



**MINNESOTA**  
**ENVIRONMENTAL QUALITY BOARD**

520 Lafayette Road North, Saint Paul, MN 55155 | [www.eqb.state.mn.us](http://www.eqb.state.mn.us)  
Phone: 651-757-2873 | Fax: 651-757-2343

**August 15, 2018**

**Meeting Location: MPCA Board Room**  
**St. Paul, Minnesota**  
**1:00 p.m. – 4:00 p.m.**

**ANNOTATED AGENDA**

**General**

This month's meeting will take place in the Minnesota Pollution Control Agency board room at 520 Lafayette Road in St. Paul. The Environmental Quality Board (EQB or Board) meeting will be available via live webcast on July 18, 2018 1:00 p.m. to 4:00 p.m. You will be able to access the webcast on our website: [www.eqb.state.mn.us](http://www.eqb.state.mn.us)

*The MPCA building is served by bus routes 64, 53, 860L, 61, and 74 and is accessible by bike. For more information about transit options please see <https://www.pca.state.mn.us/about-mpca/st-paul-office>*

*The Jupiter Parking Lot is for all day visitors and is located across from the Law Enforcement Center on Grove Street. The Blue Parking Lot is also available for all day visitors and is located off University and Olive Streets.*

Public comment is taken on all agenda items. Time allocated for discussion is at the discretion of the Board Chair.

- I. \*Adoption of Consent Agenda**  
Proposed Agenda for August 15, 2018, Board Meeting  
July 18, 2017, Meeting Minutes
- II. Introductions**
- III. Chair's Report**
- IV. Executive Director's Report**

---

*\* Items requiring discussion may be removed from the Consent Agenda*

- V. EQB Energy and Environment Report Card: Land Indicators**
- VI. Mandatory Categories Rulemaking Update**
- VII. Public Comment**
- VIII. Adjourn**



**MINNESOTA**  
**ENVIRONMENTAL QUALITY BOARD**

520 Lafayette Road North, Saint Paul, MN 55155 | [www.eqb.state.mn.us](http://www.eqb.state.mn.us)  
Phone: 651-757-2873 | Fax: 651-757-2343

**August 15, 2018**

**Meeting Location: MPCA Board Room**  
**St. Paul, Minnesota**  
**1:00 p.m. – 4:00 p.m.**

**ANNOTATED AGENDA**

**General**

This month's meeting will take place in the Minnesota Pollution Control Agency board room at 520 Lafayette Road in St. Paul. The Environmental Quality Board (EQB or Board) meeting will be available via live webcast on July 18, 2018 1:00 p.m. to 4:00 p.m. You will be able to access the webcast on our website: [www.eqb.state.mn.us](http://www.eqb.state.mn.us)

*The MPCA building is served by bus routes 64, 53, 860L, 61, and 74 and is accessible by bike. For more information about transit options please see <https://www.pca.state.mn.us/about-mpca/st-paul-office>*

*The Jupiter Parking Lot is for all day visitors and is located across from the Law Enforcement Center on Grove Street. The Blue Parking Lot is also available for all day visitors and is located off of University and Olive Streets.*

Public comment is taken on all agenda items. Time allocated for discussion is at the discretion of the Board Chair.

- I. \*Adoption of Consent Agenda**  
Proposed Agenda for August 15, 2018, Board Meeting  
July 18, 2017, Meeting Minutes
- II. Introductions**
- III. Chair's Report**
- IV. Executive Director's Report**

---

*\* Items requiring discussion may be removed from the Consent Agenda*

## V. EQB Energy and Environment Report Card: Land Indicators

### Presenters:

Erik Cedarleaf Dahl  
Planning Director  
Environmental Quality Board (651-757-2364)

### Materials enclosed:

- 2017 Minnesota Environment and Energy Report Card – Land Section

### Discussion:

EQB staff and staff from member agencies will present an overview of the *2017 Environment and Energy Report Card* Land section.

## VI. Mandatory Categories Rulemaking Update

### Presenters:

Denise Wilson  
Planning Director  
Environmental Quality Board (651-757-2523)

Erik Cedarleaf Dahl  
Planning Director  
Environmental Quality Board (651-757-2364)

### Materials enclosed:

- Proposed changes to Minnesota Rule chapter 4410

### Discussion:

Drawing from the [2013 Mandatory Environmental Review Categories Report](#) and subsequent legislation, EQB staff initiated the mandatory categories rulemaking process: <https://www.eqb.state.mn.us/content/eqb-mandatory-categories-rulemaking>. To date, the process included requests for input from RGUs and the public, multiple public meetings, and a formal request for comments on proposed draft rule language. The attached document reflects results of comments received during these outreach and engagement efforts, and includes a:

- discussion of the need for the change, and
- justification for the reasonableness of the proposed change.

The information is submitted for early review and discussion, before the draft rules are provided for a final, formal public comment period. The draft of the proposed rule changes will be included in the Statement of Need and Reasonableness (SONAR) that will be presented for Board approval at the September Board meeting

## VII. Public Comment

## VIII. Adjourn

**MINNESOTA ENVIRONMENTAL QUALITY BOARD  
MEETING MINUTES**

**Wednesday July 18, 2018  
MPCA Room Board Room  
520 Lafayette Road North, St. Paul**

**EQB Members Present:** Dave Frederickson, Tom Landwehr, John Saxhaug, Julie Goehring, Kristin Eide-Tollefson, Matt Massman, Alan Forsberg, Tom Moibi, Charlie Zelle, Bryan Murdock, Gerald VanAmburg, Shawntera Hardy, Jan Malcolm

**EQB Members Absent:** Alene Tchourumoff, Jessica Looman, Kate Knuth, John Linc Stine

**Staff Present:** Will Seuffert, Tabitha Cale, Erik Dahl, Kristin Mroz-Risse, Katie Pratt, Giuseppe Tumminello, Denise Wilson

