the environment. The process is intended to disclose information to

project proposers, decision-makers and the public through a systematic process and works in conjunction with permits and other approvals.

Environmental review is mandatory for projects that meet certain thresholds. Each mandatory category assigns a responsible governmental unit (RGU) to conduct environmental review and uses a standard form. Mandatory review can either be in the form of an Environmental Assessment Worksheet (EAW) or an Environmental Impact Statement (EIS). The types of projects subject to these environmental review requirements are generally referred to as the mandatory EAW categories (441.4300) and mandatory EIS categories (4410.4400). The lists of projects that are exempt for these requirements are referred to as "exemptions categories" or sometimes just "exemptions."

Mandatory categories rulemaking

In 2012, the Minnesota Legislature, under the [Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3](#), directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances. This review resulted in the [Mandatory Environmental Review Categories Report](#) (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013.

Additionally, [2015 Special Session Law, Chapter 4, Article 3, Section 2](#) direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection.

Silica sand projects rulemaking

In 2013, the Minnesota Legislature set new, temporary, thresholds for when environmental review of silica sand projects must occur. The interim mandatory categories for silica sand projects are listed under [Minn. Stat. § 116C.991](#) and were established in accordance with [Laws of Minnesota 2013, chapter 114, article 4, section 105](#).

In the same section of the 2013 laws, the Legislature directed the EQB to amend its environmental review rules adopted under Minn. Stat. 116D to address silica sand projects. The legislation allowed the EQB, through its rulemaking process, to determine "whether the requirements should be different for different geographic areas of the state." The rulemaking was exempted from Minn. Stat. section 14.125; however, the interim thresholds for silica sand projects would remain in place until July 1, 2015.

The EQB initiated the silica sand project rulemaking (R-04157) in 2014 with the formation of the Silica Sand Advisory Panel. The public engagement and technical input generated by this group is identified in the Public Participation section II. of this SONAR.

In 2015, the Minnesota Legislature updated Minn. Stat. 116.991 [Laws of Minnesota 2015, Chapter 4, Article 4, Section 121](#), by removing the July 1, 2015 deadline and instead requiring environmental review until rules are adopted.

116C.991 ENVIRONMENTAL REVIEW; SILICA SAND PROJECTS.

(a) ~~Until July 1, 2015~~ a final rule is adopted pursuant to Laws 2013, chapter 114, article 4, section 105, paragraph (d), an environmental assessment worksheet must be prepared for any silica sand project that meets or exceeds the following thresholds,.....

The EQB determined that it would conduct rulemaking (R-04157) to adopt the original 2013 thresholds for environmental review of silica sand projects, as set by the Legislature. In 2017, [Laws of Minnesota 2017, Chapter 93, article 1, Section 105](#) the Legislature made silica sand rulemaking optional. The EQB determined that because there is a continuing potential for significant environmental effects from silica sand projects in Minnesota it is needed and reasonable to have the mandatory category thresholds for silica sand project within the environmental review Mandatory Category rules.

Sec. 105.

RULES; SILICA SAND.

- (a) *The commissioner of the Pollution Control Agency shall ~~may~~ adopt rules pertaining to the control of particulate emissions from silica sand projects. The rulemaking is exempt from Minnesota Statutes, section 14.125.*
- (b) *The commissioner of natural resources shall adopt rules pertaining to the reclamation of silica sand mines. The rulemaking is exempt from Minnesota Statutes, section 14.125.*
- (c) *By January 1, 2014, the Department of Health shall adopt an air quality health-based value for silica sand.*
- (d) *The Environmental Quality Board shall ~~may~~ amend its rules for environmental review, adopted under Minnesota Statutes, chapter 116D, for silica sand mining and processing to take into account the increased activity in the state and concerns over the size of specific operations. The Environmental Quality Board shall consider whether the requirements of Minnesota Statutes, section 116C.991, should remain part of the environmental review requirements for silica sand and whether the requirements should be different for different geographic areas of the state. The rulemaking is exempt from Minnesota Statutes, section 14.125.*

Recreational trails projects rulemaking

To conform to the 2015 legislative directive (below), the EQB is amending Minn. R. 4410.4300, subpart 37. The legislation directing the specific environmental review threshold and authorizing the changes to the EAW thresholds for motorized trails reads:

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

- a. The Environmental Quality Board shall amend Minnesota Rules, chapter 4410, to allow the following without preparing a mandatory environmental assessment worksheet:
 - 1. constructing a Recreational trails less than 25 miles long on forested or other naturally vegetated land for a recreational use;
 - 2. adding a new motorized recreational use or a seasonal motorized recreational use to an existing motorized Recreational trails if the treadway width is not expanded as a result of the added use; and
 - 3. designating an existing, legally constructed route, such as a logging road, for motorized Recreational trails use.
- b. The board may use the good cause exemption rulemaking procedure under Minnesota Statutes, section 14.388, subdivision 1, clause (3), to adopt rules under this section, and Minnesota Statutes, section 14.386, does not apply except as provided under Minnesota Statutes, section 14.388.

A summary of the good-cause rulemaking for the recreational trails category as well as the two judge's orders is available in **Exhibit #3**.

II. Public participation and stakeholder involvement

The EQB took the following steps to develop the draft rules, notify interested parties about the draft rules, and to solicit their input on rule language:

The EQB provided the statutorily required notifications to the public.

- A. Three Request for Comments were published in the *State Register*:
 - July 22, 2013
 - November 9, 2015
 - October 24, 2016
- B. The EQB has a self-subscribing rule-specific mailing list at: <https://www.eqb.state.mn.us/contact> which EQB used to send rule-related information to interested and affected parties.
- C. The EQB sent a GovDelivery notice and a notice the *EQB Monitor* encouraging interested and affected parties to register to receive rulemaking information via the self-subscribing rule-specific mailing list.
- D. The EQB established a rule-specific webpage: <https://www.eqb.state.mn.us/content/eqb-mandatory-categories-rulemaking>, which was used to disseminate rule-related information to interested and affected parties. (Prior to combining the silica sand projects rulemaking and the Recreational trails projects rulemaking with the mandatory categories rulemaking, each rulemaking had a rule-specific webpage. After the rulemakings were combined, all webpages directed viewers to the mandatory categories webpage for rulemaking information.)
- E. As part of the earlier silica sand rulemaking project, the EQB conducted the following activities to engage and inform interested parties and to provide the opportunity to register for future GovDelivery notices regarding this rule.
 - EQB staff traveled to eighteen local governments around the State of Minnesota (every county with silica sand facilities) to interview local government staff on issues related to silica sand and the implementation of the potential rules.
 - EQB sent out a survey (<https://www.eqb.state.mn.us/sites/default/files/documents/Sand%20survey%20for%20LGU%27s%20April%2015%20EQB.pdf>) on preliminary silica sand rule concepts to counties, cities and townships in Minnesota via three organizations:
 - 1) Minnesota Association of Counties (18 Counties)
 - 2) Minnesota Association of Cities
 - 3) Minnesota Association of Townships (745 Townships)

The survey was utilized to receive feedback on and refine rule concepts, designated RGUs, and to develop the discussion of need and reasonable in the SONAR.

- EQB released a preliminary draft of the proposed silica sand rule language on September 5, 2014 and presented the preliminary draft of the proposed rules to the Board at the public board meeting on September 17, 2014. This was an opportunity to provide an informal comment on the EQB rules.

- EQB staff presented an updated preliminary draft of the proposed rules to the EQB Board on November 18, 2015. This was another opportunity to provide an informal comment on the EQB rules and process.
- A Silica Sand Rulemaking Advisory Panel (SSRAP) was created:
 - An application process selected SSRAP members. A November 2013 request for interest in a silica sand rule advisory panel (advisory panel) was released by PCA and DNR.
 - The focus of the advisory panel was to provide feedback and advise PCA, DNR and EQB on issues related to rule language, economic and environmental impacts and administrative elements of rules.
 - A 15-member advisory panel was established representing public and private statewide interests. Membership included citizens, industries and local government.

Local government representatives
Keith Fossen, Hay Creek Township
Allen Frechette, Scott County
Kristi Gross, Goodhue County and Minnesota Association of County Planning and Zoning Administrators
Beth Proctor, Lime Township
Lynn Schoen, City of Wabasha
Citizen representatives
Jill Bathke, resident of Hennepin County
Katie Himanga, resident of Lake City
Jim McIlrath, resident of Goodhue County
Vince Ready, resident of Winona County
Kelley Stange, resident of Houston County
Industry representatives
Doug Losee, Unimin Corp.
Tom Rowekamp, IT Sands LLC
Aaron Scott, Fairmount Minerals
Brett Skilbred, Jordan Sands and Industrial Sand Council
Tara Wetzel, Mathy Construction and Aggregate and Ready Mix Association

- On January 13, 2014, PCA produced a media release announcing the membership of the advisory panel. Examples of media coverage include:
 - CBS Local, January 13, 2014: Minn. names member of Silica Sand Advisory Panel.
 - St. Paul, Pioneer Press, January 13, 2014: Minnesota: Silica sand advisory panel appointed.
 - Mankato Free Press, January 13, 2014: Three from area named to silica rulemaking panel.
- On January 28, 2014, DNR announced, via GovDelivery to 727 subscribers, the date of the first SSRAP meeting.
- The advisory panel met 12 times between January 2014 and February 2015.
 - Staff from Management Analysis & Development facilitated these meetings.
 - SSRAP meetings were open to the public.
 - All but the first meeting was held in Oronoco, MN, a central location for members of the panel and potentially affected persons.
 - All but the first meeting was recorded via WebEx, which allowed the public to remotely observe SSRAP meetings.

- WebEx recordings of each meeting were posted viewing on the Environmental Quality Board's website: (<https://www.eqb.state.mn.us/content/silica-sand-rule-advisory-panel>). Meeting handouts and presentation slides are also available on this web page.
- F. The EQB hosted informational meetings regarding the mandatory categories rulemaking, open to the public, but specifically focused on implications to LGUs. These meetings were held on March 18, 21, and 22, 2016, at the EQB offices in St. Paul, MN and via WebEx (which offers audio and visual interactions with participants from any location with internet access).
 - EQB staff have presented information regarding the rulemaking to groups that have made the request:
 - The Association of Minnesota Counties Annual Meeting on June 3, 2016.
 - The Board of Water and Soil Resources: Drainage Work Group on July 14, 2016.
 - The EQB released a preliminary draft of the proposed rule language on June 20, 2016 and provided an informal comment period through August 5, 2016. EQB sent a GovDelivery notice to interested parties as well as posted preliminary language on the EQB rulemaking web page and sought informal comment. Informal comments were reviewed.
 - On June 28, 2016, the EQB hosted a Mandatory Categories Rulemaking Open House and Workshop at the EQB offices in St. Paul, MN and via WebEx (which offers audio and visual interactions with participants from any location with internet access).
 - EQB staff presented preliminary rule concepts to the Environmental Rules Advisory Panel (ERAP) in June 2017.
- G. EQB staff presented a preliminary draft of the proposed rule language at the August 15, 2018 public EQB meeting. The minutes from the Board meeting are available at EQB's website here: <https://www.eqb.state.mn.us/content/eqb-mandatory-categories-rulemaking>
- H. EQB staff presented the draft proposed rules language at the September 19, 2018 public EQB meeting. The minutes from the Board meeting are available at EQB's website here: <https://www.eqb.state.mn.us/content/eqb-mandatory-categories-rulemaking>
- I. The notifications required under Minn. Stat. ch. 14 will be provided at the time the amendments are proposed. The EQB intends to publish a dual notice for the proposed amendments in the *State Register* and to provide additional notice of its activities to all parties who have registered their interest in receiving such notice. Details of this notice plan are provided in section VII of this SONAR.

III. Statutory authority

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

This rulemaking will also include the adoption of Silica sand project thresholds in accordance with the authority provided in [Laws of Minnesota 2013, Chapter 114, Article 4, Section 91](#). The Board's authority to establish thresholds for different types of Recreational trails that require preparation of an EAW is established in the 2015 legislative session, [Laws of Minnesota 2015, Chapter 4, Article 5, Section 33](#).

IV. Statement of general need

Minn. Stat. ch. 14 requires the EQB to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the EQB must not be arbitrary or capricious in proposing rules. However, to the extent that need and reasonableness are separate, “need” has come to mean that a problem exists that requires administrative attention, and “reasonableness” means that the solution proposed by the EQB is appropriate. The basis of the need for this rule is described here; reasonableness, both general and specific, is addressed in the Reasonableness section below.

The proposed amendments to Minn. R. ch. 4410 are needed to:

- A. Fulfill the recommendations found in the 2013 Mandatory Environmental Review Categories Report (Report) (Exhibit #1).
- B. Streamline environmental review through both technical and housekeeping changes.
- C. Adopt thresholds specific to Silica sand projects and to amend thresholds specific to Recreational trails as directed by the Minnesota Legislature in 2013 and 2015.

The desired outcome is to make environmental review more efficient by adding clarity and specificity and thereby reducing ambiguous or confusing application of the environmental review rules. The proposed changes are needed, both to increase certainty for project proposers, RGUs and the public, and to assure that certain proposed projects are receiving environmental review.

Need to fulfill the recommendations of the interagency 2013 Report. The Report proposed changes to the mandatory EAW, EIS and exemption categories, and their supporting definitions. These proposed changes came from those state agencies and LGUs that have extensive experience in the day-to-day application of the rule.

Need to streamline environmental review. Many of the proposed rule amendments are technical and housekeeping changes to the existing rules, which reflect the changes to corresponding Minnesota rules and statutes. The proposed rule amendments include updates to the thresholds in EAW and EIS categories to reflect the EQB’s experience in applying the process. These changes are needed because the majority of the EAW and EIS categories were established in the 1980’s and 1990’s and do not reflect the modern regulatory system or project types. Rule updates are needed to keep the rules relevant and more easily understood by project proposers, RGUs and citizens.

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

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

Need to adopt thresholds for silica sand projects and recreational trails. The substantive amendments include, as directed by the Minnesota Legislature in 2013 and 2015, establishing new thresholds specific to silica sand projects and amending existing thresholds specific to Recreational trails. Silica sand thresholds are needed to address the potential for significant environmental effects from silica sand projects in Minnesota. The amendments to the Recreational trail thresholds are needed to fulfill threshold language directed by the Legislature.

V. Reasonableness of the amendments

A. General reasonableness

Minn. Stat. ch. 14 requires the EQB to explain the facts establishing the reasonableness of the proposed rule amendments. “Reasonableness” means that there is a rational basis for the proposed action.

Legislative directive. These amendments are generally reasonable because in three separate instances the MN legislature has requested that these changes be made.

In 2013, the EQB, along with other state agencies, completed the Mandatory Environmental Review Categories Report (Report), directed by the 2012 Minnesota legislature (Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3). The Report provided an analysis of whether the mandatory categories should be modified, eliminated, or unchanged, based on their relationship to existing permits or other federal, state, or local laws or ordinances.

- Pursuant to a legislative charge to support environmental review efficiency and streamline the environmental review process, (2015 Special Session Law, Chapter 4, Article 3, Section 2), the EQB is updating MN Rules ch. 4410 in this rulemaking. Specifically, the proposed amendments focus on streamlining:
 - mandatory EAW and EIS categories that were identified in the 2013 Report; and
 - categories identified by the public during rulemaking comment periods.
- The proposed amendments also include legislatively directed changes, as follows:
 - changes to the recreational trails mandatory categories include specific, required language, and
 - changes to categories related to silica sand were the result of recommendations from a stakeholder engagement initiative and Legislative thresholds.

The proposed amendments are generally reasonable to draw clear lines as to when environmental review is necessary – by adding specificity to the definitions, the project types and thresholds in order to provide clarity to the stakeholders as to whether environmental review is required.

Non-substantive changes. The proposed technical and housekeeping changes to the EAW and EIS categories, which reflect the changes to corresponding Minnesota rules and statutes, are reasonable to update outdated aspects of the rules. Other changes to EAW and EIS categories’ thresholds are reasonably based on the many years of rule application and experience from the practitioners.

B. Specific reasonableness

Throughout this section, to distinguish the rule amendments from the justification, the rules are indented. Amendments to the existing rules are shown by ~~strike~~ for deletion and underlining for new language. The rules are presented in the order that the existing rules now appear in chapter 4410.

1. Part 4410.0200, subpart 1b. Acute hazardous waste.

Acute hazardous waste. "Acute hazardous waste" has the meaning given in part 7045.0020.

Justification.

Currently, Minn. Rules ch. 4410 does not define acute hazardous waste. Providing a definition is reasonable to determine if environmental review is required for a proposed project. The proposed definition is consistent with the definition of the term in other rules ([Minn. Rules 7045.0020](#)) and helps the public with review when environmental review documents and permits are co-noticed.

2. Part 4410.0200, subpart 5a. Auxiliary lane.

Auxiliary lane. "Auxiliary lane" means the portion of the roadway that:

- A. adjoins the through lanes for purposes such as speed change, turning, storage for turning, weaving, and truck climbing; and
- B. supplements through-traffic movement.

Justification.

Auxiliary lane is a new definition. The term is not currently defined in chapter 4410, but is now used in the mandatory EAW categories for highway projects (4410.4300 subpart 22). The addition of this definition helps RGUs identify the types of roads that are not included in the threshold calculation.

The proposed definition of "auxiliary lane" is generally consistent with the [MnDOT Road Design Manual \(Section 4-3.02\)](#) and the 2011 American Association of State Highway Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets. (Chapter 1076). This AASHTO publication is known in the industry as the "Green Book." Minnesota standards and policies adhere closely to policies established by AASHTO. Numerous AASHTO publications provide background on accepted highway design practices and provide guides on details not covered in the DOT manual and provide further in-depth explanation of road design concepts. (Section 18.01)

Both the MnDOT Manual and the AASHTO Green Book include the phrase "and other purposes" in the definition of "auxiliary lane." This phrase has been excluded from the definition of auxiliary lane proposed for part 4410.0200, subpart 5a because it is vague. Because a reasonable reader will not know what "other purposes" refers to, it is reasonably omitted from the proposed rule. The proposed definition of auxiliary lane is limited to just the lanes listed in the definition; i.e., speed change, turning, storage for turning, weaving, and truck climbing. The change is reasonable to clarify the types of auxiliary lanes that would be included in the exclusion for ease of administration and interpretation.

