



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

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

**September 19<sup>th</sup>, 2018**

**Meeting Location: Ramsey County Library - Maplewood**  
**3025 Southlawn Drive**  
**Maplewood, Minnesota**  
**1:00 p.m. – 4:00 p.m.**

**ANNOTATED AGENDA**

**General**

This month's meeting will take place in the Ramsey County Library in Maplewood. The meeting location has changed from our traditional MPCA Board Room meeting location due to ongoing construction. One board member may participate by telephone. The Environmental Quality Board (EQB or Board) meeting will be available via live WebEx on September 19<sup>th</sup>, 2018 1:00 pm to 4:00 pm. You will be able to access the WebEx on our website: [www.eqb.state.mn.us](http://www.eqb.state.mn.us)

*The Maplewood Library Parking Lot is for all day visitors and is located adjacent to the library.*

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

- I. \*Adoption of Consent Agenda**  
Proposed Agenda for September 19<sup>th</sup>, 2018, Board Meeting  
August 15, 2018, Meeting Minutes
- II. Introductions**
- III. Chair's Report**
- IV. Executive Director's Report**
- V. \*\* Resolution to Adopt 2018 EQB Strategic Plan**

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

\*\* Denotes action may be taken

- VI. \*\* Resolution Authorizing Initiation of Rulemaking to Adopt Amendments to the Environmental Review Rules, Minn. Rules, Part 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, and 4410.4600. Authorizing EQB Staff to Issue a Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received in Minnesota Revisor of Statutes File Numbers: RD-04157, With Any Modifications Approved By the Board.**
  
- VII. Public Comment**
  
- VIII. Adjourn**



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**Presenters:**

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*\*\* Denotes action may be taken*

Will Seuffert  
Executive Director  
Environmental Quality Board (651-757-2766)

Katie Pratt  
Director of Communications and Public Engagement  
Environmental Quality Board (651-757-2524)

**Materials enclosed:**

- 2018 EQB Strategic Plan

**Discussion:**

Board Members will review and vote to adopt the final draft of EQB's strategic plan. This discussion is a continuation of EQB's five-year strategic planning process initiated in January of 2018.

- VI. \*\* Resolution Authorizing Initiation of Rulemaking to Adopt Amendments to the Environmental Review Rules, Minn. Rules, Part 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, and 4410.4600. Authorizing EQB Staff to Issue a Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received in Minnesota Revisor of Statutes File Numbers: RD-04157, With Any Modifications Approved By the Board.**

**Presenters:**

Denise Wilson  
Director of Environmental Review Program  
Environmental Quality Board (651-757-2523)

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

**Materials enclosed:**

- Memo to EQB Board
- September 19, 2018 Draft Resolution, Findings of Fact
- Draft Notice of Intent to Adopt Rules
- Revisor Certified Rules
- Draft Statement of Need and Reasonableness (SONAR) and attachments

**Issue before the Board:**

EQB staff request that the Board authorize the Chair, Executive Director and staff to commence the formal rulemaking process for the proposed draft amendments to Minnesota Rules 4410, which are attached in the Board packet.

To do so, the Board can adopt the enclosed draft resolution. If the Board authorizes rulemaking, the staff would undertake the various logistical and procedural steps necessary to issue notice of the intent to adopt the proposed rules. The notice of intent to adopt will occur as soon as possible if the Board authorizes the rulemaking at this meeting, and the rules will come back before the Board for final adoption after the rulemaking process is completed.

**Discussion:**

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

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

The draft of the proposed rule changes is included in the Statement of Need and Reasonableness (SONAR).

**Staff recommendation:**

Staff recommends adopting the resolution and approving the Findings, Conclusions of Law, and Order to allow EQB staff to begin the formal rulemaking process and issue a notice of intent to adopt the proposed rule language amendments.