<b>Activity</b>	<b>Webcast</b>
<b>I. Adoption of Consent: Agenda and Minutes</b>	0:01:00
<b>II. Introductions</b>	0:02:03
<b>III. Chairs Report – No Report</b>	0:03:15
<b>IV. Executive Director’s Report</b> Appointments to be made for 3 <sup>rd</sup> Congressional District EQB Citizen Member, applications open. Strategic plan is proceeding and will be brought as a draft in September Board meeting. A walkthrough of remaining 2018 board meetings. New EQB assignments discussed. EQB staff Katie Pratt and Giuseppe Tumminello brief on October’s EQB Youth Perspectives Board Meeting.	0:03:25
<b>V. Discussion of Wild Rice Task Force (WRTF)</b> Katie Pratt (EQB) discusses statute and Executive Orders related to the WRTF. Catherine Neuschler (MPCA) provides context for the sulfate standard and a brief history of its formation. Mariah Levison (MN Office for Collaboration and Dispute Resolution) explains the role of the MN Office for Collaboration and Dispute resolution in this process for moving the conversation forward.	0:15:05
<b>VI. EQB Energy and Environment Report Card: Energy Indicators</b> Jessica Burdette (COMM) provides an update on fuel consumption in MN and a status update on energy consumption standards and progress related to them. Peter Olson (MnDOT) gives an update on E+E Report Card fuel use metrics.	1:05:30
<b>VII. EQB Energy and Environment Report Card: Air Indicators</b> Kari Palmer (MPCA) overviews air quality index measure used in 2017 report by reviewing trends and updates. Jim Kelly (MDH) builds on the basis for air quality index measure by evaluating reasons for why we care about the measure and how it impacts human health. Peter Olson (MnDOT) assesses transit ridership in the state, actions being taken, and goals, related to the transit ridership metric.	1:32:15
<b>VIII. Public Comment</b> Kristin Eide-Tollefson (EQB Citizen Member) asks about public access to meeting materials.	1:56:40
<b>IX. Adjourn</b>	

# Land

Across Minnesota, how we use our land can have broad impacts. For example, how we build our cities and manage our crops can affect water, habitat, and air quality. Understanding the complexity of land use and management decisions is crucial to support thriving communities, protect species and ecosystems, and sustain economic growth.

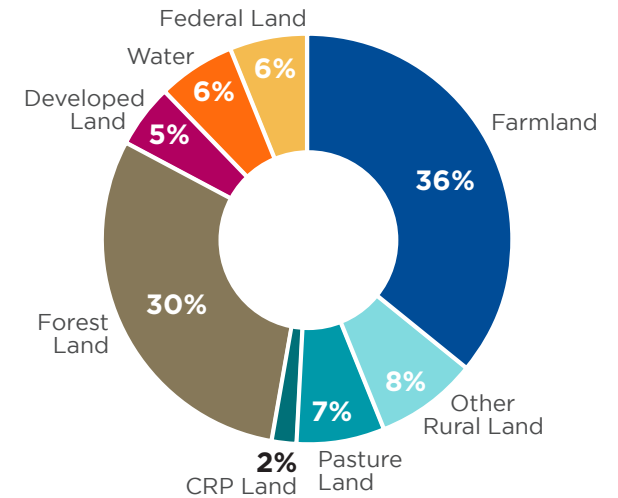
Humans have significantly altered Minnesota's ecosystems and habitats by using land for farming, forestry, mining, and to build cities and towns. Over the last 150 years, large areas of Minnesota's prairie, wetlands, and forests have been converted to pasture, cropland, and residential and commercial development. As a result, natural habitats have been reduced in size and quality and become fragmented, which in turn affects wildlife populations.

The development of land for housing, businesses, roads, and industry has reduced land available for resource-based activities such as agriculture, forestry, and recreation. How we dispose of our waste also impacts the land in terms of space needed to transport, process, and store waste, and our ability to contain contaminants.

We need to continue to improve our ability to use land wisely and efficiently and to minimize negative impacts of land development and conversion.

## Minnesota Land Use/Cover in 2012

Total land area approximately 54 million acres



SOURCE: 2012 National Resources Inventory. USDA/NRCS

**Since settlement, Minnesota's natural ecosystems have been developed and fragmented for human use. We can use our land more efficiently to better protect our ecosystems and water.**



SAINT LOUIS PARK, MN

### DENSITY

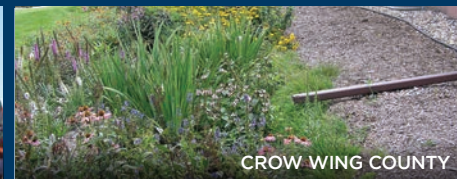
Steering growth to already urbanized areas, reuse of existing buildings and developed land, increased residential densities and more transportation options lead to development patterns that preserve the natural environment.



WORTHINGTON, MN

### WORTHINGTON WELLS

Over 95% of highly vulnerable acres (147 acres) within the wellhead protection boundaries for the city of Worthington were protected by Pheasants Forever and other public and private partners to create habitat while also protecting drinking water resources. This land purchase also helped complete a wildlife habitat corridor stretching from Lake Ocheda to Lake Bella.



CROW WING COUNTY

### GREEN INFRASTRUCTURE

Green infrastructure is a cost-effective, resilient approach to managing wet weather impacts that provide many community benefits. By keeping rain where it falls and mimicking natural hydrology, green infrastructure practices both minimize pollution reaching our lakes, rivers and streams, and recharge our groundwater.

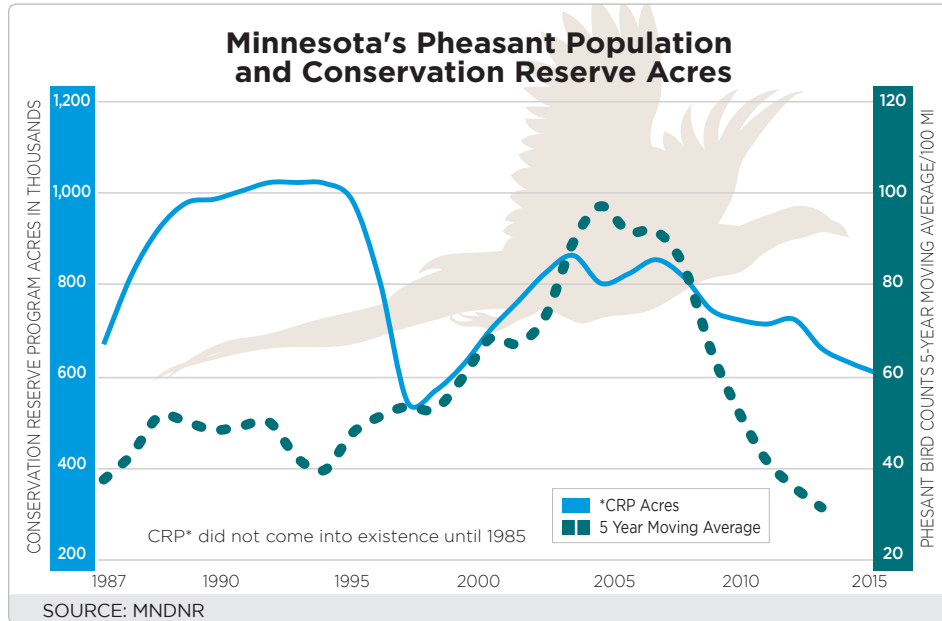


### RECYCLING

Minnesota's recycling manufacturing industry is recognized as a national leader. In 2003, the industry supported more than 9,000 jobs and added \$2.98 billion to the state's economy. Recycling significantly reduces the amount of trash that goes into landfills.



Recent pheasant and other grassland bird population declines reflect significant prairie and grassland habitat loss.



