

# September 2025 Environmental Quality Board meeting

**Wednesday, September 17 from 1 – 4:00 p.m.**

## Join in person or online

- In person: [520 Lafayette Road, St. Paul, MN 55155](#), lower level conference rooms
  - Online: For the meeting link and more information, visit the [board meeting webpage](#)
- 

## Participating in board meetings

### Attending in person

The Environmental Quality Board (EQB) will convene its meeting in person at the Minnesota Pollution Control Agency St. Paul office building. All visitors must sign in at the front desk.

Transportation options:

- Bicycle: Visit the [Saint Paul Bike Map](#) webpage for route information. Outdoor bicycle parking is available to the left of the front doors near the loading dock.
- Transit: Use [Metro Transit's Trip Planner](#) to determine the best routes and times.
- Car: You may park in a Visitor Parking space in the parking lot just outside the front door, or park in one of the visitor lots. The visitor lots are the Blue Lot (Olive St. and University Ave.) and the Jupiter Lot (on Grove St. across from the Ramsey County Law Enforcement Center); please see the [parking map](#). Parking in these lots is free of charge. You must register your vehicle at the front desk upon arrival.

### Attending virtually

Members of the public may join the meeting virtually using the Teams link at the board meeting webpage link above. Please review the [Guide to Teams Participation](#) for additional information.

### Accessibility

Please contact Environmental Quality Board (EQB) staff at least one week prior to the event at [info.EQB@state.mn.us](mailto:info.EQB@state.mn.us) to arrange an accommodation. Meeting materials can be provided in different forms, such as large print, braille, or on a recording.

### Public engagement opportunities at EQB meetings

EQB encourages public input and appreciates the opportunity to build shared understanding with members of the public. The opportunities for public engagement for this meeting are below.

## Public comment opportunities at EQB meetings

EQB encourages public engagement and appreciates the opportunity to build shared understanding with members of the public. There are multiple ways to engage with staff and board members. One important way is to provide public comment at a board meeting.

The public comment period(s) at a board meeting provide an opportunity for members of the public to inform the board about their views related to the specific item under discussion or something related to the board's purview or authority. Tips for providing comments:

- Ensure that your comments are relevant and specific to the topic you are addressing.
- Say what you want the board to know or consider in moving forward with a piece of work.
- Identify a specific action that you want the Board to take.

If you have a question for the board or EQB staff, it will be noted by staff who will get back to you at a later time. This ensures that we have enough time at a meeting for all commenters to provide input to the board and that your questions can be fully considered.

## Oral public comment



At each meeting, the agenda will show when the board will accept oral public comment. The chair will use their discretion to direct public comment and ensure the board's ability to effectively conduct business.

Procedure for giving oral public comment:

- **Virtual:** when prompted, use the "raise hand" feature in Teams, located at the top of your screen.
- **In person:** sign up at the welcome table before the meeting starts.
- When the chairperson calls on you to speak:
  - Introduce yourself before beginning your comment.
  - Please keep your remarks to the agenda item at hand.
  - Please be respectful of board members, staff, and other meeting participants. The chair, vice-chair, or other presiding officer will not tolerate personal attacks.
- The chairperson may limit commenters' time for remarks to ensure there is equal opportunity for the public to comment. Generally, your remarks will be limited to two (2) minutes.
- The chairperson may discontinue a commenter's time to speak if the comments are not reasonably related to the agenda item at hand.

## Written public comment



You may submit written comment to EQB by emailing your letter to [info.EQB@state.mn.us](mailto:info.EQB@state.mn.us) or mailing to: Environmental Quality Board, 520 Lafayette Road, Saint Paul, MN 55155. Comments must be received by EQB staff **by noon the day before the meeting**.

Staff will compile letters, make them available to members and the public, and attach them to the public record. Any written comments received after this deadline will be included in the next meeting packet.

Please only submit information that you wish to make available publicly. EQB does not edit or delete submissions that include personal information. We reserve the right to not publish any comments we deem offensive, intimidating, belligerent, harassing, bullying, or that contain any other inappropriate or aggressive behavior.

## Agenda

*Note that all listed times are estimates and are advisory only.*

### 1. Welcome and roll call (1:00 pm)

Nancy Daubenberger – Chair, EQB; Commissioner, Department of Transportation

### 2. Approval of consent agenda (1:10 pm)

- Meeting minutes from the August 20, 2025, Environmental Quality Board meeting on packet page 5
- Preliminary agenda for the September 17, 2025, Environmental Quality Board meeting

### 3. Executive Director's report (1:15 pm)

Catherine Neuschler – Executive Director, EQB

### 4. Climate Action Framework Update (1:25 pm)

**Type of item:** Informational

**Summary:** The 2022 Climate Action Framework set a vision for how Minnesota can address and prepare for climate change. It included a set of actions to achieve the long-term goal of a carbon-neutral, resilient, and equitable future for Minnesota. This framework has been a valuable communication tool and resource for collaboration and prioritization.

Though we have made significant progress on the original framework, we must accelerate the pace and scale of our climate actions to effectively reach our goals to mitigate the state's greenhouse gas emissions. Minnesota is taking the opportunity to update the Climate Action Framework in 2025 to provide more specific, actionable steps to guide climate action at the necessary pace and scale. The presenter will provide an overview of the process of updating the Climate Action Framework, including the consideration of new climate goals and actions; modeling; and upcoming opportunities for public feedback.

**Outcome:** The Board is informed about the process and progress in updating Minnesota's Climate Action Framework.

**Presenter:** Kate Knuth – Climate Director, MPCA

**Public comment:** EQB will take public comment specifically on this item.

### Break (2:10 pm)

### 5. Energy Rulemaking Notice Approval (2:15 pm)

**Type of item:** Decision

**Summary:** The 2024 legislature directed EQB to revise the provisions of Minn. R. 4410 to conform with legislative changes, including the creation of the Minnesota Energy Infrastructure Permitting Act and related statutes governing the environmental review of certain energy projects.

EQB staff have developed and drafted potential revisions and recommend that the Board approve moving forward to propose the rules. Included in the packet is a brief overview memo on packet page 11, a draft notice of intent to adopt expedited rules on packet page 16, a draft of the potential rule language on packet page 20, and a justification memo describing the rule changes and rationale on packet page 76.

**Outcome:** The Board authorizes the Executive Director to commence the formal rulemaking process for the proposed draft amendments to Minnesota Rules 4410 by adopting the resolution on packet page 14.

**Presenter:** Colleen Hetzel – Director Environmental Review Program, EQB

**Public comment:** EQB will take public comment specifically on this item.

**6. Public comment (3:30 pm)**

The board welcomes any additional oral public comment. Please see guidance and procedures on packet page 2.

**7. Closing and adjournment**



# August 2025 Environmental Quality Board meeting

Wednesday, August 20, 2025 | 1:00-4:00 p.m. | 520 Lafayette Road, St. Paul, MN 55155, lower level conference room south and online via Teams.

## Minutes

### 1. Welcome and roll call

Chair Nancy Daubenberger called to order the regular meeting of the Environmental Quality Board.

Members present: Peter Bakken, Joseph Bauerkemper, Ed Brands, Brooke Cunningham, Nancy Daubenberger, Todd Holman, Daniel Katzenberger, Paul Nelson, Thom Petersen, Angie Smith

Members excused: Grace Arnold, Tamar Gronvall, Rylee Hince, Katrina Kessler, Nicholas Martin, Sarah Strommen, Matt Varilek, Charles Zelle

Proxies present: Myra Kunas (for Cunningham), Melissa Kuskie (for Strommen), Peter Lindstrom (for Zelle), Jamie MacAlister (for Arnold), Kevin McKinnon (for Varilek), Peter Tester (for Kessler)

EQB staff present: Catherine Neuschler, Stephanie Aho, Rebeca Gutierrez-Moreno, Colleen Hetzel, Hazel Houle, Sarah Lerohl, Priscilla Villa-Watt, Kayla Walsh

Approval of consent agenda

- Meeting minutes from May 21, 2025, Environmental Quality Board meeting
- Proposed agenda for August 20, 2025, Environmental Quality Board meeting

**Motion:** Board Member Petersen moved to approve the consent agenda; Board Member Bakken seconded.

In favor: Bakken, Brands, Daubenberger, Holman, Katzenberger, Martin, Nelson, Petersen, Smith

Opposed: none

Excused: Arnold, Bauerkemper, Gronvall, Hince, Kessler, Martin, Strommen, Varilek

## 2. Executive Director's report

Catherine Neuschler – Executive Director, EQB

- Events
  - August 28: EQB staff with the Interagency Pollinator Protection Team (IPPT) at the EcoExperience for pollinator day at the Minnesota State Fair
  - September 6: EQB staff at the Minneapolis Monarch Festival
- Meetings
  - September 17: Full board meeting. Planning to ask for formal approval to move the energy rules forward, and then talk about the Climate Action Framework and the ongoing work to update
  - October 15: Full board, in person emphasis
- Project update: Staff are continuing to move forward on the gas production rules
- Data Centers: The appropriate environmental review of data centers is an emerging issue that we are increasingly hearing more about. One concern is the use of the Alternative Urban Areawide Review (AUAR) process to review these data centers, and whether that is resulting in sufficient information. The Minnesota Center for Environmental Advocacy (MCEA) has recently filed lawsuits on specific AUARs that seem to contain data centers.

## 3. Energy Rulemaking Notice update

**Presenter:** Colleen Hetzel – Director Environmental Review Program, EQB

**Type of item:** Informational

**Summary:** EQB staff provided an update on progress in developing revisions to the provisions of Minn. R. ch. 4410 related to energy infrastructure. These rules are being revised to conform with changes made during the 2024 legislative session in the Minnesota Energy Infrastructure Permitting Act and related changes.

**Discussion:**

- Both options presented to the Board would encompass the changes required to conform the rule; the difference in the options is how the rule will be written to conform with the new statute and related changes.
- There were no objections to staff moving forward with the preferred option presented.

**Public comment:**

- Alan Muller:
  - Option 2 appears to leave more flexibility than Option 1, and more openings for things to happen that might not be consistent with the intent of Minnesota's Environmental Review program. The revisions should be done in the way that minimizes the amount of damage to the effectiveness and integrity of the overall program that EQB is charged with.
  - Shifting the responsibility in the direction of the Minnesota Public Utilities Commission (PUC) is probably not in the public interest.

- Carol Overland:
  - There is an unprecedented amount of high voltage power line projects coming to Minnesota. The most recent legislation slashed public participation. There is no longer a citizen advisory task force. Those have been eliminated. As EQB makes these updates they should look at the impact on public participation; environmental assessments don't have the same iterative process as an EAW.
  - In her many years in this field as an attorney, Ms. Overland has seen the public's role going down and less review going forward.
  - Review for the PUC is done by the Minnesota Department of Commerce, which has its own agenda.
    - **EQB staff response:** The environmental review staff at Commerce that worked on behalf of PUC have been moved to PUC.

**Outcome:** The board understands the goal, scope, and possible options for structuring the rule changes and provided feedback to the staff. Feedback will inform rule revisions, which will be presented for board review and approval at the September board meeting.

#### 4. 2025 Groundwater Policy Report approval

**Presenter:** Catherine Neuschler – Executive Director, EQB

**Type of item:** Decision

**Summary:** EQB staff have coordinated an interagency workgroup to draft the required 2025 Groundwater Policy Report. The board reviewed the preliminary outline in February. Public input on the purpose of the report and the overall outline was gathered in March, and an update was presented to the board in May.

**Discussion:**

- The 2015 Groundwater Policy Report was used as a starting point for the 2025 report, the current information mainly coming from state agencies and other reports.
- Geogenic contaminants are very significant addition to the report.
- Maybe for the next iteration of the report some language could be added noting there are authorities in all kinds of levels, e.g. state and local.
- Need more action on items in the report. We need to be able to move quickly and adapt quickly.
- Question as to why there were no gaps or opportunities identified in the chlorides section.
  - Answer: MPCA has done a lot of work on chloride plans and prepared that section of the report. Will check to make sure nothing missing in the report.
- Suggestion that staff identify and invite a relevant guest to present to the EQB the relationship between AUARs and data center developments.
- MDH is engaged in understanding the full impact of nitrates on health.

**Public comment:**

- Carol Overland:
  - One big problem with carbon capture is that it consumes 30% or more of a facility's power input. It's parasitic power.
  - When the carbon is captured, it's usually pumped into aquifers. And so what will be the impact if there's a sudden increase in pumping CO2 into aquifers? That can cause problems, like black well water in the vicinity.
  - There's a lot of talk and a lot of money going into carbon capture, but it's not really happening.
  - Very important to be thinking about these issues when looking at sustainable aviation fuel. Ethanol is a large part of the carbon capture and pipeline issue.
- Alan Muller:
  - It's frustrating to read the report because it seems to be more descriptive than a policy report in the sense of giving us a path forward.
  - The management of water resources in Minnesota is relatively ineffective, whether referring to groundwater or surface waters or atmospheric water.
  - The responsibility is divided among so many entities, so many levels of government, so many agencies that nobody is really held responsible for delivering a result. How can water resource management be integrated more effectively than it is? If the legislature or others are seeking advice from the EQB about how to improve water resource management, then a more integrated approach would be indicated, as opposed to a purely descriptive approach.

**Motion:** Board Member Cunningham moved to adopt the resolution approving the 2025 Groundwater Policy Report. Board Member Katzenberger seconded.

In favor: Bakken, Bauerkemper, Brands, Cunningham, Daubenberger, Holman, Katzenberger, Nelson, Petersen, Smith

Opposed: none

Excused: Arnold, Gronvall, Hince, Kessler, Martin, Strommen, Varilek

**Outcome:** The board reviewed and approved the 2025 Groundwater Policy Report.

## 5. Roots for the Future student project presentations

**Presenter:** Priscilla Villa-Watt – Communications and Engagement Coordinator, EQB and students from the Roots to the Future program.

**Type of item:** Informational

**Summary:** Roots to the Future, formerly Northside Safety NET (Neighborhoods Empowering Teens), is designed to equip youth from historically underrepresented communities with the education, skills, and connections needed to pursue careers in environmental fields. Over the past six weeks, high school students learned about various environmental topics and work happening in Minnesota. Students



shared what they learned and how the summer program helped them develop new skills and learn about environmental careers and issues in Minnesota.

**Discussion:**

- Wonderful that the students are involved in public health from the environmental angle.
- Would be great if this program could be expanded, for example as an after-school program.
- As an associate professor of environmental studies at the University of Minnesota, Morris, Board member Brands is happy to be a resource.
- Hopefully EQB can invite students back again. Planning on more youth engagement in the future.

**Outcome:** The board learned about the youth program and heard first-hand what students took away from the six-week curriculum.

## 6. FY26 Workplan approval

**Presenter:** Catherine Neuschler – Executive Director, EQB

**Type of item:** Decision

**Summary:** The Executive Director presented the proposed organizational workplan for FY26.

**Discussion:**

- Some concerns about having the capacity to complete some items on the continuous improvement plan in a timely manner. Every time EQB asks for public comment or other ideas, there's an expectation that staff will get to those soon.

**Public comment:** There were no comments.

**Motion:** Board Member Holman moved to adopt the resolution approving the FY26 Workplan. Board Member Brands seconded.

In favor: Bakken, Bauerkemper, Brands, Cunningham, Daubenberger, Holman, Katzenberger, Nelson, Petersen, Smith

Opposed: none

Excused: Arnold, Gronvall, Hince, Kessler, Martin, Strommen, Varilek

**Outcome:** The Board reviewed and approved the organizational workplan and approved authority to implement it.

## 7. Public Comment

- Carol Overland:
  - Re: AUAR guidance on the work plan; there needs to be guidance about what the AUAR process is for, how it should be used and more specifically how it shouldn't be used, as data center proposers are using AUARs to hide details.
  - Water and electricity are going to be huge issues with data centers, as well as noise they're being built right up against residences/subdivision lines. As environmental review regulators, EQB should look at data center regulations.
  - Go to <https://legalelectric.org/> to get more information.

## 8. Closing and adjournment

Having reached the end of the agenda, the Chair asked if there was any further business.

### **Adjournment:**

With no further business, the Chair adjourned the meeting.

## Memo

**Date:** September 5, 2025

**To:** EQB Board Members

**From:** Colleen Hetzel, EQB Environmental Review Program Director

### **RE: Environmental review conformance with Energy Infrastructure Permitting Act and related changes**

EQB staff is requesting the Board vote to approve moving forward with rule changes to conform with the Energy Infrastructure Permitting Act and related legislative changes. These changes have been discussed at Board or ERIS meetings in 2025 on February 19, June 18, and August 20.

Specifically, the staff recommend that the Board approve a resolution allowing the Executive Director to move forward with publishing a notice of intent to adopt the proposed rule amendments, and then – subject to notice and comment and review by an administrative law judge – to adopt final rules.

#### **Authority of the Board**

Under Minn. Stat. § 116D.04, subd. 5a, the EQB Board has the authority to promulgate rules.

Minn. Stat. § 116D.04, subd. 5a(11) “... any additional rules which are reasonably necessary to carry out the requirements of this section.”

The legislature, in Laws of Minnesota 2024, Chapter 126, Article 9, Sec. 19, mandated that the EQB undertake expedited rulemaking to conform the EQB’s rule (Minn. R. ch. 4410) with the statute (Minn. Stat. ch. 216) and other changes made in the session law,<sup>1</sup> saying:

*“The Environmental Quality Board must adopt rules, using the expedited process under Minnesota Statutes, section 14.389, that amend Minnesota Rules, chapter 4410, to conform with the changes made in this act.”*

#### **Proposed changes to the rule**

The Minnesota Energy Infrastructure Permitting Act, Minn. Laws 2024, Chapter 126, Art. 9, Sec. 19, a major energy reform signed into law in May 2024 and effective July 1, 2025, replaces the former Power Plant Siting Act (Minn. Stat. Chapter 216E) with the new Energy Infrastructure Permitting Act (Minn. Stat. ch. 216I). It consolidates permitting and environmental review for large energy infrastructure facilities and moves environmental review staff from the Dept. of Commerce to the Public Utilities Commission (PUC).

The large energy infrastructure projects covered by the Act are: high-voltage transmission lines, large electric power generating plants, energy storage systems, large wind energy conversion systems, and associated facilities. Solar energy generating systems are also covered in this statute.

---

<sup>1</sup> Because the Legislature adopted the rulemaking authority as a separate article, the EQB believes the word “act” as used in this provision refers broadly to legislative changes made in Minn. Laws 2024, Chapter 126, and not just those in Article 7, including the carbon dioxide pipeline provision and spent-fuel storage provision.

Through the law, the legislature made changes to how these projects are permitted and undergo environmental review. The EQB is required to change Minn. R. ch. 4410 to reflect these changes, a process known as “conforming”. Conforming the rule to the statute is the process of ensuring that an administrative rule aligns with a statute and does not conflict with the law passed by the legislature. Conforming rule changes cannot change the intent of the legislation.