**VII. Public Comment**

**VIII. Adjourn**

**MINNESOTA ENVIRONMENTAL QUALITY BOARD  
MEETING MINUTES**

**Wednesday August 15, 2018  
MPCA Board Room  
520 Lafayette Road North, St. Paul**

**EQB Members Present:** Tom Landwehr, Jessica Looman, John Saxhaug, Julie Goehring, Alan Forsberg, Bryan Murdock, Gerald VanAmburg, John Linc Stine

**EQB Members Absent:** Dave Frederickson, Alene Tchourumoff, Kate Knuth, Kristin Eide-Tollefson, Matt Massman, Tom Moibi, Charlie Zelle, Shawntera Hardy, Jan Malcolm

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

<b>Activity</b>	<b>Webcast</b>
<b>I. Adoption of Consent: Agenda and Minutes</b>	0:00:10
<b>II. Introductions</b> In absence of Chairperson and Vice Chair, John Linc Stine served as Presiding Officer	0:00:37
<b>III. Chairs Report – No Report</b>	0:02:25
<b>IV. Executive Director’s Report</b> Remainder of EQB Meetings for 2018 are likely to be relocated due to construction in MPCA Board Room. Will Seuffert reviewed meeting topics for upcoming 2018 EQB Board Meetings. Considering transition planning as the board will change in the coming year.	0:02:30
<b>V. EQB Energy and Environment Report Card: Land Indicators</b> Greg Hoch (DNR) reviews the pheasant metric and provides a status update on MN pheasant habitat and efforts. Bob Patton (MDA) describes the land conversion metric and changes related to it throughout MN over recent years. Lisa Barajas (Met Council) describes trends and provides an urban perspective on the land conversion metric. Steve Giddings (MPCA) talks about the recycling metric and present challenges that could make it difficult to reach our goals.	0:06:13
<b>VI. Mandatory Categories Rulemaking Update</b> Erik Dahl (EQB) provides historical context and the timeline regarding Mandatory Categories Rule making changes. Denise Wilson (EQB) walks through priority rule changes and answers questions related to rule changes not directly addressed in walkthrough.	0:55:40
<b>VII. Public Comment</b> No public comment.	2:03:20
<b>VIII. Adjourn</b>	

**RESOLUTION OF THE  
MINNESOTA ENVIRONMENTAL QUALITY BOARD**

**Adoption of Minnesota Environmental Quality Board (EQB) Five-year Strategic Plan.**

WHEREAS, the EQB strives to meaningfully engage Minnesotans and provide greater access to conversations regarding the future of our shared environment;

WHEREAS, the “Minnesota Environmental Quality Board Five-year Strategic Plan” seeks to provide a framework that propels EQB efforts in accordance with Minnesota Statute § 116C and 116D;

WHEREAS, to address this charge, EQB Board Members, EQB Technical Representatives, EQB Staff, and other collaborating interagency staff cooperatively participated in the development of the strategic plan;

WHEREAS, the EQB fully recognizes the aspiration for a healthy and sustainable environmental quality that supports public health, economic vitality, societal quality of life, and sustained natural resources;

WHEREAS, the strategic plan demonstrates imperative need to be flexible and adaptive in a changing social and environmental climate;

WHEREAS, the plan provides for annual reporting on progress towards its objectives;

WHEREAS, the EQB affirms the commitment to regularly adopt a strategic plan on a five-year cycle;

NOW THEREFORE BE IT RESOLVED, that the strategic plan establishes and implements a directional framework that guides action and organizational decision-making for the coming five years;

BE IT FURTHER RESOLVED, that the Minnesota Environmental Quality Board incorporates and adopts the document: “Minnesota Environmental Quality Board Five-year Strategic Plan.”

Approved and adopted this 19<sup>th</sup> day of September, 2018

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David Frederickson, Chair  
Minnesota Environmental Quality Board