**Grassland birds are declining faster than any other group of birds in the United States.** Major loss of grassland habitat in Minnesota has driven declines in pheasant populations, meadowlarks and other grassland species. This has been compounded by successive years of poor weather conditions. The quality of Minnesota's grasslands has also declined as trees and non-native invasive species encroach on high quality grassland habitats.

One of the contributing factors to prairie habitat loss is the conversion of grasslands for agricultural use. The August Roadside Survey Index (which counts birds per 100 miles) is the long-standing measure of Minnesota's pheasant population. Similar to other grassland-dependent wildlife, the pheasant population has seen a sharp decline in the past several years. This has happened in tandem with a major loss of grassland habitat as pasture and land in conservation programs have been converted to row crops and, to a lesser extent, urban land.

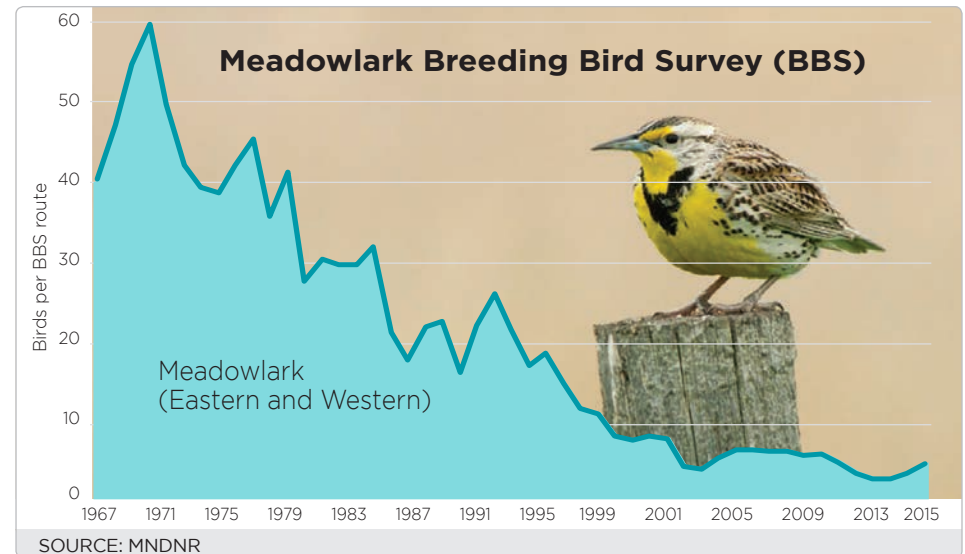
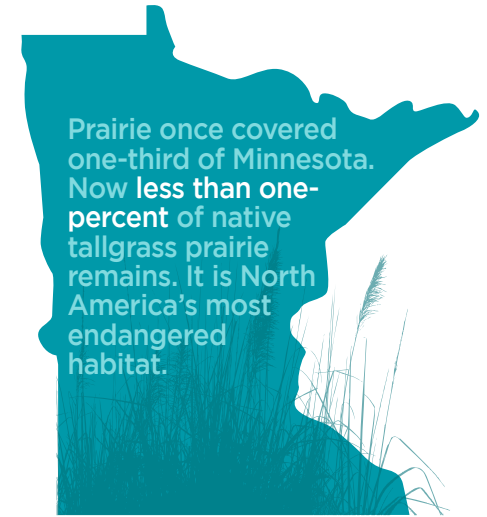
\*The US Department of Agriculture uses the Conservation Reserve Program (CRP) to pay eligible farmers who remove environmentally sensitive fields from agricultural production by planting trees, grasses and wildflowers to improve environmental quality for ten to fifteen years. CRP acres are for the pheasant range in Minnesota.

## Meadowlarks

Eastern and Western Meadowlarks can be found along roadsides, grasslands, croplands, weedy fallow fields, and mixed grasslands/shrublands.

Loss of suitable habitat is a significant factor in meadowlark population declines. This is true of many grassland birds.

Disturbances—including mowing, spraying, burning, farm tillage, grazing, field turnaround spraying and vehicle or equipment encroachment—during peak nesting months (May, June, July) significantly lower reproduction of meadowlarks and other grassland birds.



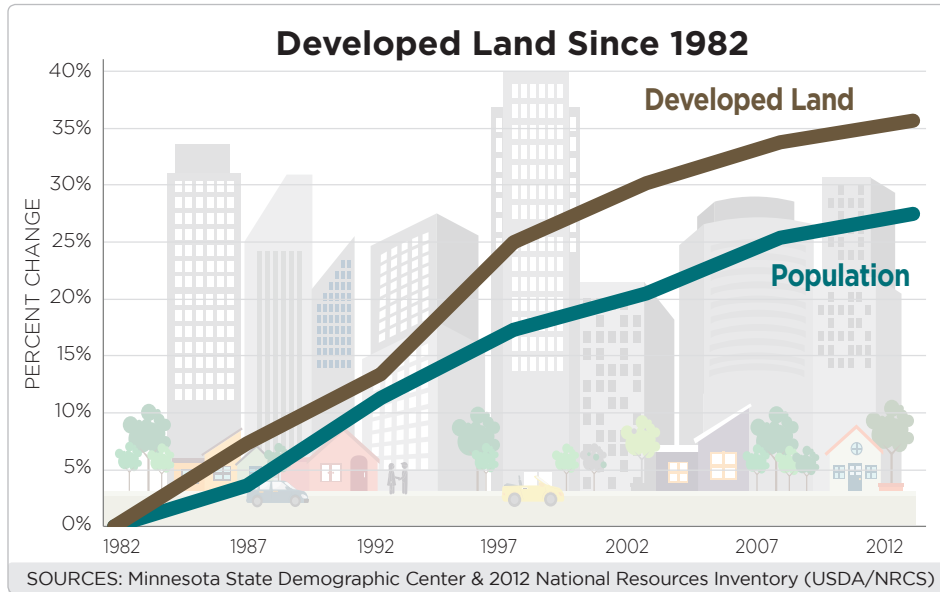


# Land Conversion



Over time, our land conversion per person has increased, resulting in a higher rate of land conversion of prime farmland, forest land, wetlands, and wildlife habitat.

Approximately 35% of land in Minnesota developed between 1982 and 2012 was prime farmland.



## Planning Focus:

Communities in the Twin Cities Metropolitan Area are currently engaged in comprehensive plan development. The Metropolitan Council's *Thrive MSP 2040* promotes growth in already urbanized areas and encourages comprehensive plans to locate new developments in ways that preserve and benefit from the natural environment, thereby reducing development pressures that endanger natural resources. Communities are also encouraged to partner to conserve, maintain, and restore natural resources identified in local natural resource inventories.