The term "passing lanes," a type of auxiliary lane identified in the definition used by MnDOT and the AASHTO Green Book, is not included in the proposed amendment to the definition of auxiliary lane. Passing lanes are not considered "auxiliary lanes," and are included as lanes in the two-mile threshold because passing lanes can be considered and constructed as one project. Passing lanes can continue for

several miles in length when the lanes are staggered, a situation that occurs particularly in the rural areas of Minnesota. As provided in the definition, auxiliary lanes serve specific purposes for shorter distances and are typically constructed within the existing right-of-way in urban settings.

3. Part 4410.0200, subpart 9b. Compost facility.

~~Compost facility. "Compost facility" has the meaning given in part 7035.0300, means a facility use to compost or co-compost solid waste, including:~~

- ~~a) Structures and processing equipment used to control drainage or collect and treat leachate; and~~
- ~~b) Storage areas for incoming waste, the final product, and residuals resulting from the composting process.~~

Justification.

Replacing the current definition with a reference to an existing definition provides greater clarity and consistency in determining if environmental review is required for a proposed project. Referencing other applicable State regulatory requirements ([Minn. Rule 7035.0300](#)) in the definition ensures that Minn. Rules ch. 4410 will stay current when other applicable State regulatory requirements are updated. Using the same terms as other applicable regulatory requirements helps the public with review when environmental review documents and permits are co-noticed.

The current definition of compost facility in Minn. rule 7035.0300 is: "*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.

4. Part 4410.0200, subpart 36a. Hazardous material.

Hazardous material. "Hazardous material" has the meaning given in Code of Federal Regulations, title 49, section 171.8.

Justification.

Minn. Rules ch. 4410 does not define hazardous material. The reference to the federal definition provides greater clarity in determining if environmental review is required for a proposed project. Referencing other applicable State regulatory requirements in the definition ([Code of Federal Regulations, title 49, section 171.8](#)) ensures that Minn. Rules ch. 4410 will stay current when other applicable State regulatory requirements are updated. Using the same terms as other applicable regulatory requirements helps the public with review, when environmental review documents and permits are co-noticed

The current definition of hazardous waste in the Code of Federal Regulations, title 49, section 171.8, is: *Hazardous waste, for the purposes of this chapter, means any material that is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR part 262.*

5. **Part 4410.0200, subpart 40b. Institutional facility.**

Institutional facility. “Institutional facility” means a land-based facility owned or operated by an organization having a governmental, educational, civic, or religious purpose such as a school, hospital, prison, military installation, church, or other similar establishment or facility.

Justification.

The term “institutional facility” is not defined in Minn. Rules ch. 4410, nor Minnesota law. The proposed definition is the same as Code of Federal Regulations CFR 60.3078 and is reasonable for consistency with how the term is currently used in other applicable regulatory requirements. This definition is used in the mandatory EAW and EIS categories for Industrial, commercial, and institutional facilities 4410.4300 subpart 14 (EAW) and 4410.4400 subpart 11 (EIS).

In addition to being consistent with the federal definition, the proposed definition reflects the common understanding and use of the term. The change reasonably provides greater specificity in Minnesota Rule 4410.0200, and ensures consistent application of the terms across federal and Minnesota state rules.

6. **Part 4410.0200, subpart 43. Local governmental unit.**

Local governmental unit. “Local governmental unit” means any unit of government other than the state or a state agency of the federal government or a federal agency. ~~‡~~ Local governmental unit includes watershed districts established pursuant according to Minnesota Statutes, chapter 103 D, soil and water conservation districts, watershed management organizations, counties, towns, cities, port authorities, housing authorities, and the Metropolitan Council. ~~‡~~ Local governmental unit does not include courts, school districts, and regional development commissions.

Justification.

The term local governmental unit is used throughout Minn. Rules ch. 4410. The term is most often used to determine which units of government are authorized to prepare and approve environmental review documents. It was unclear whether soil and water conservations districts and watershed management organizations could be considered responsible governmental units, with the authority to prepare and approve environmental documents required under Minn. Rules ch. 4410. The addition of soil and water conservation districts and watershed management organizations to this subpart does not make this subpart a comprehensive list of local governmental units. The change implements the common understanding of the terms and eliminates any confusion.

7. **Part 4410.0200, subpart 52a. Mixed municipal solid waste land disposal facility.**

Mixed municipal solid waste land disposal facility. “Mixed municipal solid waste land disposal facility” has the meaning given in part 7035.0300.

Justification.

Minn. Rules ch. 4410 does not define “mixed municipal solid waste land disposal facility.” The proposed definition provides greater clarity in determining if environmental review is required for a proposed project. Referencing an existing definition ([Minn. Rule 7035.0300](#)) ensures that Minn. Rules ch. 4410 will

stay current when other applicable State regulatory requirements are updated. Using similar terminology with other applicable regulatory requirements helps the public with review when environmental review documents and permits are co-noticed.

The current definition of mixed municipal solid waste land disposal facility in [Minn. Rule 7035.0300](#) is: *"Mixed municipal solid waste land disposal facility" means a site used for the disposal of mixed municipal solid waste in or on the land.*

8. Part 4410.0200, subpart 59a. Petroleum refinery.

Petroleum refinery. "Petroleum refinery" has the meaning given in Minnesota Statutes, section 115C.02, subpart 10a.

Justification.

Minn. Rules ch. 4410 does not define Petroleum refinery. The definition provides greater clarity in determining if environmental review is required for a proposed project. Referencing other applicable State regulatory requirements in the definition ([Minn. Stat., section 115C.02, subpart 10a](#)) ensures that Minn. Rules ch. 4410 will stay current, when other applicable State regulatory requirements are updated. Using similar terminology with other applicable regulatory requirements helps the public with review, when environmental review documents and permits are co-noticed.

The current definition of petroleum refinery in Minn. Stat., section 115C.02, subpart 10a is: *"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.*

9. Part 4410.0200, subpart 71a. Refuse-derived fuel.

Refuse-derived fuel. "Refuse-derived fuel" has the meaning given in Minnesota Statutes, section 115A.03, subdivision 25d.

~~**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.~~

Justification.

Replacing the current definition with the statutory definition ([Minn. Stat. section 115A.03, subdivision 25d](#)) from the Waste Management Act provides greater clarity in determining if environmental review is required for a proposed project. Using similar terminology with other applicable regulatory requirements helps the public with review, when environmental review documents and permits are co-noticed.

The current definition of refuse derived fuel in Minnesota Statutes, section 115A.03, subdivision 25d is: *"Refuse-derived fuel" means a product resulting from the processing of mixed municipal solid waste in a manner that reduces the quantity of noncombustible material present in the waste, reduces the size of*

waste components through shredding or other mechanical means, and produces a fuel suitable for combustion in existing or new solid fuel-fired boilers.

10. Part 4410.0200, subpart 82a. Silica sand.

Silica sand. "Silica sand" has the meaning given in Minnesota Statutes, section 116C.99, subdivision 1.

Justification.

This change reflects statutory language in 116C.99, which defines silica sand. By incorporating the definition and reference into Minn. Rules 4410.0200. The addition of Minn. Rule 4410.0200, subpart 82a. Silica sand, is established to incorporate the definition found at [Minn. Stat. 116C.99, subdivision 1, paragraph \(d\)](#) which states:

"'Silica sand' means well-rounded, sand-sized grains of quartz (silicon dioxide), with very little impurities in terms of other minerals. Specifically, the silica sand for the purposes of this section is commercially valuable for use in the hydraulic fracturing of shale to obtain oil and natural gas. Silica sand does not include common rock, stone, aggregate, gravel, sand with a low quartz level, or silica compounds recovered as a by-product of metallic mining."

11. Part 4410.0200, subpart 82b. Silica sand project.

Silica sand project. "Silica sand project" has the meaning given in Minnesota Statutes, section 116C.99, subdivision 1.

Justification.

This change reflects statutory language in 116C.99, which defines silica sand project. The addition of Minn. Rule 4410.0200, subpart 82b. Silica sand project; is established to incorporate the definition found at [Minn. Stat. 116C.99, subdivision 1, paragraph \(e\)](#) which states:

"'Silica sand project' means the excavation and mining and processing of silica sand; the washing, cleaning, screening, crushing, filtering, drying, sorting, stockpiling, and storing of silica sand, either at the mining site or at any other site; the hauling and transporting of silica sand; or a facility for transporting silica sand to destinations by rail, barge, truck, or other means of transportation."

12. Part 4410.0200, subpart 93. Wetland.

Wetland. "Wetland" has the meaning given ~~wetlands in U.S. Fish and Wildlife Service Circular No. 39 (1971 edition)~~ Minnesota Statutes, section 103G.005, subdivision 19

Justification.

The proposed change to the definition ([Minn. Stat. section 103G.005, subdivision 19](#)) aligns the current usage and understanding of the terms. The current definition for "wetlands" in Minn. Rule 4410.0200 was written in 1982 and does not reflect state rule or statutes that were specifically written for wetlands. Referencing other applicable State regulatory requirements in the definition ensures that Minn. Rules ch. 4410 will stay current,

when other applicable State regulatory requirements are updated. Using similar terminology with other applicable regulatory requirements helps the public with review, when environmental review documents and permits are co-noticed.

The current definition of wetland in [Minn. Stat. section 103G.005, subdivision 19](#) is: (a) "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:

(1) have a predominance of hydric soils;

(2) are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) under normal circumstances support a prevalence of such vegetation.

(b) For the purposes of regulation under this chapter, the term wetlands does not include public waters wetlands as defined in subdivision 15a.

13. Part 4410.0500, subpart. 4. RGU for EAW by order of EQB.

If the EQB orders an EAW pursuant to part 4410.1000, subpart 3, item C, the EQB shall, at the same time, designate the RGU for that EAW.

Justification.

The amendment to this subpart is reasonable to correct a spelling error. The letter "E" was inadvertently left off "EQB" when originally published.

14. Part 4410.0500, subpart 6. Exception.

Exception. Notwithstanding subparts 1 to 5, the EQB, or EQB chair, may designate ~~within five days of receipt of the completed data portions of the EAW,~~ a different RGU for the project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.

Justification.

The requirement for "within five days of receipt of the completed data portions of the EAW" is removed because project proposers often work with the RGU to determine what type of information is needed. Removing the requirement to have a complete data submittal before the RGU designation process is complete, will ensure that parties are identified early in the process and work together in the EAW development process. The EQB, or EQB chair, will identify what information is required. Additionally, it is reasonable to eliminate the five day time limit because it is inconsistent with the operation of the EQB Board. The EQB uses its regularly scheduled monthly Board meeting to process requests to designate a different RGU. The process under the current rule can take as long as 45-days to complete; therefore, it is not possible for the EQB to meet the timeline designated in the current rule.

The addition of extending the ability to designate a different RGU to the EQB chair is reasonable because it allows the request to be processed more efficiently. This change will allow flexibility for making non-controversial decisions, and does not prevent anyone from making a request for the full Board to consider the decision. All requests to designate a different RGU will be published in the EQB Monitor for one week prior to approval, which will give any Board member on behalf of the public, an opportunity to request a full review by the Board.

15. Part 4410.4300, subpart 2. Nuclear fuels and nuclear waste.

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 of the storage of high level nuclear waste, other than an independent spent-fuel storage installation, the EOB ~~shall be~~ is the RGU.

Justification.

For the nuclear fuels and nuclear waste mandatory EAW category, the proposed change includes the addition of the words “other than an independent spent-fuel storage installation” This amendment removes these types of projects from the mandatory requirement to prepare an EAW. Independent spent-fuel storage installations are statutorily required to prepare a mandatory EIS [Minn. Stat. 116C.83, subdivision 6, paragraph \(b\)](#)

“An environmental impact statement is required under chapter 116D for a proposal to construct and operate a new or expanded independent spent-fuel storage installation. The commissioner of the Department of Commerce shall be the responsible governmental unit for the environmental impact statement.”

The addition of “other than an independent spent-fuel storage installation” to item A clarifies the fact that independent spent-fuel storage installation projects are not subject to the mandatory requirement to prepare an EAW but are in fact subject to the requirement for an EIS. In this rulemaking the EOB is proposing to amend Minn. Rule ch. 4410.4400, subpart 2, which governs nuclear fuels, is to reflect the statutory requirement for independent spent-fuel storage installations to prepare an EIS.

The addition of “other than independent spent-fuel storage installation” is reasonable to make this rule consistent with [Minn. Stat. 116C.83, subdivision 6](#). The EOB retains RGU status for preparation of an EAW for non-independent spent-fuel storage installation high-level nuclear waste storage facilities.

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

Electric-generating facilities.

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

- A. For construction of an electric power generating plant and associated facilities designated for or capable of operating at a capacity of ~~between 25 megawatts and 50 megawatts~~, the EOB ~~shall be the RGU or more but less than 50 megawatts~~ and for which an air permit from the PCA is required, the PCA is the RGU.
- B. For construction of an electric power generating ~~plants~~ plant and associated facilities designed for and capable of operating at a capacity of ~~25 megawatts or more but less than 50 megawatts or more~~. Environmental review shall be conducted according to parts ~~7849.1000 to 7849.2100 and 7850.1000 to 7850.5600~~, and for which an air permit from the PCA is not required, the local governmental unit is the RGU.
- C. For construction of an electric power generating plant and associated facilities designed for and capable of operating at a capacity of 50 megawatts or more, the PUC is the RGU,

environmental review must be conducted according to parts 7849.1000 to 7849.2100 and chapter 7850.

- 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 megawatts or more, the PUC is the RGU and environmental review must be conducted according to chapter 7854.

Justification.

This subpart has been divided into 3 sections to clarify and expand on the existing requirements. The proposed amendment to item A changes the RGU from the EQB to the PCA for certain types of electric-generating facilities, (those that are a certain size and that require a PCA air permit). This is a reasonable change because the PCA, through the permitting process, will have more knowledge of the facility and more experience with the types of processes and pollutants involved.

The proposed amendment to item B changes the RGU from the EQB to the LGU for certain types of electric-generating facilities, (those that are a certain size and that do not require a PCA air permit). This is reasonable change because such facilities typically utilize a renewable resource in a non-combustion process (e.g., solar panels). These plants are well suited to be evaluated by LGUs because LGUs have more permitting authority over the project as a whole.

The amendments to item C clarify the existing requirement in the last sentence of subpart 3. The current rule does not specifically identify the PUC as having the responsibility for environmental review for facilities over 50 megawatts but, through application of the cited rules, MN rules parts 7849.1000 to 7849.2100 and chapter 7850 it is the RGU. It is reasonable to make that clarification in new item C. Item D is added to designate the PUC as the RGU for construction of wind energy conversion systems designed for and capable of operating at a capacity of 25 megawatts or more. These types of systems were not previously addressed in this rule and the PUC is reasonably assigned as the RGU based on their approval authority over the project as a whole and their expertise for evaluating these project types

These changes to the RGU for specific types of facilities are consistent with Minn. R. 4410.0500, RGU Selection Procedures.

17. Part 4410.4300, subpart 4. Petroleum refineries.

For expansion of an existing petroleum refinery facility that increases its the refinery's capacity by 10,000 or more barrels per day or more, the PCA ~~shall be~~ is the RGU

Justification.

Changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

18. Part 4410.4300, subpart 5. Fuel conversion facilities.

Fuel conversion facilities.

- A. Subitems (1) and (2) ~~Items A and B~~ designate the RGU for the type of project listed:
- (1) ~~A.~~ For construction of a new fuel conversion facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 25,000 dry tons or more per year of input, the PCA ~~shall be~~ is the RGU.
 - (2) ~~B.~~ For construction ~~or expansion~~ of a new fuel conversion facility for the production of alcohol fuels ~~which that~~ would have the capacity ~~or would increase its capacity by to produce 5,000,000 or more gallons or more~~ per year of alcohol ~~produced~~, the PCA ~~shall be~~ is the RGU.
- B. A mandatory EAW is not required for projects described in Minnesota Statutes, section 116D.04, subdivision 2a, paragraph (b).

Justification.

The addition of the phrase “new fuel conversion” to subitems (1) and (2) more clearly identifies the type of facilities for which environmental review must be considered. The addition of “new” in subitem (1) and (2), and the deletion of “or expansion” and “or would increase its capacity by” from subitem (2) makes clear that the construction at existing facilities is not included in this EAW category, per language passed by the Minnesota Legislature in 2011 and found in [Minn. Stat. 116D.04, subdivision 2a paragraph \(b\)](#).

Item B is reasonably added to align with the requirements passed by the Minnesota Legislature in 2011 ([Minn. Stat. 116D.04, subdivision 2a, paragraph \(b\)](#)), which deals exclusively with the expansion of fuel conversion facilities:

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

The addition of item B provides greater clarity, specificity and efficiency in determining if environmental review is required for a proposed project.

Other changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

19. Part 4410.4300, subpart 6. Transmission lines.

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 construction of a high-voltage transmission lines line and associated facilities, as defined in part 7850.1000 designed for and capable of operating at a~~

~~nominal voltage of 100 kilovolts or more, the PUC is the RGU.~~ Environmental review ~~shall~~ must be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.

Justification.

Changes to the mandatory EAW category for transmission lines include the deletion of the requirement for mandatory environmental review of transmission lines between 70 kilovolts and 100 kilovolts (kV). The EQB, which was the designated RGU, suggested the change because those types of transmission lines are not typically constructed in Minnesota. If a future need for these transmission lines were identified, the PUC could order a discretionary review or the public could submit a petition, if they believe the project may have the potential for significant environmental effects. The addition of the phrase "the PUC is the RGU" to this subpart makes clear that the PUC is the RGU for transmission line projects.