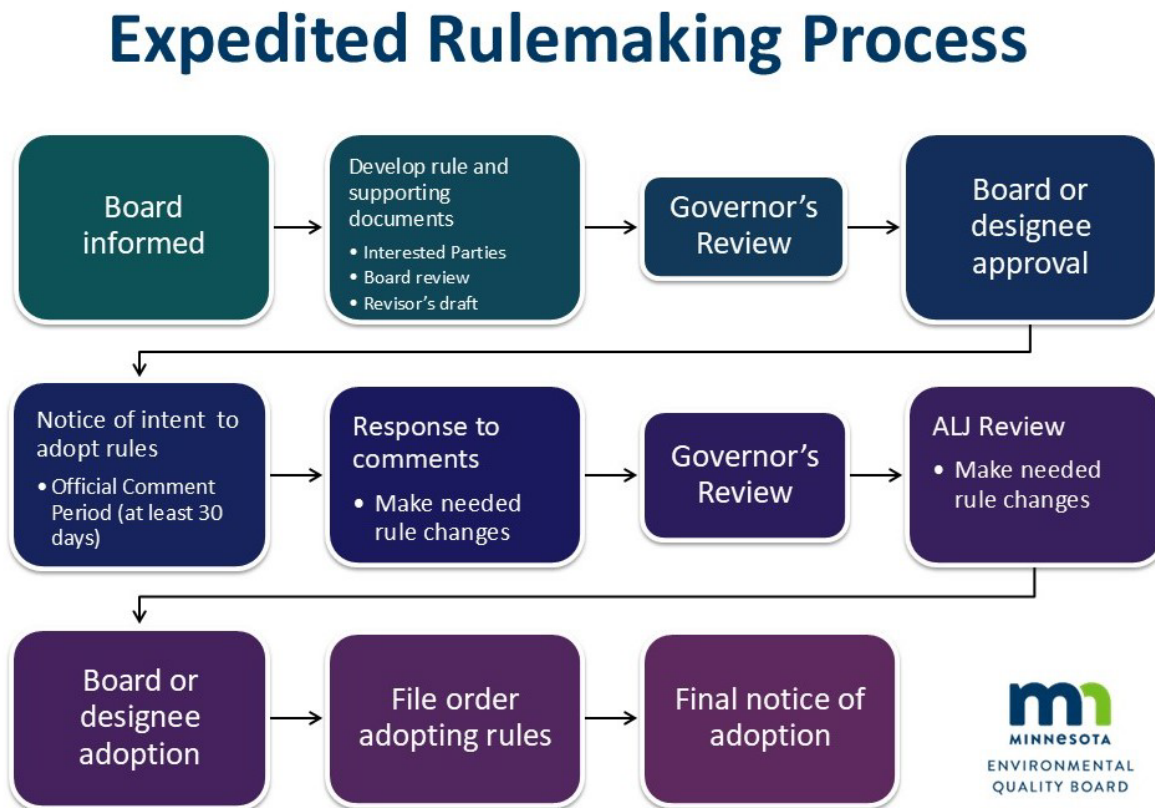
Although EQB’s rules cover environmental review for certain types of energy projects, the current rules:

1. do not address all the projects now covered by Minn. Stat. ch. 216I
2. use different descriptions and thresholds for environmental review,
3. cite to repealed rules and statutes or to rules that will likely be amended in the future to conform to the new review and permitting process established in Minn. Stat. ch. 216I
4. do not allow use of the processes authorized by Minn. Stat. Ch. 216I such as “standard review” and “local review.”

The staff-developed rule revisions address these inconsistencies, and additional minor changes made to the environmental review program, as described in the attached rule summary and justification memo. The major component of the proposed rules is the creation of a new “clearinghouse” provision within Minn. R. ch. 4410 specifically for large energy infrastructure facility projects. This new provision would direct all environmental review of these projects to the procedures laid out in Minn. Stat. ch. 216I. Redundant and unneeded provisions in the rest of Minn. R. 4410 would then be removed.

## Process and timeline for the rule

The legislature directed this rulemaking be completed using an expedited process, shown in the visual below.



*Expedited rulemaking process for a Board. (Credit: EQB website)*

## Initial phase of expedited rulemaking process

After the Act was passed, EQB staff began the expedited rulemaking process by reviewing Minn. R. ch. 4410 to determine where the rule and the statute needed to be conformed. Once the parts of the rule were identified EQB staff drafted two options to bring to the Board as possible ways to conform the rule. One was to create parallel mandatory categories within Minn. R. ch. 4410, as has been the preferred method in the past. However, this was not the preferred method moving forward due to the complexities and variations in environmental review written in to Minn. Stat. ch. 216I. For this reason, EQB staff moved forward with creating a new part within the rule to direct users to Minn. Stat. ch. 216I for environmental review.

EQB staff has shared information with the Governor's Office about the rule amendments, obtained a Revisor's approved draft, and drafted a Notice of Intent to Adopt Expedited Rules and a summary and justification of the recommended proposed rules. EQB staff is requesting Board approval to move forward with proposing the rule.

## Second phase of expedited rulemaking process

Once the Board approves the draft language to conform the rule and the Notice of Intent to Adopt Expedited Rules, these materials will be sent to the State Register and the EQB proposed rulemaking email list. The draft rule language will be available for comment for at least 30 days (EQB staff expects to have it listed from Sept. 29-Nov. 10, 2025). After the end of the comment period, EQB staff will review the public comments, decide on modifications, and request approval from the Board for any changes that are needed. It is important to know that substantial changes to a rule after the draft language has been published in the State Register are generally not permitted unless specific procedural steps are followed. Once the draft rule language is published in the State Register, changes prior to adoption must be:

- Non-substantial (e.g., clarifications, corrections, or formatting)
- Clearly within the scope of what was originally noticed

Once the Board has approved of the amended language, a final draft of the rules is received from the Revisor.

## Final phase of expedited rulemaking process

Once the final rule language is determined, the rule language, supporting information, and a draft Order Adopting Rules is sent to the Court of Administrative Hearings (CAH).<sup>2</sup> An Administrative Law Judge (ALJ) is assigned to the case. The ALJ has 14 days to review the rule amendments and either order corrections or approve the language. If changes are needed, EQB staff will make those changes and resubmit for approval. Once the language is approved, the Order Adopting Rules is signed and filed with the Court of Administrative Hearings and the Secretary of State. The Revisor provides a Notice of Adoption, which is published in the State Register.<sup>3</sup> Once this step is complete, the rule is adopted and becomes enforceable after five days.

---

<sup>2</sup> Under Minn. Stat. 14.26, this must happen within 180 days of the close of the comment period.

<sup>3</sup> This must happen within 180 days of the ALJ's review.

## **RESOLUTION OF THE MINNESOTA ENVIRONMENTAL QUALITY BOARD**

### **Amendment to Rules Governing the Environmental Review Program, Minnesota Rules Chapter 4410**

#### **Background**

The Minnesota Environmental Policy Act, Minnesota Statutes §§ 116D.04 and 116D.045, authorize the Environmental Quality Board (“EQB” or “board”) to adopt rules governing the environmental review program.

In 2024, the Legislature enacted the Minnesota Energy Infrastructure Permitting Act (“Act”). See Minn. Laws 2024, Chapter 126, Art. 7. The Act adopted alternative environmental review and permitting requirements for certain large energy infrastructure projects, placed those requirements into a new statutory chapter (Chapter 216I) and repealed superseded statutes and rules.

In the same legislative enactment, the Legislature created environmental review requirements for carbon dioxide pipelines (Minn. Laws 2024, Ch. 126, Art. 9, Sec. 17) and changed the responsible governmental unit for spent-fuel storage to the Public Utilities Commission (Minn. Laws 2024, Ch. 126, Art. 9, Sec. 2).

The Legislature directed the EQB to conform its rules to the Act using the expedited process described in Minn. Stat. § 14.389. See Minn. Laws 2024, Chapter 126, Art. 9, Sec. 19. Under the expedited rule process, the EQB must (1) publish notice of the proposed rule amendments (2) notify persons who have requested notice of rules and (3) provide an “easily readable and understandable summary of the overall nature and effect of the proposed rule,” including the statutory authority supporting the rule and the authority to use the expedited process.

Having met with staff from affected state agencies and other interested parties, and having taken comment from EQB members at meetings held February 19, 2025; June 18, 2025 (Environmental Review Implementation Subcommittee); and August 20, 2025, the EQB staff has proposed that the board approve the following amendments to Minnesota Rules Chapter 4410:

- to create a new provision in the section of Chapter 4410 addressing “substitute forms of environmental review” that would direct projects covered under the new Chapter 216I review and permitting process to complete environmental review using the processes under that Chapter.
- to create definitions (such as “large energy infrastructure facility”) that are consistent with Chapter 216I and repeal inconsistent definitions.
- to repeal mandatory Environmental Assessment Worksheet (“EAW”) and Environmental Impact Statement (“EIS”) categories for projects addressed under Chapter 216I.
- to create a definition and mandatory EIS category addressing carbon dioxide pipelines.
- to change the responsible governmental unit for spent-fuel storage project EISs from the Department of Commerce to the Public Utilities Commission.

The EQB staff developed draft rule amendments and a rule summary and justification memo summarizing the overall nature and effect of the proposed amendments and the supporting statutory authorities (“Summary”) and the EQB board has reviewed the Summary.

**The board resolves** to initiate expedited rulemaking to adopt amendments to the environmental review rules in order to conform with changes made in Minn. Laws 2024, Chapter 126 as described in the attached documents.

**The board resolves** that Catherine Neuschler, the Executive Director of the EQB, is hereby granted the authority and directed to proceed with all steps necessary to complete the expedited rulemaking under Minn. Stat. §14.389.

The EQB board approved and adopted this resolution on September 17, 2025.

\_\_\_\_\_  
Nancy Daubenberger, Chair  
Minnesota Environmental Quality Board

Date: \_\_\_\_\_

Attachments:

Draft notice of intent to adopt expedited rules

Draft proposed amendments (RD4944)

Rule summary and justification memo (Environmental Review: Conformance with Energy Infrastructure Permitting Act and related changes)

# Notice of Intent to Adopt Expedited Rules

## Minnesota Environmental Quality Board

### NOTICE OF INTENT TO ADOPT EXPEDITED RULES WITHOUT A PUBLIC HEARING

#### **Proposed Amendments to Rules Governing the Environmental Review Program, *Minnesota Rules*, Chapter 4410, Revisor's ID Number (R-04944)**

**Introduction.** The Minnesota Environmental Quality Board ("EQB") intends to adopt rules under the expedited rulemaking process following the rules of the Court of Administrative Hearings, *Minnesota Rules*, part 1400.2410, and the Administrative Procedure Act, *Minnesota Statutes*, section 14.389. You may submit written comments on the proposed expedited rules until **4:30 p.m. on Monday, November 10, 2025.**

**Plain English Summary.** This notice is the EQB's legal notice of its intent to amend the state's environmental review rules. The amendments are necessary to address legislative changes governing environmental review and permitting of certain energy infrastructure projects. This notice provides an opportunity for the public to comment on the proposed rules. Anyone who would like to comment on the proposed rule language must submit written comment on the proposed rules by the deadline identified in this notice. The Subject of the Expedited Rules section provides additional information about the proposed rules. If the proposed rules affect you in any way, the EQB encourages you to participate in the rulemaking process.

**Subject of the Expedited Rules.** The EQB is proposing the expedited rule amendments to address legislative changes made to projects for which the Public Utilities Commission is the Responsible Governmental Unit ("RGU") pertaining to the permitting and environmental review requirements applicable to certain energy projects. *See Minn. Laws 2024, Chapter 126.*

#### Minnesota Energy Infrastructure Permitting Act

The proposed amendments address changes made to the permitting and environmental review requirements applicable to "large energy infrastructure projects" and other energy projects in the Minnesota Energy Infrastructure Permitting Act, codified as Minn. Stat. ch. 216I. *See Minn. Laws 2024, Chapter 126, Art. 7.* The proposed amendments direct environmental review of energy projects covered by Minn. Stat. ch. 216I to that chapter's requirements and eliminate duplicative environmental review categories for such projects in the existing environmental review rules in Minn. R. ch. 4410. The proposed amendments do not change mandatory environmental review categories for electric power generating facility projects exempt from or



not covered by Minn. Stat. ch. 216I. The proposed amendments also remove references to repealed statutes and rules.

### Other Changes

In addition to the changes conforming EQB's environmental review rules to the Minnesota Energy Infrastructure Permitting Act, the proposed amendments will add an Environmental Impact Statement ("EIS") mandatory category for carbon dioxide pipeline projects to reflect the new EIS requirement mandated by Minn. Laws 2024, Ch. 126, Art. 9, Sec. 17 (codified as Minn. Stat. § 216G.025). Finally, the proposed amendments will change the RGU for independent spent-fuel storage installation projects from the Department of Commerce to the Public Utilities Commission to conform to the change mandated by Minn. Laws 2024, Ch. 126, Art. 9, Sec. 2 (codified as Minn. Stat. § 116C.83, subd. 6 as amended).

**Statutory Authority.** The statutory authority authorizing EQB to adopt these rules is Minn. Stat. § 116D.04, subd. 5a. The statutory authority authorizing EQB to adopt the rules under the expedited rulemaking process is Laws of Minnesota 2024, Chapter 126, Article 9, Sec. 19.

**Availability of Rules.** A copy of the proposed rules is published in the *State Register* after this notice, or they can be viewed on the rule webpage at <https://www.eqb.state.mn.us/environmental-review/rules-and-regulations>. A free copy of the proposed rules is also available upon request by contacting the [EQB contact person](#). One copy per request will be sent.

**EQB Contact Person.** The EQB contact person is Kayla Walsh at Minnesota Environmental Quality Board, 520 Lafayette Road North, St. Paul, MN 55155, 651-757-2796, and [kayla.walsh@state.mn.us](mailto:kayla.walsh@state.mn.us). You may contact the EQB contact person with *questions* about the proposed expedited rule amendments. Please note that *comments* on the proposed expedited rule amendments must be submitted through the Court of Administrative Hearings eComment system as described below or in writing and received *by* the Court of Administrative Hearings by the due date.

**Alternative Format.** Upon request, the information in this notice can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the EQB contact person at the address or telephone number identified above.

**Public Comment Process.** You have until **4:30 p.m. on Monday, November 10, 2025**, to submit written comment in support of or in opposition to the proposed expedited rule amendments and any part or subpart of the proposed rule amendments.

To be considered by the EQB, your comment must be in writing and received by the **Court of Administrative Hearings** by the due date. Your comment should identify the portion of the proposed expedited rule amendments addressed, the reason for the comment, and any change proposed. You must also make any comments that you have on the legality of the proposed rule amendments during this comment period. The EQB encourages comments.

Submit written comments:

- 1) via the [Court of Administrative Hearings Rulemaking eComments website](https://mn.gov/oah/forms-and-filing/ecomments/) (<https://mn.gov/oah/forms-and-filing/ecomments/>),
- 2) U.S. Mail CAH attn: William Moore, CAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620 or fax 651-539-0310.

You may view frequently asked questions about the CAH Rulemaking eComments website at [https://mn.gov/oah/assets/ecomments-faq\\_tcm19-82012.pdf](https://mn.gov/oah/assets/ecomments-faq_tcm19-82012.pdf). Any questions about submitting comments via the Rulemaking eComments website should be directed to William Moore of the CAH at 651-361-7900 or by email at [william.t.moore@state.mn.us](mailto:william.t.moore@state.mn.us); please note that you may not submit rulemaking comments by phone or email.

Comments received are public and will be available for review at the CAH Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/discussions> and at the CAH, 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620.

**Modifications.** The EQB may modify the proposed expedited rules amendments based upon public comment. The modifications must be supported by comments and information submitted to the EQB, and the adopted rules may not be substantially different than these proposed rules as defined in *Minnesota Statutes*, section 14.05, subdivision 2, paragraphs (b) and (c).

The EQB may adopt substantially different rules if it follows the procedure under *Minnesota Rules*, part 1400.2110.

If the final rules are identical to the amendments originally published in the *State Register*, the EQB will publish a notice of adoption in the *State Register*. If the final rules are different from the rules originally published in the *State Register*, the EQB will publish a copy of the changes in the *State Register*.

**Adoption and Review of Expedited Rules.** The EQB may adopt the rules at the end of the comment period. The EQB will then submit rules and supporting documents to the Court of Administrative Hearings for review for legality. You may ask to be notified of the date that the

EQB submits the rules. If you want to be so notified or want to receive a copy of the adopted rules or want to register with the EQB to receive notice of future rule proceedings, submit your request to the EQB contact person listed above.

**Lobbyist Registration.** *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You may direct questions about this requirement to the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

---

[Date]

---

[Name]

[Commissioner/Director]

*[Signature is required on the Notice per Minn. Rules, part 1400.2085, subpart 2, item O.]*

1.1 **Minnesota Environmental Quality Board**

1.2 **Proposed Expedited Permanent Rules Relating to Energy Infrastructure**

1.3 **4410.0200 DEFINITIONS AND ABBREVIATIONS.**

1.4 Subpart 1. **Scope.** For the purpose of parts 4410.0200 to 4410.6500, the following  
1.5 terms and abbreviations have the meanings given them, unless otherwise provided.

1.6 Subp. 1a. [Repealed, 31 SR 539]

1.7 Subp. 1b. **Acute hazardous waste.** "Acute hazardous waste" has the meaning given  
1.8 in part 7045.0020.

1.9 Subp. 2. **Agricultural land.** "Agricultural land" means land that is or has, within the  
1.10 last five years, been devoted to the production of livestock, dairy animals, dairy products,  
1.11 poultry and poultry products, fur bearing animals, horticultural and nursery stock, fruit,  
1.12 vegetables, forage, grains, or bees and apiary products. Wetlands, naturally vegetated lands,  
1.13 and woodlands contiguous to or surrounded by agricultural land shall be considered  
1.14 agricultural lands if under the same ownership or management as that of the agricultural  
1.15 land during the period of agricultural use.

1.16 Subp. 3. **Animal units.** "Animal units" has the meaning given in part 7020.0300,  
1.17 subpart 5.

1.18 Subp. 4. **Approval.** "Approval" means a decision by a unit of government to issue a  
1.19 permit or to otherwise authorize the commencement of a proposed project.

1.20 Subp. 5. **Attached units.** "Attached units" means in groups of four or more units each  
1.21 of which shares one or more common walls with another unit.

1.22 Subp. 5a. **Auxiliary lane.** "Auxiliary lane" means the portion of the roadway that:

1.23 A. adjoins the through lanes for purposes such as speed change, turning, storage  
1.24 for turning, weaving, or truck climbing; and

2.1 B. supplements through-traffic movement.

2.2 Subp. 6. **Biomass sources.** "Biomass sources" means animal waste and all forms of  
2.3 vegetation, natural or cultivated.

2.4 Subp. 6a. **Capacity.** "Capacity," as used in parts 4410.4300, subpart 17, and 4410.4400,  
2.5 subpart 13, means the maximum daily operational input volume a facility is designed to  
2.6 process on a continuing basis.

2.7 Subp. 6b. **Carbon dioxide pipeline.** "Carbon dioxide pipeline" has the meaning given  
2.8 in Minnesota Statutes, section 216G.025, subdivision 1.

2.9 Subp. 7. **Class I dam.** "Class I dam" has the meaning given in part 6115.0340.

2.10 Subp. 8. **Class II dam.** "Class II dam" has the meaning given in part 6115.0340.

2.11 Subp. 9. **Collector roadway.** "Collector roadway" means a road that provides access  
2.12 to minor arterial roadways from local streets and adjacent land uses.

2.13 Subp. 9a. **Common open space.** "Common open space" means a portion of a  
2.14 development permanently set aside to preserve elements of the natural landscape for public  
2.15 or private use, which will not be developed or subdivided and is either owned in common  
2.16 by the individual owners in the development or by a permanently established management  
2.17 entity. Common open space does not include the area within 25 feet of any structure, any  
2.18 impervious surface, or the area between buildings within an individual cluster of buildings  
2.19 when the development is designed using clustered compact lots or clustered units or sites  
2.20 to create and preserve green space, such as in a conservation subdivision, planned unit  
2.21 development, or resort.

2.22 Subp. 9b. **Compost facility.** "Compost facility" has the meaning given in part  
2.23 7035.0300.

3.1 Subp. 9c. **Connected actions.** Two projects are "connected actions" if a responsible  
3.2 governmental unit determines they are related in any of the following ways:

3.3 A. one project would directly induce the other;

3.4 B. one project is a prerequisite for the other and the prerequisite project is not  
3.5 justified by itself; or

3.6 C. neither project is justified by itself.

3.7 Subp. 10. **Construction.** "Construction" means any activity that directly alters the  
3.8 environment. It includes preparation of land or fabrication of facilities. It does not include  
3.9 surveying or mapping.

3.10 Subp. 11. **Cumulative impact.** "Cumulative impact" means the impact on the  
3.11 environment that results from incremental effects of the project in addition to other past,  
3.12 present, and reasonably foreseeable future projects regardless of what person undertakes  
3.13 the other projects. Cumulative impacts can result from individually minor but collectively  
3.14 significant projects taking place over a period of time.

3.15 Subp. 11a. **Cumulative potential effects.** "Cumulative potential effects" means the  
3.16 effect on the environment that results from the incremental effects of a project in addition  
3.17 to other projects in the environmentally relevant area that might reasonably be expected to  
3.18 affect the same environmental resources, including future projects actually planned or for  
3.19 which a basis of expectation has been laid, regardless of what person undertakes the other  
3.20 projects or what jurisdictions have authority over the projects. Significant cumulative  
3.21 potential effects can result from individually minor projects taking place over a period of  
3.22 time. In analyzing the contributions of past projects to cumulative potential effects, it is  
3.23 sufficient to consider the current aggregate effects of past actions. It is not required to list  
3.24 or analyze the impacts of individual past actions, unless such information is necessary to  
3.25 describe the cumulative potential effects. In determining if a basis of expectation has been

laid for a project, an RGU must determine whether a project is reasonably likely to occur and, if so, whether sufficiently detailed information is available about the project to contribute to the understanding of cumulative potential effects. In making these determinations, the RGU must consider: whether any applications for permits have been filed with any units of government; whether detailed plans and specifications have been prepared for the project; whether future development is indicated by adopted comprehensive plans or zoning or other ordinances; whether future development is indicated by historic or forecasted trends; and any other factors determined to be relevant by the RGU.