## Success Story:

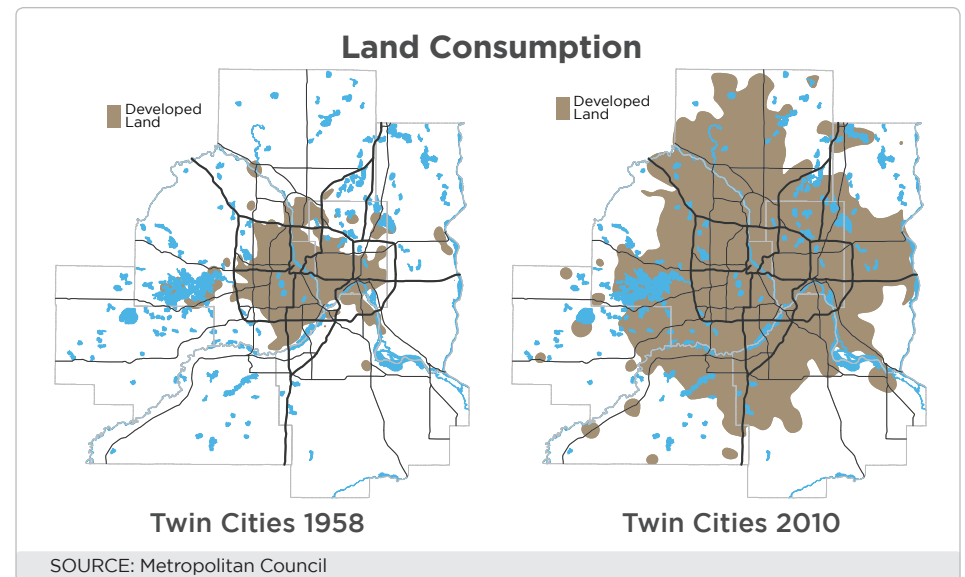
### Dakota County Farmland & Natural Areas Program

The Dakota County Farmland & Natural Areas Program works with willing landowners to protect farmland and natural areas by purchasing permanent agricultural conservation easements. The landowner retains the rights to use, rent, transfer, or sell the land; however, the property within the easement cannot be developed. To date, a total of 10,781 acres have been protected.

Land conversion refers to how much land we use as our cities and towns grow to support larger populations. This land conversion results in the transformation of open space (natural areas/ecosystems), farmland, and forest land to developed or urban land uses.

As we grow, both in terms of population and the economy, we need room for jobs, recreation and entertainment, shopping, parking, transportation, storage, government services, religious and cultural opportunities, waste handling, and education. However, we can develop land more efficiently than we do today through, for example, more compact development patterns, increased residential densities, reuse of existing buildings and developed land, and more transportation options (decreasing land demands for roads and parking lots).

Efficient use of land can provide many economic, social, and environmental benefits including improved accessibility, increased efficiency in providing utilities and public services, transportation cost savings, open space preservation, reduced per capita pollution emissions, and fewer impervious surfaces (such as pavement).

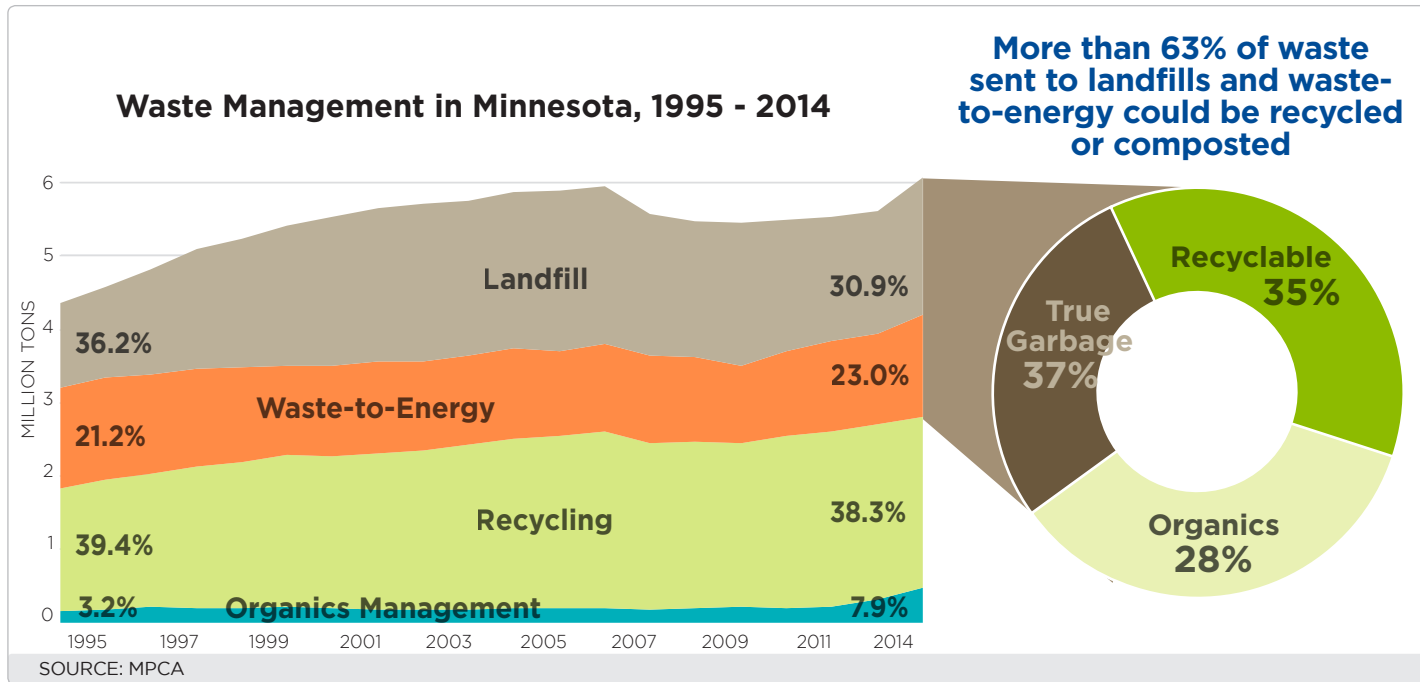




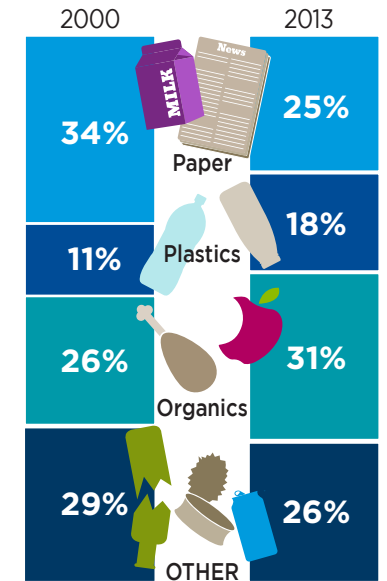


About one-third of our waste is still sent to landfills. More of this waste could be recycled.