However, high-voltage transmission line projects are still required to be reviewed. The amendments reasonably add a reference to an existing definition of "high voltage transmission line" or "HVTL." Referencing other applicable State regulatory requirements in the definition ensures that Minn. Rules ch. 4410 will stay current, when other applicable State regulatory requirements are updated. Using similar terminology with other applicable regulatory requirements helps the public with review, when environmental review documents and permits are co-noticed.

20. 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.

Items A through D are reasonably replaced by a reference to [Minn. Stat. chapter 216G.01](#) and [216G.02](#). This statute is more recent than the existing language, and is specifically written to address pipelines in the state. [Minn. Stat. 216G.01, subdivision 2 and 3](#) deals exclusively with the construction of a pipeline:

"Subd. 2. Construction. "Construction" means any clearing of land, excavation, or other action that would adversely affect the natural environment of a pipeline route but does not include changes needed for temporary use of a route for purposes other than installation of a pipeline, for securing survey or geological data, for the repair or replacement of an existing pipeline within the existing right-of-way, or for the minor relocation of less than three-quarters of a mile of an existing pipeline.

Subd. 3. Pipeline. "Pipeline" means a pipeline located in this state which is used to transport natural or synthetic gas at a pressure of more than 90 pounds per square inch, or to transport crude petroleum or petroleum fuels or oil or their derivatives, coal, anhydrous ammonia or any mineral slurry to a distribution center or storage facility which is located within or outside of this state. "Pipeline" does not include a pipeline owned or operated by a natural gas public utility as defined in section 216B.02, subdivision 4."

The statutory language changed how the EAW category is applied to pipeline projects and identifies a different RGU for the environmental review of pipeline projects. The statute also includes new thresholds for when environmental review must be completed for pipeline projects.

Replacing the current requirements with a citation to the statutory requirements and existing rules provides greater clarity and consistency in determining if environmental review is required for a proposed project. Referencing applicable statutes and rules ensures that Minn. Rules ch. 4410 will stay current, when other applicable State regulatory requirements are updated. Using the same terminology helps the public with review, when environmental review documents and permits are co-noticed.

21. Part 4410.4300, subpart 8. Transfer facilities.

Transfer facilities. Items A ~~and B~~ to C designate the RGU for the type of project listed:

- A. For construction of a new facility which is designed for or capable of transferring 300 tons or more of coal per hour or with an annual throughput of 500,000 tons of coal from one mode of transportation to a similar or different mode of transportation; or the expansion of an existing facility by these respective amounts, the PCA ~~shall be~~ is the RGU.
- B. For construction of a new facility or the expansion by 50 percent or more of an existing facility for the bulk transfer of hazardous materials with the capacity of 10,000 or more gallons per transfer, if the facility is located in 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 PCA ~~shall be~~ is the RGU.
- C. The PCA is the RGU for a silica sand project that:
 - (1) is designed to store or is capable of storing more than 7,500 tons of silica sand; or
 - (2) has an annual throughput of more than 200,000 tons of silica sand.

Justification.

The changes to item A provide clarity and consistency with item B, which also addresses “new” facilities. The addition of item C aligns with the thresholds found at Minn. Stat. 116C.991, section a, paragraph (2). The interim mandatory categories for silica sand projects are listed under Minn. Stat. § 116.991 and were established as provided by [Laws of Minnesota 2013, chapter 114, article 4, section 105](#):

- 1) *excavates 20 or more acres of land to a mean depth of ten feet or more during its existence. The local government is the responsible governmental unit; or*
- 2) *is designed to store or is capable of storing more than 7,500 tons of silica sand or has an annual throughput of more than 200,000 tons of silica sand and is not required to receive a permit from the Pollution Control Agency. The Pollution Control Agency is the responsible governmental unit.*
 - b) *In addition to the contents required under statute and rule, an environmental assessment worksheet completed according to this section must include:*
 - 1) *a hydrogeologic investigation assessing potential groundwater and surface water effects and geologic conditions that could create an increased risk of potentially significant effects on groundwater and surface water;*
 - 2) *for a project with the potential to require a groundwater appropriation permit from the commissioner of natural resources, an assessment of the water resources available for appropriation;*
 - 3) *an air quality impact assessment that includes an assessment of the potential effects from airborne particulates and dust;*
 - 4) *a traffic impact analysis, including documentation of existing transportation systems, analysis of the potential effects of the project on transportation, and mitigation measures to eliminate or minimize adverse impacts;*
 - 5) *an assessment of compatibility of the project with other existing uses; and*
 - 6) *mitigation measures that could eliminate or minimize any adverse environmental effects for the project.*

In 2015, the Minnesota Legislature updated Minn. Stat. 116.991 [Laws of Minnesota 2015, Chapter 4, Article 4, Section 121](#), by removing the July 1, 2015 date and changed the language to :

116C.991 ENVIRONMENTAL REVIEW; SILICA SAND PROJECTS.

(a) ~~Until July 1, 2015~~ a final rule is adopted pursuant to Laws 2013, chapter 114, article 4, section 105, paragraph (d)..

The EQB determined that it would permanently adopt the original 2013 thresholds for when environmental review of silica sand projects must occur, as set by the Legislature, in the Mandatory categories rulemaking, R-04157. The EQB has discontinued that rulemaking and is addressing those requirements in the proposed rules.

In 2017, [Laws of Minnesota 2017, Chapter 93, article 1, Section 105](#) was updated to read:

Sec. 105.RULES; SILICA SAND.

(a) The commissioner of the Pollution Control Agency ~~shall~~ may adopt rules pertaining to the control of particulate emissions from silica sand projects. The rulemaking is exempt from Minnesota Statutes, section 14.125.

(b) The commissioner of natural resources shall adopt rules pertaining to the reclamation of silica sand mines. The rulemaking is exempt from Minnesota Statutes, section 14.125.

(c) By January 1, 2014, the Department of Health shall adopt an air quality health-based value for silica sand.

(d) The Environmental Quality Board ~~shall~~ may amend its rules for environmental review, adopted under Minnesota Statutes, chapter 116D, for silica sand mining and processing to take into account the increased activity in the state and concerns over the size of specific operations. The Environmental Quality Board shall consider whether the requirements of Minnesota Statutes, section 116C.991, should remain part of the environmental review requirements for silica sand and whether the requirements should be different for different geographic areas of the state. The rulemaking is exempt from Minnesota Statutes, section 14.125.

In 2017, the Legislature changed the language from “shall” to “may” amend EQB rules for environmental review. The EQB determined that the potential for significant environmental effects persists in relation to silica sand projects in Minnesota and it would be to the public’s benefit to have the mandatory category threshold within the environmental review Mandatory Category rules, 4410.4300.

The proposed change clarifies that processing, transloading and storage of silica sand have the potential for causing environmental impacts relating to land use, transportation, noise, facility lights, air quality, recreation, economic, and water quality and water quantity. For economic reasons, transloading, processing and storage facilities may be very large-scale, which in some cases may increase the potential for environmental impacts including fugitive dust emissions, transportation related issues and water pollution issues.

The proposed rules are in response to environmental issues identified at these sites, which have increased as a result of increased demand for silica sand. The proposed language will provide clarity for the public, RGUs and project proposers for the types of projects that require an EAW.

The proposed change reflects the 2013 legislative thresholds for projects. The thresholds are 200,000 tons of annual throughput and 7,500 tons for storage piles. These thresholds indicate a legislative intent that these types of operations have the potential for significant environmental effects, and therefore warrant

environmental review. Proposed item C addresses the potential for air emissions related to silica sand facility operations. Silica sand dust may be emitted during mining, handling, transferring, open storage piles and transport at a silica sand transloading or processing facility. Transloading or processing at a mine or standalone facility may include the storage of silica sand or the transfer of raw materials into trucks or railcars for transport. Depending on how a processing, transloading or mining operation is configured, the proximity of businesses, residences— including sensitive populations – older, asthmatics, young children from inhalation or aspiration of particles can be directly related to its potential for environmental and health effects related to air quality.

Proposed item C establishes a throughput threshold of 200,000 tons or more of silica sand annually and a facility designed to store 7,500 tons or more of silica sand. The throughput threshold is reasonable because it was developed on the basis that the legislature determined the threshold level of 200,000 tons or more of annual throughput on a silica sand project requires environmental review due to the potential for significant environmental effects. The storage threshold is reasonable on the basis that the legislature determined 7,500 tons or more of storage was an appropriate and necessary threshold due to the potential for significant environmental effects related to air quality and transportation related issues.

The proposed thresholds are also reasonable based on a 2015, EQB survey of LGUs throughout the state of Minnesota. The survey is available on EQB's website:

<https://www.eqb.state.mn.us/sites/default/files/documents/Sand%20survey%20for%20LGU%27s%20April%2015%20EQB.pdf>. The survey recorded responses from 11 counties, 13 cities and 70 townships (94 total responses). The survey recorded 66% (59) respondents agreeing with the 200,000-ton throughput threshold and 7,500-ton storage threshold, and 71% (63) agreed that the Minnesota Pollution Control Agency (PCA) should be the RGU.

Potential environmental effects at a silica sand facility may relate to air quality, noise and safety issues associated with truck traffic transporting the sand to and from the facility. The figure of 200,000 tons per mine per year converts to approximately 7,692 loaded trucks per year (15,385 total trips). This yearly figure converts to approximately 148 loaded trucks per week, and 296 total (loaded and empty) total truck trips per week. Much depends on operating hours to determine how many trucks per day and per hour. If a 6-day work week is used as an example (several MN/WI facilities are operating this way), this would be approximately 25 loaded trucks per day, and approximately 50 total trips per day from a facility.

The PCA has been designated as the RGU in compliance with Minn. Rules ch, 4410.0500, and considering the following:

- The regional scale that silica sand processing and transloading facilities encompass, and their potential for significant environmental effects encompass (air quality, transportation, water quality/quantity). Silica sand processing facilities often work as a hub and spoke system where the processing facility is the hub and neighboring and distant mines transport the silica sand resource to the processing facility where it is processed for the specified end use. Thus, the potentially significant environmental effects from a processing and/or storage and/or transloading facility are likely to be regional and the PCA, the state agency with authority over outdoor air and water quality and the environment, is best positioned to assess these potential impacts.
- The key characteristics of processing and transloading facilities which have the potential for significant environmental effects are air quality and water quality, which are incredibly complicated and which PCA has unique expertise to best assess the potential impacts.
- Permitting authority rests with the PCA for air permits and water discharge permits for processing and transloading facilities.

- If a silica sand facility proposes to process or transload sand from offsite, it is likely to be a larger facility and require more transportation infrastructure, a larger water appropriation (for the processing), and due to a larger size, it may have the potential to have increased significant environmental effects.
- The legislature determined the PCA was the appropriate RGU when it developed and established the statutory language.
- The EOB surveyed 94 LGUs in Minnesota and 71% (63) agreed that the Minnesota Pollution Control Agency (PCA) should be the RGU.

22. Part 4410.4300, subpart 10. Storage facilities.

Storage facilities. Items A to ~~GH~~ designate the RGU for the type of project listed:

- A. For construction of a new facility designed for or capable of storing more than 7,500 tons of coal or with an annual throughput of more than 125,000 tons of coal; or the expansion of an existing facility by these respective amounts, the PCA ~~shall be~~ is the RGU.
- B. For construction of a new major facility, as defined in Minn. Rule ch. 7151.1200, subpart 22, on a single site designated for or capable of storing 1,000,000 gallons or more of hazardous materials, that results in a designed storage capacity of 1,000,000 gallons or more of hazardous materials, the PCA ~~shall be~~ is the RGU.
- C. For expansion of an existing major facility, as defined in Minn. rule chapter 7151.1200, subpart 22, with a designed storage capacity of 1,000,000 gallons or more of hazardous materials, when the expansion adds a net increase of 1,000,000 gallons or more of hazardous materials, the PCA is the RGU.
- D. For expansion of an existing facility that has less than 1,000,000 gallons in total designed storage capacity of hazardous materials, when the net increase in designed storage capacity results in 1,000,000 gallons or more of hazardous materials, the PCA is the RGU.
- E. For construction of a new facility designed for or capable of storing on a single site 100,000 gallons or more of liquefied natural gas, as defined in Minnesota Statutes, section 299F.56, subdivision 14, or synthetic gas, or anhydrous ammonia as defined in Minnesota Statutes, section 216B.02, subdivision 6b, the PCA ~~shall be~~ PUC is the RGU, except as provided in item G.
- F. For construction of a new facility designed for or capable of storing on a single site 100,000 gallons or more of anhydrous ammonia, the MDA is the RGU, except as provided in item G.
- G. For construction of a new facility designed for or capable of storing on a single site 100,000 gallons or more of a combination of liquefied natural gas, as defined in Minnesota Statutes, section 299F.56, subdivision 14, synthetic gas, as defined in Minnesota Statutes, section 216B.02, subdivision 6b, or anhydrous ammonia, the PUC is the RGU.
- H. The PCA is the RGU for a silica sand project that:

(1) is designed to store or is capable of storing more than 7,500 tons of silica sand; or
(2) has an annual throughput of more than 200,000 tons of silica sand.

Justification.

Item A is amended to clarify that the first clause applies to “new” facilities. The Office of the Revisor has suggested changing “shall be” to “is.”

For items B and C, adding the term “major” facility resolves a long standing problem when trying to determine whether a facility meets the threshold of this subpart. The addition of the clarifying language is reasonable because it assists project proposers, the public, and the RGU to consistently determine whether a new facility requires a mandatory environmental review. The definition clearly identifies which components of a site must be considered in determining whether the project meets mandatory thresholds.

Item B only refers to the construction of a new major facility, while item C establishes a separate threshold for the expansion of an existing facility. In consultation with the PCA, the RGU for this EAW category, the separation of these activities – construction of a new facility and expanding an existing facility, is reasonable to better reflect the types of projects that have historically been addressed in this category.

Item C addresses the expansion of existing major facilities rather than the construction of new major facilities as discussed in item B. The separation of the two activities, building a new major facility and expanding an existing major facility is reasonable, to eliminate the inconsistent application of the threshold.

Nothing in the current subpart addresses increases in volume as a result of expansion. Using the term “net” increase in new items C and D helps add clarification when facilities are proposing to add or remove storage areas. The environmental review process considers the entire property or contiguous properties when factoring in net increase.

The new item D adds clarification that environmental review is required when the expansion of an existing facility with less than 1,000,000 gallons has a net increase in designed storage capacity of 1,000,000 gallons or more of hazardous materials, and designates the PCA as the RGU.

Items E, F and G are expansions of existing item E and address liquid natural gas, synthetic gas, and anhydrous ammonia. Item E is amended to expand existing rule language to cross reference to already existing definitions of liquefied natural gas and synthetic gas and also to identify a more appropriate RGU. The proposed change removes the PCA as the RGU and assigns the PUC as the RGU.

The re-assignment of the PUC as the RGU in each of these items is reasonable because the PUC is the regulatory authority for these liquids. Historically a single threshold was established for multiple substances– liquefied natural gas, synthetic gas and anhydrous ammonia were all contained in the same item with the PCA as the RGU. However, the PCA has no approval authority of any of the substances. The PUC regulates liquefied natural gas and synthetic gas, making them the more appropriate RGU. Similarly, the PCA does not regulate anhydrous ammonia, but the MDA does and is the more appropriate RGU. While the thresholds have not changed, the RGU has changed. Additionally in item G, the RGU with the greatest approval authority over the project is identified as the PUC. This change is consistent with other parts of Minn. Rules ch. 4410 and is consistent with the regulatory system around each substance.

The new threshold item H, is established to align with the thresholds found at [Minn. Stat. 116C.991, section a, paragraph \(2\)](#) as provided by [Laws of Minnesota 2015, Chapter 4, Article 4, Section 121](#), which states:

“(a) Until a final rule is adopted pursuant to Laws 2013, chapter 114, article 4, section 105, paragraph (d), an EAW must be prepared for any silica sand project that meets or exceeds the following thresholds, unless the project meets or exceeds the thresholds for an environmental impact statement under rules of the Environmental Quality Board and an environmental impact statement must be prepared:

(2) is designed to store or is capable of storing more than 7,500 tons of silica sand or has an annual throughput of more than 200,000 tons of silica sand and is not required to receive a permit from the PCA. The PCA is the RGU.”

Item H is identical to Minn. Rules 4410.4300, subpart 8, item C. The purpose of its inclusion in the Storage facilities mandatory EAW category is to ensure a project proposer or RGU is aware of the threshold if silica sand facility is developed that just includes storage. The justification for the need and reasonableness for this category and thresholds is described above in the justification section for [Minnesota Rules 4410.4300, subpart 8, item C.](#)

23. Part 4410.4300, subpart 12. Nonmetallic mineral mining.

Nonmetallic mineral mining. Items A to ~~C~~ D designate the RGU for the type of project listed:

Item A [unchanged]

B. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will extract 40 or more acres of land to a mean depth of ten feet or more during its existence, the local ~~government~~governmental unit ~~shall be~~ is the RGU.

Item C [unchanged]

D. For development of a silica sand project that excavates 20 or more acres of land to a mean depth of ten feet or more during the project's existence, the local governmental unit is the RGU.

Justification.

In item B, the term “government” is replaced with the term “governmental”, to provide consistency with how this term is used in other parts of this chapter. This change ensures consistent application of terms throughout Minn. Rules ch. 4410. The term “shall be” is reasonably changed to “is at the recommendation of the Office of the Revisor.

Item D follows the intent of the interim rules the 2013 and 2015 legislature set forth in [Minn. Stat. § 116C.991, paragraph \(a\), clause \(1\)](#), which state:

“(a) Until July 1, 2015, an environmental assessment worksheet must be prepared for any silica sand project that meets or exceeds the following thresholds, unless the project meets or exceeds the thresholds for an environmental impact statement under rules of the Environmental Quality Board and an environmental impact statement must be prepared:

(1) excavates 20 or more acres of land to a mean depth of ten feet or more during its existence. The local government is the RGU; or...”