Subp. 12. **Day.** "Day" in counting any period of time shall not include the day of the event from which the designated period of time begins. The last day of the period counted shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is 15 days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the counting of days.

Subp. 13. [Repealed by amendment, L 1983 c 289 s 115 subd 1]

Subp. 14. **Disposal facility.** "Disposal facility" has the meaning given in Minnesota Statutes, section 115A.03, subdivision 10.

Subp. 15. **DNR.** "DNR" means Department of Natural Resources.

Subp. 16. **DOT.** "DOT" means Department of Transportation.

Subp. 17. **EAW.** "EAW" means environmental assessment worksheet.

Subp. 18. **EIS.** "EIS" means environmental impact statement.

Subp. 19. [Repealed, 21 SR 1458]

Subp. 20. [Repealed, 21 SR 1458]

5.1       Subp. 20a. **Electric power generating facility.** "Electric power generating facility"  
5.2       means any plant or combination of plants at a single site designed to generate electricity  
5.3       and transmission lines directly associated with the plant that are necessary to interconnect  
5.4       the plant to the transmission system. Electric power generating facility does not include a  
5.5       large electric power generating plant.

5.6       Subp. 21. [Repealed, 21 SR 1458]

5.7       Subp. 22. **Emergency.** "Emergency" means a sudden unexpected occurrence, natural  
5.8       or caused by humans, involving a clear and imminent danger, demanding immediate action  
5.9       to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.  
5.10      "Emergency" includes fire, flood, windstorm, riot, accident, or sabotage.

5.11      Subp. 22a. **Energy recovery facility.** "Energy recovery facility" means a facility used  
5.12      to capture the heat value of solid waste for conversion to steam, electricity, or immediate  
5.13      heat by direct combustion or by first converting the solid waste into an intermediate fuel  
5.14      product. It does not include facilities that produce, but do not burn, refuse-derived fuel.

5.15      Subp. 22b. **Energy storage system.** "Energy storage system" has the meaning given  
5.16      in Minnesota Statutes, section 216I.02, subdivision 6.

5.17      Subp. 23. **Environment.** "Environment" means physical conditions existing in the  
5.18      area that may be affected by a proposed project. It includes land, air, water, minerals, flora,  
5.19      fauna, ambient noise, energy resources, and artifacts or natural features of historic, geologic,  
5.20      or aesthetic significance.

5.21      Subp. 24. **Environmental assessment worksheet.** "Environmental assessment  
5.22      worksheet" means a brief document which is designed to set out the basic facts necessary  
5.23      to determine whether an EIS is required for a proposed project or to initiate the scoping  
5.24      process for an EIS.



6.1 Subp. 25. **Environmental document.** "Environmental document" means EAW, draft  
6.2 EIS, final EIS, substitute review document, and other environmental analysis documents.

6.3 Subp. 26. **Environmental impact statement.** "Environmental impact statement"  
6.4 means a detailed written statement as required by Minnesota Statutes, section 116D.04,  
6.5 subdivision 2a.

6.6 Subp. 27. **EQB.** "EQB" means Environmental Quality Board.

6.7 Subp. 28. **Expansion.** "Expansion" means an extension of the capability of a facility  
6.8 to produce or operate beyond its existing capacity. It excludes repairs or renovations that  
6.9 do not increase the capacity of the facility.

6.10 Subp. 29. **First class city.** "First class city" has the meaning given in Minnesota  
6.11 Statutes, section 410.01.

6.12 Subp. 30. **Floodplain.** "Floodplain" has the meaning given in Minnesota Statutes,  
6.13 section 103F.111.

6.14 Subp. 31. [Repealed, 21 SR 1458]

6.15 Subp. 32. **Fourth class city.** "Fourth class city" has the meaning given in Minnesota  
6.16 Statutes, section 410.01.

6.17 Subp. 33. **Governmental action.** "Governmental action" means activities including  
6.18 projects wholly or partially conducted, permitted, assisted, financed, regulated, or approved  
6.19 by governmental units, including the federal government.

6.20 Subp. 34. **Governmental unit.** "Governmental unit" means any state agency and any  
6.21 general or special purpose unit of government in the state, including watershed districts  
6.22 organized under Minnesota Statutes, chapter 103D, counties, towns, cities, port authorities,  
6.23 housing authorities, and the Metropolitan Council, but not including courts, school districts,  
6.24 the Iron Range Resources and Rehabilitation Board, and regional development commissions.

7.1 Subp. 35. **Gross floor space.** "Gross floor space" means the total square footage of  
7.2 all floors but does not include parking lots or approach areas.

7.3 Subp. 35a. **Genetically engineered organism.** "Genetically engineered organism"  
7.4 has the meaning given in part 4420.0010, subpart 14.

7.5 Subp. 35b. **Genetic engineering.** "Genetic engineering" has the meaning given in  
7.6 part 4420.0010, subpart 15.

7.7 Subp. 36. **Ground area.** "Ground area" means the total surface area of land that would  
7.8 be converted to an impervious surface by the proposed project. It includes structures, parking  
7.9 lots, approaches, service facilities, appurtenant structures, and recreational facilities.

7.10 Subp. 36a. **Hazardous material.** "Hazardous material" has the meaning given in  
7.11 Code of Federal Regulations, title 49, section 171.8.

7.12 Subp. 37. **Hazardous waste.** "Hazardous waste" has the meaning given in parts  
7.13 7045.0129 to 7045.0141.

7.14 Subp. 38. ~~High-voltage~~ **High-voltage transmission line or HVTL.** "~~High-voltage~~  
7.15 High-voltage transmission line" or "HVTL" has the meaning given in ~~part 7849.1100~~  
7.16 Minnesota Statutes, section 216I.02, subdivision 8.

7.17 Subp. 39. **Highway safety improvement project.** "Highway safety improvement  
7.18 project" means a project designed to improve safety of highway locations that have been  
7.19 identified as hazardous or potentially hazardous. Projects in this category include the removal,  
7.20 relocation, remodeling, or shielding of roadside hazards; installation or replacement of  
7.21 traffic signals; and the geometric correction of identified high accident locations requiring  
7.22 the acquisition of minimal amounts of right-of-way.

7.23 Subp. 40. [See repealer.]

8.1 Subp. 40a. **Incinerator.** "Incinerator" means any furnace used in the process of burning  
8.2 solid waste for the purpose of reducing the volume of waste by removing combustible  
8.3 matter.

8.4 Subp. 40b. **Institutional facility.** "Institutional facility" means a land-based facility  
8.5 owned or operated by an organization having a governmental, educational, civic, or religious  
8.6 purpose such as a school, hospital, prison, military installation, church, or other similar  
8.7 establishment or facility.

8.8 Subp. 41. **Large electric power generating plant; LEPGP.** "Large electric power  
8.9 generating plant" or "LEPGP" has the meaning given in ~~part 7849.1100~~ Minnesota Statutes,  
8.10 section 216I.02, subdivision 9.

8.11 Subp. 41a. **Large energy infrastructure facility.** "Large energy infrastructure facility"  
8.12 has the meaning given in Minnesota Statutes, section 216I.02, subdivision 10.

8.13 Subp. 41b. **Large wind energy conversion system.** "Large wind energy conversion  
8.14 system" has the meaning given in Minnesota Statutes, section 216I.02, subdivision 11.

8.15 Subp. 42. [See repealer.]

8.16 Subp. 42a. **Light industrial facility.** "Light industrial facility" means a subcategory  
8.17 of industrial land use with a primary function other than manufacturing and less than 500  
8.18 employees.

8.19 Subp. 43. **Local governmental unit.** "Local governmental unit" means any unit of  
8.20 government other than the state or a state agency or the federal government or a federal  
8.21 agency. Local governmental unit includes watershed districts established according to  
8.22 Minnesota Statutes, chapter 103D, soil and water conservation districts, watershed  
8.23 management organizations, counties, towns, cities, port authorities, housing authorities, and  
8.24 the Metropolitan Council. Local governmental unit does not include courts, school districts,  
8.25 and regional development commissions.

9.1 Subp. 44. **Marina.** "Marina" has the meaning given in part 6115.0170.

9.2 Subp. 45. **MDA.** "MDA" means Minnesota Department of Agriculture.

9.3 Subp. 46. **MDH.** "MDH" means Minnesota Department of Health.

9.4 Subp. 47. **Mineral deposit evaluation.** "Mineral deposit evaluation" has the meaning  
9.5 given in Minnesota Statutes, section 103I.605, subdivision 2.

9.6 Subp. 48. **Minnesota River Project Riverbend area.** "Minnesota River Project  
9.7 Riverbend area" means an area subject to the comprehensive land use plan of the Project  
9.8 Riverbend Board established under Minnesota Statutes, chapter 103F.

9.9 Subp. 49. **Mississippi headwaters area.** "Mississippi headwaters area" means an area  
9.10 subject to the comprehensive land use plan of the Mississippi River Headwaters Board  
9.11 established under Minnesota Statutes, chapter 103F.

9.12 Subp. 50. **Mississippi headwaters plan.** "Mississippi headwaters plan" means the  
9.13 comprehensive land use plan of the Mississippi River Headwaters Board established under  
9.14 Minnesota Statutes, chapter 103F.

9.15 Subp. 51. **Mitigation.** "Mitigation" means:

9.16 A. avoiding impacts altogether by not undertaking a certain project or parts of a  
9.17 project;

9.18 B. minimizing impacts by limiting the degree of magnitude of a project;

9.19 C. rectifying impacts by repairing, rehabilitating, or restoring the affected  
9.20 environment;

9.21 D. reducing or eliminating impacts over time by preservation and maintenance  
9.22 operations during the life of the project;

10.1 E. compensating for impacts by replacing or providing substitute resources or  
10.2 environments; or

10.3 F. reducing or avoiding impacts by implementation of pollution prevention  
10.4 measures.

10.5 Subp. 52. **Mixed municipal solid waste.** "Mixed municipal solid waste" has the  
10.6 meaning given in Minnesota Statutes, section 115A.03, subdivision 21.

10.7 Subp. 52a. **Mixed municipal solid waste land disposal facility.** "Mixed municipal  
10.8 solid waste land disposal facility" has the meaning given in part 7035.0300.

10.9 Subp. 53. **Natural watercourse.** "Natural watercourse" has the meaning given in  
10.10 Minnesota Statutes, section 103G.005, subdivision 13.

10.11 Subp. 54. **Negative declaration.** "Negative declaration" means a written statement  
10.12 by the RGU that a proposed project does not require the preparation of an EIS.

10.13 Subp. 55. **Open space land use.** "Open space land use" means a use particularly  
10.14 oriented to and using the outdoor character of an area including agriculture, campgrounds,  
10.15 parks, and recreation areas.

10.16 Subp. 55a. **Ordinary high water level.** "Ordinary high water level" has the meaning  
10.17 given in Minnesota Statutes, section 103G.005, subdivision 14.

10.18 Subp. 55b. **Organism.** "Organism" has the meaning given in part 4420.0010, subpart  
10.19 18.

10.20 Subp. 56. **PCA.** "PCA" means Minnesota Pollution Control Agency.

10.21 Subp. 56a. **PCB.** "PCB" has the meaning given in Minnesota Statutes, section 116.36,  
10.22 subdivision 4.

10.23 Subp. 57. **Permanent conversion.** "Permanent conversion" means a change in use  
10.24 of agricultural, naturally vegetated, or forest lands that impairs the ability to convert the

11.1 land back to its agricultural, natural, or forest capacity in the future. It does not include  
11.2 changes in management practices, such as conversion to parklands, open space, or natural  
11.3 areas.

11.4 Subp. 58. **Permit.** "Permit" means a permit, lease, license, certificate, or other  
11.5 entitlement for use or permission to act that may be granted or issued by a governmental  
11.6 unit, or the commitment to issue or the issuance of a discretionary contract, grant, subsidy,  
11.7 loan, or other form of financial assistance, by a governmental unit.

11.8 Subp. 59. **Person.** "Person" means any natural person, state, municipality, or other  
11.9 governmental unit, political subdivision, other agency or instrumentality, or public or private  
11.10 corporation, partnership, firm, association, or other organization, receiver, trustee, assignee,  
11.11 agent, or other legal representative of the foregoing, and any other entity.

11.12 Subp. 59a. **Petroleum refinery.** "Petroleum refinery" has the meaning given in  
11.13 Minnesota Statutes, section 115C.02, subdivision 10a.

11.14 Subp. 60. **Phased action.** "Phased action" means two or more projects to be undertaken  
11.15 by the same proposer that a RGU determines:

11.16 A. will have environmental effects on the same geographic area; and

11.17 B. are substantially certain to be undertaken sequentially over a limited period of  
11.18 time.

11.19 Subp. 61. **Positive declaration.** "Positive declaration" means a written statement by  
11.20 the RGU that a proposed project requires the preparation of an EIS.

11.21 Subp. 62. **Potentially permanent.** "Potentially permanent" means a dwelling for  
11.22 human habitation that is permanently affixed to the ground or commonly used as a place  
11.23 of residence. It includes houses, seasonal and year round cabins, and mobile homes.

12.1 Subp. 63. **Preparation notice.** "Preparation notice" means a written notice issued by  
12.2 the RGU stating that an EIS will be prepared for a proposed project.

12.3 Subp. 64. **Processing.** "Processing," as used in parts 4410.4300, subpart 16, items B  
12.4 and C, and 4410.4400, subpart 12, item C, has the meaning given in Minnesota Statutes,  
12.5 section 115A.03, subdivision 25.

12.6 Subp. 65. **Project.** "Project" means a governmental action, the results of which would  
12.7 cause physical manipulation of the environment, directly or indirectly. The determination  
12.8 of whether a project requires environmental documents shall be made by reference to the  
12.9 physical activity to be undertaken and not to the governmental process of approving the  
12.10 project.

12.11 Subp. 66. [Repealed, 13 SR 1437]

12.12 Subp. 67. **Project Riverbend plan.** "Project Riverbend plan" means the comprehensive  
12.13 land use plan of the Project Riverbend Board established under Minnesota Statutes, chapter  
12.14 103F.

12.15 Subp. 68. **Proposer.** "Proposer" means the person or governmental unit that proposes  
12.16 to undertake or to direct others to undertake a project.

12.17 Subp. 69. **Public waters.** "Public waters" has the meaning given in Minnesota Statutes,  
12.18 section 103G.005.

12.19 Subp. 70. **Public waters wetland.** "Public waters wetland" has the meaning given in  
12.20 Minnesota Statutes, section 103G.005, subdivision 15a.

12.21 Subp. 70a. **PUC.** "PUC" means the Minnesota Public Utilities Commission.

12.22 Subp. 71. **Recreational development.** "Recreational development" means facilities  
12.23 for temporary residence while in pursuit of leisure activities. Recreational development

13.1 includes, but is not limited to, recreational vehicle parks, rental or owned campgrounds,  
13.2 and condominium campgrounds.

13.3 Subp. 71a. **Refuse-derived fuel.** "Refuse-derived fuel" has the meaning given in  
13.4 Minnesota Statutes, section 115A.03, subdivision 25d.

13.5 Subp. 71b. **Release.** "Release" has the meaning given in part 4420.0010, subpart 19.

13.6 Subp. 72. [Repealed, 13 SR 1437]

13.7 Subp. 73. **Resource recovery.** "Resource recovery" has the meaning given in  
13.8 Minnesota Statutes, section 115A.03, subdivision 27.

13.9 Subp. 74. [Repealed, 13 SR 1437]

13.10 Subp. 75. **Responsible governmental unit.** "Responsible governmental unit" means  
13.11 the governmental unit that is responsible for preparation and review of environmental  
13.12 documents.

13.13 Subp. 76. **RGU.** "RGU" means responsible governmental unit.

13.14 Subp. 77. **Scientific and natural area.** "Scientific and natural area" means an outdoor  
13.15 recreation system unit designated pursuant to Minnesota Statutes, section 86A.05, subdivision  
13.16 5.

13.17 Subp. 78. **Scram mining operation.** "Scram mining operation" has the meaning  
13.18 given in part 6130.0100.

13.19 Subp. 79. **Second class city.** "Second class city" has the meaning given in Minnesota  
13.20 Statutes, section 410.01.

13.21 Subp. 79a. **Sensitive shoreland area.** "Sensitive shoreland area" means shoreland  
13.22 designated as a special protection district pursuant to part 6120.3200 or shoreland riparian  
13.23 to any of the following types of public waters:



14.1 A. lakes or bays of lakes classified as natural environment pursuant to part  
14.2 6120.3000;

14.3 B. trout lakes and streams designated pursuant to part 6264.0050;

14.4 C. wildlife lakes designated pursuant to Minnesota Statutes, section 97A.101,  
14.5 subdivision 2;

14.6 D. migratory waterfowl feeding and resting lakes designated pursuant to Minnesota  
14.7 Statutes, section 97A.095, subdivision 2; or

14.8 E. outstanding resource value waters designated pursuant to part 7050.0335.

14.9 Subp. 80. **Sewage collection system.** "Sewage collection system" means a piping or  
14.10 conveyance system that conveys wastewater to a wastewater treatment plant.

14.11 Subp. 81. **Sewered area.** "Sewered area" means an area:

14.12 A. that is serviced by a wastewater treatment facility or a centralized septic system  
14.13 servicing the entire development; or

14.14 B. that is located within the boundaries of the metropolitan urban service area, as  
14.15 defined pursuant to the development framework of the Metropolitan Council.

14.16 Subp. 81a. **Shore impact zone.** "Shore impact zone" has the meaning given in part  
14.17 6120.2500, or in a local ordinance, if the ordinance specifies a greater size for the zone.

14.18 Subp. 82. **Shoreland.** "Shoreland" has the meaning given in part 6120.2500, subpart  
14.19 15, of the Department of Natural Resources.

14.20 Subp. 82a. **Silica sand.** "Silica sand" has the meaning given in Minnesota Statutes,  
14.21 section 116C.99, subdivision 1.

14.22 Subp. 82b. **Silica sand project.** "Silica sand project" has the meaning given in  
14.23 Minnesota Statutes, section 116C.99, subdivision 1.

15.1 Subp. 83. [Repealed, 21 SR 1458]

15.2 Subp. 83a. **Solar energy generating system.** "Solar energy generating system" has  
15.3 the meaning given in Minnesota Statutes, section 216I.02, subdivision 18.

15.4 Subp. 84. **Solid waste.** "Solid waste" has the meaning given in Minnesota Statutes,  
15.5 section 116.06, subdivision 22.

15.6 Subp. 84a. **Sports or entertainment facility.** "Sports or entertainment facility" means  
15.7 a facility intended for the presentation of sports events and various forms of entertainment  
15.8 or amusement. Examples include sports stadiums or arenas, racetracks, concert halls or  
15.9 amphitheaters, theaters, facilities for pageants or festivals, fairgrounds, amusement parks,  
15.10 and zoological gardens.

15.11 Subp. 85. **State trail corridor.** "State trail corridor" means an outdoor recreation  
15.12 system unit designated pursuant to Minnesota Statutes, section 86A.05, subdivision 4.

15.13 Subp. 86. **Storage.** "Storage," as used in part 4410.4300, subpart 16, item D, has the  
15.14 meaning given in Code of Federal Regulations 1980, title 40, section 260.10 (a)(66).

15.15 Subp. 87. **Third class city.** "Third class city" has the meaning given in Minnesota  
15.16 Statutes, section 410.01.

15.17 Subp. 88. **Tiering.** "Tiering" means incorporating by reference the discussion of an  
15.18 issue from a broader or more general EIS. An example of tiering is the incorporation of a  
15.19 program or policy statement into a subsequent environmental document of a more narrow  
15.20 scope, such as a site-specific EIS.

15.21 Subp. 89. **Transfer station.** "Transfer station" has the meaning given in Minnesota  
15.22 Statutes, section 115A.03, subdivision 33.