Every year, each American throws out about **1,200 pounds of organic garbage** that can be composted.



### Composition of waste sent to disposal facilities



Minnesota's recycling programs are among the nation's most successful. From 2012 to 2013, Minnesota's combined recycling and composting rate increased from 45.6% to 46.9%. In 2013, over 2.7 million tons were recycled, or composted, an increase of over 108,193 tons from 2012.

Recycling and composting add significant value to Minnesota's economy while protecting our environment. According to a Statewide Waste Composition study, more than 63% of Minnesota trash is made up of paper, plastic, metal, glass, organics, and other materials that could be collected for recycling. That equals about 1.2 million tons of recyclable materials thrown away every year which is worth \$285 million.

In 2014, the Legislature increased the recycling goal (recycling and organics management) for counties in the Twin Cities metro area to 75% (from 50%) of the waste they generate by 2030. The Greater Minnesota counties' goal remains unchanged at 35%. Citizens, businesses, and corporations will play a critical role to meet Minnesota's 2030 goals.



### Saint Paul Hotel

The historic Saint Paul Hotel in the heart of downtown Saint Paul has a long-standing commitment to environmental sustainability. The hotel instituted a program to reduce waste and increase recycling. In the program's first month, it diverted almost 52,000 pounds (26 tons) of food waste. **It's estimated the program will divert over 600,000 pounds of food and other compostable materials every year and save the hotel over \$20,000 per year.**

## INTRODUCTION

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.

### A. AMENDMENTS TO CHAPTER AND PART 4410.0200 - DEFINITIONS AND ABBREVIATIONS.

The following list includes new, amended and/or expanded definitions. The purpose of these changes is to assist the reader in the proper interpretation of the rules. Where applicable these changes include accepted definitions in common usage, and for terms defined in existing statutes or regulations, the citations are provided.

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

Acute hazardous waste. "Acute hazardous waste" has the meaning given in part 7045.0020, subpart 3a.

#### **Justification for Part 4410.0200, subpart 1b. Acute hazardous waste.**

Currently, Minn. Rules ch. 4410 does not define acute hazardous waste. The definition provides greater clarity in determining if environmental review is required for a proposed project. The definition aligns Minn. Rules ch. 4410 with the other applicable State regulatory requirements. Using similar terminology with other applicable regulatory requirements helps the public with review, when environmental review documents and permits are co-noticed.

#### **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 for Part 4410.0200, subpart 5a. Auxiliary lane.**

The definition of "auxiliary lane" is not currently defined in Minn. Rules ch. 4410 and is referenced in proposed changes to 4410.4300, subpart 22. Highway projects. This definition aligns with other applicable regulatory requirements.

The definition of "auxiliary lane" is the definition that is 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. (MnDOT Manual, 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. The definition of auxiliary lane will be limited to just the lanes listed in the definition; i.e., speed change, turning, storage for turning, weaving, and truck climbing. The change is made to clarify the types of auxiliary lanes that would be included in the exclusion for ease of administration and interpretation.

"Passing lanes," a type of auxiliary lane, are not included in definition of auxiliary lane. Passing lanes are included as lanes in the two-mile threshold because passing lanes can be considered and constructed as one project that can continue for several miles in length when the lanes are staggered, particularly in the rural areas of Minnesota.

Auxiliary lanes are excluded from the threshold because these types of lanes are typically short distances and are provided to keep the traffic moving on the through lanes; in other words, they are auxiliary to the through lanes and provide a benefit of improving traffic movement. 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 offtracking vehicle 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)

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. They have been supported by the public because they provide a benefit of improving traffic movement and increasing safety.

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

~~Compost facility. "Compost facility" has the meaning given in part 7035.0300, subpart 19 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 for Part 4410.0200, subpart 9b. Compost facility.**

Replacing the current definition with a regulatory citation provides greater clarity and consistency in determining if environmental review is required for a proposed project. 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.

**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 for Part 4410.0200, subpart 36a. Hazardous material.**

Currently, Minn. Rules ch. 4410 does not define hazardous material. 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 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

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

“Institutional facility” is not currently defined in Minn. Rules ch. 4410, nor Minnesota law. Consequently, the EQB looked to the Code of Federal Regulations (CFR) for a definition already in use by environmental regulatory entities. The following is the definition found in CFR 60.3078:

“Institutional facility means a land-based facility owned and/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.”

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

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

It was unclear whether soil and water conservations districts and watershed management organizations could be considered responsible governmental units, with the authority to prepare 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.

**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, subpart 64.

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

Currently, Minn. Rules ch. 4410 does not define mixed municipal solid waste land disposal facility. 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 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.

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

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

**Justification for Part 4410.0200, subpart 59a. Petroleum refinery.**

Currently, 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 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.

**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 for Part 4410.0200, subpart 71a. Refuse-derived fuel.**

Replacing the current definition with the statutory definition 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.

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

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

**Justification for Part 4410.0200, subpart 82a. Silica sand.**

This change reflects statutory language in 116C.99 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.”

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.

#### **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 for Part 4410.0200, subpart 82b. Silica sand project.**

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.”

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.

#### **Part 4410.0200, subpart 93. Wetland.**

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

#### **Justification for Part 4410.0200, subpart 93. Wetland.**



The proposed change to the definition 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.

### C. AMENDMENTS TO CHAPTER AND PART 4410.0500 - RGU SELECTION PROCEDURES.

The amendment to this subpart is intended to add clarity and efficiency for how a different Responsible Governmental Unit (RGU) is selected for projects that are subject to environmental review.

#### **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 for Part 4410.0200, subpart 6. Exception.**

The EQB uses its regularly scheduled monthly Board meeting to process requests for a different RGU; therefore, the process under the current rule can take nearly 45-days to complete, therefore, it is not possible for the EQB to meet the timeline designated in the current rule. The addition of “EQB chair” allows the request to be processed more efficiently.

The requirement for “receipt of the complete data portion of the EAW” before a decision on assigning a different RGU is removed because project proposers often work with the RGU to determine what type of information needed. Removing the requirement to have a complete data submittal before RGU designation process is complete will ensure that parties may be identified early in the process and work together in the EAW development process.

### D. AMENDMENTS TO CHAPTER AND PART 4410.4300 - MANDATORY EAW CATEGORIES.

The mandatory EAW categories are category areas that identify when an EAW is required, and identifies the governmental unit responsible for assessing the potential environmental effects of a project.

Changes to the following mandatory categories include adding greater clarity to existing language, updates based on the most recent information, alignment with other regulatory requirements, and changes requested from the state of Minnesota Revisor's Office.