The addition of item D is reasonable because the extraction, mining, and ancillary features associated with extraction and mining of silica sand deposits have the potential for significant environmental effects relating to land use, transportation, noise, air quality, water quality and vibrations.

Activities and features associated with the extraction and mining processes and mine area land disturbance directly relate to the need for environmental review due to the potential for significant environmental effects caused by these activities. Specifically, the activities include truck transport of the silica sand from the mine site, which has the potential to result in increased traffic impacts, road degradation, increased noise, safety concerns and increased dust. Mine area activities also include permanent landscape alterations caused by removing overburden to access the silica sand resources and permanent landscape alterations from removing the silica sand resources from the site. The landscape alterations have the potential to change the way-of-life in a community in which these facilities are located. This change in the way-of-life may be characterized as the loss of a notable land feature from an area's viewshed or the disruption of the character of a place due to mine area activities. Additional activities and features associated with the extraction and mining process that have the potential to change the way-of-life include lights, noise, and hours of operation. In 2015, EQB completed a survey of LGUs throughout the state of Minnesota. The survey is available on EQB's website: <https://www.eqb.state.mn.us/sites/default/files/documents/Sand%20survey%20for%20LGU%27s%20April%2015%20EQB.pdf>. Survey respondents stated that non-metallic mining causes disruption to traffic flows in an area, noise, odor, dust and have a significant impact on area residents way-of-life.

Mine activities and features with the potential for significant environmental effects include: clearing the mine site, removal of vegetation, compaction, stripping, grading, grubbing, filling, storing materials, settling ponds, berms, constructed buildings associated with mine activities, haul roads and refuse piles.

Proposed item D is reasonable because the Minnesota Legislature set the threshold at 20-acre and the mean depth of 10-feet or more, indicating a legislative intent and concern that a silica sand project that excavates 20-acres or more to a mean depth of 10 feet has the potential for significant environmental effects, and therefore warrants environmental review.

Item D establishes the LGU as the RGU. The 2015 survey of LGUs throughout the state recorded responses from 11 counties, 13 cities and 70 townships. The survey recorded 56% (49) respondents agreeing with the 20 acre mine threshold and 77% (69) agreed that the LGU should be the RGU.

It is reasonable to designate the LGU as the RGU because:

- Mines are a land-use issue. LGUs have the greatest authority for supervising and permitting authority over land-use and projects in their community; LGUs have local knowledge and expertise regarding what is appropriate for their community and quality of life; thus it is necessary to involve the LGU and reasonable to designate it as the RGU.
- LGUs are in a better position to understand and protect the unique local resources that the local community deems valuable. LGUs have access to local insights and have a strong incentive to ensure that all risks of silica sand mining are mitigated.
- The environmental review program has a historic precedent to identify LGUs as the RGU because they have the greatest approval authority over a project via a land use permit.

Based on the potential for environmental impacts at existing and proposed silica sand mine sites it is reasonable to require environmental review on silica sand mine sites larger than the proposed threshold.

24. Part 4410.4300, subpart 14. Industrial, commercial, and institutional.

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

- A. For construction of a new or expansion of an existing warehousing or light industrial facility equal to or in excess of the following thresholds, expressed as gross floor space, the local governmental unit ~~shall be~~ is the RGU:
 - (1) unincorporated area, 150,000 square feet;
 - (2) third or fourth class city, 300,000 square feet;
 - (3) second class city, 450,000 square feet; and
 - (4) first class city, 600,000 square feet.

- B. For construction of a new or expansion of an existing industrial, commercial, or institutional facility, other than a warehousing or light industrial facility, equal to or in excess of the following thresholds, expressed as gross floor space, the local ~~government~~ governmental unit ~~shall be~~ is the RGU:
 - (1) unincorporated area, 100,000 square feet;
 - (2) third or fourth class city, 200,000 square feet;
 - (3) second class city, 300,000 square feet; and
 - (4) first class city, 400,000 square feet.

Justification.

During the EQB rulemaking in 1982, the words "square feet" were inadvertently omitted from item A of this subpart, but were included in item B. They term is reasonably added to item A to eliminate any question regarding which units of measurement must be used.

The term "government" is replaced with the term "governmental," to provide consistency with how this term is used in other parts of this chapter. This change ensures consistent application of Minn. Rules ch. 4410.

25. Part 4410.4300, subpart 16. Hazardous waste.

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

- A. For construction of a new or expansion of a an existing hazardous waste disposal facility the PCA ~~shall be~~ is the RGU.

- B. For construction of a new facility for hazardous waste storage, processing facility with a capacity of 1,000 or more kilograms per month or treatment that is generating or receiving 1,000 kilograms or more per month of hazardous waste or one kilogram or more per month of acute hazardous waste, the PCA ~~shall be~~ is the RGU.

- C. For expansion of an existing facility for hazardous waste storage processing facility storage or treatment, that increases ~~it's~~ the facility's capacity by ten percent or more, the PCA ~~shall be~~ is the RGU.

- D. For construction or expansion of a facility that sells hazardous waste storage services to generators other than the owner and operator of the facility or construction of a facility at

which a generator's own hazardous wastes will be stored for a time period in excess of 90 days, if the facility is located in a water-related land use management district, or in an area characterized by soluble bedrock, the PCA ~~shall be~~ is the RGU.

Justification.

The changes to the mandatory EAW category for hazardous waste in items A, B and C clarify that the term "construction" is referring to a new facility and "expansion" applies to an existing facility.

In items B and C, the word "processing" is removed, as the term is confusing when applied to hazardous waste treatment. The terms "storage" and "treatment" are defined in Minn. R. pt. 7045.0020 and are used by the regulatory authority when permitting hazardous waste facilities. Removing the term "processing facility" and using hazardous waste "storage" or "treatment," aligns the environmental review rules with the language in other State rules. Using the same terminology also helps the public with review when environmental review documents and permits are co-noticed.

In item B, the term "acute hazardous waste" was added to the category as there are two types of hazardous waste collected at storage and treatment facilities, "acute" and "non-acute." and the threshold currently does not differentiate between the two. Technical experts at the PCA recommended that the category provide a separate, smaller, volume threshold for acute hazardous waste because acutewastes are more toxic, therefore posing more risk to human health and the environment at smaller exposure amounts.

The threshold volume of one kilogram (kg) was chosen to align with the Federal hazardous waste laws that regulate hazardous waste. Generating 1 kg of acute hazardous waste per month is regulated under the hazardous waste program equivalently to businesses generating 1000 kg per month of non-acute hazardous waste.

26. Part 4410.4300, subpart 17. Solid waste.

Solid waste. Items A to G designate the RGU for the type of project listed:

- A. For construction of a mixed municipal solid waste land disposal facility for up to 100,000 cubic yards of waste fill per year, the PCA is the RGU.
- B. For expansion by 25 percent or more of ~~previous~~ previously permitted capacity of a mixed municipal solid waste land disposal facility for up to 100,000 cubic yards of waste fill per year, the PCA is the RGU.
- C. For construction or expansion of a mixed municipal solid waste transfer station for 300,000 or more cubic yards per year, the PCA is the RGU.
- D. For construction or expansion of a mixed municipal solid waste energy recovery facility, or incinerator, or ~~the utilization use~~ of an existing facility for the combustion of mixed municipal solid waste or refuse-derived fuel, with a permitted capacity of 30 tons or more ~~tons~~ per day of input, the PCA is the RGU.
- E. For construction or expansion of a mixed municipal solid waste compost facility, or a refuse-derived fuel production facility with a permitted capacity of 50 tons or more ~~tons~~ per day of input, the PCA is the RGU.

- F. For expansion by at least ten percent but less than 25 percent of ~~previous~~ previously permitted capacity of a mixed municipal solid waste land disposal facility for 100,000 cubic yards or more of waste fill per year, the PCA is the RGU.

Justification.

The addition of the term "land" in items A, B and F aligns the terms with other applicable State rules. Using the same terminology with other applicable regulatory requirements helps the public with review, when environmental review documents and permits are co-noticed

Adding the terms "permitted:" and "previously permitted" adds greater clarity for identifying the correct capacity to the applicable threshold.

27. Part 4410.4300, subpart 18. Wastewater system.

Wastewater system. Items A to ~~C~~E designate the RGU for the type of project listed:

- A. For expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in 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 wastewater treatment facility with a capacity less than 20,000,000 gallons per day ~~or for expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of any part of that system by 2,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with the capacity of 20,000,000 gallons or greater,~~ the PCA is ~~shall be~~ the RGU.
- B. ~~For expansion or reconstruction of an existing municipal or domestic wastewater treatment facility which results in an increase by 50 percent or more and by at least 200,000 gallons per day of its average wet weather design flow capacity, or construction of a new municipal or domestic wastewater treatment facility with an average wet weather design flow capacity of 200,000 gallons per day or more, the PCA shall be the RGU.~~
- C. ~~For expansion or reconstruction of an existing industrial process wastewater treatment facility which increases its design flow capacity by 50 percent or more and by at least 200,000 gallons per day or more, or construction of a new industrial process wastewater treatment facility with a design flow capacity of 200,000 gallons per day or more, 5,000,000 gallons per month or more, or 20,000,000 gallons per year or more, the PCA shall be the RGU. This category does not apply to industrial process wastewater treatment facilities that discharge to a publicly-owned treatment works or to a tailings basin reviewed pursuant to subpart 11, item B.~~
- B. For expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of any part of that system by 2,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with the capacity of 20,000,000 gallons per day or greater, the PCA is the RGU.
- C. ~~B.~~ For expansion or ~~reconstruction~~ modification of an existing municipal or domestic wastewater treatment facility ~~which~~ that results in an increase by 50 percent or more and

by at least 200,000 gallons per day of ~~its~~ the facility's average wet weather design flow capacity, the PCA is the RGU.

D. For construction of a new municipal or domestic wastewater treatment facility with an average wet weather design flow capacity of 200,000 gallons per day or more, the PCA ~~shall be~~ is the RGU.

E. For expansion or ~~reconstruction~~ modification of an existing industrial process wastewater treatment facility ~~which that~~ increases ~~its~~ the facility's design flow capacity by 50 percent or more and by at least 200,000 gallons per day or more ~~or,~~ the PCA is the RGU.

F. For construction of a new industrial process wastewater treatment facility with a design flow capacity of 200,000 gallons per day or more, 5,000,000 gallons per month or more, or 20,000,000 gallons per year or more, the PCA ~~shall be~~ is the RGU. This category does not apply to industrial process wastewater treatment facilities that discharge to a ~~publicly-owned~~ publicly owned treatment works or to a tailings basin reviewed ~~pursuant~~ according to subpart 11, item B

Justification.

The requirements in former items A, B and C have been revised for clarity as follows: the requirements in former item A are now addressed in items A and B; the requirements in former item B are now addressed in items C and D; and, the requirements in former item C are now addressed in items E and F.

In new items C and E, the deletion of the term "reconstruction" and the addition of the term "modification" corrects a long-standing problem. The word "reconstruction" causes confusion as it implies the existing municipal wastewater treatment facility is being rebuilt instead of modified. It is more accurate to use the term "modification," as proposers are more likely to add on new components, or significantly alter a portion of a wastewater treatment facility in order to increase treatment capacity. This proposed change will have a positive impact by preventing delays in the environmental review process.

The term "modification" does not include movement of the discharge outfall to a different location. The movement of discharge pipe and outfall to another location – such as different location of the same receiving water, a different receiving water, or different on land or subsurface disposal location, is not considered a modification and results in the need for an EAW. A new wastewater treatment facility includes:

- construction that replaces an existing wastewater treatment facility, or
- construction of a wastewater treatment facility or new discharge outfall location, where one did not exist before.

The 1986 EQB SONAR language indicated "the work will increase [treatment] capacity," and therefore the change in language follows the intent of the 1986 EQB SONAR.

28. Part 4410.4300, subpart 20. Campgrounds and RV parks.

Campgrounds and RV parks.

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

Justification.

The term "government" is replaced with the term "governmental," to provide consistency with how this term is used in other parts of Minn. Rules 4410. The change ensures consistent application of Minn. Rules ch. 4410.

29. Part 4410.4300, subpart 20a. Resorts, campgrounds, and RV parks in shorelands

Resorts, campgrounds, and RV parks in shorelands.

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

Justification.

The term "government" is replaced with the term "governmental", to provide consistency with how this term is used in other parts of Minn. Rules 4410. The change ensures consistent application of Minn. Rules ch. 4410.

30. Part 4410.4300, subpart 21. Airport projects.

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

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

Justification.

The term "government" is replaced with the term "governmental", to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410.

31. Part 4410.4300, subpart 22. Highway projects.

Highway projects. Items A to C designate the RGU for the type of project listed:

- A. For construction of a road on a new location over one mile in length that will function as a collector roadway, the DOT or local ~~government~~ governmental unit ~~shall be~~ is the RGU.
- B. For construction of additional ~~travel through~~ lanes or passing lanes on an existing road for a length of ~~one~~ two or more miles, exclusive of auxiliary lanes, the DOT or local ~~government~~ governmental unit ~~shall be~~ is the RGU.
- C. For the addition of one or more new interchanges to a completed limited access highway, the DOT or local ~~government~~ governmental unit ~~shall be~~ is the RGU.

Justification.

The primary changes to the mandatory EAW category for highway projects are the change of “travel” lane to “through” lane, excluding “auxiliary lanes” but including “passing lanes,” and extending the threshold length of through lanes from one to two miles. Auxiliary lanes is a new term in the rules as further defined in [part 4410.0200, subpart 5a](#).

With the introduction of the term “auxiliary lane”, the DOT proposes changing the term “travel lane” to “through lane.” This change is necessary to clarify the types of lanes used in road design projects. A review of 1982 SONAR does not indicate why the phrase “travel lane” was chosen. Because the term has not been previously defined, this rulemaking is an opportunity to update the rule with terminology that is commonly used today.

Types of traffic lanes are described in the MnDOT Road Design Manual (MnDOT Manual).

<http://roaddesign.dot.state.mn.us/> See Chapter 4, section 4-3.0. As described in section 4-3.0 “travel lanes” is the overall umbrella term for lanes and then a subset of travel lanes is “through lanes” and “auxiliary lanes.” Because the rule will now include the term “auxiliary lane,” it is necessary to clarify the lane terminology and separate out both through lane and auxiliary lane. Managed lanes, such as bus lanes, value- priced lanes, and high occupancy vehicle (HOV) lanes are considered standard higher speed through lanes to provide optimum transportation services and fully utilize the capacity of congested highways in urban areas. Often times these types of lanes are accomplished by using existing highway facilities. The definition of “auxiliary lane” is consistent with the *DOT Road Design Manual* (Section 4-3.02) and the *2011 American Association of State Highway Transportation Officials (AASHTO) and A Policy on Geometric Design of Highways and Streets* (Chapter 1076).

Auxiliary lanes are excluded from the threshold because these types of lanes are typically short distances and as such, have a minimal effect on the impact of the project. Auxiliary lanes are most often used to:

- A. Comply with the principle of lane balance.
 - B. Comply with capacity requirements in the case of adverse grades.
 - C. Accommodate speed changes.
 - D. Accommodate weaving.
 - E. Accommodate traffic pattern variations at interchanges.
 - F. Accommodate maneuvering of entering and exiting traffic.
 - G. Simplify traffic operations by reducing the number of lane changes.”
- (MnDOT Manual 6-1.05.04)

AASHTO explains that, generally, auxiliary lanes are used preceding median openings and are used at intersections preceding right- and left-turning movements. Auxiliary lanes may also be added to increase capacity and reduce crashes at an intersection. In many cases, an auxiliary lane may be desirable after completing a right-turn movement to provide for acceleration, maneuvering, and weaving. Auxiliary lanes can serve as a useable shoulder for emergency use or off-tracking vehicles or both. Auxiliary lanes are also used for deceleration and storage of vehicles while waiting to turn. Auxiliary lanes are used to balance the traffic load and maintain a uniform level of service on the highway. They facilitate the positioning of drivers at exits and the merging of drivers at entrances. (Green Book, 9-124-127, 10-76, 10-79)

Also, the threshold will increase from one mile to two miles. The 1982 SONAR does not specifically state why one mile was chosen (<https://www.leg.state.mn.us/archive/sonar/SONAR-00003.pdf>); however, comments made by the public in 1982 rulemaking provided that: “A one mile threshold for additional travel lanes is also too restrictive. Five or ten miles ... would be more reasonable.” (December 1, 1981

Comment by John Voss, Planning consultant, Urban Planning and Design, Inc.). As the designated RGU, the DOT conducted a 10-year historical data review of projects that completed an EAW for this subpart and found that projects between 1 mile and 2 miles did not have the potential for significant environmental effects. Project files and comments received were reviewed to determine whether potential environmental effects were identified that would not have otherwise been mitigated by a permit or other required governmental approvals. Based on that data review, the DOT determined that it is reasonable to increase the threshold from one mile to two miles.

The term "government" is replaced with the term "governmental," to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410.

32. Part 4410.4300, subpart 25. Marinas.

Marinas. 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 square foot increase of water surface area used temporarily or permanently for docks, docking, or maneuvering of watercraft, the local ~~government~~ governmental unit ~~is~~ the RGU.

Justification.

The term "government" is replaced with the term "governmental", to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410.

33. Part 4410.4300, subpart 26. Stream diversion.

Stream diversion. For a diversion, realignment, or channelization of any designed trout stream, or affecting greater than 500 feet of natural watercourse with a total drainage area of ten or more square miles unless exempted by part 4410.4600, subpart 14, item E, or 17, the DNR or local ~~government~~ governmental ~~shall be~~ is the RGU.

Justification.

The proposed change to the stream diversion mandatory EAW category includes adding the DNR as a possible RGU. Minn. Rule 4410.4300, subpart 26 assigns the RGU to only the LGU. However, there are circumstances where DNR is the more appropriate RGU due to having similar or greater approval of the project as a whole, in addition to possibly having greater expertise in analyzing the potential impacts. Some examples of these types of projects may include stream habitat restoration projects and floodplain management projects.

