

March 20, 2026

The Honorable Judge Kimberly J. Middendorf
Court of Administrative Hearings
600 Robert Street N
Saint Paul, MN 55155

Re: Amendment to Rules Relating to Environmental Review, Governing Scoping of Mandatory Environmental Impact Statements, Minn. R. 4410; Revisor's ID Number R-04978, CAH Docket No. 21-9008-41465

Dear Judge Middendorf:

This letter contains the Environmental Quality Board's (EQB's) responses to comments on the above-referenced rules. Six timely comments were received during the comment period.

Comment 1: Minnesota Chamber of Commerce

The commenter suggests updating the proposed rule language in Minn R. 4410.2100, Subp. 2, item A to simply read: "All projects requiring an EIS must have a scoping document filed with the RGU", without including the additional sentence proposed by EQB that reads: "An EAW may serve as a scoping document."

The existing rule is longstanding; the proposed change represents a departure from procedures in place for more than forty years. Although the language could be considered duplicative, because of the new definition of a scoping document, EQB believes it bears repeating within the rule parts that contain the scoping procedures. Most project proposers and responsible governmental units (RGUs) are likely to refer to those procedural rules first, rather than the definitions.

Comment 2: Environmental organizations

A group of environmental organizations (Water Legacy, Minnesota Center for Environmental Advocacy, Minnesota Division Izaak Walton League of America, Minnesota Environmental Partnership, Northeastern Minnesotans for Wilderness) provided joint comments on the proposed rules.

1. The commenters state that EQB has not demonstrated that the good cause exempt rulemaking procedures may be used.
2. The commenters suggest that multiple components of the proposed rule exceed the scope of the applicable legislative and require interpretation of law.
3. The commenters state that the rule changes improperly delegate EQB authority.
4. Commenters propose changes that they find may be acceptable for exempt rulemaking.

EQB respectfully disagrees with the commenters on these points. The Court of Administrative Hearings has, in multiple rulemaking procedures, deemed explicit legislative permission to use the exempt rulemaking process to

be sufficient justification. See, for example, *In the Matter of the Adopted Exempt Permanent Rule: Terminating Postclosure Care of Solid Waste Disposal Facilities*, OAH 25-9003-40430; Revisor R-4878.¹

The cases cited by the commenters are inapplicable. The commenters cite *Jewish Community Action v. Commissioner of Public Safety*, 657 N.W.2d 604, 611 (Minn. App. 2003); in this case, the Department of Public Safety made its own decision to use the good cause exempt procedures to promulgate rules. It did not receive or rely on legislative authorization for the exempt process.

The commenters further cite *In re the Adopted Exempt Permanent Rule of the Minn. Pollution Control Agency Governing Municipal Effluent Limitations*, OAH 19-9003-34654. The Minnesota Pollution Control Agency (MPCA) asked for the chief administrative law judge to review the findings in that matter. The Order on Chief Judge's Review of Rules in that matter states "In some cases, the legislature provides the good cause in the legislation and in those cases the agency does not have to show good cause itself under the requirements of the statute. The Chief Judge finds the legislature's direction to use the good cause exemption process, while permissive, is sufficient to establish good cause in this case. This direction coupled with the proposed amendment's incorporation of specific statutory language meets the requirements of Minn. Stat. 14.388, subd. 1(3)." (Internal references omitted).

Furthermore, EQB has already received questions from project proposers and RGUs concerning implementation of the revised scoping procedures directed by the Legislature. Any delay in approval and implementation of these Rules would cause confusion for government entities and project proposers trying to reconcile rules that have not yet been updated to meet the policy expressed by the Legislature.

The commenters go on to claim that EQB has interpreted the law and gone far beyond the scope of what was allowed by the legislature.

The commenters indicate that amendment to Minn. R. 4410.2100, subp. 2, item B, to remove the requirement for an EAW "if a voluntary EIS is planned" is beyond the scope, as the Legislature authorized no changes to scoping a voluntary EIS. EQB's rule amendments respect the existing (and long-standing) rules, which provide that the process for a mandatory EIS and a voluntary EIS are the same.

The commenters state that EQB's proposed rules would remove functions of the EAW when the need for an EIS has **not** been determined. The proposed rule language does not do so, as the functions of an EAW are delineated elsewhere, such as Minn. R. 4410.1000. Minn. R. 4410.2100 relates to scoping an EIS; as noted in the beginning of Subp. 2, it applies to all projects requiring an EIS. A reference to what an EAW does when an EIS has not been determined to be needed is not necessary in this section of rules. The proposed changes provide clarity about the role of the EAW in scoping a subsequent EIS, one determined to be needed based on the information in the EAW. This is especially important given the new difference in procedures between the pathways to an EIS. Changing the reference to Minn. R. 4410.2000, subpart 3, item A aligns with the way the existing rule describes the multiple pathways to completing an EIS. These changes support clear implementation of the legislative direction.

¹ In this Minnesota Pollution Control Agency rulemaking, CAH identified that "According to Laws of Minnesota 2024, chapter 116, article 2, sections 30(b), the Agency has the statutory authority to adopt the proposed rule using the exempt rulemaking process." The language in the authorizing law is the same as that given to the EQB for this rulemaking in Laws of Minnesota 2025, chapter 1, article 6, section 5(b), i.e. "may use the good cause exemption 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."

Without them, there will be confusion over the applicable requirements. For example, the change to Minn. R. 4410.3610 is proposed because the requirement in that rule part is to include information comparable to that of a scoping EAW under part 4410.2100, subpart 2. Given the changes in part 4410.2100, continuing to refer to a scoping EAW would be confusing and could prevent RGUs from properly following the procedures.

In summary, the legislature specifically authorized and contemplated that this rule proceed under the good cause exemption in Minn. Stat. § 14.388 because it understood that EQB needed to quickly conform its rules to the new statute in order to avoid confusion. As noted above, EQB has already received inquiries related to the incongruities between the rule and the legislative direction. The rule changes proposed are limited to only those necessary to conform rules to the new legislation and keep internal references within the EQB rules consistent and easy to understand.

The commenters also indicate the rule changes “improperly delegate authority to determine the actions for which EAWs must and need not be prepared and the content of scoping documents to an agreement between a responsible government unit (“RGU”) and a project proposer.” The EQB has, by rule, established categories of actions for which an EAW is needed in Minn. R. 4410.4300, and those rules are not being changed here, nor is the content of the EAW form. The environmental review process is, under Minn. R. 4410.0330, Subp. 4, explicitly meant to “delegate authority and responsibility for environmental review to the governmental unit most closely involved in the project.” The commenters say, “MEPA does not contemplate a situation where a project proposer and an agency or local government could agree to a minimal scoping document and a minimal EIS to avoid public participation and the EQB’s structured requirements for an EAW.” The precise contents of an EAW and a scoping decision have always been up to the RGU; the proposed rules do not change the decision that needs to be made or the public process. The legislature clearly directed that mandatory EISs should not have to complete an EAW, and EQB must implement that decision.

Finally, the commenters’ attachment fully recognizes that many of the conforming rule changes are needed, and suggests similar changes to those made by EQB. EQB did consider whether many parts of the rule language should say “scoping EAW or scoping document,” as suggested by the commenters, and ultimately chose brevity.

Comments 3 through 6: Owatonna East Side Coalition and residents

Comments were received from residents of Owatonna, raising various concerns about the environmental review process – ranging from concerns about a specific project, to concerns about the appeals process, mitigations, RGU responses to comments, and similar. These comments are not germane to the specific proposed rule changes.

Sincerely,



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Executive Director

CC: Andrew Morley, Minnesota Chamber of Commerce
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