**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 EQB shall be is the RGU.

**Justification for Part 4410.4300, subpart 2. Nuclear fuels and nuclear waste.**

Minn. Stat. 116C.83, subdivision 6, paragraph (b) requires the Department of Commerce to complete an environmental impact statement for independent spent-fuel storage installation. The addition of "other than an independent spent-fuel storage installation" to part A removes independent spent-fuel storage installation projects from the mandatory requirement to prepare an EAW. Minn. Rule ch. 4410.4400, subpart 2. Nuclear fuels is amended to include the requirement for these projects to prepare an EIS.

The appropriate level of environmental review and the appropriate RGU for independent spent-fuel storage installation projects are established at 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 "other than independent spent-fuel storage installation" makes this rule subpart consistent with Minn. Stat. 116C.83, subdivision 6. The EQB will retain RGU status for preparation of an EAW for non-independent spent-fuel storage installation high-level nuclear waste storage facilities.

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

**Electric-generating facilities.**

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

- A. For construction of an electric power generating plant and associated facilities designated for or capable of operating at a capacity of between 25 megawatts and 50 megawatts, the EQB 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, environmental review must be conducted according to parts 7849.1000 to 7849.2100 and chapter 7850.

#### **Justification for Part 4410.4300, subpart 3. Electric-generating facilities.**

This subpart has been divided into 3 sections:

Part A: The proposed change removes the EQB as the RGU and assigns the RGU based on their approval authority over the project. The change replaces the EQB with the PCA or the LGU. The PCA has knowledge and experience with such processes and pollutants, and is a more appropriate RGU than the EQB.

Part B: The LGU is established as the RGU for plants for which an air permit from the PCA is not required. Such plants 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.

Part C: This language is included in the existing rule, but it is underlined because it has been separated into a new Part

These changes are consistent with Minn. R. 4410.0500, RGU Selection Procedures.

#### **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 barrels per day or more ~~barrels per day~~, the PCA ~~shall be~~ is the RGU

#### **Justification for Part 4410.4300, subpart 4. Petroleum refineries.**

Changes reflect the state of MN Revisor's Office recommendations to improve form.

#### **Part 4410.4300, 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 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.
- 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 or more per year of alcohol produced, the PCA ~~shall be~~ is the RGU.

- C. A mandatory EAW is not required for projects described in Minnesota Statutes, section 116D.04, subdivision 2a, paragraph (b).

**Justification for Part 4410.4300, subpart 5. Fuel conversion facilities.**

The addition of “new fuel conversion” to part A and B more clearly identifies the type of facilities for which environmental review must be considered. The addition of “new” in part A and B and the deletion of “or expansion” and “or would increase its capacity by” from part B 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).

The addition of Part C will align the language passed by the Minnesota Legislature in 2011 and found in 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.”

These changes align with the statutory change referenced in part C. The addition 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 form.

**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 for Part 4410.4300, subpart 6. Transmission lines.**

The deletion of the requirement for mandatory environmental review of transmission lines with a nominal capacity of between 70 kilovolts and 100 kilovolts (kV) reflects the types of transmission lines constructed in Minnesota. The addition of the definition assures consistency for determining whether transmission

lines and associated facilities require environmental review. 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.

Transmission lines with voltages between 70 and 100 kV are not typically utilized in Minnesota. 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.”

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.

#### Part 4410.4300, subpart 7. Pipelines.

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

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

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

~~(1) five miles if the pipeline will occupy streets, highways, and other public property; or~~

~~(2) 0.75 miles if the pipeline will occupy private property; the EQB or the municipality is the RGU.~~

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

~~(1) five miles if the pipeline will be constructed and operated within an existing right-of-way; or~~

~~(2) 0.75 miles if construction or operation will require new temporary or permanent right-of-way;~~

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

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

~~greater than 0.75 miles, the EQB is the RGU.~~

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

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

#### **Justification for Part 4410.4300, subpart 7. Pipelines.**

Parts A through D are substituted with a reference to Minn. Stat. chapter 216G. 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 definition with a regulatory citation provides greater clarity and consistency in determining if environmental review is required for a proposed project. 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.

#### **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 ~~gallons~~ 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 for Part 4410.4300, subpart 8. Transfer facilities.

The changes to part A provide clarity and alignment with the language in part B. The addition of part C is established to align 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:

*“(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, 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 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.”*

The proposed rule is necessary because, in the past, several proposed silica sand processing and storage facilities were in or near populated areas and tend to be controversial, thus further planning and due diligence should be undertaken to assess the environmental effects which may be associated with a proposed project prior to any decision making by the RGU regarding 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)*

In 2018, 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. 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.*

The language changed 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 the 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. Transloading, processing and storage facilities have to be sufficiently large in scale for economic reasons, which in some cases may be sufficient to increase the potential for environmental impacts including fugitive dust emissions, transportation related issues and water pollution issues.

The proposed rule is due to the increased silica sand activities in the state caused by the increased demand for silica sand nationwide, and the need for a clear determination for which governmental unit will serve as the RGU. The proposed language will provide clarity for stakeholders as to which projects require an EAW and which projects do not.

The proposed change reflects the 2013 legislation directly references the following thresholds for projects proposed at the 200,000 tons of annual throughput and the storage pile size of 7,500 tons threshold. This indicates a legislative intent that these threshold levels have the potential for significant environmental effects, and therefore warrant environmental review.

The proposed rule language in subpart 8, item c, is due to 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.

The proposed rule at 4410.4300, subpart 8, 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. 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.

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) 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 processing facility.

PCA as the RGU is necessary due to several factors:

- 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.

**Part 4410.4300, subpart 10. Storage facilities.**

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

- A. For construction of a new facility which is 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. For a silica sand project that is required to obtain a permit from the PCA and:
  - (i) is designed to store or is capable of storing more than 7,500 tons of silica sand; or
  - (ii) has an annual throughput or more than 200,000 tons of silica sand.

#### **Justification for Part 4410.4300, subpart 10. Storage facilities.**

For Part B and C, 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, citizens and the RGU in consistently determining whether a new facility requires a mandatory environmental review, as the definition clearly identifies which components of a site must be considered in determining whether the project meets mandatory thresholds.

Part B only refers to the construction of a new major facility, while part 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 necessary to better reflect the types of projects that have historically been captured by this category.

Part C addresses the expansion of existing major facilities; rather than new major facilities as discussed in part B. The separation of the two activities, building a new major facility and expanding an existing major facility is necessary, according to the PCA and RGU for the EAW category, to eliminate the inconsistent application of the threshold. Moreover, separating the two activities also aligns the environmental review and permitting programs, making the application of the threshold more consistent. PCA is responsible for the environmental review and permitting of these facilities and believes that aligning the methodology used to determine thresholds for permitting and environmental review is reasonable for all parties.

The current rule language does not explain the increase in volume for expansion. Using the term “net” increase helps add clarification when facilities are proposing to add and remove storage areas. Environmental review considers the entire property or contiguous properties when factoring in net increase.