15.23 Subp. 89a. **Warehousing facility.** "Warehousing facility" means a subcategory of  
15.24 industrial-commercial land use that has as its primary function the storage of goods or

16.1 materials. Warehousing facilities may include other uses, such as office space or sales, in  
16.2 minor amounts.

16.3 Subp. 90. **Waste.** "Waste" has the meaning given in Minnesota Statutes, section  
16.4 115A.03, subdivision 34.

16.5 Subp. 91. **Waste facility.** "Waste facility" has the meaning given in Minnesota Statutes,  
16.6 section 115A.03, subdivision 35.

16.7 Subp. 92. **Wastewater treatment facility.** "Wastewater treatment facility" means a  
16.8 facility for the treatment of municipal or industrial waste water.

16.9 Subp. 92a. **Water-related land use management district.** "Water-related land use  
16.10 management district" includes:

16.11 A. shoreland areas;

16.12 B. floodplains;

16.13 C. wild and scenic rivers districts;

16.14 D. areas subject to the comprehensive land use plan of the Project Riverbend  
16.15 Board under Minnesota Statutes, chapter 103F; and

16.16 E. areas subject to the comprehensive land use plan of the Mississippi River  
16.17 Headwaters Board under Minnesota Statutes, chapter 103F.

16.18 Subp. 92b. **Water-related land use management district ordinance or plan,**  
16.19 **approved.** "Water-related land use management district ordinance or plan, approved"  
16.20 means:

16.21 A. a state-approved shoreland ordinance;

16.22 B. a state-approved floodplain ordinance;

16.23 C. a state-approved wild and scenic rivers district ordinance;

17.1 D. the comprehensive land use plan of the Project Riverbend Board under  
17.2 Minnesota Statutes, chapter 103F; or

17.3 E. the comprehensive land use plan of the Mississippi River Headwaters Board  
17.4 under Minnesota Statutes, chapter 103F.

17.5 Subp. 92c. **Waters of the state.** "Waters of the state" has the meaning given in  
17.6 Minnesota Statutes, section 103G.005, subdivision 17.

17.7 Subp. 93. **Wetland.** "Wetland" has the meaning given wetlands in Minnesota Statutes,  
17.8 section 103G.005, subdivision 19.

17.9 Subp. 94. **Wild and scenic rivers district.** "Wild and scenic rivers district" means a  
17.10 river or a segment of the river and its adjacent lands that possess outstanding scenic,  
17.11 recreational, natural, historical, scientific, or similar values and has been designated by the  
17.12 commissioner of the DNR or by the legislature of the state of Minnesota for inclusion within  
17.13 the Minnesota wild and scenic rivers system pursuant to Minnesota Statutes, sections  
17.14 103F.301 to 103F.345, or by Congress for inclusion within the national wild and scenic  
17.15 rivers system pursuant to United States Code 1976, title 16, sections 1274 to 1286.

17.16 Subp. 95. **Wild and scenic rivers district ordinances, state approved.** "Wild and  
17.17 scenic rivers district ordinances, state approved" means a local governmental unit ordinance  
17.18 implementing the state management plan for the district. The ordinance must be approved  
17.19 by the commissioner of the DNR pursuant to parts 6105.0220 to 6105.0250 or 6105.0500 to  
17.20 6105.0550 of the Department of Natural Resources.

17.21 Subp. 96. **Wilderness area.** "Wilderness area" means an outdoor recreation system  
17.22 unit designated pursuant to Minnesota Statutes, section 86A.05, subdivision 6.

**4410.4100 REVIEW OF ENERGY PROJECTS UNDER MINNESOTA STATUTES, CHAPTER 216I.**

Any large energy infrastructure facility project or solar energy generating system project must follow the RGU selection and review requirements in Minnesota Statutes, chapter 216I, and rules adopted thereunder. As described in Minnesota Statutes, chapter 216I, a large energy infrastructure facility project includes a high-voltage transmission line, a large electric power generating plant, an energy storage system, a large wind energy conversion system, and any associated facilities.

**4410.4300 MANDATORY EAW CATEGORIES.**

**Subpart 1. Threshold test.**

A. Except as otherwise provided in this subpart, an EAW must be prepared for projects that meet or exceed the threshold of any ~~of subparts 2 to 37~~ in this part, unless the project meets or exceeds any thresholds of part 4410.4400, in which case an EIS must be prepared.

B. If the proposed project is an expansion or additional stage of an existing project, the cumulative total of the proposed project and any existing stages or components of the existing project must be included when determining if a threshold is met or exceeded if construction was begun within three years before the date of application for a permit or approval from a governmental unit for the expansion or additional stage but after April 21, 1997, except that any existing stage or component that was reviewed under a previously completed EAW or EIS need not be included.

C. Multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when comparing the project or projects to the thresholds of this part and part 4410.4400.

D. For projects under part 4410.4100, environmental review is governed by Minnesota Statutes, chapter 216I.

Subp. 2. **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 for the storage of high level nuclear waste, other than an independent spent-fuel storage installation, the EQB is the RGU.

B. For construction or expansion of a facility for the storage of low level nuclear waste for one year or longer, the MDH is the RGU.

C. For expansion of a high level nuclear waste disposal site, the EQB is the RGU.

D. For expansion of a low level nuclear waste disposal site, the MDH is the RGU.

E. For expansion of an away-from-reactor facility for temporary storage of spent nuclear fuel, the EQB is the RGU.

F. For construction or expansion of an on-site pool for temporary storage of spent nuclear fuel, the EQB is the RGU.

Subp. 3. ~~Electric generating facilities~~ **Electric power generating facilities.** Items A to ~~D~~ B designate the RGU for the type of project listed:

A. For construction of an electric power generating ~~plant~~ facility and associated facilities designed for or capable of operating at a capacity of 25 megawatts 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 ~~plant~~ facility and associated facilities designed for and capable of operating at a capacity of 25 megawatts or more but less than 50 megawatts and for which an air permit from the PCA is not required, the local governmental unit is the RGU.

~~C. For construction of an electric power generating plant and associated facilities designed for and capable of operating at a capacity of 50 megawatts or more, the PUC is~~

20.1 ~~the RGU, and environmental review must be conducted according to parts 7849.1000 to~~  
20.2 ~~7849.2100 and chapter 7850.~~

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

20.7 Subp. 4. **Petroleum refineries.** For expansion of an existing petroleum refinery that  
20.8 increases the refinery's capacity by 10,000 barrels per day or more, the PCA is the RGU.

20.9 Subp. 5. **Fuel conversion facilities.**

20.10 A. Subitems (1) and (2) designate the RGU for the type of project listed:

20.11 (1) For construction of a new fuel conversion facility for the conversion of  
20.12 coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity  
20.13 to utilize 25,000 dry tons or more per year of input, the PCA is the RGU.

20.14 (2) For construction of a new fuel conversion facility for the production of  
20.15 alcohol fuels that would have the capacity to produce 5,000,000 gallons or more per year  
20.16 of alcohol, the PCA is the RGU.

20.17 B. An EAW is required if an ethanol plant or biobutanol facility meets or exceeds  
20.18 thresholds of other categories of actions for which EAWs must be prepared.

20.19 Subp. 6. [See repealer.]

20.20 Subp. 7. **Pipelines.** Items A to D designate the RGU for the type of project listed:

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



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

22.4 Subp. 8. **Transfer facilities.** Items A to C designate the RGU for the type of project  
22.5 listed:

22.6 A. For construction of a new facility designed for or capable of transferring 300  
22.7 tons or more of coal per hour or with an annual throughput of 500,000 tons of coal from  
22.8 one mode of transportation to a similar or different mode of transportation or the expansion  
22.9 of an existing facility by these respective amounts, the PCA is the RGU.

22.10 B. For construction of a new facility or the expansion by 50 percent or more of  
22.11 an existing facility for the bulk transfer of hazardous materials with the capacity of 10,000  
22.12 or more gallons per transfer, if the facility is located in a shoreland area, a delineated  
22.13 floodplain, a state or federally designated wild and scenic rivers district, the Minnesota  
22.14 River Project Riverbend area, or the Mississippi headwaters area, the PCA is the RGU.

22.15 C. The PCA is the RGU for a silica sand project that:

22.16 (1) is designed to store or is capable of storing more than 7,500 tons of silica  
22.17 sand; or

22.18 (2) has an annual throughput of more than 200,000 tons of silica sand.

22.19 Subp. 9. **Underground storage.** Items A and B designate the RGU for the type of  
22.20 project listed:

22.21 A. For expansion of an underground storage facility for gases or liquids that  
22.22 requires a permit, pursuant to Minnesota Statutes, section 103I.681, subdivision 1, paragraph  
22.23 (a), the DNR is the RGU.

B. For expansion of an underground storage facility for gases or liquids, using naturally occurring rock materials, that requires a permit pursuant to Minnesota Statutes, section 103I.681, subdivision 1, paragraph (b), the DNR is the RGU.

Subp. 10. **Storage facilities.** Items A to H designate the RGU for the type of project listed:

A. For construction of a new facility designed for or capable of storing more than 7,500 tons of coal or with an annual throughput of more than 125,000 tons of coal or the expansion of an existing facility by these respective amounts, the PCA is the RGU.

B. For construction of a new major facility, as defined in part 7151.1200, that results in a designed storage capacity of 1,000,000 gallons or more of hazardous materials, the PCA is the RGU.

C. For expansion of an existing major facility, as defined in part 7151.1200, 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, as defined in Minnesota Statutes, section 216B.02, subdivision 6b, the PUC is the RGU, except as provided in item G.

24.1 F. For construction of a new facility designed for or capable of storing on a single  
24.2 site 100,000 gallons or more of anhydrous ammonia, the MDA is the RGU, except as  
24.3 provided in item G.

24.4 G. For construction of a new facility designed for or capable of storing on a single  
24.5 site 100,000 gallons or more of a combination of liquefied natural gas, as defined in  
24.6 Minnesota Statutes, section 299F.56, subdivision 14; synthetic gas, as defined in Minnesota  
24.7 Statutes, section 216B.02, subdivision 6b; or anhydrous ammonia, the PUC is the RGU.

24.8 H. The PCA is the RGU for a silica sand project that:

24.9 (1) is designed to store or is capable of storing more than 7,500 tons of silica  
24.10 sand; or

24.11 (2) has an annual throughput of more than 200,000 tons of silica sand.

24.12 Subp. 11. **Metallic mineral mining and processing.** Items A to C designate the RGU  
24.13 for the type of project listed:

24.14 A. For mineral deposit evaluation of metallic mineral deposits other than natural  
24.15 iron ore and taconite, the DNR is the RGU.

24.16 B. For expansion of a stockpile, tailings basin, or mine by 320 or more acres, the  
24.17 DNR is the RGU.

24.18 C. For expansion of a metallic mineral plant processing facility that is capable of  
24.19 increasing production by 25 percent per year or more, provided that increase is in excess  
24.20 of 1,000,000 tons per year in the case of facilities for processing natural iron ore or taconite,  
24.21 the DNR is the RGU.

24.22 Subp. 12. **Nonmetallic mineral mining.** Items A to D designate the RGU for the type  
24.23 of project listed:

A. For development of a facility for the extraction or mining of peat which will result in the excavation of 160 or more acres of land during its existence, the DNR 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 40 or more acres of land to a mean depth of ten feet or more during its existence, the local governmental unit is the RGU.

C. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 20 or more acres of forested or other naturally vegetated land in a sensitive shoreland area or 40 acres of forested or other naturally vegetated land in a nonsensitive shoreland area, the local governmental unit 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.

Subp. 13. **Paper or pulp processing mills.** For expansion of an existing paper or pulp processing facility that will increase its production capacity by 50 percent or more, the PCA is the RGU.

Subp. 14. **Industrial, commercial, and institutional facilities.** 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, 150,000 square feet;

(2) third or fourth class city, 300,000 square feet;

26.1 (3) second class city, 450,000 square feet; and

26.2 (4) first class city, 600,000 square feet.

26.3 B. For construction of a new or expansion of an existing industrial, commercial,  
26.4 or institutional facility, other than a warehousing or light industrial facility, equal to or in  
26.5 excess of the following thresholds, expressed as gross floor space, the local governmental  
26.6 unit is the RGU:

26.7 (1) unincorporated area, 100,000 square feet;

26.8 (2) third or fourth class city, 200,000 square feet;

26.9 (3) second class city, 300,000 square feet; and

26.10 (4) first class city, 400,000 square feet.

26.11 C. This subpart applies to any industrial, commercial, or institutional project which  
26.12 includes multiple components, if there are mandatory categories specified in subparts 2 to  
26.13 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2 to 10, 12, 13, 15, or 17, for  
26.14 two or more of the components, regardless of whether the project in question meets or  
26.15 exceeds any threshold specified in those subparts. In those cases, the entire project must be  
26.16 compared to the thresholds specified in items A and B to determine the need for an EAW.  
26.17 If the project meets or exceeds the thresholds specified in any other subpart as well as that  
26.18 of item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.

26.19 D. This subpart does not apply to projects for which there is a single mandatory  
26.20 category specified in subparts 2 to 13, 16, 17, 20, 23, 25, 29, or 34, or part 4410.4400,  
26.21 subparts 2 to 10, 12, 13, 17, or 22, regardless of whether the project in question meets or  
26.22 exceeds any threshold specified in those subparts. In those cases, the need for an EAW must  
26.23 be determined by comparison of the project to the threshold specified in the applicable  
26.24 subpart, and the RGU must be the governmental unit assigned by that subpart.

27.1 Subp. 15. **Air pollution.** Items A and B designate the RGU for the type of project  
27.2 listed.

27.3 A. For construction of a stationary source facility that generates 250 tons or more  
27.4 per year or modification of a stationary source facility that increases generation by 250 tons  
27.5 or more per year of any single air pollutant, other than those air pollutants described in item  
27.6 B, after installation of air pollution control equipment, the PCA is the RGU.

27.7 B. For construction of a stationary source facility that generates a combined  
27.8 100,000 tons or more per year or modification of a stationary source facility that increases  
27.9 generation by a combined 100,000 tons or more per year of greenhouse gas emissions, after  
27.10 installation of air pollution control equipment, expressed as carbon dioxide equivalents, the  
27.11 PCA is the RGU. For purposes of this subpart, "greenhouse gases" include carbon dioxide,  
27.12 methane, nitrous oxide, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur  
27.13 hexafluoride, and their combined carbon dioxide equivalents shall be computed by  
27.14 multiplying the mass amount of emissions for each of the six greenhouse gases in the  
27.15 pollutant GHGs by the gas's associated global warming potential published in Table A-1  
27.16 to subpart A of Code of Federal Regulations, title 40, part 98, Global Warming Potentials,  
27.17 as amended, and summing the resultant value for each.

27.18 Subp. 16. **Hazardous waste.** Items A to D designate the RGU for the type of project  
27.19 listed:

27.20 A. For construction of a new or expansion of an existing hazardous waste disposal  
27.21 facility, the PCA is the RGU.

27.22 B. For construction of a new facility for hazardous waste storage or treatment that  
27.23 is generating or receiving 1,000 kilograms or more per month of hazardous waste or one  
27.24 kilogram or more per month of acute hazardous waste, the PCA is the RGU.

28.1 C. For expansion of an existing facility for hazardous waste storage or treatment  
28.2 that increases the facility's capacity by ten percent or more, the PCA is the RGU.

28.3 D. For construction or expansion of a facility that sells hazardous waste storage  
28.4 services to generators other than the owner and operator of the facility or construction of a  
28.5 facility at which a generator's own hazardous wastes will be stored for a time period in  
28.6 excess of 90 days, if the facility is located in a water-related land use management district,  
28.7 or in an area characterized by soluble bedrock, the PCA is the RGU.

28.8 Subp. 17. **Solid waste.** Items A to G designate the RGU for the type of project listed:

28.9 A. For construction of a mixed municipal solid waste land disposal facility for up  
28.10 to 100,000 cubic yards of waste fill per year, the PCA is the RGU.

28.11 B. For expansion by 25 percent or more of previously permitted capacity of a  
28.12 mixed municipal solid waste land disposal facility for up to 100,000 cubic yards of waste  
28.13 fill per year, the PCA is the RGU.

28.14 C. For construction or expansion of a mixed municipal solid waste transfer station  
28.15 for 300,000 or more cubic yards per year, the PCA is the RGU.

28.16 D. For construction or expansion of a mixed municipal solid waste energy recovery  
28.17 facility or incinerator or use of an existing facility for the combustion of mixed municipal  
28.18 solid waste or refuse-derived fuel, with a permitted capacity of 30 tons or more per day of  
28.19 input, the PCA is the RGU.

28.20 E. For construction or expansion of a mixed municipal solid waste compost facility  
28.21 or a refuse-derived fuel production facility with a permitted capacity of 50 tons or more per  
28.22 day of input, the PCA is the RGU.

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

G. For construction or expansion of a mixed municipal solid waste energy recovery facility ash landfill receiving ash from an incinerator that burns refuse-derived fuel or mixed municipal solid waste, the PCA is the RGU.

Subp. 18. **Wastewater systems.** Items A to 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, 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. For expansion or modification of an existing municipal or domestic wastewater treatment facility that results in an increase by 50 percent or more and by at least 200,000 gallons per day of 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 is the RGU.

E. For expansion or modification of an existing industrial process wastewater treatment facility that increases the facility's design flow capacity by 50 percent or more and by at least 200,000 gallons per day or more, 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 is 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 according to subpart 11, item B.

Subp. 19. **Residential development.** An EAW is required for residential development if the total number of units that may ultimately be developed on all contiguous land owned or under an option to purchase by the proposer, except land identified by an applicable comprehensive plan, ordinance, resolution, or agreement of a local governmental unit for a future use other than residential development, equals or exceeds a threshold of this subpart. In counting the total number of ultimate units, the RGU shall include the number of units in any plans of the proposer; for land for which the proposer has not yet prepared plans, the RGU shall use as the number of units the product of the number of acres multiplied by the maximum number of units per acre allowable under the applicable zoning ordinance or, if the maximum number of units allowable per acre is not specified in an applicable zoning ordinance, by the overall average number of units per acre indicated in the plans of the proposer for those lands for which plans exist. If the total project requires review but future phases are uncertain, the RGU may review the ultimate project sequentially in accordance with part 4410.1000, subpart 4.

If a project consists of mixed unattached and attached units, an EAW must be prepared if the sum of the quotient obtained by dividing the number of unattached units by the applicable unattached unit threshold, plus the quotient obtained by dividing the number of attached units by the applicable attached unit threshold, equals or exceeds one.

The local governmental unit is the RGU for construction of a permanent or potentially permanent residential development of:

A. 50 or more unattached or 75 or more attached units in an unsewered unincorporated area or 100 unattached units or 150 attached units in a sewerer unincorporated area;

31.1 B. 100 unattached units or 150 attached units in a city that does not meet the  
31.2 conditions of item D;

31.3 C. 100 unattached units or 150 attached units in a city meeting the conditions of  
31.4 item D if the project is not consistent with the adopted comprehensive plan; or

31.5 D. 250 unattached units or 375 attached units in a city within the seven-county  
31.6 Twin Cities metropolitan area that has adopted a comprehensive plan under Minnesota  
31.7 Statutes, section 473.859, or in a city not located within the seven-county Twin Cities  
31.8 metropolitan area that has filed with the EQB chair a certification that it has adopted a  
31.9 comprehensive plan containing the following elements:

31.10 (1) a land use plan designating the existing and proposed location, intensity,  
31.11 and extent of use of land and water for residential, industrial, agricultural, and other public  
31.12 and private purposes;

31.13 (2) a transportation plan describing, designating, and scheduling the location,  
31.14 extent, function, and capacity of existing and proposed local public and private transportation  
31.15 facilities and services;

31.16 (3) a sewage collection system policy plan describing, designating, and  
31.17 scheduling the areas to be served by the public system, the existing and planned capacities  
31.18 of the public system, and the standards and conditions under which the installation of private  
31.19 sewage treatment systems will be permitted;

31.20 (4) a capital improvements plan for public facilities; and

31.21 (5) an implementation plan describing public programs, fiscal devices, and  
31.22 other actions to be undertaken to implement the comprehensive plan, and a description of  
31.23 official controls addressing the matters of zoning, subdivision, private sewage systems, and  
31.24 a schedule for the implementation of those controls. The EQB chair may specify the form  
31.25 to be used for making a certification under this item.