The current rule assigns the LGU to be the RGU for these projects, who may not have the natural resources expertise or approval authority related to floodplain management, erosion control, water quality, fisheries habitat, wildlife habitat, recreation, and aesthetics. There exists great variation across local governments regarding the technical/scientific expertise necessary to evaluate these projects. The addition of "DNR or" allows the DNR to be the designated RGU, when their expertise and approval authorities are appropriate. LGUs can work with the DNR to determine the most appropriate RGU to accurately assess these projects and related impacts.

Under the change, the LGU and DNR will confer early in the EAW process for the RGU determination. If it is unclear which unit of government is the designated RGU, then under Minn. Rules part 4410.0500,

subpart 5. B. (2) the question will be submitted to the EQB chairperson for a determination, based upon which governmental unit has greatest responsibility for supervising or approving the project or has greater expertise that is relevant for the environmental review.

The term "government" is replaced with the term "governmental", to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410.

34. 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~~ according to Minnesota Statutes, chapter 103G, DNR or the local government 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 ~~government~~ governmental unit ~~shall be is~~ the RGU.

Justification.

Item A currently assigns the RGU to only the LGU. However, there are circumstances where the DNR is the more appropriate RGU, because the DNR may have similar or greater approval authority of the project as a whole. In some cases, the DNR may also have greater expertise in analyzing the potential impacts. Some examples of these types of projects may include wetland or stream habitat restoration projects, and floodplain management projects. In item A, the term "government" is replaced with the term "governmental", to provide consistency with how this term is used in other parts of Minn. Rules 4410.

The current language in item B does not consider the Wetland Conservation Act (WCA), as WCA was enacted into law after the establishment of mandatory requirements for wetland under Minnesota Rule Chapter 4410.4300 Subpart 27. B (1982). WCA was implemented into Laws of the State of Minnesota in 1991 to regulate those wetlands not inventoried by DNR as Public Waters or Public Water Wetlands.

The current rule assigns the LGU to be the RGU for these projects, who may not have the natural resources expertise or approval authority related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. There is variation across local governments regarding the technical/scientific expertise necessary to evaluate these projects. The addition of "DNR or" to item A is added for the situations where the DNR has expertise and approval authorities. LGUs can work with the DNR to determine the most appropriate RGU to accurately assess these projects and related impacts.

The existing SONAR for designation of LGU as RGU identifies that these type of projects typically are associated with land use developments and thus the LGU is the appropriate RGU. The DNR has been added as a possible RGU for the types of projects that are not associated with land use development, and/or where LGUs sometimes have very little regulatory oversight.

Under the change, the LGU and DNR will confer early in the EAW process for the RGU determination. If it is unclear which unit of government is the designated RGU, then under Minn. Rules part 4410.0500, subpart 5. B. (2) the question will be submitted to the EQB chairperson for a determination based greatest responsibility for supervising or approving the project or has expertise that is relevant for the environmental review.

Item B references “the course, current, or cross section” of a wetland. These terms are used to define an alteration to a public waters and public water wetlands found in [Minn. Rule part 6115.0170, subpart 2.](#) This portion of item B will be removed and replaced with the WCA description found in [Minn. Rule part 8420.0111, subpart 32,](#) which more accurately defines an “impact” as a loss in the quantity, quality, or biological diversity of wetland associated with projects that will partially or wholly drain, fill, or excavate wetlands. The proposed change is needed and reasonable as it reflects the current regulatory provisions under WCA and aligns state rules and statutes.

Item B references “40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres.” The EQB has found that this criterion is confusing for LGUs, the RGUs for this item, to apply. Furthermore, the criteria has no association with the WCA, which generally does not distinguish wetland functions and values based on type or size. Rather, the purpose of the WCA is to achieve no net loss in quantity, quality, and biological diversity of Minnesota’s existing wetlands as described in [Minn. Rule 8420.0100, subpart 1.](#) As a result, the type of wetlands has been removed, which reflects the current regulatory provisions under WCA and aligns state rules and statutes.

The existing requirement of 2.5 acres defines the size criteria for DNR public water wetlands in incorporated areas – see [Minn. Stat. 103G.005, subdivision 15a.](#) This size specification also has no specific implication in WCA. Wetlands regulated under WCA include a variety of areas and types and the jurisdictional boundary is not labeled by a specific area. Consequently in consultation with the Board of Water and Soil Resources (BWSR) staff, DNR and PCA staff, the equation of “40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres” currently found in the rule has been removed and replaced with a threshold of “1 acre.” The proposed change to one acre reflects the lowest possible size threshold established by the current rule. All of these changes are needed to better reflect the changes that have occurred to wetland programs in the state since the original 1982 EAW category was written. The criteria incorporate more recent WCA standards or clarify existing thresholds in environmental review rules.

In item B., the term “government” is replaced with the term “governmental”, to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410.

35. Part 4410.4300, subpart 28. Forestry.

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

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

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

Justification.

Changes to this subpart include state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

36. Part 4410.4300, subpart 30. Natural areas.

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

Justification.

The more recent addition of a recreational trails category, (Minn. Rules part 4410.4300, subpart 37), was developed to be a more precise measure for determining if a trail project may have the potential for environmental effects than inconsistency with state trail master plan revisions. There was no mandatory recreational trails category when the rule was enacted.

Eliminating the state trail provision is appropriate because it is unlikely that a project inconsistent with the state trail master plan would be authorized by DNR to encroach on a state trail corridor. An unintended consequence of the existing rule language is that revisions to state trail master plans can be interpreted as a "project" under Minnesota Rules 4410.0200. This interpretation results in these plan revisions requiring environmental review under the Recreational trails mandatory category if the master plan revisions propose to add new recreational uses, regardless of length, type or size

The Recreational Trails category was developed in part to serve this purpose and provides clear thresholds for when designating uses would require environmental review. The current rule assumes state trails have statutory boundaries and defined corridors similar to other outdoor recreation units. State trails do not have statutory boundaries and may or may not identify a corridor. If a state trail master plan only identifies a search corridor, it is not practical or appropriate to evaluate other proposed projects that fall within the identified search corridor. This is especially true if the trail has not been built yet, or the trail has been built but does not identify the route to construct. For situations where a new state trail is authorized, or changes in designated use(s) are proposed through a master plan amendment, this must be considered against the recreation trails mandatory EAW criteria found in Minn. Rules part 4410.4300, subpart 37.

The category was adopted to allow for the review of non-DNR projects that are proposed within established recreation units, particularly those projects that may be inconsistent or incompatible with the recreational purposes or management plan of the unit. The DNR proposed the category to ensure the agency had the chance to review projects in conflict with the management plan. The most likely situation would be a private development proposal on an inholding within a state park, not a state trail. Prior to

legislative action in 2003, Recreational trails were not identified as exhibiting impacts that may be potentially significant.

The current rule was adopted to ensure review of projects that conflict with approved master plans for outdoor recreation units. Designation of these facilities includes preparation of a master plan for the unit. These plans may vary according to the characteristics of the area and purposes for designation. The category requires review for projects that conflict with approved master plans for outdoor recreation units.

37. Part 4410.4300, subpart 31. Historical places.

For the destruction, in whole or part, or the moving of a property that is listed on the National Register of Historic Places or State Register of Historic Places, the permitting state agency or local ~~governmental~~ governmental unit ~~of government shall be~~ is the RGU, except this does not apply to projects reviewed under section 106 of the National Historic Preservation Act of 1966, United States Code, title ~~46~~ 54, section ~~470~~ 306108, or the federal policy on lands, wildlife and waterfowl refuges, and historic sites pursuant to United States Code, title 49, section 303, or projects reviewed by a local heritage preservation commission certified by the State Historic Preservation Office pursuant to Code of Federal Regulations, title 36, sections 61.5 and 61.7. This subpart does not apply to a property located within a designated historic district if the property is listed as "noncontributing" in the official district designation or if the State Historic Preservation Office issues a determination that the property is noncontributing.

Justification.

Changes to this subpart include state of MN Revisor's Office recommendations to improve clarity for interpreting the rule and corrections to references for the most recent applicable Code of Federal Regulations ([COF, title 54, section 306108](#)).

38. Part 4410.4300, subpart 36. Land use conversion, including golf courses.

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

Justification.

The term "government" is replaced with the term "governmental", to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410.

39. Part 4410.4300, subpart 36a. Land conversions in shoreland.

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

Justification.

This mandatory category was added as part of EQB rulemaking that ended in 2009. The category was intended to apply to development activities that result in increased water runoff and loss of aquatic habitat. However, projects proposing habitat and shoreline restoration also often involve the “alteration” of shoreline as discussed by the 2009 SONAR. However, restoration activities typically do not have the negative long-term water quality and aquatic habitat impacts that are associated with shoreland conversion projects and alterations resulting from development activities, which was the original intent in developing the category.

Some of the challenges with this subpart may have been that the title identifies land conversions, but items A and B do not reference land conversion, but instead reference alterations. Per [Minn. Stat. 645.49](#), headnotes printed in boldface type are not considered part of the statute. Therefore, the addition of “permanent conversion” meant to provide clarity about what was intended by this subpart and provide consistency with the term “permanent conversion” as it is used throughout Minnesota Rules chapter 4410.

It is important to note that this clarification does not exempt public water restoration projects from environmental review, but will likely prevent environmental review from being mandatory in this category. A governmental unit may still order discretionary environmental review in response to a citizen petition of if the governmental unit determines a project may have the potential for significant environmental effects.

40. Part 4410.4300, subpart 37. Recreational trails.

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

- A. Constructing a trail at least ~~ten~~ 25 miles long on forested or other naturally vegetated land for a recreational use ~~other than snowmobiling or cross-country skiing~~, unless exempted

by part 4410.4600, subpart 14, item D, ~~or constructing a trail at least 20 miles long on forested or other naturally vegetated land exclusively for snowmobiling or cross-country skiing.~~

- B. Designating at least 25 miles of an existing trail for a new motorized recreational use other than snowmobiling. When designating an existing motorized trail or existing corridor in current legal use by motor vehicles, the designation does not contribute to the 25-mile threshold under this item. When adding a new recreational use or seasonal recreational use to an existing motorized recreational trail, the addition does not contribute to the 25-mile threshold if the treadway width is not expanded as a result of the added use.

In applying items A and B, if a proposed trail will contain segments of newly constructed trail and segments that will follow an existing trail but be designated for a new motorized use, an EAW must be prepared if ~~the sum total length of the quotients obtained by dividing the length of the newly constructed and newly designated trail by 25 miles, equals or exceeds one~~ segments is at least 25 miles.

- C. Paving ten or more miles of an existing unpaved trail, unless exempted by part 4410.4600, subpart 27, item B or F. Paving an unpaved trail means to create a hard surface on the trail with a material impervious to water.
- D. Constructing an off-highway vehicle recreation area of 80 or more acres, or expanding an off-highway vehicle recreation area by 80 or more acres, on agricultural land or forested or other naturally vegetated land.
- E. Constructing an off-highway vehicle recreation area of 640 or more acres, or expanding an off-highway vehicle recreation area by 640 or more acres, if the land on which the construction or expansion is carried out is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities such as mineral mining.
- F. Some recreation areas for off-highway vehicles may be constructed partially on agricultural naturally vegetated land and partially on land that is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities. In that case, an EAW must be prepared if the sum of the quotients obtained by dividing the number of acres of agricultural or naturally vegetated land by 80 and the number of acres of land that is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities by 640, equals or exceeds one.

Justification.

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

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

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

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

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

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

(3) designating an existing, legally constructed route, such as a logging road, for motorized Recreational trails use.

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

Under the Revisor ID Number R-4381, the EQB used the good cause exemption rulemaking procedure to adopt rules in accordance with the above Minn. Laws from the 2015 legislative session in November 2015. The proposed rules were not approved. In addition, in February 2016, the EQB again submitted the proposed rules for adoption. The proposed rules were not adopted. The rulemaking under Revisor ID Number R-4381 has been incorporated into this rulemaking.

Administrative Law Judge Barbara J. Case's Order on Review (OAH 82-9008-32965) it is stated that the phrases "legally constructed route" and "logging road" were, "...impermissibly vague if it is so indefinite that one must guess at its meaning. A rule must establish a reasonably clear policy or standard to control and guide administrative officers so that the rule is carried out by virtue of its own terms and not according to the whim and caprice of the officer. This language is impermissibly vague and therefore unconstitutional."

The current changes to A. and B. will fulfill the intent of the 2015 legislation by utilizing commonly understood language for trails and motorized corridors while maintaining the integrity of the intent of the legislation—to allow trails to be constructed or designated without requiring an EAW or environmental review. By including the changes in the mandatory category section, as "exclusions" instead of in the "exemptions" category of Minn R. ch. 4410, citizens and stakeholders can still petition if a project presents the potential for significant environmental effects. The threshold changes to A. and B. are necessary and reasonable because the 2015 Legislature determined there was potential for significant environmental effects at the proposed threshold levels.

41. Part 4410.4400, subpart 2. Nuclear fuels.

Nuclear fuels. Items A to ~~D~~ E designate the RGU for the type of project listed:

- A. For the construction or expansion of a nuclear fuel or nuclear waste processing facility, including fuel fabrication facilities, reprocessing plants, and uranium mills, the DNR ~~shall~~ be is the RGU for uranium mills; otherwise, the PCA ~~shall be~~ is the RGU.
- B. For construction of a high-level nuclear waste disposal site, the EQB ~~shall be~~ is the RGU.
- C. For construction or expansion of an independent spent-fuel storage installation, the Department of Commerce is the RGU.

- D. For construction of an away-from-reactor, facility for temporary storage of spent nuclear fuel, the ~~Public Utilities Commission~~ PUC is shall be the RGU.
- E. For construction of a low-level nuclear waste disposal site, the MDH ~~shall be~~ is the RGU.

Justification.

The addition of item C, "For construction of an independent spent-fuel storage installation, the Department of Commerce is the RGU" reflects [Minn. Stat. 116C.83, subdivision 6, paragraph \(b\)](#) which states:

"An environmental impact statement is required under chapter 116D for a proposal to construct and operate a new or expanded independent spent-fuel storage installation. The commissioner of the Department of Commerce shall be the responsible governmental unit for the environmental impact statement."

The addition of item C makes this rule subpart consistent with Minn. Stat. 116C.83, subdivision 6. The addition of item C 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 EIS.

Other changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

42. Part 4410.4400, subpart 3. Electric-generating facilities.

Electric-generating facilities. For construction of a large electric power generating plant, as defined in Minnesota Statutes, section 216E.01, subdivision 5, the PUC is the RGU. Environmental review ~~shall~~ must be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.

Justification.

The addition of "as defined in [Minnesota Statutes, section 216E.01, subdivision 5,](#)" provides greater clarity in determining if environmental review is required for a proposed project. The RGU is not designated in the current rule.

The current rule does not define or reference large electric-power generating facilities, which leads to confusion and unnecessary interpretation when determining whether a mandatory EIS is required for a proposed project. This subpart now has an RGU designation. The change aligns State environmental review rules with the other applicable MN statutes for greater continuity and efficiency.

43. Part 4410.4400, subpart 4. Petroleum refineries.

Petroleum refineries. For construction of a new petroleum refinery facility, the PCA ~~shall be~~ is the RGU.

Justification.

Need and Reasonableness: Changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

44. Part 4410.4400, subpart 5. Fuel conversion facilities.

Fuel conversion facilities. Items A and B designate the RGU for the type of project listed:

- A. For construction of a new fuel conversion facility for ~~the conversion of~~ converting coal, peat, or biomass sources to gaseous, liquid, or solid fuels if ~~that~~ the facility has the capacity to ~~utilize~~ use 250,000 dry tons or more per year of input, the PCA ~~shall be~~ is the RGU.
- B. For construction of a new or expansion of ~~a~~ an existing fuel conversion facility for the production of alcohol fuels ~~which~~ that would have or would increase ~~it's~~ the facility's capacity by 50,000,000 gallons or more per year of alcohol produced if the facility will be in the seven-county Twin Cities metropolitan area or by 125,000,000 gallons or more per year of alcohol produced if the facility will be outside the seven-county Twin Cities metropolitan area, the PCA ~~shall be~~ is the RGU.
- C. A mandatory EIS is not required for projects described in Minnesota Statutes, section 116D.04, subdivision 2a, paragraph (c).

Justification.

The addition of the term "new fuel conversion" facility to items A and B more clearly identifies the type of facilities for which environmental review must be considered. The addition of item C aligns with the language passed by the Minnesota Legislature and found in [Minn. Stat. 116D.04, subdivision 2a, paragraph \(c\)](#). Other changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

The changes provide greater clarity in determining if environmental review is required for a proposed project. The addition of item C aligns with the language passed by the Minnesota Legislature and found in [Minn. Stat. 116D.04, subdivision 2a, paragraph \(c\)](#), which deals exclusively with the expansion of fuel conversion facilities:

"(c) A mandatory environmental impact statement is not required for a facility or plant located outside the seven-county metropolitan area that produces less than 125,000,000 gallons of ethanol, biobutanol, or cellulosic biofuel annually, or produces less than 400,000 tons of chemicals annually, if the facility or plant is: an ethanol plant, as defined in [section 41A.09, subdivision 2a](#), paragraph (b); a biobutanol facility, as defined in [section 41A.15, subdivision 2d](#); or a cellulosic biofuel facility. A facility or plant that only uses a cellulosic feedstock to produce chemical products for use by another facility as a feedstock is not considered a fuel conversion facility as used in rules adopted under this chapter."

45. Part 4410.4400, subpart 6. Transmission lines.

Transmission lines. For construction of a high-voltage transmission line and associated facilities, as defined in part 7850.1000, the PUC is the RGU. Environmental review ~~shall~~ must be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.

Justification.

The addition of the phrases “construction of a high-voltage” and “as defined in [part 7850.1000](#)” clarifies the definition of “associated facilities” and “high-voltage transmission line.” The addition of the phrase “the PUC is the RGU” to this subpart makes clear that the PUC is the RGU for transmission line projects.