# Minnesota Environmental Quality Board 5-year strategic plan

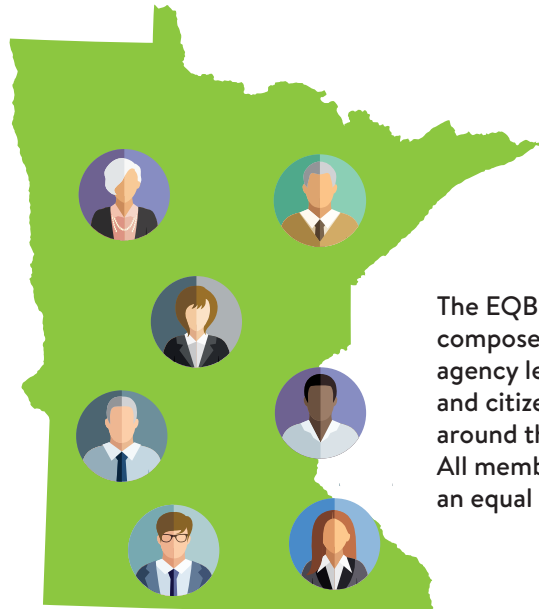


## What is the EQB?

The Minnesota Environmental Quality Board (EQB) is a forum for leadership and coordination across Minnesota state agencies on complex, priority environmental issues. As a public-facing board, the EQB strives to engage Minnesotans and provide greater access to conversations regarding the future of our environment.



The board has the responsibility to investigate interagency environmental issues such as air, water, solid waste management, transportation and utility corridors, energy policy, and planning. In addition, the EQB functions as the coordinating body for Minnesota's **Environmental Review Program**.

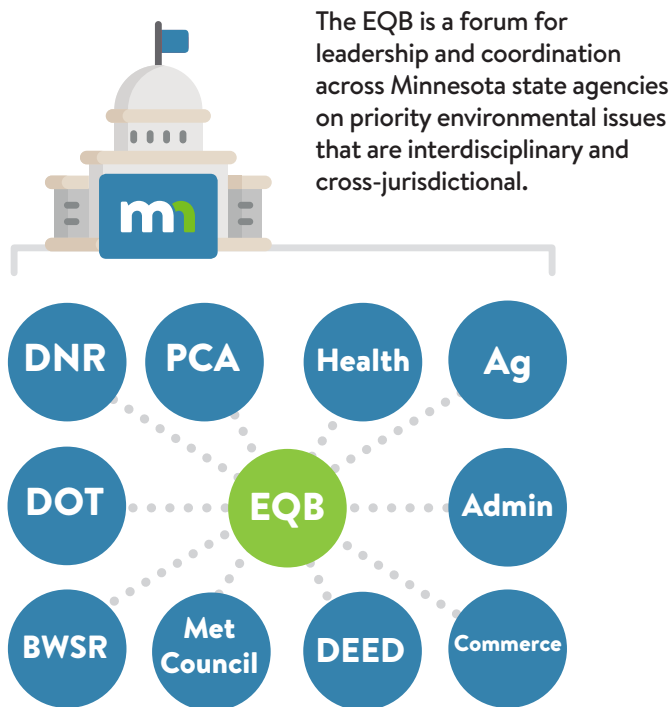


The EQB is composed of state agency leaders and citizens from around the state. All members have an equal vote.

In carrying out its role, the EQB joins with individual Minnesotans, communities, and public and private organizations in working towards our shared environmental goal: **healthy and sustainable environmental quality that supports public health, economic vitality, societal quality of life, and sustained natural resources.**

The EQB's unique contribution to this goal is the ability to bring multiple agencies and the public together in an effort to advance interdisciplinary discussions on complex environmental issues. In recent years, issues such as silica sand mining, climate change, pollinator protection, and water quality improvement have all benefited from the unique platform that the EQB provides.

**The EQB's mission** is to enhance Minnesota's environmental quality for current and future generations by leading interagency work to advance meaningful public engagement and facilitate informed decision-making on critical environmental issues.



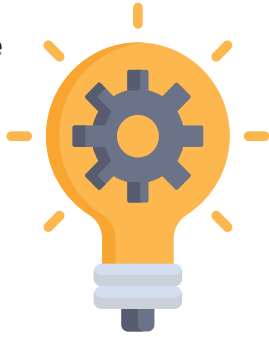


# EQB's 5-year strategic plan

**Purpose:** To provide a broad framework to guide the board's action and decision-making for the next 5 years. The plan identifies 6 priority results and possible strategies to achieve them, but is flexible enough to accommodate emerging issues and shifting priorities.

## Where we're headed

1. The EQB fosters **innovative policy development** that balances Minnesotans' environmental quality, public health, economic vitality, equity, societal quality of life, and sustained natural resources.



2. The EQB provides leadership on priority **emerging environmental issues**, by identifying emerging issues, convening conversations, and deliberating policy issues.