Part E, F and G have been modified to reflect a more appropriate RGU. The proposed changes in part E, F and G removes the PCA as the RGU and assigns an RGU based on their approval authority over the project. The change is consistent with Minn. Rule 4410.0500, RGU Selection Procedures.

Historically a single threshold was established for multiple substances in part C – liquefied natural gas, synthetic gas and anhydrous ammonia were all contained in the same part with the PCA as the RGU. However, the PCA has no approval authority of any of the substances, while 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. Consequently, while the thresholds have not changed, but the RGU has changed to a more appropriately qualified RGU.

Additionally, part G maintains that when all of the substances are combined at a single site, as the original rule implied, then the RGU with the greatest approval authority over the project, the PUC, has the obligation to review the project when the threshold is met.

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 part H, is established to align with the thresholds found at Minn. Stat. 116C.991, section a, paragraph (2) as provided by Laws of Minnesota 2013, Chapter 114, Article 4, Section 92, which state:

“(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.”

Part 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.

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)*

In 2016, 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. 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.*

The language changed from “shall” to “may” amend EQB rules for environmental review. The EQB determined that the potential for significant environmental effects persists in relation for 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.

**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:

- 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.
- 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 for Part 4410.4300, subpart 12. Nonmetallic mineral mining.**

Part 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.

Part 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 Part D is necessary because the extraction, mining, and ancillary features associated with extraction and mining of silica sand deposits results in the permanent alteration of the environment and 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 that alter the landscape. Additional activities and features associated with the extraction and mining process that have the potential to change the 'way of life' include lights, sounds, and hours of operation.

Additional mine area 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.

In addition to the aforementioned potential impacts, several proposed silica sand mines are in or near populated areas and therefore, tend to be controversial.

The proposed rule part Minn. Rule 4410.4300, subpart 12, D. is reasonable because the Minnesota Legislature set the 20-acre and the mean depth of 10-feet or more silica sand project threshold, 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.

In 2014, EQB completed a survey of LGUs throughout the state of Minnesota. The survey was sent out to 191 LGUs in Minnesota, 68 surveys were returned, (seven surveys were excluded due to data inconsistencies) a 32% response rate. The non-metallic mineral mining category was one of the categories in which there appeared to be a strong argument for changing the mandatory threshold level for non-metallic mineral mining from 40-acres to 20-acres. One reason was that out of all the categories, non-metallic mineral mining has the largest percentage of (respondents) recommendations for a lower threshold and the smallest percentage of (respondents) recommendations for a higher one. That is, 38% of the respondents recommended lowering the mandatory threshold, 54% recommended leaving it the same and only 8% recommended raising the threshold.

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'.

Designation of the local government unit as the RGU:

- 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, rather than state regulators, who do not have as strong of an incentive as LGUs to ensure that all risks of silica sand mining are mitigated.
- The historic precedent of the environmental review program that LGUs are the RGU when land use is the permit with the greatest approval authority.



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

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)*

In 2018, 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. 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.*

The language changed 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.

**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 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 for Part 4410.4300, subpart 14. Industrial, commercial, and institutional.**

During the EQB rulemaking in 1982, the words "square feet" were omitted from part A of this subpart, but were included in part B.

The addition of "square feet" to Minn. Rule part 4410.4300, subpart 14 eliminates any question regarding which units of measurement must be used in applying part 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. This change ensures consistent application of Minn. Rules ch. 4410.

**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.

**Justification for Part 4410.4300, subpart 16. Hazardous waste.**

In parts 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 more often used by the regulatory authority when permitting hazardous waste facilities. In part B, "acute hazardous waste" is added to address a gap in coverage for the types of wastes typically collected at these 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.

In part B, 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 it consists of wastes which 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 due to the Federal hazardous waste laws that, because of the more toxic nature of acute hazardous waste, regulate businesses generating 1kg of acute hazardous waste per month equivalently to businesses generating 1000 kg per month of non-acute hazardous waste.

**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 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 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 for Part 4410.4300, subpart 17. Solid waste.**

The addition of the term "land" in part A, B and F allows the environmental rule language to align with other applicable State rules. Using similar terminology with other applicable regulatory requirements helps the public with review, when environmental review documents and permits are co-noticed

Part 4410.4300, subpart 18. Wastewater system.

Wastewater system. Items A to ~~C~~F 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 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.
- 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, the PCA is the RGU.
- 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 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 to subpart 11, item B

#### **Justification for Part 4410.4300, subpart 18. Wastewater system.**

The former Parts A, B and C have been divided as follows: the former Part A is now Parts A and B; the former Part B is now Parts C and D; and, the former Part C is now Parts E and F. No changes are proposed to the language in the former Part A.

In Part 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 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.

#### **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 governmental unit shall be the RGU.

#### **Justification for Part 4410.4300, subpart 20. Campgrounds and RV parks.**

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 ensure consistent application of Minn. Rules ch. 4410.

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

**Resorts, campgrounds, and RV parks in shorelands.**

The local 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 for Part 4410.4300, subpart 20a. Resorts, campgrounds, and RV parks in shorelands.**

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 ensure consistent application of Minn. Rules ch. 4410.

**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 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 for Part 4410.4300, subpart 21. Airport projects.**

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.

**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 governmental unit ~~shall be~~ is the RGU.
- B. For construction of additional ~~travel~~ 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 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 governmental ~~unit shall be~~ is the RGU.

**Justification for Part 4410.4300, subpart 22. Highway projects.**

Part B: change "travel" lane to "through" lane, excluding "auxiliary lanes" but including "passing lanes," and extend 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) A Policy on Geometric Design of Highways and Streets (Chapter 1076). This AASHTO publication is known in the industry as the "Green Book." (Green Book, 8-35, and MnDOT Manual 4-4(8))

Also, the threshold will increase from one mile to two miles. The 1982 SONAR does not specifically state why one mile was chosen; 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.

Part C: changes reflect the state of Minnesota Revisor's Office recommendations to improve form.

**Part 4410.4300, subpart 25. 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 governmental unit is the RGU.

**Justification for Part 4410.4300, subpart 25. Marina.**

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 ensure consistent application of Minn. Rules ch. 4410.

**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 governmental shall be the RGU.

**Justification for Part 4410.4300, subpart 26. Stream diversion.**

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.

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

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

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetlands except for those to be



drained without a permit pursuant to Minnesota Statutes, chapter 103G, DNR or the local governmental unit shall be is the RGU.

- B. For projects that will ~~change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more~~ cause an impact, as defined in part 8420.0111, subpart 32, to a total of one acre or more of wetlands, as defined in part 8420.0111, subpart 72, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated flood plain floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local governmental unit shall be is the RGU.

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

Part A of Minn. Rule 4410.4300, subpart 27 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 Part 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. This change ensures consistent application of Minn. Rules ch. 4410

Part B does not reflect 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 part 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.