The definition ensures consistency for determining whether transmission lines and associated facilities require environmental review, as the definition clearly identifies which components of a site must be considered in determining whether the project means mandatory thresholds.

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

Metallic mineral mining and processing. Items ~~A to C~~ and B 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.~~

A. 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.

B. For construction of a new metallic mineral processing facility, the DNR ~~shall be~~ is the RGU.

Justification.

The existing rule envisioned the potential for projects involving extraction of radioactive minerals to occur. Bulk samples are taken to evaluate the mineral characteristics and economic feasibility of the materials. These actions were elevated to a mandatory EIS category because of the increased potential for adverse environmental impacts and human health impacts. The 1,000-ton threshold was adopted as a feasible threshold to provide a level of concern for significant adverse environmental impacts. This amount is near the limit of the amount of ore commonly analyzed in deposit evaluations.

The existing rule is unnecessary because this type of action is not being proposed. Although thought to be possible when originally enacted, the rule is now obsolete given little or no expected radioactive mineral extraction in Minnesota.

Eliminating the current rule is appropriate when there is little or no potential for actual projects that fit the rule to be proposed. The category has no history of revisions and DNR staff are not aware of ever conducting an EIS for this type of project.

According to the DNR Division of Lands and Minerals, exploration for uranium has not occurred in Minnesota since the 1970s. It is also believed that future radioactive mineral exploration is unlikely to occur in Minnesota. It should be noted that although the mandatory EIS category is proposed to be eliminated, if future exploration were to occur, an EAW would be mandatory under Minn. Rules part

4410.4300, subpart 11A. If such extraction of radioactive minerals were proposed, such exploration could be subject to preparation of an EIS if a positive declaration is made, or preparation of a discretionary EIS is volunteered, both under Minn. Rules part 4410.2000, subpart 3.

The amendment will have a positive effect by eliminating a rule for which the likelihood of the action being proposed is minimal. If such a project were proposed, it would be subject to mandatory EAW preparation under Minn. Rules part 4410.4300, subpart 11A. An EIS would be required if the project were determined to have the potential for significant environmental effects under Minn. Rules part 4410.1700, subpart 7.

47. Part 4410.4400, subpart 9. Nonmetallic mineral mining.

Nonmetallic mineral mining.

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

- A. For development of a facility for the extraction or mining of peat which will utilize 320 acres of land or more during its existence, the DNR ~~shall be~~ is the RGU.
- B. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 160 acres of land or more to a mean depth of ten feet or more during its existence, the local ~~government~~ governmental unit ~~shall be~~ is the RGU.

Justification.

The term government is replaced with the term governmental, to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410.

48. Part 4410.4400, subpart 11. Industrial, commercial, and institutional facilities.

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

- A. For construction of a new or expansion of an existing warehousing or light industrial facility equal to or in excess of the following thresholds, expressed as gross floor space, the local governmental unit is the RGU:
 - (1) unincorporated area, 375,000 square feet;
 - (2) third or fourth class city, 750,000 square feet;
 - (3) second class city, 1,000,000 square feet; and
 - (4) first class city, 1,500,000 square feet.
- B. For construction of a new or expansion of an existing industrial, commercial, or institutional facility, other than a warehousing or light industrial facility, equal to or in excess of the following thresholds, expressed as gross floor space, the local ~~government~~ governmental unit ~~shall be~~ is the RGU:
 - (1) unincorporated area, 250,000 square feet;
 - (2) third or fourth class city, 500,000 square feet;

- (3) second class city, 750,000 square feet; and
- (4) first class city, 1,000,000 square feet.

Justification.

During the EQB rulemaking in 1982, the words “square feet” were omitted from item A of this subpart, but were included in item B. In order to eliminate any question regarding which units of measurement must be used in applying item A, the EQB is adding the words “square feet” to this subpart.

The term “government” is replaced with the term “governmental”, to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410.

49. Part 4410.4400, subpart 12. Hazardous waste.

Hazardous waste. Items A to C designate the RGU for the type of project listed:

- C. For construction of expansion of a facility for hazardous waste processing facility storage, or treatment, if the facility is located in a water-related land use management district, or in an area characterized by soluble bedrock, the PCA ~~shall be~~ is the RGU.

Justification

The word “processing” is confusing when applied to hazardous waste treatment, as the terms “storage” and “treatment” are more often used by the regulatory authority when permitting hazardous waste facilities.

Removing the term “processing facility” and using hazardous waste “storage” or “treatment,” aligns the environmental review rules with the language in other State rules. Using similar terminology also helps the public with review when environmental review documents and permits are co-noticed.

50. Part 4410.4400, subpart 13. Solid waste.

Solid waste. Items A to E designate the RGU for the type of project listed:

- A. For construction of a mixed municipal solid waste land disposal facility for 100,000 cubic yards or more of waste fill per year, the PCA is the RGU.
- B. For construction or expansion of a mixed municipal solid waste land disposal facility_z in a water-related land use management district_z or in an area characterized by soluble bedrock, the PCA is the RGU.
- C. For construction or expansion of a mixed municipal solid waste energy recovery facility_z or incinerator_z, or ~~the utilization use~~ use of an existing facility for the combustion of mixed municipal solid waste or refuse-derived fuel_z with a permitted capacity of 250 tons or more ~~tons~~ per day of input, the PCA is the RGU.
- D. For construction or expansion of a mixed municipal solid waste compost facility_z or a refuse-derived fuel production facility when the construction or expansion results in a facility with a permitted capacity of 500 tons or more ~~tons~~ per day of input, the PCA is the RGU.

- E. For expansion by 25 percent or more of previous capacity of a mixed municipal solid waste land disposal facility for 100,000 cubic yards or more of waste fill per year, the PCA is the RGU.

Justification.

The addition of the term “land” in items A through E allows the environmental rule language to align with other applicable State regulatory requirements. This change provides greater clarity, specificity and efficiency for determining if environmental review is required for a proposed project. In addition, using similar terminology helps the public with review when environmental review documents and permits are co-noticed.

51. Part 4410.4400, subpart 15. Airport runway projects.

For construction of a paved and lighted airport runway of 5,000 feet of length or greater, the DOT or local ~~government~~ governmental unit ~~shall be~~ is the RGU.

Justification.

The term “government” is replaced with the term “governmental”, to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410. Other changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

52. Part 4410.4400, subpart 16 Highway projects.

For construction of a road on a new location, which is four or more lanes in width and two or more miles in length, the DOT or local ~~government~~ governmental unit ~~shall be~~ is the RGU.

Justification.

The term “government” is replaced with the term “governmental”, to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410. Other changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

53. Part 4410.4400 subpart. 19. Marinas.

For construction of a new or expansion of an existing marina, harbor, or mooring project on a state or federally designated wild and scenic river, the local ~~government~~ governmental unit ~~shall be~~ is the RGU.

Justification

The term “government” is replaced with the term “governmental”, to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410. Other changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

54. Part 4410.4400, subpart 20. Wetlands and public waters.

~~Wetlands and Public waters, public water wetlands.~~ For projects that will eliminate a public water or public water wetland, the DNR or the local government governmental unit shall be is the RGU.

Justification.

The current rule assigns the RGU to only the LGU when there are circumstances where DNR has greater expertise in analyzing the potential impacts. The 1982 SONAR identifies these resources as significant, pursuant to the DNR's inventory program. The elimination of such resources would have significant local and regional impacts. There is variation across local governments regarding the technical/scientific expertise necessary to evaluate these projects.

Under the change, the LGU and DNR will to confer early in the process for the RGU determination. If it is unclear which unit of government is the appropriate designated RGU, then under Minn. Rules part 4410.0500, subpart 5. B. (2) the question will be submitted to the EQB chairperson, for a determination based greatest responsibility for supervising or approving the project or has expertise that is relevant for the environmental review.

The term "government" is replaced with the term "governmental", to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410. Other changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

55. Part 4410.4400, subpart 25. Incineration of wastes containing PCBs.

~~Incineration of Incinerating wastes containing PCBs.~~ For the incineration of incinerating wastes containing PCB's PCBs for which an EIS is required by Minnesota Statutes, section 116.38, subdivision 2, the PCA ~~shall be~~ is the RGU.

Justification.

Changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

56. Part 4410.4600, subpart 10. Industrial, commercial, and institutional facilities.

Industrial, commercial, and institutional facilities. The following projects are exempt:

- B. ~~The~~ Construction of a warehousing, light industrial, commercial, or institutional facility with less than 4,000 square feet of gross floor space, and with associated parking facilities designed for 20 vehicles or ~~less, is exempt~~ fewer.
- C. Construction of a new parking facility for ~~less fewer~~ than 100 vehicles if the facility is not located in 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 ~~is exempt~~.

Justification .

Changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

57. Part 4410.4600, subpart 12. Residential development.

Residential development. The following projects are exempt:

- A. Construction of a sewer residential development, of:
 - (1) ~~less~~ fewer than ten units in an unincorporated area~~;~~
 - (2) ~~less~~ fewer than 20 units in a third or fourth class city~~;~~
 - (3) ~~less~~ fewer than 40 units in a second class city~~;~~ or
 - (4) ~~less~~ fewer than 80 units in a first class city, no part of which is within a shoreland area, a delineated ~~flood plain~~ floodplain state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, is exempt.
- B. Construction of less than ten residential units located in shoreland, provided all land in the development that lies within 300 feet of the ordinary high water level of the lake or river, or edge of any wetland adjacent to the lake or river, is preserved as common open space.
- C. Construction of a single residence or multiple residence with four dwelling units or ~~less~~ fewer and accessory appurtenant structures and utilities ~~is exempt~~.

Justification.

Changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

58. Part 4410.4600, subpart 14. Highway projects.

Highway projects. The following projects are exempt:

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

- E. Reconstruction or modification of an existing bridge structure on essentially the same alignment or location that may involve ~~the acquisition of~~ acquiring minimal amounts of right-of-way ~~is exempt.~~

Justification.

Revisor's office change to improve clarity for interpreting the rule and adding the word "realignment" to make this change to be consistent with part 4410.4300, subpart 26, Stream Diversion. Part 4410.4300, subpart 26 provides as follows:

Subpart 26. Stream diversion. For a diversion, *realignment*, or channelization of any designated trout stream, or affecting greater than 500 feet of natural watercourse with a total drainage area of ten or more square miles unless exempted by part 4410.4600, subpart 14, item E, or 17, the local government unit shall be the RGU. (Emphasis added)

During the EQB rulemaking in 1997, the EQB amended subpart 26 to add the word "realignment." Prior to the 1997 amendment, part, 4410.4300, subpart 26 and the highway project exemption language in part 4410.4600, subpart 14, item E were consistent. Both subparts referenced stream diversion or channelization for the EAW threshold and the highway project exemption. The 1997 rulemaking did not address the language in part 4410.4600, subpart 14, item E, however, the language regarding the exemption in part 4410.4600, subpart 14, item E, remained in part 4410.4300, subpart 26. Therefore, it appears that the omission of "realignment" in part 4410.4600, subpart 14, item E was overlooked as a cross-reference that should have been updated in 1997 as well. The EQB is now proposing the amendment in part 4410.4600, subpart 14, item E to correct this oversight.

59. Part 4410.4600, subpart 18. Agriculture and forestry.

Agriculture and forestry. The following projects are exempt:

- A. Harvesting of timber for maintenance purposes ~~is exempt.~~
- B. Public and private forest management practices, other than clearcutting or ~~the application of~~ applying pesticides, that involve less than 20 acres of land, ~~are exempt.~~

Justification.

Changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

60. Part 4410.4600, subpart 27. Recreational trails.

Recreational trails. The projects listed in items A to F ~~H~~ are exempt. For purposes of this subpart, "existing trail" means an established corridor in current legal use.

- G. Paving a trail located on an abandoned railroad grade retired in accordance with Code of Federal Regulations, title 49, part 1152.
- H. Adding a new motorized use to an existing motorized trail or trail segment where the trail is located only on an abandoned railroad grade retired in accordance with Code of Federal Regulations, title 49, part 1152.

Justification.

Recreational trails projects developed on abandoned rail grades have minimal environmental impacts and do not have the potential to result in significant environmental effects. Because these corridors already exist, there is little or no potential for new surface disturbance resulting in permanent cover-type conversion or other impacts. The rail grade is already filled and compressed to withstand the weight of a train, so it seems unlikely that paving and/or motorized use will cause much physical impact. Water crossings are already in place, whether by bridge or culvert. The activities covered by this proposed exemption would have a minimal impact and the environment and warrant being exempted.

The current mandatory categories do not distinguish between abandoned rail grades and other types of surfaces, whether for completely new projects or addition of new uses to existing trails. Utilizing these corridors when available is desirable because impacts have already occurred when the rail line was originally constructed. Little or no environmental effects are anticipated from paving or adding a motorized use to abandoned rail grades, thus warranting an exemption.

The proposed exemptions pertain to projects employing abandoned rail grades for trail siting. As used by railroad companies, "abandon" means to cease operation on a line, or to terminate the line itself. The most frequent type of abandonment is where the track has not been used for two years or more or the track has so little traffic on it that it is clear that the carrier could not be making a profit. "Abandoned," when used with reference to a rail line or right-of-way, means a line or right-of-way where the Surface Transportation Board (STB) or other responsible federal regulatory agency has permitted discontinuance of rail service. The STB's procedures are codified under [49 CFR 1152](#).

The proposed exemptions will have a positive effect by eliminating from environmental review a specific type of trail development with minimal impact.

For the remaining sections, the changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

61. Part 4410.5200, subpart 1. Required notices.

Required notices. Governmental units are required to publish notice of the items listed in items A to R in the EQB Monitor, except that this part constitutes a request and not a requirement with respect to federal agencies.

- A. When a project has been noticed pursuant to item D, separate notice of individual permits required by that project need not be made unless changes in the project are proposed that will involve new and potentially significant environmental effects not considered previously. No decision granting a permit application for which notice is required to be published by this part ~~shall be~~ is effective until 30 days following publication of the notice.
 - (1) For all public hearings conducted pursuant to water resources permit applications, Minnesota Statutes, chapter 103G, the DBR is the permitting authority.
 - (2) For notice of public sales of permits for or leases to mine iron ore, copper-nickel, or other minerals on state-owned or administered mineral rights, Minnesota

Statutes, section 93.16, ~~and 93.335, and 93.351~~, and part 6125.0500, the DBR is the permitting authority.

Justification.

Changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

62. Part 4410.7904, Licensing of Explorers.

LICENSING OF EXPLORERS.

An applicant ~~shall~~ must comply with Minnesota Statutes, section ~~156A.071~~ 103I.601, subdivision 2, and parts 4727.0400 to ~~4727.0900~~ 4727.0860, relating to the regulation of exploratory boring.

Justification.

Changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

63. Part 4410.7906, subpart 2. Content of an application for drilling permit.

Content of an application for drilling permit. An application for a drilling permit ~~shall~~ must be filed by the applicant with the ~~board~~ EQB and ~~shall~~ must include:

- C. the applicant's explorer's license, issued under Minnesota Statutes, section ~~156A.071~~ 103I.601, subdivision 2 and parts 4727.0400 to ~~4727.0900~~ 4727.0860;

Justification.

Changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

64. Part 4410.7926. Abandonment of Exploratory Borings.

Pursuant to Minnesota Statutes, section 116C.724, subdivision 2, clause (1), any abandonment, whether temporary or permanent, ~~shall~~ must comply with the state drilling and drill hole abandonment and restoration rules governing exploratory boring under Minnesota Statutes, chapter ~~156A~~ 103I, and part 4727.1000 to ~~4727.1300~~ 4727.1250.

Justification.

Changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

VI. Regulatory analysis

This part addresses the requirements of Minn. Stat. § 14.131 (a), which compel state agencies to address a number of questions in the SONAR. In some cases, the response will depend on specific amendment being proposed and specific detail will be provided. However, for most of the questions, the EQB's response can

be general and will apply across all of the components of this rulemaking, regardless of the specific amendment being proposed.

A. Description of the classes of person who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

As with the existing rules, the proposed amendments to Minn. Rules 4410.0200, 4410.4300 and 4410.4400 will primarily affect persons who propose to develop projects in Minnesota that have, or may have the potential for significant environmental effects. The greatest economic impact would occur to those proposers whose projects would require an EAW or EIS under the proposed rules but not under existing Minn. Rules ch. 4410 or under other current law/statute.

Most of the changes proposed in this rulemaking will have little to no effect on the cost to proposers or Responsible Government Units (RGU) responsible for environmental review due to the fact that a majority of the changes proposed in this rulemaking are an attempt to align with statute, and provide more clarity and certainty on which types of projects require environmental review for potential proposers and RGUs. Where a specific class will be affected, a discussion is provided below.

All changes proposed in this rulemaking provide the benefit of clarity and certainty for EQB, project proposers, RGUs and citizens. Often, changes to the proposed rules that increase clarity and certainty for EQB, project proposers, and RGUs also reduce costs due to a reduction in process time, the staff time in determination if a project requires environmental review; such as the proposed change under Minn. Rules 4410.0500, subpart 6. Exceptions. Clarity in this subpart should reduce staff time spent determine a project's environmental review status and the appropriate RGU at EQB and thus reduce costs to EQB, project proposers, and RGUs.

1. Regulatory Analysis: Minn. Rules 4410.0200

For the proposed changes to Minn. Rules 4410.0200, EQB expects there to be no change in cost to RGUs, proposers, EQB and citizens. The changes to Minn. Rules 4410.0200, provide benefit to RGUs, proposers and citizens by increasing clarity and aligning definitions with other applicable regulatory requirements will benefit the public, project proposers, RGUs and the EQB with review, when environmental review documents and permits are co-noticed. It is challenging to determine if definitional changes, which provide the benefit of more clarity and certainty for proposers, RGUs and the public, will result in more or less environmental review.