3. The EQB's **environmental review** process is transparent, accountable, efficient, and creates/sustains a healthy environment and strong economy for Minnesota.



4. Minnesotans are engaged in policy conversations and **diverse/underrepresented groups are actively included** and considered in policy development.



5. The EQB is a **trusted partner with state agencies** in the collaborative work of enhancing Minnesota's long-term environmental quality.



6. The EQB provides **support to local governments** on environmental review and the implementation of environmental policies and programs.



# MINNESOTA ENVIRONMENTAL QUALITY BOARD

## FIVE-YEAR STRATEGIC PLAN

Adopted \_\_\_\_\_, 2018

### Overview:

The 1973 Legislature established the Minnesota Environmental Quality Board (EQB/Board) as a forum for leadership and coordination across Minnesota state agencies on priority environmental issues that are interdisciplinary and cross-jurisdictional. As a public-facing board, the EQB strives to engage Minnesotans and provide greater access to conversations regarding the future of our environment.

*Minnesota Statutes*, section 116C.04 gives the Board the responsibility to investigate interagency environmental issues. The law identifies a range of environmental matters for investigation, including but not limited to air, water, solid waste management, transportation and utility corridors, energy policy, and planning. In addition, the EQB functions as the coordinating body for Minnesota's Environmental Review Program.

In carrying out its role, the EQB joins with individual Minnesotans, communities, and public and private organizations in working toward our shared environmental goal: healthy and sustainable environmental quality that supports public health, economic vitality, societal quality of life, and sustained natural resources. The EQB's unique contribution to this goal is the ability to bring multiple agencies and the public together in an effort to advance interdisciplinary discussions on complex environmental issues. In recent years, issues such as silica sand mining, climate change, pollinator protection, and water quality improvement have all benefited from the unique platform that the EQB provides.

### Plan Purpose:

The purpose of this strategic plan is to establish a directional framework that guides action and organizational decision-making for the coming five years. This plan honors our shared environmental goal and articulates the EQB's unique role in contributing to that goal. Specifically, it reaffirms the organization's mission, identifies six key desired results of EQB efforts, and identifies possible strategies to achieve those results.

By design, this plan is not highly detailed or prescriptive—it is intended to be aspirational, provide broad guidance, and serve as a shared reference point for the EQB, agency partners, and Minnesotans. It outlines the core elements of future priorities, while preserving the flexibility and responsiveness that have been essential to the EQB's past success. As a living document, the plan will guide board and staff activities while simultaneously accommodating emerging issues and dynamic state needs.

This plan is informed and shaped by the following guiding principles:

- **Leadership and action** that prioritizes Minnesota’s environmental quality, public health, safety, and welfare;
- **Trust** between the board, public, decision makers, project proposers, and partner organizations;
- **Collaboration** with partner agencies, outside groups, and the public;
- **Respect** for public values, state law, and agency rules;
- **Evidence-based planning**, that implements current science in policy development and decision making;
- **Innovation** that fosters creative solutions in policy and program decisions; and
- **Equity** for all Minnesotans’ environmental, economic, and social wellbeing.

## **MISSION**

Enhance Minnesota’s environmental quality for current and future generations by leading interagency work to advance meaningful public engagement and facilitate informed decision-making on critical environmental issues.

## **RESULTS**

**The EQB has named six priority RESULTS that the organization aspires to achieve in the coming five-year period.** To achieve these results, the EQB will employ strategies that best position the organization for success. Throughout implementation, the EQB will prioritize and adapt these strategies for each result.

**1. The EQB fosters innovative POLICY DEVELOPMENT that balances Minnesotans’ environmental quality, public health, economic vitality, equity, societal quality of life, and sustained natural resources.** The EQB provides a platform for public voice in policy development. The EQB provides a forum for collaborative cross-sector policy development. The EQB offers leadership in aligning policies across agencies. The EQB leads with equity in its policy development. Potential strategies include:

- Align state agency policy priorities to enhance statewide outcomes.
- Facilitate an interdisciplinary understanding of the environmental, economic, social, and health impacts of policy.
- Facilitate better connections between executive and legislative branches of government.
- Provide avenues for the public to meaningfully contribute to policy discussions and policy development.