Subp. 19a. **Residential development in shoreland outside of the seven-county Twin Cities metropolitan area.**

A. The local governmental unit is the RGU for construction of a permanent or potentially permanent residential development located wholly or partially in shoreland outside the seven-county Twin Cities metropolitan area of a type listed in items B to E. For purposes of this subpart, "riparian unit" means a unit in a development that abuts a public water or, in the case of a development where units are not allowed to abut the public water, is located in the first tier of the development as provided under part 6120.3800, subpart 4, item A. If a project is located partially in a sensitive shoreland area and partially in nonsensitive shoreland areas, an EAW must be prepared if the sum of the quotient obtained by dividing the number of units in the sensitive shoreland area by the applicable sensitive shoreland area threshold, plus the quotient obtained by dividing the number of units in nonsensitive shoreland areas by the applicable nonsensitive shoreland area threshold, equals or exceeds one. If a project is located partially in shoreland and partially not in shoreland, an EAW must be prepared if the sum of the quotients obtained by dividing the number of units in each type of area by the applicable threshold for each area equals or exceeds one.

B. A development containing 15 or more unattached or attached units for a sensitive shoreland area or 25 or more unattached or attached units for a nonsensitive shoreland area, if any of the following conditions is present:

- (1) less than 50 percent of the area in shoreland is common open space;
- (2) the number of riparian units exceeds by at least 15 percent the number of riparian lots that would be allowable calculated according to the applicable lot area and width standards for riparian unsewered single lots under part 6120.3300, subparts 2a and 2b; or
- (3) if any portion of the project is in an unincorporated area, the number of nonriparian units in shoreland exceeds by at least 15 percent the number of lots that would

33.1 be allowable on the parcel calculated according to the applicable lot area standards for  
33.2 nonriparian unsewered single lots under part 6120.3300, subparts 2a and 2b.

33.3 C. A development containing 25 or more unattached or attached units for a  
33.4 sensitive shoreland area or 50 or more unattached or attached units for a nonsensitive  
33.5 shoreland area, if none of the conditions listed in item B is present.

33.6 D. A development in a sensitive shoreland area that provides permanent mooring  
33.7 space for at least one nonriparian unattached or attached unit.

33.8 E. A development containing at least one unattached or attached unit created by  
33.9 the conversion of a resort, motel, hotel, recreational vehicle park, or campground, if either  
33.10 of the following conditions is present:

33.11 (1) the number of nonriparian units in shoreland exceeds by at least 15 percent  
33.12 the number of lots that would be allowable on the parcel calculated according to the  
33.13 applicable lot area standards for nonriparian unsewered single lots under part 6120.3300,  
33.14 subparts 2a and 2b; or

33.15 (2) the number of riparian units exceeds by at least 15 percent the number of  
33.16 riparian lots that would be allowable calculated according to the applicable lot area and  
33.17 width standards for riparian unsewered single lots under part 6120.3300, subparts 2a and  
33.18 2b.

33.19 F. An EAW is required for residential development if the total number of units  
33.20 that may ultimately be developed on all contiguous land owned or under an option to purchase  
33.21 by the proposer, except land identified by an applicable comprehensive plan, ordinance,  
33.22 resolution, or agreement of a local governmental unit for a future use other than residential  
33.23 development, equals or exceeds a threshold of this subpart. In counting the total number of  
33.24 ultimate units, the RGU shall include the number of units in any plans of the proposer. For  
33.25 land for which the proposer has not yet prepared plans, the RGU shall use as the number

of units the number of acres multiplied by the maximum number of units per acre allowable under the applicable zoning ordinance or, if the maximum number of units allowable per acre is not specified in an applicable zoning ordinance, by the overall average number of units per acre indicated in the plan of the proposer for those lands for which plans exist.

Subp. 20. **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 is the RGU.

Subp. 20a. **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:

A. construction or addition of 25 or more units or sites in a sensitive shoreland area or 50 units or sites in a nonsensitive shoreland area if at least 50 percent of the area in shoreland is common open space; or

B. construction or addition of 15 or more units or sites in a sensitive shoreland area or 25 or more units or sites in a nonsensitive shoreland area, if less than 50 percent of the area in shoreland is common open space.

If a project is located partially in a sensitive shoreland area and partially in nonsensitive shoreland areas, an EAW must be prepared if the sum of the quotient obtained by dividing the number of units in the sensitive shoreland area by the applicable sensitive shoreland area threshold, plus the quotient obtained by dividing the number of units in nonsensitive shoreland areas by the applicable nonsensitive shoreland area threshold, equals or exceeds one. If a project is located partially in shoreland and partially not in shoreland, an EAW must be prepared if the sum of the quotients obtained by dividing the number of units in each type of area by the applicable threshold for each area equals or exceeds one.

35.1 Subp. 21. **Airport projects.** Items A and B designate the RGU for the type of project  
35.2 listed:

35.3 A. For construction of a paved, new airport runway, the DOT, local governmental  
35.4 unit, or Metropolitan Airports Commission is the RGU.

35.5 B. For construction of a runway extension that would upgrade an existing airport  
35.6 runway to permit usage by aircraft over 12,500 pounds that are at least three decibels louder  
35.7 than aircraft currently using the runway, the DOT, local governmental unit, or Metropolitan  
35.8 Airports Commission is the RGU. The RGU is selected according to part 4410.0500, subpart  
35.9 5.

35.10 Subp. 22. **Highway projects.** Items A to C designate the RGU for the type of project  
35.11 listed:

35.12 A. For construction of a road on a new location over one mile in length that will  
35.13 function as a collector roadway, the DOT or local governmental unit is the RGU.

35.14 B. For construction of additional through lanes or passing lanes on an existing  
35.15 road for a length of two or more miles, exclusive of auxiliary lanes, the DOT or local  
35.16 governmental unit is the RGU.

35.17 C. For the addition of one or more new interchanges to a completed limited access  
35.18 highway, the DOT or local governmental unit is the RGU.

35.19 Subp. 23. **Barge fleetings.** For construction of a new or expansion of an existing barge  
35.20 fleetings facility, the DOT or port authority is the RGU.

35.21 Subp. 24. **Water appropriation and impoundments.** Items A to C designate the  
35.22 RGU for the type of project listed:

35.23 A. For a new appropriation for commercial or industrial purposes of either surface  
35.24 water or ground water averaging 30,000,000 gallons per month; or a new appropriation of

36.1 either ground water or surface water for irrigation of 540 acres or more in one continuous  
36.2 parcel from one source of water, the DNR is the RGU.

36.3 B. For a new permanent impoundment of water creating additional water surface  
36.4 of 160 or more acres or for an additional permanent impoundment of water creating additional  
36.5 water surface of 160 or more acres, the DNR is the RGU.

36.6 C. For construction of a dam with an upstream drainage area of 50 square miles  
36.7 or more, the DNR is the RGU.

36.8 Subp. 25. **Marinas.** For construction or expansion of a marina or harbor that results  
36.9 in a 20,000 or more square foot total or a 20,000 or more square foot increase of water  
36.10 surface area used temporarily or permanently for docks, docking, or maneuvering of  
36.11 watercraft, the local governmental unit is the RGU.

36.12 Subp. 26. **Stream diversion.** For a diversion, realignment, or channelization of any  
36.13 designated trout stream, or affecting greater than 500 feet of natural watercourse with a total  
36.14 drainage area of ten or more square miles unless exempted by part 4410.4600, subpart 14,  
36.15 item E, or 17, the DNR or local governmental unit is the RGU.

36.16 Subp. 27. **Public waters, public waters wetlands, and wetlands.** Items A and B  
36.17 designate the RGU for the type of project listed:

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

36.22 B. For projects that will cause an impact, as defined in part 8420.0111, to a total  
36.23 of one acre or more of wetlands, regardless of type, excluding public waters wetlands, if  
36.24 any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally  
36.25 designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or

37.1 the Mississippi headwaters area, the local governmental unit is the RGU. This item does  
37.2 not apply to projects exempted by part 4410.4600, subpart 14.

37.3 Subp. 28. **Forestry.** Items A and B designate the RGU for the type of project listed:

37.4 A. For harvesting timber for commercial purposes on public lands within a state  
37.5 park, a historical area, a wilderness area, a scientific and natural area, a wild and scenic  
37.6 rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area,  
37.7 or a critical area that does not have an approved plan under Minnesota Statutes, section  
37.8 86A.09 or 116G.07, the DNR is the RGU.

37.9 B. For a clear-cutting of 80 or more contiguous acres of forest, any part of which  
37.10 is located within a shoreland area and within 100 feet of the ordinary high water mark of  
37.11 the lake or river, the DNR is the RGU.

37.12 Subp. 29. **Animal feedlots.** The PCA is the RGU for the types of projects listed in  
37.13 items A and B unless the county will issue the feedlot permit, in which case the county is  
37.14 the RGU. However, the county is not the RGU prior to January 1, 2001.

37.15 A. For the construction of an animal feedlot facility with a capacity of 1,000  
37.16 animal units or more or the expansion of an existing facility by 1,000 animal units or more  
37.17 if the facility is not in an area listed in item B.

37.18 B. For the construction of an animal feedlot facility of more than 500 animal units  
37.19 or expansion of an existing animal feedlot facility by more than 500 animal units if the  
37.20 facility is located wholly or partially in any of the following sensitive locations: shoreland;  
37.21 a delineated flood plain, except that in the flood plain of the Red River of the North the  
37.22 sensitive area includes only land within 1,000 feet of the ordinary high water mark; a state  
37.23 or federally designated wild and scenic river district; the Minnesota River Project Riverbend  
37.24 area; the Mississippi headwaters area; or an area within a drinking water supply management  
37.25 area delineated under chapter 4720 where the aquifer is identified in the wellhead protection



plan as vulnerable to contamination; or within 1,000 feet of a known sinkhole, cave, resurgent spring, disappearing spring, Karst window, blind valley, or dry valley.

The provisions of part 4410.1000, subpart 4, regarding connected actions do not apply to animal feedlots. The provisions of part 4410.1000, subpart 4, regarding phased actions apply to feedlots.

With the agreement of the proposers, the RGU may prepare a single EAW to collectively review individual sites of a multisite feedlot proposal.

**Subp. 30. Natural areas.** For projects resulting in permanent physical encroachment on lands within a national park, a state park, a wilderness area, state lands and waters within the boundaries of the Boundary Waters Canoe Area, or a scientific and natural area when the encroachment is inconsistent with laws applicable to or the management plan prepared for the recreational unit, the DNR or local governmental unit is the RGU.

**Subp. 31. Historical places.** For the destruction, in whole or part, or the moving of a property that is listed on the National Register of Historic Places or State Register of Historic Places, the permitting state agency or local governmental unit is the RGU, except this does not apply to projects reviewed under section 106 of the National Historic Preservation Act of 1966, United States Code, title 54, section 306108, or the federal policy on lands, wildlife and waterfowl refuges, and historic sites pursuant to United States Code, title 49, section 303, or projects reviewed by a local heritage preservation commission certified by the State Historic Preservation Office pursuant to Code of Federal Regulations, title 36, sections 61.5 and 61.7. This subpart does not apply to a property located within a designated historic district if the property is listed as "noncontributing" in the official district designation or if the State Historic Preservation Office issues a determination that the property is noncontributing.

**Subp. 32. Mixed residential and industrial-commercial projects.** If a project includes both residential and industrial-commercial components, the project must have an EAW

prepared if the sum of the quotient obtained by dividing the number of residential units by the applicable residential threshold of subpart 19, plus the quotient obtained by dividing the amount of industrial-commercial gross floor space by the applicable industrial-commercial threshold of subpart 14, equals or exceeds one. The local governmental unit is the RGU.

Subp. 33. **Communications towers.** For construction of a communications tower equal to or in excess of 500 feet in height, or 300 feet in height within 1,000 feet of any public water or public waters wetland or within two miles of the Mississippi, Minnesota, Red, or St. Croix rivers or Lake Superior, the local governmental unit is the RGU.

Subp. 34. **Sports or entertainment facilities.** For construction of a new sports or entertainment facility designed for or expected to accommodate a peak attendance of 5,000 or more persons, or the expansion of an existing sports or entertainment facility by this amount, the local governmental unit is the RGU.

Subp. 35. **Release of genetically engineered organisms.** For the release of a genetically engineered organism that requires a release permit from the EQB under chapter 4420, the EQB is the RGU. For all other releases of genetically engineered organisms, the RGU is the permitting state agency. This subpart does not apply to the direct medical application of genetically engineered organisms to humans or animals.

Subp. 36. **Land use conversion, including golf courses.** Items A and B designate the RGU for the type of project listed:

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 is the RGU, except that this subpart does not apply to agricultural land inside the boundary of the Metropolitan Urban Service Area established by the Metropolitan Council.

40.1 B. For projects resulting in the conversion of 640 or more acres of forest or  
40.2 naturally vegetated land to a different open space land use, the local governmental unit is  
40.3 the RGU.

40.4 Subp. 36a. **Land conversions in shoreland.**

40.5 A. For a project proposing a permanent conversion that alters 800 feet or more  
40.6 of the shoreline in a sensitive shoreland area or 1,320 feet or more of shoreline in a  
40.7 nonsensitive shoreland area, the local governmental unit is the RGU.

40.8 B. For a project proposing a permanent conversion that alters more than 50 percent  
40.9 of the shore impact zone if the alteration measures at least 5,000 square feet, the local  
40.10 governmental unit is the RGU.

40.11 C. For a project that permanently converts 20 or more acres of forested or other  
40.12 naturally vegetated land in a sensitive shoreland area or 40 or more acres of forested or  
40.13 other naturally vegetated land in a nonsensitive shoreland area, the local governmental unit  
40.14 is the RGU.

40.15 Subp. 37. **Recreational trails.** If a project listed in items A to F will be built on  
40.16 state-owned land or funded, in whole or part, by grant-in-aid funds administered by the  
40.17 DNR, the DNR is the RGU. For other projects, if a governmental unit is sponsoring the  
40.18 project, in whole or in part, that governmental unit is the RGU. If the project is not sponsored  
40.19 by a unit of government, the RGU is the local governmental unit. For purposes of this  
40.20 subpart, "existing trail" means an established corridor in current legal use.

40.21 A. Constructing a trail at least 25 miles long on forested or other naturally vegetated  
40.22 land for a recreational use, unless exempted by part 4410.4600, subpart 14, item D.

40.23 B. Designating at least 25 miles of an existing trail for a new motorized recreational  
40.24 use other than snowmobiling. When designating an existing motorized trail or existing  
40.25 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 total length of the newly constructed and newly designated segments is at least 25 miles.

C. Paving ten or more miles of an existing unpaved trail, unless exempted by part 4410.4600, subpart 27, item B or F. Paving an unpaved trail means to create a hard surface on the trail with a material impervious to water.

D. Constructing an off-highway vehicle recreation area of 80 or more acres, or expanding an off-highway vehicle recreation area by 80 or more acres, on agricultural land or forested or other naturally vegetated land.

E. Constructing an off-highway vehicle recreation area of 640 or more acres, or expanding an off-highway vehicle recreation area by 640 or more acres, if the land on which the construction or expansion is carried out is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities such as mineral mining.

F. Some recreation areas for off-highway vehicles may be constructed partially on agricultural naturally vegetated land and partially on land that is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities. In that case, an EAW must be prepared if the sum of the quotients obtained by dividing the number of acres of agricultural or naturally vegetated land by 80 and the number of acres of land that is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities by 640, equals or exceeds one.

42.1 **4410.4400 MANDATORY EIS CATEGORIES.**

42.2 Subpart 1. **Threshold test.**

42.3 A. Except as provided in item B, an EIS must be prepared for projects that meet  
42.4 or exceed the threshold of any of subparts 2 to 25 in this part. Multiple projects and multiple  
42.5 stages of a single project that are connected actions or phased actions must be considered  
42.6 in total when comparing the project or projects to the thresholds of this part.

42.7 B. For projects under part 4410.4100, environmental review is governed by  
42.8 Minnesota Statutes, chapter 216I.

42.9 Subp. 2. **Nuclear fuels and nuclear waste.** Items A to E designate the RGU for the  
42.10 type of project listed:

42.11 A. For the construction or expansion of a nuclear fuel or nuclear waste processing  
42.12 facility, including fuel fabrication facilities, reprocessing plants, and uranium mills, the  
42.13 DNR is the RGU for uranium mills; otherwise, the PCA is the RGU.

42.14 B. For construction of a high level nuclear waste disposal site, the EQB is the  
42.15 RGU.

42.16 C. For construction or expansion of an independent spent-fuel storage installation,  
42.17 the ~~Department of Commerce~~ PUC is the RGU.

42.18 D. For construction of an away-from-reactor facility for temporary storage of  
42.19 spent nuclear fuel, the PUC is the RGU.

42.20 E. For construction of a low level nuclear waste disposal site, the MDH is the  
42.21 RGU.

42.22 Subp. 3. [See repealer.]

42.23 Subp. 4. **Petroleum refineries.** For construction of a new petroleum refinery facility,  
42.24 the PCA is the RGU.

Subp. 5. **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 converting coal, peat, or biomass sources to gaseous, liquid, or solid fuels if the facility has the capacity to use 250,000 dry tons or more per year of input, the PCA is the RGU.

B. For construction of a new or expansion of an existing fuel conversion facility for the production of alcohol fuels that would have or would increase 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 is the RGU.

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

Subp. 6. [See repealer.]

Subp. 7. **Underground storage.** Items A and B designate the RGU for the type of project listed:

A. For construction of an underground storage facility for gases or liquids that requires a permit pursuant to Minnesota Statutes, section 103I.681, subdivision 1, paragraph (a), the DNR is the RGU.

B. For construction of an underground storage facility for gases or liquids, using naturally occurring rock materials, that requires a permit pursuant to Minnesota Statutes, section 103I.681, subdivision 1, paragraph (b), the DNR is the RGU.

Subp. 8. **Metallic mineral mining and processing.** Items A to C designate the RGU for the type of project listed:

44.1 A. For mineral deposit evaluation involving the extraction of 1,000 tons or more  
44.2 of material that is of interest to the proposer principally due to its radioactive characteristics,  
44.3 the DNR is the RGU.

44.4 B. For construction of a new facility for mining metallic minerals or for the disposal  
44.5 of tailings from a metallic mineral mine, the DNR is the RGU.

44.6 C. For construction of a new metallic mineral processing facility, the DNR is the  
44.7 RGU.

44.8 Subp. 9. **Nonmetallic mineral mining.** Items A to C designate the RGU for the type  
44.9 of project listed:

44.10 A. For development of a facility for the extraction or mining of peat which will  
44.11 utilize 320 acres of land or more during its existence, the DNR is the RGU.

44.12 B. For development of a facility for the extraction or mining of sand, gravel, stone,  
44.13 or other nonmetallic minerals, other than peat, which will excavate 160 acres of land or  
44.14 more to a mean depth of ten feet or more during its existence, the local governmental unit  
44.15 is the RGU.

44.16 C. For development of a facility for the extraction or mining of sand, gravel, stone,  
44.17 or other nonmetallic minerals, other than peat, which will excavate 40 or more acres of  
44.18 forested or other naturally vegetated land in a sensitive shoreland area or 80 or more acres  
44.19 of forested or other naturally vegetated land in a nonsensitive shoreland area, the local  
44.20 governmental unit is the RGU.

44.21 Subp. 10. **Paper or pulp processing.** For construction of a new paper or pulp  
44.22 processing mill, the PCA is the RGU.

44.23 Subp. 11. **Industrial, commercial, and institutional facilities.** Items A and B  
44.24 designate the RGU for the type of project listed, except as provided in items C and D:

45.1           A. For construction of a new or expansion of an existing warehousing or light  
45.2 industrial facility equal to or in excess of the following thresholds, expressed as gross floor  
45.3 space, the local governmental unit is the RGU:

45.4           (1) unincorporated area, 375,000 square feet;

45.5           (2) third or fourth class city, 750,000 square feet;

45.6           (3) second class city, 1,000,000 square feet; and

45.7           (4) first class city, 1,500,000 square feet.

45.8           B. For construction of a new or expansion of an existing industrial, commercial,  
45.9 or institutional facility, other than a warehousing or light industrial facility, equal to or in  
45.10 excess of the following thresholds, expressed as gross floor space, the local governmental  
45.11 unit is the RGU:

45.12           (1) unincorporated area, 250,000 square feet;

45.13           (2) third or fourth class city, 500,000 square feet;

45.14           (3) second class city, 750,000 square feet; and

45.15           (4) first class city, 1,000,000 square feet.