2. Regulatory Analysis: Minn. Rules 4410.4300, subpart 2 Nuclear fuels and Nuclear Waste

For the proposed change in Minn. Rules 4410.4300, subpart 2. Nuclear fuels and Nuclear Waste; EQB expects there to be no change to the number of EAWs or EISs as a result of the change that excludes "independent spent-fuel storage installation." Since this threshold update is already required in statute, EQB does not anticipate there to be any change in costs to proposers or the RGU. This clarification and change was required by the Minnesota Legislature in [Minn. Stat. 116C.83, subdivision 6](#), paragraph (b).

3. Regulatory Analysis: Minn. Rules 4410.4300, subpart 3. Electric-generating facilities

The proposed change for Minn. Rules 4410.4300, subpart 3. Electric-generating facilities, item A., will result in less cost to EQB due to the reduction in process steps by directly referring the responsibility for the proposed project to the Minnesota Pollution Control Agency (PCA) instead of a proposed project coming before the EQB Board and then being referred to the PCA (as usually occurs).

Similarly, the change to Minn. Rules 4410.4300, subpart 3., item B means that proposed projects generating between 25 megawatts and 50 megawatts will be reviewed by the Local Government Unit (LGU) instead of going before the EQB Board and then potentially being referred to a Local Government Unit (LGU). This change is expected to increase costs for LGUs because with this change, LGUs will always be the RGU (the LGU is now designated as the RGU) where in the past, in some cases EQB was the RGU and in some cases the RGU was re-designated. Since 2011, the EQB has records of thirteen projects in this category, of the thirteen projects, one would have been between 25 and 50 megawatts and would have triggered an EAW that would have been conducted by a LGU. To mitigate any EAW costs, local government units have the option of creating a local ordinance to require project proposers to pay the costs of an environmental assessment worksheet.

The change to item C is expected to result in less cost to EQB due to the reduction in process steps by directly referring the proposed project to the Public Utilities Commission (PUC) instead of a proposed project coming before the EQB Board and then being referred to the PUC (as usually occurs).

The change to item D is expected to result in less cost to EQB due to the reduction in process steps by directly referring the proposed project to the Public Utilities Commission (PUC) instead of a proposed project coming before the EQB Board and then being referred to the PUC.

4. Regulatory Analysis: Minn. Rules 4410.4300, subpart 4. Petroleum refineries

The proposed rule language change for Minn. Rules 4410.4300, subp. 4. Petroleum refineries, EQB expects there to be no change to cost for EQB, proposers or RGU.

5. Regulatory Analysis: Minn. Rules 4410.4300, subpart 5. Fuel conversion facilities.

EQB expects the changes to items A and B, which add the phrase “new fuel conversion” to reduce costs to the proposer and RGU. The clarity of specifying “new fuel conversion” will help a proposer and RGU more effectively and efficiently determine if a proposed project should undergo environmental review and complete an EAW.

The change to item B, that deletes “or expansion” from the mandatory category is expected to reduce the number of EAWs in this category—thus reducing the cost for proposers and RGU (in this case, the PCA). The additional change to item B, that deletes “or would increase its capacity by...” and changes it to “a capacity” provides more certainty on when a new fuel conversion facility should undergo environmental review.

Finally, the proposed change to item C is expected to provide more clarity and certainty to proposers, RGUs and citizens when determining which projects in this category must undergo mandatory environmental review. This change aligns with [Minnesota Statutes 116D.04, subdivision 2a, paragraph \(b\)](#) and thus there is no actual change to the mandatory category. environmental review. The additional language in item c, helps the proposer, RGU and citizens more easily access the statutory language by its inclusion in 4410.4300.

6. Regulatory Analysis: Minn. Rules 4410.4300, subpart 6. Transmission lines.

The proposed change to Minn. Rules 4410.4300, subpart 6. Transmission lines, is expected to have minimal effect on the cost to proposers, RGUs or citizens of Minnesota. The changes to this category are a language alignment of rule language with already existing Minnesota Rule and statutory language. Inclusion of Minnesota Rule references of the “high-voltage transmission lines” definition will provide more ease of access for proposers, citizens and RGUs and EQB expects no change to cost for EQB, RGUs, proposers, or citizens.

The additional change to subpart 6, the change of the RGU from EQB to PUC should reduce costs for EQB, because EQB will no longer need to re-designate the RGU for a proposed Transmission line project. Per Minn. Rules, [7849.1000](#) to [7849.2100](#) and [7850.1000](#) to [7850.5600](#); environmental review for a proposed high-voltage transmission line project must be conducted by the PUC as required by Minn. Stat., section [216B.243](#) or [216B.2425](#).

7. Regulatory Analysis: Minn. Rules 4410.4300, subpart 7. Pipelines.

The proposed change to Minn. Rules 4410.4300, subpart 7. Pipelines, is expected to increase clarity and efficiency in processing proposed pipeline projects. The deletion of all the current mandatory category language and the introduction of new language will provide clarity to proposers, EQB, citizens, and the RGU through simplification of the threshold determination. EQB expects this change to reduce costs for EQB because it will no longer need to re-designate the Public Utilities Commission the RGU. The change aligns with and incorporates [Minn. Stat. 216G](#) and [Minn. Rules 7852](#), which directs how environmental review is conducted. This incorporation of statute into rule will increase ease of access to all relevant statutory and rule requirements for the proposer, RGU and citizen when determining the environmental review process.

8. Regulatory Analysis: Minn. Rules 4410.4300, subpart 8. Transfer facilities.

The proposed rule language change to Minn. Rules 4410.4300, subpart 8. Transfer facilities. Item C. is an incorporation of existing statutory language and is expected to have no effect on the cost to EQB, RGUs, citizens or proposers due to the fact that these environmental review threshold requirements are already in affect through statute ([Minn. Stat. 116C.991](#)).

9. Regulatory Analysis: Minn. Rules 4410.4300, subpart 10. Storage facilities.

The proposed rule language change to Minn. Rules 4410.4300, subpart 10. Storage facilities. Item A. is a simple readability change and should have no effect on the cost to EQB, RGUs, citizens or proposers.

The proposed rule language change to Item B is a change that should provide more clarity through defining “new major facility” ([Minn. Rule 7151.1200](#)) and “hazardous materials” ([CFR, title 49, section 171.8](#)) to help the RGU, proposer and citizens more easily determine when a facility is required to conduct a mandatory Environmental Assessment Worksheet. These changes should benefit the proposer, RGUs, EQB and citizens by clarifying what a “new major facility” is and what “hazardous materials” are through other, already established, Minnesota rules and Federal codes. All other changes for item B are for readability and should have no effect on costs.

The proposed rule language for Minn. Rules 4410.4300, subpart 10. Storage facilities, item C, is completely new and will likely increase costs for the RGU and proposers due to the fact that more Environmental Assessment Worksheets will be completed. This cost increase will be bore by the Minnesota Pollution Control Agency (PCA) and proposers and will not affect costs for small municipalities. EQB has no record of any projects of this type being proposed in the last 10 years.

The proposed rule language for item D may increase costs for the RGU and proposers due to the fact that more Environmental Assessment Worksheets may be completed because the threshold related to “expansion”. This cost increase will be bore by the Minnesota Pollution Control Agency (PCA) and proposers, and will not affect costs for small municipalities. It is unknown how much this change may cost for proposers or the RGU because it is new and it is unclear to EQB how many projects may occur in the future.

The proposed rule language for item E. will increase clarity through incorporating statutory definitions of “liquefied natural gas” ([Minn. Stat. 299F.56](#)) and “synthetic natural gas” ([Minn. Stat. 216B.02](#)) into the new proposed rule language. These definitions will provide more clarity for proposers, RGU and the EQB by incorporating the already established definitions from statute. The proposed change that deletes the PCA as the RGU and adds the Public Utilities Corporation (PUC) as the RGU aligns with statute and PUC’s jurisdictional authority and expertise. This change should reduce time and costs for the EQB, because now the EQB will not need to re-designate the RGU to the PUC for the proposed project.

The proposed rule change to item F, which aligns a mandatory category with an agency that already has oversight over anhydrous ammonia, Minnesota Department of Agriculture (MDA), provides a benefit to the PCA and EQB, by eliminating their role as an RGU, but may increase costs to MDA. Changing the RGU to MDA may increase costs for proposers and MDA by increasing the level of scrutiny of proposals. This change will benefit all Minnesotans because anhydrous ammonia facilities will undergo environmental review by a state agency that already tracks the location and size of these facilities.

The proposed rule language for item G will increase clarity through incorporating statutory definitions of “liquefied natural gas” ([Minn. Stat. 299F.56](#)) and “synthetic natural gas” ([Minn. Stat. 216B.02](#)) into the new proposed rule language. These definitions should provide more clarity for proposers, RGU and EQB by incorporating the already established definitions from statute.

The proposed change that deletes the PCA as the RGU and adds the Public Utilities Corporation (PUC) as the RGU aligns with statute and PUC’s jurisdictional authority and expertise. This change should reduce time and costs for the PCA and the EQB because now the EQB will not need to re-designate the RGU to the PUC for the proposed project.

The proposed rule language for item H is an incorporation of existing statutory language and is expected to have no effect on the cost to EQB, RGUs, citizens or proposers due to the fact that these statutory requirements are already in effect. Including this change into 4410.4300 rule language will benefit proposers and the RGU by making it easier to know when a proposed project requires environmental review.

10. Regulatory Analysis: Minn. Rules 4410.4300, subpart 12. Nonmetallic mineral mining.

The proposed rule language change to Minn. Rules 4410.4300, subpart 12. Nonmetallic mineral mining, is an incorporation of existing statutory language ([Minn. Stat. 116C.991](#)) and is expected to have no effect on the cost to EQB, RGUs, citizens or proposers due to the fact that this threshold is already in effect through statute. Including this change into 4410 rule language (where proposers and RGUs look when determining if environmental review is required) will benefit proposers and the RGU by making it easier to know when a proposed project requires environmental review.

11. Regulatory Analysis: Minn. Rules 4410.4300, subpart 14. Industrial, commercial and institutional facilities.

The proposed rule language change to Minn. Rules 4410.4300, subpart 14. Industrial, commercial and institutional facilities, is a readability change (adding "square feet") and will have no effect on cost or the number of EAWs in the State of Minnesota. Readability will benefit proposers when determining if a proposed project requires environmental review.

12. Regulatory Analysis: Minn. Rules 4410.4300, subpart 16. Hazardous waste.

The proposed rule language change to Minn. Rules 4410.4300, subpart 16. Hazardous waste. Item A, is a change that adds additional clarity to "new" and "existing". This change should have no effect in costs for proposers, the RGU or the EQB.

Much of the proposed rule language change to Minn. Rules 4410.4300, subpart 16. Hazardous waste. Item A and B adds additional clarity. The clarity changes (wording, "new", etc.) should have no effect in costs for proposers, the RGU or the EQB. The deletion of "with a capacity of 1,000 or more kilograms per month" and the change to "is generating or receiving 1,000 kilograms or more per month," may increase or reduce the costs to proposers of potential projects because now the mandatory threshold is not just about a site's "capacity" but about how much a site "generates" or "receives." This equates to a threshold change and may require proposers of potential projects to undergo environmental review now where they were not required in the past.

The proposed change of "one kilogram or more per month of acute hazardous waste" is also a threshold change and may increase costs for proposers of potential projects to undergo environmental review now where they we're not required in the past. This change may also increase costs for the RGU (PCA) due to additional environmental review of proposed projects that would now be required to conduct a mandatory environmental review. This category has many unknowns because no projects have been proposed in the last ten years and there is no indication there would be any new projects in future years. This cost increase will be bore by the Minnesota Pollution Control Agency (PCA) and proposers and will not affect costs for small

municipalities. It is unknown how much this change may cost for proposers or the RGU because it is new and it is unclear to EQB how many projects may occur in the future.

The proposed rule language change to Minn. Rules 4410.4300, subpart 16. Hazardous waste. Item C adds additional clarity. The clarity changes should have no effect in costs for proposers, the RGU or the EQB.

13. Regulatory Analysis: Minn. Rules 4410.4300, subpart 17. Solid waste.

The proposed rule language change to Minn. Rules 4410.4300, subpart 17. Solid waste. Item A, provides more clarity by incorporating "land" into the category to clarify that this is for locations on the land with solid waste. This change should have no effect on costs for proposers, the RGU (PCA) or the EQB.

The proposed rule language change to Minn. Rules 4410.4300, subpart 17. Solid waste. Item B, adds words that provide more clarity in what the threshold is for this mandatory category. This change may or may not increase costs for proposers and the RGU. This change will benefit proposers, the RGU and citizens by having certainty of how to measure the mandatory threshold.

The proposed rule language change to Minn. Rules 4410.4300, subpart 17. Solid waste. Item D, E and F, provides more clarity by increasing readability of the category. This category assumes similar changes to B, E and F, which all add in the word "permitted". Including "permitted" into the category should provide more clarity for RGUs, proposers and citizens. It is unknown if this change will increase or decrease costs for proposers, the RGU or the EQB. Currently the threshold is related to the "capacity" of a site which EQB assumes would be the "permitted capacity" and thus there should be no change to the number of environmental reviews required. The word "permitted" is incorporated to provide more clarity that the threshold is derived from that which is permitted not a "potential" or "designed" capacity.

14. Regulatory Analysis: Minn. Rules 4410.4300, subpart 18. Wastewater system.

The proposed change to Minn. Rules 4410.4300, subpart 18. A, provides more clarity by increasing readability of the category by splitting "A" into two parts: "A" and "B". The thresholds do not change and thus EQB expects there to be no change in cost to RGUs, EQB, proposers, or citizens.

The proposed change to Minn. Rules 4410.4300, subpart 18. C, by adding "modification" may increase the number of EAWs due to more clarity and specificity in the mandatory category. It is unknown if costs will increase for proposers and RGUs due to more EAWs. It is unknown if this category was applied when a project "modified" a wastewater treatment plant or if they only completed an EAW when they "reconstructed" a wastewater plant.

The proposed change to Minn. Rules 4410.4300, subpart 18, D. EQB expects there to be no cost changes to RGUs, project proposers, or citizens, due to the fact that this is a simple language clarification change.

The proposed change to Minn. Rules 4410.4300, subpart 18. E, by adding "modification" may increase the number of EAWs due to more clarity and specificity in the mandatory category. It is unknown if costs will increase for proposers and RGUs due to more EAWs. It is unknown if this

category was applied when a project “modified” a wastewater treatment plant or if they only completed an EAW when they “reconstructed” a wastewater plant.

The proposed change to Minn. Rules 4410.4300, subpart 18, F. EQB expects there to be no cost changes to RGUs, project proposers, or citizens, due to the fact that this is a simple language clarification change.

15. Regulatory Analysis: Minn. Rules 4410.4300, subparts 20, 20a, 21.

The proposed change to Minn. Rules 4410.4300, subpart. 20., 20a and 21. EQB expects there to be no cost changes to RGUs, project proposers, or citizens, due to the fact that this is a simple language clarification change.

16. Regulatory Analysis: Minn. Rules 4410.4300, subpart 22. Highway projects.

The proposed change to Minn. Rules 4410.4300, subpart 22. Highway Projects. EQB expects there to be less cost to EQB, project proposers and RGUs due to the fact that there will be less EAWs due to the increase in threshold (from 1-mile to 2-miles).

17. Regulatory Analysis: Minn. Rules 4410.4300, subparts 25, 30, 31, 36.

The proposed changes to Minn. Rules 4410.4300, subparts 25, 30, 31, 36, are expected to be no change to costs for EQB, project proposers and RGUs.

18. Regulatory Analysis: Minn. Rules 4410.4300, subpart 26. Stream diversion.

The proposed change to Minn. Rules 4410.4300, subpart 26 that allows for either the “DNR or LGU” to be the RGU may or may not reduce costs for a proposed project. It is likely to reduce costs and time for the proposer due to the reduction in EQB process of re-designation if an LGU wants the DNR to be the RGU for a project (this occurs often).

19. Regulatory Analysis: Minn. Rules 4410.4300, subpart 27. Wetlands and public waters.

The proposed changes to Minn. Rules 4410.4300, subpart 27. Wetlands and Public waters. changes the title of the category for readability. This will have no effect on costs for proposers, the RGU, EQB or citizens.

The proposed change to item A, may or may not reduce costs for a proposed project. It is likely to reduce costs and time for the proposer due to the reduction in EQB process of re-designation if an LGU wants the DNR to be the RGU for a project (this occurs often).

The proposed change to Minn. Rules 4410.4300, subpart 27, item B, may increase costs for project proposers that trigger this mandatory threshold. The proposed language change incorporates “impact”, defines it through existing Minnesota Rule ([Minn. Rule 8420.0111](#)). The deletion of “change or diminish the course, current, or cross-section of 40 percent or more of five or more acres of types 3 through 8 wetlands of 2.5 acres or more” and the replacement with “cause an impact” simplifies the determination of if a project crosses the mandatory threshold and thus

requires environmental review. From this perspective, the simplification in language will reduce costs for the RGU and potentially the project proposer due to the renewed ease of determining if a project requires environmental review. Although, the change in “cause an impact” of “one or more acre or wetland” may increase costs for project proposers that impact wetlands with a proposed project due to clarity and removal of a confusing formula and replacement with a simple threshold. This may mean more Environmental Assessment Worksheets (EAW) will be required and thus increase costs for proposers and RGUs. All other changes to item B are for readability and will have no effect on cost.

20. Regulatory Analysis: Minn. Rules 4410.4300, subpart 30. Natural Areas.

Most of the proposed changes to Minn. Rules 4410.4300, subp. 30. Natural Areas. are for readability and will have no effect on cost for the RGU or proposers. The deletion of “state trail corridor,” will likely reduce costs for the RGU due to no mandatory Environmental Assessment Worksheet being required (in this category) on proposed projects in state trail corridors.

21. Regulatory Analysis: Minn. Rules 4410.4300, subpart 31. Historical places.

The proposed changes to Minn. Rules 4410.4300, subpart 31 is a housekeeping change and is expected to have no change to costs for EQB, project proposers and RGUs.