The Minnesota Legislature has amended WCA several times since and rules to implement the program have also been written. The current language of Minn. Rule 4410.4300, subpart 27 is outdated and revisions are needed to align with current state statute and rule.

Part 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 part 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.

Part B references “40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres.” The EOB has found that this criterion is confusing for LGUs, the RGUs for this part, 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 from part B and replaced with “wetland, as defined in part 8420.0111, subpart 72,” 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.

#### **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 governmental unit shall be is the RGU.

#### **Justification for Part 4410.4300, subpart 30. Natural areas.**

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.

**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 governmental unit shall be 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 governmental unit ~~shall be~~ is the RGU.

**Justification for Part 4410.4300, subpart 36. Land use conversion, including golf courses.**

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.

**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.

- E. 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 for Part 4410.4300, subpart 37. Recreational trails.**

The current rule change to part 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 part 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. And 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.

## E. AMENDMENTS TO CHAPTER AND PART 4410.4400 - MANDATORY EIS CATEGORIES.

The mandatory EIS categories are category areas that identify when an EIS is required, and identifies the governmental unit responsible for assessing the potential environmental effects of a project, preparing the required environmental documents and making the final decision on the adequacy of the final EIS document

Changes to selected mandatory categories include adding greater clarity to existing language, updates based on the most recent information, alignment with other regulatory requirements, and changes requested from the state of MN Revisor's Office.

### 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 for Part 4410.4400, subpart 2. Nuclear fuels.

The addition of Part 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 part C makes this rule subpart consistent with Minn. Stat. 116C.83, subdivision 6. The addition of part 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 form.

**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 for Part 4410.4400, subpart 3. Electric-generating facilities.**

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.

**Part 4410.4400, subpart 4. Petroleum refineries.**

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

**Justification for Part 4410.4400, subpart 4. Petroleum refineries.**

**Need and Reasonableness:** Changes reflect the state of MN Revisor's Office recommendations to improve form.

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

**Fuel conversion facilities.** Items A ~~and B~~ to C 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 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 or more gallons per year of alcohol produced if the facility will be in the seven-county Twin Cities metropolitan area or by 125,000,000 or more gallons 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 for Part 4410.4400, subpart 5. Fuel conversion facilities.**

The addition of the term “new fuel conversion” facility to part A and B more clearly identifies the type of facilities for which environmental review must be considered. The addition of part 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 form.

The changes provide greater clarity in determining if environmental review is required for a proposed project. The addition of part 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.”

**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 for Part 4410.4400, subpart 6. Transmission lines.**



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.

**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 project listed:

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

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.

**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 for Part 4410.4400, subpart 9. Nonmetallic mineral mining.**

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.

**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 for Part 4410.4400, subpart 8. Industrial, commercial, and institutional facilities.**

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

**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 or 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 for Part 4410.4400, subpart 12. Hazardous waste.**

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.

**Part 4410.4400, subpart 13. Solid waste.**

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

- B. For construction or expansion of a mixed municipal solid waste land disposal facility, in a water-related land use management district, 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, or incinerator, or ~~the utilization use~~ use of an existing facility for the combustion of mixed municipal solid waste or refuse-derived fuel, with a permitted capacity of 250 tons or more per day of input, the PCA is the RGU.
- D. For construction or expansion of a mixed municipal solid waste compost facility, 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.

**Justification for Part 4410.4400, subpart 13. Solid waste.**

The addition of the term "land" in part A 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.

**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 for Part 4410.4400, subpart 15. Airport runway projects.**

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 form.

**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 for Part 4410.4400, subpart 16. Highway projects.**

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 form.

**Part 4410.4400 Subp. 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 governmental unit ~~shall be~~ is the RGU.

**Justification for Part 4410.4400, Subp. 19. Marinas**

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 form.

**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 governmental unit shall be is the RGU.

**Justification for Part 4410.4400, subpart 20. Public waters, public water wetlands and wetlands.**

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 EAW 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 form.

**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 for Part 4410.4400, subpart 25. Incinerating wastes containing PCBs.**

Changes reflect the state of MN Revisor's Office recommendations to improve form.

**F. AMENDMENTS TO CHAPTER AND PART 4410.4600 - EXEMPTIONS.**

Projects within this subpart are exempt from parts 4410.0200 to 4410.6500, unless they have characteristics which meet or exceed any of the thresholds specified in part 4410.4300 or 4410.4400. Changes include adding greater clarity to existing language, updates based on the most recent information, alignment with other regulatory requirements, and changes requested from the state of MN Revisor's Office.

**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 for Part 4410.4600, subpart 10. Industrial, commercial, and institutional facilities.**

Changes reflect the state of MN Revisor's Office recommendations to improve form.

**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;<sub>z</sub>
  - (2) ~~less~~ fewer 20 units in a third or fourth class city;<sub>z</sub>
  - (3) ~~less~~ fewer 40 units in a second class city;<sub>z</sub> or
  - (4) ~~less~~ fewer 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 for Part 4410.4600, subpart 12. Residential development.**

Changes reflect the state of MN Revisor's Office recommendations to improve form.

**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.~~
- F. 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 for Part 4410.4600, subpart 14. Highway projects.**

Revisor's office change to improve form 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.

**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 for Part 4410.4600, subpart 18. Agriculture and forestry.**

Changes reflect the state of MN Revisor's Office recommendations to improve form.

**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 for Part 4410.4600, subpart 27. Recreational trails.**

Recreational trails projects developed on abandoned rail grades have minimal environmental impacts and do not have the potential to result in significant environmental effects.

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.



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 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 form.**

### **G. AMENDMENTS TO CHAPTER AND PART 4410.5200 - EQB MONITOR PUBLICATION REQUIREMENTS.**

**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 93.354,~~ and part 6125.0500, the DBR is the permitting authority.

**Justification for Part 4410.5200, subpart 1. Required notices.**

Changes reflect the state of MN Revisor's Office recommendations to improve form.

### **H. AMENDMENTS TO CHAPTER AND PART 4410.7904 – LICENSING OF EXPLORERS.**

**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 for Proposed change – Part 4410.7904 – Licensing of Explorers.**

Changes reflect the state of MN Revisor's Office recommendations to improve form.

**I. AMENDMENTS TO CHAPTER AND PART 4410.7906 - PROCEDURE FOR THE ISSUANCE OF A DRILLING PERMIT.**

**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~~ EOB 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 for Part 4410.7906, subpart 2. Content of an application for drilling permit.**

Changes reflect the state of MN Revisor's Office recommendations to improve form.

**J. AMENDMENTS TO CHAPTER AND PART 4410.7926 - ABANDONMENT OF EXPLORATORY BORINGS.**

**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 for Part 4410.5200, subpart 1. Required notices.**

Changes reflect the state of MN Revisor's Office recommendations to improve form.