45.16           C. This subpart applies to any industrial, commercial, or institutional project which  
45.17 includes multiple components, if there are mandatory categories specified in subparts 2 to  
45.18 10, 12, 13, 15, or 17, or part 4410.4300, subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29 for  
45.19 two or more of the components, regardless of whether the project in question meets or  
45.20 exceeds any threshold specified in those subparts. In those cases, the entire project must be  
45.21 compared to the thresholds specified in items A and B to determine the need for an EIS. If  
45.22 the project meets or exceeds the thresholds specified in any other subparts as well as those  
45.23 in item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.



D. This subpart does not apply to projects for which there is a single mandatory category specified in subparts 2 to 10, 12, 13, 17, or 22, or part 4410.4300, subparts 2 to 13, 16, 17, 20, 23, 25, 29, or 34, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an EIS or an EAW must be determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.

Subp. 12. **Hazardous waste.** Items A to C designate the RGU for the type of project listed:

A. For construction or expansion of a hazardous waste disposal facility for 1,000 or more kilograms per month, the PCA is the RGU.

B. For the construction or expansion of a hazardous waste 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 facility for hazardous waste 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 is the RGU.

Subp. 13. **Solid waste.** Items A to E designate the RGU for the type of project listed:

A. For construction of a mixed municipal solid waste land disposal facility for 100,000 cubic yards or more of waste fill per year, the PCA is the RGU.

B. For construction or expansion of a mixed municipal solid waste land disposal facility 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 use of an existing facility for the combustion of mixed municipal

47.1 solid waste or refuse-derived fuel with a permitted capacity of 250 tons or more per day of  
47.2 input, the PCA is the RGU.

47.3 D. For construction or expansion of a mixed municipal solid waste compost facility  
47.4 or a refuse-derived fuel production facility when the construction or expansion results in a  
47.5 facility with a permitted capacity of 500 tons or more per day of input, the PCA is the RGU.

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

47.9 Subp. 14. **Residential development.** An EIS is required for residential development  
47.10 if the total number of units that the proposer may ultimately develop on all contiguous land  
47.11 owned by the proposer or for which the proposer has an option to purchase, except land  
47.12 identified by an applicable comprehensive plan, ordinance, resolution, or agreement of a  
47.13 local governmental unit for a future use other than residential development, equals or exceeds  
47.14 a threshold of this subpart. In counting the total number of ultimate units, the RGU shall  
47.15 include the number of units in any plans of the proposer; for land for which the proposer  
47.16 has not yet prepared plans, the RGU shall use as the number of units the product of the  
47.17 number of acres multiplied by the maximum number of units per acre allowable under the  
47.18 applicable zoning ordinance, or if the maximum number of units allowable per acre is not  
47.19 specified in an applicable zoning ordinance, by the overall average number of units per acre  
47.20 indicated in the plans of the proposer for those lands for which plans exist. If the total project  
47.21 requires review but future phases are uncertain, the RGU may review the ultimate project  
47.22 sequentially in accordance with part 4410.2000, subpart 4.

47.23 The RGU may review an initial stage of the project, that may not exceed ten percent  
47.24 of the applicable EIS threshold, by means of the procedures of parts 4410.1200 to  
47.25 4410.1700 instead of the procedures of parts 4410.2000 to 4410.2800. If the RGU determines

that this stage requires preparation of an EIS under part 4410.1700, it may be reviewed through a separate EIS or through an EIS that also covers later stages of the project.

If a project consists of mixed unattached and attached units, an EIS must be prepared if the sum of the quotient obtained by dividing the number of unattached units by the applicable unattached unit threshold, plus the quotient obtained by dividing the number of attached units by the applicable attached unit threshold, equals or exceeds one.

The local governmental unit is the RGU for construction of a permanent or potentially permanent residential development of:

A. 100 or more unattached or 150 or more attached units in an unsewered unincorporated area or 400 unattached units or 600 attached units in a sewerer unincorporated area;

B. 400 unattached units or 600 attached units in a city that does not meet the conditions of item D;

C. 400 unattached units or 600 attached units in a city meeting the conditions of item D if the project is not consistent with the adopted comprehensive plan; or

D. 1,000 unattached units or 1,500 attached units in a city within the seven-county Twin Cities metropolitan area that has adopted a comprehensive plan under Minnesota Statutes, section 473.859, or in a city not located within the seven-county Twin Cities metropolitan area that has filed with the EQB chair a certification that it has adopted a comprehensive plan containing the following elements:

(1) a land use plan designating the existing and proposed location, intensity, and extent of use of land and water for residential, industrial, agricultural, and other public and private purposes;

(2) a transportation plan describing, designating, and scheduling the location, extent, function, and capacity of existing and proposed local public and private transportation facilities and services;

(3) a sewage collection system policy plan describing, designating, and scheduling the areas to be served by the public system, the existing and planned capacities of the public system, and the standards and conditions under which the installation of private sewage treatment systems will be permitted;

(4) a capital improvements plan for public facilities; and

(5) an implementation plan describing public programs, fiscal devices, and other actions to be undertaken to implement the comprehensive plan, and a description of official controls addressing the matters of zoning, subdivision, private sewage systems, and a schedule for the implementation of the controls. The EQB chair may specify the form to be used for making a certification under this item.

**Subp. 14a. Residential development in shoreland outside of the seven-county Twin Cities metropolitan area.**

A. The local governmental unit is the RGU for construction of a permanent or potentially permanent residential development located wholly or partially in shoreland outside the seven-county Twin Cities metropolitan area of a type listed in items B to D. For purposes of this subpart, "riparian unit" means a unit in a development that abuts a public water or, in the case of a development where units are not allowed to abut the public water, is located in the first tier of the development as provided under part 6120.3800, subpart 4, item A. If a project is located partially in a sensitive shoreland area and partially in nonsensitive shoreland areas, an EIS must be prepared if the sum of the quotient obtained by dividing the number of units in the sensitive shoreland area by the applicable sensitive shoreland area threshold, plus the quotient obtained by dividing the number of units in nonsensitive shoreland areas by the applicable nonsensitive shoreland area threshold, equals

or exceeds one. If a project is located partially in shoreland and partially not in shoreland, an EIS must be prepared if the sum of the quotients obtained by dividing the number of units in each type of area by the applicable threshold for each area equals or exceeds one.

B. A development containing 50 or more unattached or attached units for a sensitive shoreland area or 100 or more unattached or attached units for a nonsensitive shoreland area, if any of the following conditions is present:

(1) less than 50 percent of the area in shoreland is common open space;

(2) the number of riparian units exceeds by at least 15 percent the number of riparian lots that would be allowable calculated according to the applicable lot area and width standards for riparian unsewered single lots under part 6120.3300, subparts 2a and 2b; or

(3) any portion of the project is in an unincorporated area.

C. A development of 100 or more unattached or attached units for a sensitive shoreland area or 200 or more unattached or attached units for a nonsensitive shoreland area, if none of the conditions listed in item B is present.

D. A development creating 20 or more unattached or attached units for a sensitive shoreland area or 40 or more unattached or attached units for a nonsensitive shoreland area by the conversion of a resort, motel, hotel, recreational vehicle park, or campground, if either of the following conditions is present:

(1) the number of nonriparian units in shoreland exceeds by at least 15 percent the number of lots that would be allowable on the parcel calculated according to the applicable lot area and width standards for nonriparian unsewered single lots under part 6120.3300, subparts 2a and 2b; or

(2) the number of riparian units exceeds by at least 15 percent the number of riparian lots that would be allowable calculated according to the applicable lot area and

51.1 width standards for riparian unsewered single lots under part 6120.3300, subparts 2a and  
51.2 2b.

51.3 E. An EIS is required for residential development if the total number of units that  
51.4 the proposer may ultimately develop on all contiguous land owned by the proposer or for  
51.5 which the proposer has an option to purchase, except land identified by an applicable  
51.6 comprehensive plan, ordinance, resolution, or agreement of a local governmental unit for  
51.7 a future use other than residential development, equals or exceeds a threshold of this subpart.  
51.8 In counting the total number of ultimate units, the RGU shall include the number of units  
51.9 in any plans of the proposer. For land for which the proposer has not yet prepared plans,  
51.10 the RGU shall use as the number of units the number of acres multiplied by the maximum  
51.11 number of units per acre allowable under the applicable zoning ordinance or, if the maximum  
51.12 number of units allowable per acre is not specified in an applicable zoning ordinance, by  
51.13 the overall average number of units per acre indicated in the plans of the proposer for those  
51.14 lands for which plans exist.

51.15 Subp. 15. **Airport runway projects.** For construction of a paved and lighted airport  
51.16 runway of 5,000 feet of length or greater, the DOT or local governmental unit is the RGU.

51.17 Subp. 16. **Highway projects.** For construction of a road on a new location which is  
51.18 four or more lanes in width and two or more miles in length, the DOT or local governmental  
51.19 unit is the RGU.

51.20 Subp. 17. **Barge fleeting facilities.** For construction of a barge fleeting facility at a  
51.21 new off-channel location that involves the dredging of 1,000 or more cubic yards, the DOT  
51.22 or port authority is the RGU.

51.23 Subp. 18. **Water appropriation and impoundments.** For construction of a Class I  
51.24 dam, the DNR is the RGU.

52.1 Subp. 19. **Marinas.** For construction of a new or expansion of an existing marina,  
52.2 harbor, or mooring project on a state or federally designated wild and scenic river, the local  
52.3 governmental unit is the RGU.

52.4 Subp. 20. **Public waters and public water wetlands.** For projects that will eliminate  
52.5 a public water or public waters wetland, the DNR or the local governmental unit is the RGU.

52.6 Subp. 21. **Mixed residential and commercial-industrial projects.** If a project includes  
52.7 both residential and commercial-industrial components, the project must have an EIS  
52.8 prepared if the sum of the quotient obtained by dividing the number of residential units by  
52.9 the applicable residential threshold of subpart 14, plus the quotient obtained by dividing  
52.10 the amount of industrial-commercial gross floor space by the applicable industrial-commercial  
52.11 threshold of subpart 11, equals or exceeds one.

52.12 Subp. 22. **Sports or entertainment facilities.** For construction of a new outdoor  
52.13 sports or entertainment facility designed for or expected to accommodate a peak attendance  
52.14 of 20,000 or more persons or a new indoor sports or entertainment facility designed for or  
52.15 expected to accommodate a peak attendance of 30,000 or more persons, or the expansion  
52.16 of an existing facility by these amounts, the local governmental unit is the RGU.

52.17 Subp. 23. **Water diversions.** For a diversion of waters of the state to an ultimate  
52.18 location outside the state in an amount equal to or greater than 2,000,000 gallons per day,  
52.19 expressed as a daily average over any 30-day period, the DNR is the RGU.

52.20 Subp. 24. **Pipelines.** For routing of a pipeline subject to the full route selection  
52.21 procedures under Minnesota Statutes, section 216G.02, the Public Utilities Commission is  
52.22 the RGU.

52.23 Subp. 24a. **Carbon dioxide pipelines.** For permitting the route of a carbon dioxide  
52.24 pipeline, the PUC is the RGU.

53.1 Subp. 25. **Incinerating wastes containing PCBs.** For incinerating wastes containing  
53.2 PCBs for which an EIS is required by Minnesota Statutes, section 116.38, subdivision 2,  
53.3 the PCA is the RGU.

53.4 Subp. 26. **Resorts, campgrounds, and RV parks in shorelands.** For construction  
53.5 or expansion of a resort or other seasonal or permanent recreational development located  
53.6 wholly or partially in shoreland, accessible by vehicle, adding 100 or more units or sites in  
53.7 a sensitive shoreland area or 200 or more units or sites in a nonsensitive shoreland area, the  
53.8 local governmental unit is the RGU. If a project is located partially in a sensitive shoreland  
53.9 area and partially in nonsensitive shoreland areas, an EIS must be prepared if the sum of  
53.10 the quotient obtained by dividing the number of units in the sensitive shoreland area by the  
53.11 applicable sensitive shoreland area threshold, plus the quotient obtained by dividing the  
53.12 number of units in nonsensitive shoreland areas by the applicable nonsensitive shoreland  
53.13 area threshold, equals or exceeds one. If a project is located partially in shoreland and  
53.14 partially not in shoreland, an EIS must be prepared if the sum of the quotients obtained by  
53.15 dividing the number of units in each type of area by the applicable threshold for each area  
53.16 equals or exceeds one.

53.17 Subp. 27. **Land conversion in shorelands.** For a project that permanently converts  
53.18 40 or more acres of forested or other naturally vegetated land in a sensitive shoreland area  
53.19 or 80 or more acres of forested or other naturally vegetated land in a nonsensitive shoreland  
53.20 area, the local governmental unit is the RGU.

53.21 Subp. 28. **Genetically engineered wild rice.** For the release and a permit for a release  
53.22 of genetically engineered wild rice for which an EIS is required by Minnesota Statutes,  
53.23 section 116C.94, subdivision 1, paragraph (b), the EQB is the RGU.



54.1 **4410.5200 EQB MONITOR; PUBLICATION REQUIREMENTS.**

54.2 Subpart 1. **Required notices.** Governmental units are required to publish notice of  
54.3 the items listed in items A to R in the EQB Monitor, except that this part constitutes a request  
54.4 and not a requirement with respect to federal agencies.

54.5 A. When a project has been noticed according to item D, separate notice of  
54.6 individual permits required by that project need not be made unless changes in the project  
54.7 are proposed that will involve new and potentially significant environmental effects not  
54.8 considered previously. No decision granting a permit application for which notice is required  
54.9 to be published by this part is effective until 30 days following publication of the notice.

54.10 (1) For all public hearings conducted pursuant to water resources permit  
54.11 applications, Minnesota Statutes, chapter 103G, the DNR is the permitting authority.

54.12 (2) For notice of public sales of permits for or leases to mine iron ore,  
54.13 copper-nickel, or other minerals on state-owned or administered mineral rights, Minnesota  
54.14 Statutes, sections 93.16 and 93.335, and part 6125.0500, the DNR is the permitting authority.

54.15 (3) For section 401 certifications, United States Code 1976, title 33, section  
54.16 1341, and Minnesota Statutes, section 115.03, the PCA is the permitting authority.

54.17 (4) For construction of a public use airport, Minnesota Statutes, section  
54.18 360.018, subdivision 6, the DOT is the permitting authority.

54.19 B. Impending projects proposed by state agencies when the proposed project may  
54.20 have the potential for significant environmental effects.

54.21 C. Notice of the decision on the need for an EAW pursuant to part 4410.1100,  
54.22 subpart 6.

54.23 D. Notice of the availability of a completed EAW pursuant to part 4410.1500,  
54.24 item A.

- 55.1 E. RGU's decision on the need to prepare an EIS pursuant to part 4410.1700,  
55.2 subpart 2, item D.
- 55.3 F. Notice of the time, place, and date of the EIS scoping meeting pursuant to part  
55.4 4410.2100, subpart 2, items A, subitem (2) and B, subitem (1).
- 55.5 G. EIS preparation notices pursuant to part 4410.2100, subpart 9.
- 55.6 H. Amendments to the EIS scoping decision pursuant to part 4410.2100, subpart  
55.7 8.
- 55.8 I. Availability of draft and final EIS pursuant to parts 4410.2600, subpart 5 and  
55.9 4410.2700, subpart 4.
- 55.10 J. Notice of draft EIS informational meetings to be held pursuant to part 4410.2600,  
55.11 subpart 7.
- 55.12 K. RGU's adequacy decision of the final EIS pursuant to part 4410.2800, subpart  
55.13 6.
- 55.14 L. Notice of activities undergoing environmental review under alternative review  
55.15 processes pursuant to part 4410.3600, subpart 1, item F.
- 55.16 M. Adoption of model ordinances pursuant to part 4410.3700, subpart 2.
- 55.17 N. Environmental analyses prepared under adopted model ordinances pursuant  
55.18 to part 4410.3700, subpart 3.
- 55.19 O. Notice of the application for a certificate of need for a large energy facility,  
55.20 pursuant to Minnesota Statutes, section 216B.243.
- 55.21 P. Notice of the availability of a draft alternative urban areawide review document.
- 55.22 Q. Notice of the adoption of a final alternative urban areawide review document.
- 55.23 R. Notice of other actions that the EQB may specify by resolution.

56.1 Subp. 2. **Optional notices.** Governmental units may publish notices of general interest  
56.2 or information in the EQB Monitor.

56.3 Subp. 3. **Required EQB notices.** The EQB is required to publish the following in the  
56.4 EQB Monitor:

56.5 A. receipt of a valid petition and assignment of a RGU pursuant to part 4410.1100,  
56.6 subparts 3 and 5;

56.7 B. decision by the EQB that it will determine the adequacy of a final EIS pursuant  
56.8 to part 4410.2800, item A;

56.9 C. EQB's adequacy decision of the final EIS pursuant to part 4410.2800, item G;

56.10 D. receipt by the EQB of an application for a variance pursuant to part 4410.3100,  
56.11 subpart 4, item D;

56.12 E. the EQB's decision to hold public hearings on a recommended critical area  
56.13 pursuant to Minnesota Statutes, section 116G.06, subdivision 1, clause (c);

56.14 F. notice of application for a site permit for a large electric power generating plant  
56.15 or a route permit for a high voltage transmission line pursuant to Minnesota Statutes, chapter  
56.16 ~~216E~~ 216I;

56.17 G. receipt of a consolidated permit application pursuant to part 4350.3030, subpart  
56.18 1; and

56.19 H. notice of the availability of an environmental report, pursuant to part 7849.1400,  
56.20 subpart 10.

56.21 **REPEALER.** Minnesota Rules, parts 4410.0200, subparts 40 and 42; 4410.4300, subpart  
56.22 6; and 4410.4400, subparts 3 and 6, are repealed.

# Environmental Review: Conformance with Energy Infrastructure Permitting Act and related changes

## Rule summary and justification memo

### Purpose of rulemaking

In 2024, the Minnesota legislature made changes to the environmental review of certain energy projects.<sup>1</sup> The Legislature also directed the Minnesota Environmental Quality Board (“EQB”) to use the expedited rule process to conform its environmental review rules with the changes made.<sup>2</sup> This rulemaking consists of amendments necessary to conform to the 2024 changes.

### Minnesota Energy Infrastructure Permitting Act

The Legislature called the changes that it made to energy project environmental review and permitting the Minnesota Energy Infrastructure Permitting Act (“Act”). The Act represented a legislative effort to resolve issues arising from the patchwork of statutes and rules governing energy project permitting, by consolidating most of these authorities into a single statute, Minnesota Statutes Chapter 216I, and repealing redundant statutes and rules. The goal was to streamline and clarify the review and permitting requirements for certain kinds of energy infrastructure projects. Many of the Act’s provisions went into effect on July 1, 2025.

The Act establishes a process for site and route permitting and associated environmental review for “large energy infrastructure facilities”<sup>3</sup> and requires that large energy projects will now undergo environmental review as directed by Minn. Stat. ch. 216I. Under Minn. Stat. ch. 216I, the Public Utilities Commission (PUC) will generally do environmental review for large energy infrastructure facilities, although review can be done by local governmental units for certain smaller projects that still qualify as large energy infrastructure facility projects.

In passing the statute and requiring EQB to conform its rule to the new provisions using the expedited process, the Legislature did not authorize EQB to add any additional environmental review categories for energy projects covered by the Act. The Act states that the environmental review documents required by Minn. Stat. ch. 216I are the only state environmental review documents that must be prepared for a proposed energy project within the scope of Minn. Stat. ch. 216I. See Minn. Stat. § 216I.06, subd. 1 (“[n]o other state environmental review documents are required”); Minn. Stat. § 216I.07, subd. 3 (“[t]he environmental assessment is the only state environmental review document that must be prepared for the proposed project”).

---

<sup>1</sup> These changes were passed as two identical bills, Minn. Laws 2024, Chapter 127, Art. 43, and Minn. Laws 2024, Chapter 126, Art. 7. This document will cite to Chapter 126.

<sup>2</sup> Minn. Laws 2024, Chapter 126, Art. 9, Sec. 19.

<sup>3</sup> The Act defines large energy infrastructure facility to include certain high-voltage transmission lines, large electric power generating plants, energy storage systems, large wind energy systems, and any associated facilities. It also covers solar energy generating systems.