22. Regulatory Analysis: Minn. Rules Part 4410.4300, subpart 36. Land use conversions, including golf courses.

The proposed changes to Minn. Rules 4410.4300, subpart 36 is a housekeeping change and is expected to have no change to costs for EQB, project proposers and RGUs.

23. Regulatory Analysis: Minn. Rules Part 4410.4300, subpart 36a. Land conversions in shoreland.

The addition of “permanent conversion” meant to provide clarity about what was intended by this subpart and provide consistency with the term “permanent conversion” as it is used throughout Minnesota Rules chapter 4410. The proposed language is expected to have little effect on the costs for EQB, project proposers and the RGU, LGUs.

24. Regulatory Analysis: Minn. Rules 4410.4300, subpart 37. Recreational Trails.

The proposed change at Minn. Rules 4410.4300, subp. 37. Recreational Trails. EQB expects there to be less cost to EQB due to clarity and certainty on if a project is required to undergo mandatory environmental review—or if it is excluded via Legislatively directed language, [Minn. Laws 2015, ch. 4, section 33](#).

25. Regulatory Analysis: Minn. Rules 4410.4400.

All the proposed changes to Minn. Rules 4410.4400 are expected to have little to no change in projected costs for EQB, proposers or RGUs due to the language changes being for readability (clarity), alignment with statute, and minor grammatical updates.

26. Regulatory Analysis: Minn. Rules 4410.4600.

All the proposed changes to Minn. Rules 4410.4600, are expected to have little to no change in projected costs for EQB, proposers or RGUs due to the language changes being for readability (clarity), alignment with statute, and minor grammatical updates.

27. Regulatory Analysis: Minn. Rules 4410.5200

All changes to Minn. Rules 4410.5200 are expected to have little to no change in projected costs for EQB, proposers or RGUs due to the language changes being for readability (clarity), alignment with statute, and minor grammatical updates.

28. Regulatory Analysis: Minn. Rules 4410.7904, 4410.7906, 4410.7926.

All changes to Minn. Rules 4410.7904, 4410.7906, 4410.7926 are expected to have little to no change in projected costs for EQB, proposers or RGUs due to the language changes being for readability (clarity), alignment with statute, and minor grammatical updates.

B. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The proposed rule amendments clarify practices and mandatory EAW and EIS category thresholds already in place for the statewide environmental review program, therefore the proposed rule amendments are unlikely to result in a significant increase in costs to the state. Costs associated with the implementation of the existing rules includes EQB staff time and staff resources to provide technical assistance to citizens, project proposers and RGUs around the state. One goal of the proposed rules is to reduce EQB staff time needed to process requests to designate different RGUs and to determine whether projects meet the mandatory EAW and EIS category thresholds. Moreover, project proposers and RGUs will benefit from those same time and cost savings.

Other state agencies and many local governmental units are RGUs and therefore responsible for overseeing the completion of the environmental review process, often in the form of an EAW or EIS. Those agencies and local governmental units may incur some additional costs or reduction in costs because the rule amendments clarify mandatory EAW and EIS category thresholds and therefore there may be some projects that require environmental review that had not previously been captured by the threshold. Nevertheless, most of the changes proposed in this rulemaking are intended to make environmental review clearer and easier to understand and apply, so any increase or decrease in costs as a result of this rule should be nominal. Please refer to Section A. above for more details on which categories may result in increased costs for other agencies due to RGU change or other proposed language changes.

C. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The vast majority of the proposed rule amendments are technical changes and to align state rule with state statutes and in doing so, gaining efficiencies for all classes of people affected by these rules. Consequently, the only straightforward method for making technical and statutory changes to the rules is through rulemaking.

- D. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.**

The alternative of not conducting this rulemaking was considered. However, this would not achieve the goal of the proposed rules, including clarifying the rules, keeping the rules up to date with state statute language and technical changes, and streamlining the rules. Therefore, not amending the existing rules was rejected by the EQB in favor of the proposed rule amendments.

Moreover, EQB's alternatives were limited, particularly for changes related to recreational trails, a rulemaking directed by the Minnesota state legislature. The proposed changes could not be addressed through agency policy, development of guidance or internal rule interpretation.

- E. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.**

The potential or probable costs are discussed in detail in item A. of this section. Environmental review costs are project and RGU dependent. Costs are wide ranging and difficult to ascertain since the complexity and location of a proposed project plays a significant factor in determining costs for affected parties.

- F. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.**

The potential or probable costs or consequences of not adopting the proposed rules are discussed in detail in item A. of this section. Environmental review costs are project and RGU dependent. Costs are wide ranging and difficult to ascertain since the complexity and location of a proposed project plays a significant factor in determining costs for affected parties. The consequences of not adopting these rules is that environmental review reviews will continue to not align with Statute, will be unclear and difficult to read and comprehend for proposers, LGUs, RGUs and citizens.

- G. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.**

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

H. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

Minn. Stat. § 14.131 defines “cumulative effect” as “the impact that results from incremental impact of the proposed rule in addition to the other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”

There is no cumulative effect of the rule with other federal and state regulations related to environmental review. The 4410 rules cover the process, definitions, mandatory thresholds for EAW and EIS and exclusions and have no relation to federal and state regulations because environmental review is not a regulation per se, it is an exercise in fact finding and due diligence to develop a project that will not have the potential for significant environmental effects.

VII. Notice plan

Minn. Stat. § 14.131 requires that an Agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule, or explain why these efforts were not made.

The EQB utilizes a self-subscription service for interested and affected parties to register to receive rule related activities at the EQB. Each EQB rule project has a page on the EQB’s website and rulemaking information include status, timelines and drafts can be found on the rulemaking webpage.

A. Notice

The EQB published notice requesting comments on planned rule amendments to Minn. R. ch. 4410. The notice was placed on the EQB’s rulemaking webpage. Three Request for Comments were published in the State Register:

- a. July 22, 2013 - The Request for Comments closed on August 23, 2013 at 4:30pm.
- b. November 9, 2015 - The Request for Comments closed on December 31, 2015 at 4:30pm.
- c. October 24, 2016 - The Request for Comments closed on November 28, 2016 at 4:30pm.

On November 9, 2015, the EQB sent messages to the following audiences: MN Cities; MN Townships and members of the Association of Minnesota Counties. The message was sent via email and noticed in the EQB Monitor. All recipients were invited to visit the EQB webpage to use the self-subscription service and sign up for notification on topics of interest to them. Listed topics include rulemaking projects.

1. Minn. Stat. § 14.14, subdivision 1a. On the date the Notice is published in the State Register, the EQB intends to send an electronic notice with a hyperlink to electronic copies of the Notice, SONAR, and proposed rule amendments to all parties who have self-subscribed to the EQB rulemaking distribution lists for the purpose of receiving notice of rule proceedings. The EQB will also distribute an electronic notice with a hyperlink to electronic copies of the Notice, SONAR, and proposed rule amendments in the next available EQB Monitor.

Additionally, the EQB intends to send an electronic notice with a hyperlink to electronic copies of the Notice, SONAR, and the proposed rule amendments to the following organizations:

Name	Contact	Email
Association of MN Counties	Jennifer Berquam, Environment & Natural Resources Policy Analyst	
League of MN Cities	Craig Johnson, Intergovernmental Relations Representative	cjohnson@lmc.org
MN Association of Townships (MAT)		
Center for Environmental Advocacy	Kathryn Hoffman	khoffman@mncenter.org
MN Chamber of Commerce	Tony Kwilas	tkwilas@mnchamber.com
MN Solid Waste Administrators Association	Troy Freihammer, SWA President	Troy.Freihammer@co.stearns.mn.us
Metropolitan Council	Leisa Thompson, MCES General Manager	leisa.thompson@metc.state.mn.us

A copy of the Notice, proposed rule amendments and SONAR will be posted on the EQB's rulemaking webpage: <https://www.eqb.state.mn.us/content/eqb-mandatory-categories-rulemaking>

Pursuant to Minn. Stat. § 14.14, subdivision 1a, the EQB believes its regular means of notice, including publication in the State Register, EQB Monitor and on the EQB's rulemaking webpage, will provide adequate notice of this rulemaking to persons interested in or regulated by these rules.

Minn. Stat. § 14.116. The EQB intends to send a cover letter with a hyperlink to electronic copies of the Notice, SONAR, and the proposed rule amendments to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule amendments, as required by Minn. Stat. § 14.116. The timing of this notice will occur at least 33 days before the end of the comment period because it will be delivered via U.S. Mail.

This statute also states that if the mailing of the notice is within two years of the effective date of the law granting the agency authority to adopt the proposed rules, the agency must make reasonable efforts to send a copy of the notice and SONAR to all sitting House and Senate legislators who were chief authors of the bill granting the rulemaking. This does not apply because no bill was authored within the past two years granting rulemaking authority.

Minn. Stat. §14.111. If the rule affects agricultural land, Minn. Stat. § 14.111 requires an agency to provide a copy of the proposed rule changes to the Commissioner of Agriculture no later than 30 days before publication of the proposed rule in the State Register. This rule is expected to impact the Minnesota Department of Agriculture (MDA). The rule changes will be submitted to the Commissioner of the Department of Agriculture with a cover letter notifying the MDA of the changes.

VIII. Additional notice plan

Minn. Stat. § 14.14 requires that in addition to its required notices:

“each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication.”

The Environmental Quality Board (EQB) considered these statutory requirements governing additional notification and as detailed in this section, intends to fully comply with them. In addition, as described in Section 2, Public participation and stakeholder involvement, the EQB has made reasonable efforts, thus far, to notify and involve the public and stakeholders in the rule process, including various meetings and publishing the RFC.

The EQB intends to request that the Office of Administrative Hearings review and approve the Additional Notice Plan, pursuant to Minn. R. 1400.2060. The EQB's plan to notify additional parties includes the following:

1. Publish its Notice of Intent to Adopt Rules on the EQB's webpage at <https://www.eqb.state.mn.us/content/eqb-mandatory-categories-rulemaking>.
2. Provide specific notice to tribal authorities. The EQB maintains a list of the 12 federally recognized tribes in Minnesota. The EQB will send specific electronic notice to the designated tribal contact person of Minnesota's tribal communities. The notice will be sent on or near the day the proposed rule amendments are published in the State Register, and will have a hyperlink to the webpage where electronic copies of the Notice of Intent to Adopt Rules, proposed rule amendments, and SONAR can be viewed.
3. Provide specific notice to associations related to responsible governmental units (RGUs), environmental groups, other industry associations that may be affected by the proposed rules. The notice will be sent to the following associations and groups on or near the day the proposed rule amendments are published in the State Register, and will have a hyperlink to the webpage where electronic copies of the Notice, proposed rule amendments, and SONAR can be viewed.
 - Metro Cities - Association of Metropolitan Municipalities
 - Association of Minnesota Counties
 - Coalition of Greater Minnesota Cities
 - League of Minnesota Cities
 - Metropolitan Council
 - Minnesota Association of Small Cities
 - Minnesota Chamber of Commerce
 - Minnesota City/County Management Association
 - Minnesota Center for Environmental Advocacy
 - Minnesota Environmental Partnership
 - Sierra Club North Star Chapter
 - PCA Environmental Justice Advisory Group
 - PCA Environmental Justice List serve
 - Environmental Justice Advocates of Minnesota (EJAM)
 - The Alliance Advancing Regional Equity
 - Minnesota Farm Bureau
 - Minnesota Farmers Union
 - Minnesota Corn Growers Association

- Minnesota Association of Wheat Growers
- Minnesota Land Improvement Contractors Association
- Red River Watershed Management Board
- Minnesota Soybean Growers Association
- Minnesota Pollution Control Agency
- Minnesota Industrial Sand Council
- Minnesota Public Utilities Commission
- Minnesota Department of Commerce
- Minnesota Department of Natural Resources

Note: some members of these associations may already subscribe to receive GovDelivery notices.

4. Providing an extended comment period to allow additional time for the review of the proposed revisions. The EQB intends to provide more than the minimum 30-day comment period prior to the hearings and to request that the administrative law judge provide the maximum allowed post-hearing comment period.
5. Email the Notice of Intent to Adopt Rules; the proposed rules; links to the SONAR and any additional documents related to the rulemaking; to persons on the EQB's broader email list, the "EQB Monitor".
 - The EQB Monitor is a weekly publication announcing environmental review documents, public comment periods and other actions of the Environmental Quality Board. The EQB Monitor is published every Monday at 8:00 am.
6. The EQB believes that by following the steps of this Additional Notice Plan, and its regular means of public notice, including early notification of the GovDelivery mail list for this rulemaking and the broader "EQB Monitor" email list, publication in the State Register, and posting on the EQB's webpages, the EQB will adequately provide additional notice pursuant to Minn. Stat. § 14.14, subd. 1a.

IX. Performance-based rules

Minn. Stat. §14.002 requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of an agency's regulatory objectives while allowing maximum flexibility to regulated parties and to an agency in meeting those objectives.

The goal of the environmental review program is to obtain useful information about potential environmental effects of proposed projects and how they can be avoided or mitigated. The structure of the rules promotes flexibility for units of government in obtaining this information. The rules specify the types of information that are needed, but the RGU chooses how it will obtain the information. Except for one of the proposed amendments, which will streamline RGU determinations early in the environmental review process, the present rulemaking does not substantially affect the procedures of environmental review. Rather it makes minor adjustments to the thresholds at which review is required. Furthermore, environmental review is not a regulatory program, and hence the EQB has no "regulatory objectives" in this rulemaking.

X. Consult with MMB on local government impact

As required by Minn. Stat. § 14.131, the EQB will consult with Minnesota Management and Budget (MMB). The EQB will do this by sending MMB copies of the documents that are sent to the Governor's office for review and approval on the same day the EQB sends them to the Governor's office. The Agency will do this before publishing the Notice of Intent to Adopt/Dual Notice/Notice of Hearing. The documents will include - the Governor's Office Proposed Rule, and SONAR Form, the proposed rules; and the SONAR. The EQB will submit a copy of the cover correspondence and any response received from MMB to the Office of Administrative Hearing (OAH) at the hearing or with the documents it submits for Administrative Law Judge (ALJ) review (Exhibit #5).

XI. Impact on local government ordinances and rules

Minn. Stat. § 14.128, subdivision 1, requires an agency to determine whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule. The EQB has determined that the proposed amendments will not have any effect on local ordinances or regulations.

XII. Costs of complying for small business or city

Minn. Stat. § 14.127, subs. 1 and 2 require an agency to "determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees."

The EQB determined that the cost of complying with the proposed rules in the first year after the rules take effect may or may not exceed \$25,000 for any small business or small city. The Board has made this determination based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis section of this SONAR. The potential or probable costs of adopting the proposed rules are discussed in detail in item A. of this section. In general, local units of government prepare approximately two-thirds of the total environmental review documents each year, and eighty-percent of the total projects are reviewed using the EAW process.

It is difficult to assess the potential cost of an individual project and/or categories of projects. The overall project costs can vary based on the adequacy of the data submitted to the RGU, the complexity of the project, the project's location and proximity to sensitive resources, and the level of controversy. Because the EQB delegates the authority to prepare and approve environmental documents, they do not have reliable historic project data. EQB staff attempted to better understand the RGU costs of preparing these environmental documents through survey questions, but did not receive substantive responses. According to 2017 survey (Exhibit 2) data collected, the average cost for environmental review for RGUs was \$35,960, with a range of \$200 to \$75,000 (Exhibit #2). It is worth noting there was a small sample size related to RGU costs and a large range reported.

Additionally, EQB staff reached out to several local governments and state agencies who are RGUs for projects that require environmental review. According to these RGUs, the cost for EAWs ranged from \$1,500 to \$368,600. An example project, is the Lilydale Regional Park Master Plan EAW. The EAW for this project was estimated to cost between \$18,889 and \$28,058. Another example is a more complex project, CHS Field in St. Paul, MN. The estimated proposed cost for the EAW for this project was \$368,600. Another set of example of estimated EAW costs, from Scott County, for three mining projects ranged

from \$17,000-\$53,000. Scott County also provided an estimate cost for an EIS for a mining project, this estimate was \$232,000 for a completed EIS.

To mitigate any EAW costs, local government units have the option of creating a local ordinance to require project proposers to pay the costs of an environmental assessment worksheet.

XIII. Authors and SONAR exhibits

A. Authors

- Denise Wilson, Planning Director, Environmental Review, Environmental Quality Board
- Erik Cedarleaf Dahl, Planning Director, Environmental Quality Board

B. SONAR exhibits

Exhibits are located at the end of this document.

XIV. Conclusion

In this SONAR, the EQB has established the need for and the reasonableness of each of the proposed amendments to Minn. Rules ch. 4410. The EQB has provided the necessary notifications and in this SONAR documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules. The EQB will comply with Minn. Stat. 14.131 and 14.23 and submit the SONAR to the Legislative Reference when the EQB mails out the Dual Notice.

Based on the forgoing, the proposed amendments are both needed and reasonable.

11/13/18
Date


David Frederickson, Chair
Environmental Quality Board

XV. SONAR exhibits

1. Mandatory Categories Report (2013)
2. 2017 Survey Results RGUs and Project Proposers Debrief
3. Recreational Trails Legal Review of Previous Efforts
 - (a) Judge's Order: December 2, 2015
 - (b) Judge's Order: February 16, 2016
4. EQB Statutory Authority
5. MMB Letter

XVI. References

Minnesota Department of Transportation. Road Design Manual. 2018.
<http://roaddesign.dot.state.mn.us/>. Section 4-3.0, 4-4(8), 6-1.05.04, 18.01.

Transportation Officials (AASHTO). A Policy on Geometric Design of Highways and Streets. American Association of State Highway 2011. Section 8-35, 9-124-127, 10-76, 10-79)

Voss, John. Mandatory Categories Statement of Needs and Reasonableness. December 1, 1982, Minnesota Environmental Quality Board. 1982.