To conform EQB rules with the new and revised requirements for environmental review of energy projects set out in statute, the EQB proposes to amend Minn. R. ch. 4410 to remove redundant environmental review mandatory categories and to adopt a new provision within Minn. R. ch. 4410 that will direct the public to the alternative environmental review process under the new statute, i.e., a “clearinghouse” provision. The EQB concludes this amendment will best address the legislative goal of the Act, which was to eliminate confusing and redundant review provisions. The EQB proposes to retain certain energy project environmental review provisions currently in EQB’s rules that were not affected by the Act.

## Other environmental review changes

The same session law (Laws 2024, Chapter 126, article 9, section 17)<sup>4</sup> included one new environmental review requirement that is not addressed in Minn. Stat. ch. 216I or in the EQB’s environmental review rules. The legislature mandated, through changes to Minn. Stat. § 216G.025, that carbon dioxide pipeline projects be the subject of an EIS before they are permitted. The EQB also proposes addressing this new requirement.

In addition, the legislature amended Minn. Stat. § 116C.83, subd. 6 to change the RGU for a required EIS for any proposal to construct or expand an independent spent-fuel storage installation at a nuclear power plant from the Department of Commerce to the PUC (Laws 2024, Chapter 126, article 9, section 2).<sup>5</sup> This is consistent with the parts of the law that transferred the responsibility for administering the environmental analysis of certain energy projects from the Department of Commerce to the PUC as of July 1, 2025. The EQB is therefore also proposing to update the RGU designation in Minn. R. 4410.4400.

## History of energy permitting and environmental review

Environmental review of energy projects has a long and complicated history. In 1973, the Legislature enacted the Power Plant Siting Act (then codified in Minn. Stat. ch. 116C) and gave EQB the responsibility for siting power plants and transmission lines. Until 2005, the EQB’s rules governed siting power plants, wind energy conversion systems, and high voltage transmission lines. The EQB had the responsibility for conducting hearings, completing environmental review (using an environmental assessment document that was specific to large electric generating plants and high voltage transmission lines), and issuing permits. The EQB rules addressing these procedures were codified as Minn. R. ch. 4400 and the EQB occasionally amended the rules as the energy infrastructure permitting process changed.

In 2005, the legislature transferred responsibility for the siting of energy facilities to the PUC. This included transferring the Power Plant Siting Act from Minn. Stat. ch. 116C to Minn. Stat. ch. 216E, and transferring statutes on wind energy systems from Minn. Stat. ch. 116C to Minn. Stat. ch. 216F. The Legislature also transferred EQB’s rules into chapters subject to the authority of the PUC, i.e., Minn. R. chs. 7849 and 7850 for power plant siting and Minn. R. ch. 7854 for wind energy conversion systems. The Legislature designated Department of Commerce staff as responsible for environmental review, supporting the PUC as the RGU.

After these actions, EQB adapted its general environmental review rules, Minn. R. ch. 4410, to identify those energy projects that needed environmental review, but noted that the review would take place under the processes laid out in PUC rules (Minn. R. chs. 7849, 7850, and 7854) and in various statutes (Minn. Stat. chs. 216B, 216E, and 216F). These rules and statutes continued to use alternative environmental review processes, such as the use of an environmental assessment (“EA”) in lieu of an environmental assessment worksheet (“EAW”).

As noted above, by 2023, the statutes and rules governing thresholds and responsibility for environmental review and permitting for energy facilities existed in multiple complex and overlapping spaces.

---

<sup>4</sup> Also Laws of Minnesota 2024, Chapter 127, Article 45, Section 17.

<sup>5</sup> Also Laws of Minnesota 2024, Chapter 127, Article 45, Section 2.

In 2023, the PUC convened state, industry and environmental stakeholders to discuss and offer solutions to streamline the permitting process for energy infrastructure projects. The stakeholder meetings resulted in a report, titled [Permitting Reform Stakeholder Report to Minnesota Public Utilities Commission](#), prepared by Lipschultz Communications & Energy Consulting. This report identified issues within the permitting process and proposed operational reforms. The Act incorporated many of these proposed reforms.

The Act did not address pipelines generally, although carbon dioxide pipelines were addressed in a concurrent legislative enactment. As discussed below in more detail, the EQB is proposing that the present rulemaking address environmental review of carbon dioxide pipelines, but not other pipelines.

## Permitting and environmental review under Minn. Stat. ch. 216I

The new Minn. Stat. ch. 216I statutory language divides large energy infrastructure facility project permitting into three tracks: “major review,” “standard review,” and “local review.” Project applications may go through a different type of review (Environmental Impact Statement or Environmental Assessment) depending on the specific project characteristics or based on the request of a project proposer. Depending on the project there can be different requirements for environmental review and permitting for similar project types. Many of these project types are not reflected in EQB’s current rules.

### 1. Major review: Minn. Stat. § 216I.06

- Major review applies to applicants seeking to permit a large energy infrastructure facility. Major review requires the PUC to prepare an Environmental Impact Statement (EIS) and hold a public hearing with an administrative law judge presiding and preparing a report.
- Major review is mandatory for energy generating facilities using nonrenewable fuels with a capacity of 80 MW or greater and high-voltage transmission lines (“HVTLS”) over 300 kilovolts (kV) with 30 miles or more of length in Minnesota, or if the proposed HVTL will be sited such that more than 20% will need a new HVTL right of way.

### 2. Standard review: Minn. Stat. § 216I.07

- Under the standard review process, an applicant for a large energy infrastructure facility site or route permit notifies the PUC that it has elected to follow the “standard process” and submits an Environmental Assessment (EA) to the PUC as part of its site or route permit application. The PUC can ask for additional information during the permitting process. The standard process requires a public hearing. The PUC may request an administrative law judge to preside over the hearing, but an administrative law judge hearing and report is not mandatory.
- The following facilities are eligible for standard review: All solar energy, large wind energy conversion, and energy storage systems; all generating plants fueled by natural gas or with a capacity of less than 80 MW; HVTLS between 100 kV and 300 kV; and HVTLS in excess of 300 kV that (1) have less than 30 miles of length in Minnesota or (2) locate 80% of the proposed line along existing HVTL right of way.

### 3. Local review: Minn. Stat. § 216I.08

- In lieu of applying to the PUC for a site or route permit, an applicant may seek approval under this section from a local unit of government and use the EA process (either prepared by the local unit or the applicant) for environmental review for qualifying projects. The statute provides that the local unit may ask the PUC to take over within 60 days of receipt of the application. When the EA is complete, the public may comment on the document, and a copy is provided to the PUC.

- The following facilities are eligible for local review: large electric power generating plants and solar energy generating systems with a capacity of less than 80 megawatts (MW); large electric power generating plants of any size that burn natural gas and are intended to be a peaking plant; high-voltage transmission lines with a capacity between 100 and 200 kV; substations with a voltage designed for and capable of operation at a nominal voltage of 100 kV or more; a high-voltage transmission line service extension to a single customer between 200 and 300 kV and less than ten miles in length; a high-voltage transmission line rerouting to serve the demand of a single customer, if at least 80 percent of the rerouted line is located on property owned or controlled by the customer or the owner of the transmission line; energy storage systems; and large wind energy conversion systems with a capacity less than 25 MW.

## Rulemaking

### Legislative directive

The legislature, in Laws of Minnesota 2024, Chapter 126, Article 9, Sec. 19, mandated that the EQB undertake expedited rulemaking to conform the rule with the statute and other changes made in the session law, saying: *“The Environmental Quality Board must adopt rules, using the expedited process under Minnesota Statutes, section 14.389, that amend Minnesota Rules, chapter 4410, to conform with the changes made in this act.”* Based on this directive, EQB staff began working on the rule changes proposed here.<sup>6</sup>

### EQB’s current rules do not conform to Minn. Stat. ch. 216I

The environmental review rules in Minn. R. ch. 4410 contain “mandatory categories” that specify the form of the required environmental review document (environmental assessment worksheet (“EAW”) or environmental impact statement (“EIS”)) and the responsible governmental unit (RGU) for projects that meet or exceed specified thresholds based on project size or other characteristics.

Although EQB’s rules cover environmental review for certain types of energy projects, the rules (1) do not address all the projects now covered by Minn. Stat. ch. 216I, (2) use different descriptions and thresholds for environmental review, (3) cite to repealed rules and statutes or to rules that will likely be amended in the future to conform to the new review and permitting process established in Minn. Stat. ch. 216I and (4) don’t allow use of the processes authorized by Minn. Stat. ch. 216I such as “standard review” and “local review.”

### Projects not addressed by current EQB rules

Minn. Stat. ch. 216I defines and includes “energy storage system” projects as “large energy infrastructure facility” projects subject to permitting and review. EQB’s current rules do not address “energy storage system” projects. Similarly, Minn. Stat. ch. 216I specifically addresses solar energy generation projects and provides different pathways for review of these projects. EQB’s current rules do not address solar energy generation projects, except as an “electric-generating facility” required to be the subject of an EAW.

---

<sup>6</sup> Because the Legislature adopted the rulemaking authority as a separate article, the EQB believes the word “act” as used in this provision refers broadly to legislative changes made in Minn. Laws 2024, Chapter 126, and not just those in Article 7, including the carbon dioxide pipeline provision and spent-fuel storage provision.

## Different descriptions and thresholds and references to repealed rules and statutes

One of the areas where EQB's rules are now most problematic involves the mandatory review categories for electric-generating facilities and transmission lines. The way projects are described is not consistent with the new statutory chapter, the rules refer environmental review to PUC rules and statutes that are repealed or likely to be changed, and generally the rules do not conform to the environmental review process for major, standard, and local project specifics authorized by Minn. Stat. ch. 216I. The enactment of Minn. Stat. ch. 216I also exacerbated an existing problem with the EQB's rules: classifying certain energy projects under the mandatory EAW category (Minn. R. 4410.4300) but requiring, in the individual project descriptions, the use of a non-EAW document as directed by PUC rules.

### **Minn. R. 4410.4300 and 4410.4400, subp. 3, Electric-generating facilities review**

The mandatory EAW category for electric-generating facilities includes:

- A. For construction of an electric power generating plant and associated facilities designed for or capable of operating at a capacity of 25 megawatts 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 plant and associated facilities designed for and capable of operating at a capacity of 25 megawatts or more but less than 50 megawatts and for which an air permit from the PCA is not required, the local governmental unit is the RGU.
- C. For construction of an electric power generating plant and associated facilities designed for and capable of operating at a capacity of 50 megawatts or more, the PUC is the RGU, and environmental review must be conducted according to parts [7849.1000](#) to [7849.2100](#) and chapter 7850.
- D. For construction of a wind energy conversion system, as defined in Minnesota Statutes, section [216F.01](#), designed for and capable of operating at a capacity of 25 megawatts or more, the PUC is the RGU, and environmental review must be conducted according to chapter 7854.

EQB's rules place certain projects now defined in Minn. Stat. ch. 216I as a "large electric power generating plant" projects into the "electric-generating facilities" mandatory EAW category (items C and D above) but the rules indicate that the process for environmental review is defined by Minn. R. ch. 7849 and 7850. Minn. R. ch. 7850 has now been repealed. Moreover, Minn. Stat. ch. 216I provides different documents and pathways for review, as described in more detail above. Some large electric power generating facility projects may be reviewed with an EIS, and some with an "environmental assessment."

EQB's rule treatment of "wind energy conversion system" projects is similarly problematic. EQB's rule (Item D) now references a repealed definition in Minn. Stat. ch. 216F and requires an EAW for a system 25 MW or more but using the process in Minn. R. ch. 7854. However, under the definition in Minn. R. ch. 7854 (which is also repealed), this process applies to wind energy conversion systems greater than 5 MW or more. The Minn. R. ch. 7854 review process involves an "analysis of the potential impacts of the projects, proposed mitigative measures, and any adverse environmental effects that cannot be avoided" with regard to certain categories of potential impacts, which is not a classic EAW. See Minn. R. 7854.0500, subp. 7. Under Minn. Stat. ch. 216I, a "large" wind energy project is 5 MW or more (not 25 MW or more), but large wind energy conversion system projects are eligible to be managed as "standard" projects using an "environmental assessment" as described above.



Finally, EQB rules require an EIS for a “large electric power generating plant.” Minn. R. 4410.4400, subp. 3. The definition of “large electric power generating plant” in Minn. R. 4410.0200, subp. 41 refers to the definition in Minn. R. 7849.1100, a rule that will likely be amended. But the mandatory category rule for a “large electric power generating plant” refers to a definition in Minnesota Statutes, section 216E.01, subdivision 5. Minn. Stat. ch. 216E is repealed. The Minn. R. 7849.1100 definition specifically includes transmission lines directly associated with the plant that are necessary to interconnect the plant to the transmission system, while Minn. Stat. ch. 216I includes transmission lines in projects as “associated facilities,” but limits those lines as those “designed for and capable of operating at 100 kilovolts or less.” These different definitions create the potential for confusion regarding what is part of the review. Further, the EIS mandatory category rule refers to the process for environmental review described in PUC rules which have either been repealed (Minn. R. ch. 7850) or will likely be amended (Minn. R. ch. 7849). The EQB rules do not authorize the environmental review processes now allowed under Minn. Stat. ch. 216I (major, standard and local review).

#### **Minn. R. 4410.4300 and 4410.4400, subp. 6, transmission line review**

EQB rules define “high voltage transmission line” by referencing Minn. R. 7849.1100 (200 kV or more), which is not consistent with how high voltage transmission lines are now defined under Minn. Stat. ch. 216I (100 kV or more). The mandatory EAW category references a different definition—Minn. R. 7050.1000—which is now repealed. The mandatory EIS category also references the repealed definition and directs environmental review to PUC rules that are repealed or likely to be changed because they are not consistent with Minn. Stat. ch. 216I.

In short, while some projects requiring review under the EQB’s current rules appear consistent in size with projects requiring review under Minn. Stat. ch. 216I, neither the existing EQB rules nor the rules referenced in EQB’s rules reflect the new permitting and review process in Minn. Stat. ch. 216I and therefore conforming changes are needed.

### **Proposed environmental review rule changes**

The goal of the Act, as stated above, was to streamline and clarify review and permitting requirements for certain kinds of energy infrastructure facilities. Many of the law’s provisions—including sections repealing certain statutes and rules—went into effect on July 1, 2025. Outside of specific energy infrastructure permitting, the legislature made two additional changes to environmental review requirements to which EQB’s rules should be conformed: requiring carbon dioxide pipelines permitting to include an EIS and changing the RGU for spent-fuel storage projects.

In total, EQB’s environmental review rules require changes to address:

- References to repealed authorities: Minn. R. ch. 4410 contains references to repealed rules and statutes.
- References to permitting processes now found in Minn. Stat. ch. 216I: Minn. Stat. ch. 216I defines the types and sizes of projects which require review using an EIS or a EA. Current EQB rules require environmental review of projects that are defined differently than under Minn. Stat. ch. 216I and do not specifically address the differences in processes.
- References to RGUs: Minn. Stat. ch. 216I has made the PUC the RGU for most projects but allows local review in some cases. Current EQB rules do not address this change in RGU designation. The 2024 legislation also changed the RGU for the spent-fuel storage category in Minn. R. 4410.4400.
- Reference to carbon dioxide pipeline environmental review: In Minn. Laws 2024, ch. 126, article 9, section 17, the Legislature added the requirement for an EIS to be conducted for carbon dioxide pipelines before the PUC issues a routing permit as an amendment to Minn. Stat. ch. 216G.

## Coordination and information sharing

EQB staff began the rule development process by reviewing the new statute and session law in coordination with other affected agencies, primarily Commerce and PUC but also the Minnesota Pollution Control Agency. The EQB staff also discussed the need for rulemaking at the following meetings with environmental review program and state government partners:

- EQB Technical Representatives meeting June 2, 2025.<sup>7</sup>
- EQB Technical Representatives meeting June 30, 2025.
  - At this meeting, the EQB staff discussed the option for amending the EQB rules under consideration.
- EQB Technical Representatives meeting Aug. 4, 2025.

Under EQB's tribal coordination and consultation policy, EQB staff regularly share information with staff of Tribal governments and entities about the EQB's project, program, and policy development work, and identify those areas of work likely to be matters that have Tribal implications. EQB staff did not identify this rulemaking as a matter that has tribal implications, because the substantive changes were made by the legislature. However, EQB did share updates on the rulemaking process with Tribal representatives.

- Minnesota Tribal Environmental Council (MNTEC) regular meeting on December 13, 2024.
- Minnesota Tribal Environmental Council (MNTEC) regular meeting on February 13, 2025.
- A meeting with MNTEC and other Tribal representatives on June 26, 2025.
  - At this meeting staff explained the possible conforming changes to Minn. R. ch. 4410.
- On July 1, 2025, the Executive Director sent a letter to all Tribes in Minnesota providing updates and offering the opportunity for consultation on several EQB projects, including this rulemaking.

Throughout the process, EQB staff made efforts to provide information to the public, including placing the following language on its website (March 5, 2025):

*Energy infrastructure permitting (expedited)*

*In 2024, the Minnesota Legislature passed the Minnesota Energy Infrastructure Permitting Act. This legislation aims to streamline and clarify the process for environmental review, siting, routing jurisdiction, and permitting for certain energy facilities and projects. (These facility types include: energy storage or battery systems, high voltage transmission lines, large electric power generating plants, wind energy systems, and solar energy generating systems.)*

*These energy projects have been governed by a patchwork of statutes and rules. The new act consolidates most of these into a single statute and repeals other statutes and rules. It also directs EQB to update our rules to conform with the changes, and requires the use of expedited rulemaking procedures.*

EQB staff presented information and updates about the rulemaking to multiple regular meetings of the board and its subcommittees. Each meeting included an opportunity for the public to give input.

- EQB meeting February 19, 2025.
- Environmental Review Implementation Subcommittee (ERIS) meeting June 18, 2025.
  - At this meeting, the EQB staff discussed the options under consideration for amending the rules.
- EQB meeting, August 20, 2025.
- EQB meeting, September 17, 2025.
  - At this meeting, the Board was asked to formally approve these proposed rule revisions.

The proposed amendments and the rationale for the amendments appear below.

---

<sup>7</sup> The "technical representatives" are staff of EQB member agencies; many have expertise in environmental review.

## Proposed rule amendments

### Overview

The EQB proposes amendments that would create a new provision within Minn. R. ch. 4410 specifically for large energy infrastructure facility projects addressed under Minn. Stat. ch. 216I. This new provision would direct all environmental review of these projects to the procedures laid out in Minn. Stat. ch. 216I. The reference in Minn. R. ch. 4410 would function as a “clearinghouse” provision and Minn. R. ch. 4410 would not attempt to include parallel provisions for all energy projects captured in Minn. Stat. ch. 216I. In addition, the amendments would include pointing language in introductory sections of the mandatory categories portion of the rule (Minn. R. 4410.4300 and Minn. R. 4410.4400) to ensure that readers do not miss the applicable substitute review provision for these energy projects. The mandatory category references to projects covered by Minn. Stat. ch. 216I will be repealed.

The EQB concludes this is the most efficient way of effectuating the legislature’s intent in adopting the Act. It effectively gives notice to those reviewing Minn. R. ch. 4410 that environmental review is required, while pointing them to the statutes that define the requirements and environmental review options created by the Act. This provision more effectively recognizes the distinct nature of the review process that is applicable to large energy infrastructure facility projects.

This proposal is different than how EQB has updated these rules in the past. Typically, EQB has added energy projects subject to environmental review into the Minn. R. ch. 4410 mandatory categories and, if necessary, referenced the separate rule or statutory authority controlling the review process.

However, because of the way Minn. Stat. ch. 216I was written, it is not easy to conform the rule and statute in this traditional manner. Mandatory categories within Minn. R. ch. 4410 identify the type of project, with a threshold, and then assign an RGU to conduct environmental review for projects larger than the specified threshold. Minn. Stat. ch. 216I uses its definitions to set out a project size and initially assigns large energy infrastructure facilities to prepare an EIS. Minn. Stat. ch. 216I then identifies (mostly smaller or non-fossil fuel related) specific large energy infrastructure facility projects that can be reviewed under standard or local environmental review procedures, which are environmental assessments. In some cases, project proposers can choose the level of review, which can affect the RGU (i.e., PUC or local unit) completing the review or the environmental review document required. Since the types of projects that are identified in Minn. Stat. ch. 216I may have different RGUs and environmental review based on the specifics of the facility or proposer choice, it is difficult to conform those provisions with the system for project classification and RGU selection found in Minn. R. ch. 4410.

The proposed amendments will not change certain existing EQB rules addressing energy projects that are not covered under Minn. Stat. ch. 216I. Minn. Stat. ch. 216I covers mostly larger projects that are required to get site or route permits from the PUC. Two types of smaller energy projects – smaller electric generating facilities and lower voltage transmission lines – currently require environmental review under the mandatory categories in Minn. R. ch. 4410. EQB is proposing that these electric generating facility projects continue to be reviewed under EQB rules, but that the mandatory categories for large electric power generating plants, lower-voltage transmission lines, and high-voltage transmission line projects be removed.

### Retained project category: smaller electric-generating facilities

The existing mandatory categories in Minn. R. 4410.4300, subp. 3 (A) and (B) require an EAW for electric generating facilities with a capacity greater than 25 MW but less than 50 MW, with one mandatory category applicable to a project requiring an air permit from the MPCA (with MPCA as the RGU) and the other for projects that do not require an air permit (with the local unit as the RGU). Minn. Stat. ch. 216I does not cover projects of this size. The proposed amendments keep these EAW requirements in place.

The EAW mandatory category for electric generating facilities was added in 1982 and has been evaluated multiple times. When the category was updated in 2003, EQB determined that it remained necessary for smaller facilities to undergo an EAW. During the last update to the mandatory categories, completed in 2019, EQB again evaluated this category and decided to keep the EAW requirement for these projects. EQB records show that there were 13 projects that fell into this mandatory category from 2011 until the 2019 rulemaking documents were drafted. In the last four years, four projects have triggered this category (all projects that did not need an air permit). Although these projects are smaller, EQB concludes that there is still a need for this category. The public tends to be interested in obtaining information about these projects and commenting on them. For example, one of the projects evaluated in 2021 had 40 comments. EQB reasons that environmental review supports public awareness of these projects, the ability to comment, and ultimately informs the permitting process for these projects. EQB staff also had a conversation with MPCA staff about whether the Minn. R. 4410.4300, subp. 3 (A) mandatory category should be removed. MPCA staff were in favor of keeping the category and EQB staff agreed with this proposal.

### Repealed project category: lower voltage transmission lines

Minn. R. 4410.4300, subp. 6 requires an EAW for certain transmission lines, including lower voltage lines between 70 and 100 kV, with the EQB as the RGU. The proposed amendments remove this category from Minn. R. ch. 4410.

Minn. Stat. ch. 216I revised the definition of high voltage transmission lines and added a definition for “associated facility” that covers smaller transmission lines. This definition states (emphasis added):

*Minn. Stat. § 216I.02 subd. 2. Associated facility. “Associated facility” means a building, equipment, communication instrumentation, or other physical structure that is necessary to operate a large energy infrastructure facility. **Associated facility includes transmission lines designed for and capable of operating at 100 kilovolts or less that interconnect the large energy infrastructure facility with the existing high-voltage transmission system.***

As a result, lower voltage transmission lines will now be reviewed along with the core electric generating facility project, making a separate project category obsolete. In addition, there is strong evidence that transmission lines between 70 kV and 100 kV are not built in Minnesota and therefore this category can be removed. No projects have triggered this category in the last four years, and likely for several years before that. From EQB staff’s research, the existing 70 kV threshold is not a relevant size threshold in Minnesota. According to Minnesota Electric Transmission Planning, ([Electric Transmission Planning in the State of Minnesota](#)), transmission lines used in Minnesota are 500 kV, 400 kV, 345 kV, 230 kV, 161 kV and 115 kV, and then 69 kV through 23 kV. Minnesota does not use any transmission lines between 70 kV and 100 kV, and none are likely to be built because they would not fit into the existing system.

Standalone transmission lines with voltage greater than 100 kV are now addressed by the requirements under Minn. Stat. ch. 216I, and the new definition of “associated facility” ensures that there will be evaluation of transmission lines of 100 kV or less (mostly 70 kV or less), when associated with a large energy infrastructure facility.<sup>8</sup> Therefore, this mandatory category is unneeded.

## Other environmental review changes

In addition to establishing Minn. Stat. ch. 216I, the legislature made other changes that the EQB should reflect in its rules.

In the 2024 legislation, the Legislature created the requirement for an EIS for carbon dioxide pipelines before a routing permit is granted. As this requirement is presently in law, EQB rules must be amended to conform to it.<sup>9</sup>

Finally, Minn. R. 4410.4400 must be amended to change the RGU to PUC for an EIS for spent-fuel storage installation to conform to legislative changes to Minn. Stat. § 116C.83, subd. 6.

## Proposed rule language changes

### Proposed clearinghouse provision language

#### New rule part

To effectuate the plan to sweep environmental review projects that are covered by Minn. Stat. ch. 216I into the RGU selection and environmental review requirements in Minn. Stat. ch. 216I rather than address them under the EQB environmental review rule, a new rule provision is necessary.

The EQB will add a new part, Minn. R. 4410.4100 (designation and final language subject to consultation with the Revisor), into the section of EQB’s rules that addresses alternative review processes. The new part reads:

#### 4410.4100 REVIEW OF ENERGY PROJECTS UNDER MINNESOTA STATUTES CHAPTER 216I

Any large energy infrastructure facility project or solar energy generating system project must follow the RGU selection and review requirements in Minnesota Statutes, chapter 216I and rules adopted thereunder. As described in Minnesota Statutes, chapter 216I, a large energy infrastructure facility project includes a high-voltage transmission line, a large electric power generating plant, an energy storage system, a large wind energy conversion system, and any associated facilities.

Adopting this “clearinghouse” provision requires amending Minn. R. 4410.0200 by adding a definition of “large energy infrastructure facility” that references the definition in Minn. Stat. ch. 216I, and by adding a definition of solar energy generating system also as defined in Minn. Stat. ch. 216I. The separate reference to “solar energy generating system” is necessary because, although these projects are not included in the definition of “large energy infrastructure project,” they are included as projects under Minn. Stat. ch. 216I. These proposed new definitions are described below.

---

<sup>8</sup> This is the most common use of lower voltage transmission lines – to connect a project to a larger line. Those projects are usually 69kV or less, and so already fall outside of the environmental review requirements.

<sup>9</sup> Although the Legislature made changes to Minn. Stat. ch. 216B governing pipelines that could be interpreted to include certain pipelines under Minn. Stat. ch. 216I (see Minn. Stat. §§ 216B.243, subd. 4 and 216B.2421, subd. 2(5)), the EQB will not change the current EQB rules governing environmental review of pipelines, primarily because Minn. Stat. ch. 216I itself does not address pipelines and they were not addressed during the 2023 stakeholder process that resulted in the Act.

To further ensure that the public is aware that projects covered under Minn. Stat. ch. 216I will be addressed under that chapter, the “mandatory category” parts of EQB rule will be amended to contain introductory language referencing the EQB’s decision to redirect review. The proposed amendment to Minn. R. 4410.4300, subp. 1 adds an item that reads:

C. For projects under part 4410.4100, environmental review is governed by Minnesota Statutes, chapter 216I.

Similar language will be inserted in Minn. R. 4410.4400, subp. 1. The new item reads:

B. For projects under part 4410.4100, environmental review is governed by Minnesota Statutes, chapter 216I.

## **Changes proposed to definitions and mandatory categories**

### **Energy storage system definition**

The EQB will add a definition of “energy storage system” so that the public knows which projects are subject to the clearinghouse provision. The definition reads:

Subp. 22b. Energy storage system. “Energy storage system” has the meaning in Minnesota statutes, section 216I.02, subd. 6.

The reference to Minn. Stat. ch. 216I will be a hyperlink to Minn. Stat. ch. 216I in the online published rule, making it easy for users to find the definitions without creating a need to update EQB’s rule if changes are made in the future. EQB staff has worked with the Revisor to determine the best way to highlight which types of projects are covered under Minn. Stat. ch. 216I environmental review without creating ambiguity within the rules or requiring the rules to be updated for small rule changes that do not impact Minn. R. ch. 4410 except to list additional project types within Minn. Stat. ch. 216I.

### **Large energy infrastructure facility definition**

The EQB will add a definition of “large energy infrastructure facility” so that the public knows which projects are subject to the clearinghouse provision. The definition reads:

Subp. 41a. Large energy infrastructure facility. “Large energy infrastructure facility” has the meaning in Minnesota statutes, section 216I.02, subd. 10.

The reference to Minn. Stat. ch. 216I will be a hyperlink to Minn. Stat. ch. 216I in the online published rule, but including the projects within the new provision will make it easy for the reader to understand the types of projects included. EQB staff has worked with the Revisor to determine the best way to highlight which types of projects are covered under Minn. Stat. ch. 216I environmental review without creating ambiguity within the rules or requiring the rules to be updated for small rule changes that do not impact Minn. R. ch. 4410.



### Large wind energy conversion system definition

The EQB will add a definition of “Large wind energy conversion system” so that the public knows which projects are subject to the clearinghouse provision. The definition reads:

Subp. 41b. Large wind energy conversion system. “Large wind energy conversion system” has the meaning in Minnesota statutes, section 216I.02, subd. 11.

The reference to Minn. Stat. ch. 216I will be a hyperlink to Minn. Stat. ch. 216I in the online published rule making it easy for users to find the definitions without creating a need to update EQB’s rule if changes are made in the future. EQB staff has worked with the Revisor to determine the best way to highlight which types of projects are covered under Minn. Stat. ch. 216I environmental review without creating ambiguity within the rules or requiring the rules to be updated for small rule changes that do not impact Minn. R. ch. 4410 except to list additional project types within Minn. Stat. ch. 216I.

### Solar energy generating system definition

The EQB will add a definition of “Solar energy generating system” so that the public knows which projects are subject to the clearinghouse provision. The definition reads:

Subp. 83a. Solar energy generating system. “Solar energy generating system” has the meaning in Minnesota statutes, section 216I.02, subd. 18.

The reference to Minn. Stat. ch. 216I will be a hyperlink to Minn. Stat. ch. 216I in the online published rule making it easy for users to find the definitions without creating a need to update EQB’s rule if changes are made in the future. EQB staff has worked with the Revisor to determine the best way to highlight which types of projects are covered under Minn. Stat. ch. 216I environmental review without creating ambiguity within the rules or requiring the rules to be updated for small rule changes that do not impact Minn. R. ch. 4410 except to list additional project types within Minn. Stat. ch. 216I.

### Carbon dioxide pipeline definition

The EQB rules will add a definition and mandatory category for carbon dioxide pipelines, which is a classification of project added by the legislature. The definition reads:

Subp. 6b. Carbon dioxide pipeline. “Carbon dioxide pipeline” has the meaning given in Minnesota Statutes section 216G.025 subd.1.

The EQB proposes that the definition reference the statutory definition, rather than repeating the statutory language defining “carbon dioxide pipeline” so that if the legislature makes changes to that definition, the EQB rule does not require amendment. The statutory definition will be a hyperlink in the rule, so this proposal should not be burdensome to the public.

### Carbon dioxide pipeline project mandatory EIS category amendment:

The EQB will add “carbon dioxide pipeline” to the mandatory EIS projects listed in Minn. R. 4410.4400, because the legislature has required an EIS for carbon dioxide pipelines that meet the definition. The EQB will add a new subpart in Minn. R. 4410.4400, that reads:

Subp. 24a. Carbon dioxide pipelines. For permitting the route of a carbon dioxide pipeline, the PUC is the RGU.

The statute creating this category specifies that an EIS is required prior to the issuance of a route permit under Minn. Stat. ch. 216G, and that the PUC is the RGU. Although arguably it would not be necessary to include this as a mandatory category in rule given the legislation, the EQB typically attempts to ensure that all projects requiring environmental review are included in the Minn. Stat. ch. 4410 rules, unless that would cause undue complexity, as is the case with the large energy infrastructure projects. EQB has concluded that this environmental review requirement should be included in Minn. R. 4410 so that it remains complete.

## Electric power generating facilities definition

Minn. Stat. ch. 216I addresses only “large” electric power generating plants. Current EQB rules contain a redundant mandatory EIS category and a redundant EAW category that can be eliminated if the clearinghouse proposal is adopted.

The existing EQB rules require review of certain smaller electric power generating facilities (called “plants”) that are not included in Minn. Stat. ch. 216I’s “large” classification. However, while EQB’s current rules define “large electric power generating plant”, the rules do not contain a general definition for an electric power generating plant or facility.

Because the EQB is proposing that these projects continue to be included in Minn. R. ch. 4410, it is necessary to define “electric power generating facility.” Because the power-generation levels necessary for review are specified in the mandatory category, it is appropriate that the definition define the activity, not the power generation levels involved. To ensure that associated transmission lines are subject to review, these are described (as they are in Minn. Stat. ch. 216I and Minn. R. 7849.1100) in the definition to ensure review is included. The proposed definition also signals to the public that large power generation facilities are covered elsewhere, i.e., Minn. Stat. ch. 216I.

EQB will add a new definition for “electric power generating facility” that reads:

Subp. 20a. Electric power generating facility. “Electric power generating facility” means any plant or combination of plants at a single site designed to generate electricity and transmission lines directly associated with the plant that are necessary to interconnect the plant to the transmission system. As used in this rule, ‘electric power generating facility’ does not include a large electric generating plant that qualifies as a large energy infrastructure project under Minnesota statutes, chapter 216I.

The EQB finds this definition to be a needed and useful clarification. It does not change the way the existing and remaining mandatory categories are applied.

### Electric power generating facility project mandatory EAW category amendments:

Under EQB’s current rules, there are four EAW mandatory categories for “Electric-generating facilities” projects – Minn. R. 4410.4300, subp. 3. EQB is proposing to remove two of these project types from the EAW mandatory category of Minn. R. 4410.4300 because the projects described in these categories would now undergo environmental review using Minn. Stat. ch 216I.

~~C. For construction of an electric power generating plant and associated facilities designed for and capable of operating at a capacity of 50 megawatts or more, the PUC is the RGU, and environmental review must be conducted according to parts 7849.1000 to 7849.2100 and chapter 7850.~~

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

Minn. Stat. § 216I.02 Subd. 9 defines a “large electric power generating plant” as “electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more.” Large electric power generating plants are subject to environmental review in Minn. Stat. ch. 216I and therefore would not use Minn. R. ch. 4410. A wind energy conversion system capable of operating at a capacity of 25 MW or more would also be required to follow Minn. Stat. ch. 216I for environmental review. Both of the mandatory category project areas as written in Minn. R. 4410 also have references to repealed rules or statutes. Minn. R. 4410.4300, subp.3(C) references chapter 7850 which was repealed. Minn. R. 4410.4300, subp.3(D) references a repealed statute, Minnesota Statutes, section 216F.01 and a repealed rule, chapter 7854. For these reasons EQB proposes to remove both Minn. R. 4410.4300, subp. 3(C) and (D) from the electric-generating facilities EAW mandatory category.



### Large electric power generating plant definition

The EQB will revise the definition of “Large electric power generating plant” so that the public knows which projects are subject to the clearinghouse provision. The revised definition reads:

Subp. 41. Large electric power generating plant; LEPGP.<sup>10</sup> “Large electric power generating plant” or “LEPGP” has the meaning given in ~~part 7849.1100~~ Minnesota Statutes, section 216I.02, subd. 9.

The reference to Minn. Stat. ch. 216I will be a hyperlink to Minn. Stat. ch. 216I in the online published rule making it easy for users to find the definitions without creating a need to update EQB’s rule if changes are made in the future. EQB staff has worked with the Revisor to determine the best way to highlight which types of projects are covered under Minn. Stat. ch. 216I environmental review without creating ambiguity within the rules or requiring the rules to be updated for small rule changes that do not impact Minn. R. ch. 4410 except to list additional project types within Minn. Stat. ch. 216I. This was an existing definition within Minn. R. ch. 4410 and EQB proposes it be updated to reflect Minn. Stat. ch. 216I.

### Large electric power generating facility project mandatory EIS amendments:

Under EQB’s current rules, there is a mandatory EIS category for “Electric-generating facilities” – Minn. R. 4410.4400, subp. 3. EQB is proposing to remove this EIS mandatory category because the project described in this category would now undergo environmental review using Minn. Stat. ch 216I.

~~Subp. 3. 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 must be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.~~

Minn. Stat. § 216I.02 Subd. 9 defines a “large electric power generating plant” as “electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more.” Large electric power generating plants are subject to environmental review in Minn. Stat. ch. 216I. Minn. R. 4410.4400, subp. 3 also references Minn. Stat. 216E.01, Subd 5 and Minn. R. 7850.1000 to 7850.5600 both of which are repealed. Minn. Stat. ch. 216I is the new authority that governs the environmental review process for large electric power generating plants. For these additional reasons, the EQB proposes to remove 4410.4400, subp. 3 from the EIS mandatory category.

### High-voltage transmission lines definition

The EQB will amend the definition of high-voltage transmission line to reference the definition in Minn. Stat. ch. 216I. The definition reads

Subp. 38. High-voltage transmission line or HVTL.<sup>11</sup> “High-voltage transmission line” or “HVTL” has the meaning given in ~~part 7849.1100~~ Minnesota Statutes section 216I.02, subd 8.

A definition of HVTLs needs to be maintained because the term is used in Minn. R. 4410 in reference to early notice publication requirements.

Referencing the statute instead of the rule will ensure consistency as it is less likely to be changed and reflects legislative preference to require review of projects greater than 100 kV that are greater than 1,500 feet in length.

<sup>10</sup> The current EQB rules contain an unnecessary separate definition of this acronym in subp. 42. The EQB proposes deleting this separate definition.

<sup>11</sup> The current EQB rules contain an unnecessary separate definition of this acronym in subp. 40. The EQB proposes deleting this separate definition.

## High-voltage transmission line mandatory project category amendment

Under EQB's current rules, there is a mandatory EAW category for "transmission line" projects—Minn. R. 4410.4300, subp. 6. It addresses both "transmission lines" and "high-voltage transmission lines and associated facilities, as defined in part 7850.1000." Transmission lines include a line at "new location," with "20 or more miles of length in Minnesota," and carrying "between 70 kilovolts and 100 kilovolts." The EQB proposes to delete this category in its entirety. The "clearinghouse" provision will address *high-voltage transmission line projects* subject to Minn. Stat. ch. 216I, which will override any inconsistent or repealed rules. For "transmission lines," the EQB expects that these projects will now be addressed with larger energy projects under Minn. Stat. ch. 216I as "associated facilities." As defined in Minn. Stat. § 216I.02, subd. 2, an "associated facility" includes "transmission lines designed for and capable of operating at 100 kilovolts or less that interconnect the large energy infrastructure facility with the existing high-voltage transmission system."

Based on EQB's experience and according to PUC staff experts, "stand alone" transmission lines of between 70 and 100 kV or less are not constructed except in conjunction with larger projects.<sup>12</sup>

There is also an EIS mandatory category—Minn. R. 4410.4400, subp. 6—for transmission lines. This mandatory category also addresses "high-voltage transmission lines and associated facilities, as defined in part 7850.1000." which is a repealed reference, and these projects will be covered in Minn. Stat. ch. 216I. For this reason, EQB proposes deleting the mandatory category for transmission lines from Minn. R. 4410.4400, subp. 6.

### Spent-fuel storage

In the 2024 legislation, the legislature determined that the RGU for spent-fuel storage projects should be the PUC, not the Department of Commerce. As a result, Minn. R. 4410.4400, subp. 2, item C requires amendment to the designated RGU. The new language reads:

C. For construction or expansion of an independent spent-fuel storage installation, the ~~Department of Commerce~~ PUC is the RGU.

## Changes to other provisions.

### Early notice rules

The EQB rules address when project proposers must publish an EQB Monitor notice for certain significant projects that are entering the environmental review process. See Minn. R. 4410.5200. Because the early notice rule contains references to statutory chapters (i.e., Minn. Stat. ch. 216E) repealed and replaced by Minn. Stat. ch. 216I, the amendment is necessary to amend Minn. R. 4410.5200, Subp. 3, Item F, which addresses a large electric power generating plant or a route permit for a high-voltage transmission line, to reference Minn. Stat. ch. 216I. The new language reads:

F. notice of application for a site permit for a large electric power generating plant or a route permit for a high voltage transmission line pursuant to Minnesota Statutes, chapter ~~216E~~ 216I;

---

<sup>12</sup> In 2019, EQB proposed to delete this mandatory EAW category on the ground that these projects are not constructed, but this proposal met public resistance and was not moved forward. With the adoption of Minn. Stat. ch. 216I, it is clearer that these lines will be subject to mandatory review along with the larger energy project that they are associated with. As a result, the EQB believes that the current provision is redundant and will not be used as a basis for environmental review of transmission lines in the future.