**2. The EQB provides leadership on priority EMERGING ENVIRONMENTAL ISSUES.** The EQB identifies emerging environmental issues, convenes conversations, and deliberates policy issues. The EQB is a leader on water, land, air, energy, and climate. The EQB recognizes Minnesota's role in supporting environmental quality and environmental justice as part of the regional, national, and global community. Potential strategies include:

- Discussing the latest research and scientific advances related to emerging environmental issues at the EQB's Board Meetings.
- Collaborate with research institutions, organizations, and businesses to identify key emerging issues.
- Initiate and support interagency projects to address emerging issues.
- Provide opportunities for individuals, organizations, and businesses to bring emerging issues to the Board.
- Proactively collaborate with businesses showing leadership in sustainability and environmental improvement.
- Actively solicit broad input on emerging issues of concern to Minnesotans, including environmental justice issues.
- Analyze and deliberate local, regional, national, and global trends, policies, and best practices in environmental protection and improvement.

**3. The EQB's ENVIRONMENTAL REVIEW process is transparent, accountable, efficient, and creates and sustains a healthy environment and strong economy for Minnesota.** The public, proposers, and local and state government organizations are clear about implementation requirements. Potential strategies include:

- Systematically monitor Environmental Review Program indicators to ensure compliance with the objectives of MEPA.
- Take a continuous improvement approach with program management decisions based on relevant data. Considers the needs of local and state governments, citizens, and project proposers.
- Create guidance and information about the Environmental Review Program for the public to support meaningful participation in the review process.
- Provide high quality assistance to stakeholders that supports effective and efficient implementation of Environmental Review requirements.
- Provide stakeholders meaningful information about the status of specific environmental review projects and easy access to governmental decision-makers.
- Ensure the Minnesota environmental review rules are current and result in meeting the needs for effective state and local environmental decision-making.

**4. Minnesotans are ENGAGED in policy dialogue and diverse perspectives are considered in policy development.** Underrepresented groups are actively included in EQB policy dialogues and development. Minnesotans know about the EQB's role in policy development and environmental review processes and understand their options for participation. Potential strategies include:

- Provide and clearly communicate opportunities for the public to influence environmental policy, programs, and outcomes.
- Build meaningful relationships with diverse groups statewide.
- Proactively include underrepresented groups and environmental justice communities in policy dialogues and development.
- Develop communications strategies to engage diverse stakeholders.
- Enhance citizen Board Member roles as representatives of citizen perspectives and concerns.
- Provide information to the public to inform and drive public discussion.
- Provide high quality customer service when responding to questions from the public.

**5. The EQB is a trusted partner with state agencies in the COLLABORATIVE WORK of enhancing Minnesota's long-term environmental quality.** Partner agencies and the EQB work together in addressing multijurisdictional environmental challenges. The EQB provides transparent and meaningful interagency coordination so that policy and programs are aligned and optimized for public health and environmental protection. Potential strategies include:

- Articulate statewide narratives, plans, research, and shared goals.
- Intentionally align state-level environmental programs to achieve better consistency, resulting in improved environmental outcomes.
- Convene and support interagency and intergovernmental teams to address priority statewide issues.
- Support collective efforts to advance goals of individual member agencies.

**6. The EQB provides SUPPORT TO LOCAL GOVERNMENTS on environmental review and the implementation of environmental policies and programs.** The EQB is a valued source of information and resource network for local governments seeking assistance. The EQB achieves statewide environmental goals by fostering connections with local governments and community efforts. Potential strategies include:

- Provide technical assistance and access to interagency subject matter expertise.
- Support and partner with local environmental initiatives.
- Highlight innovative best practices at the local level.
- Identify and elevate local concerns for statewide consideration.
- Convene workgroups to share best practices, identify barriers, and develop innovative solutions.

## **KEY INDICATORS**

In 2019-2020, the EQB will report on strategic plan implementation and develop a reporting protocol that integrates qualitative and quantitative data to measure progress in the following three areas:

- 1) Engagement of Minnesotans in EQB policy discussion and development.
- 2) Effectiveness of the Minnesota Environmental Review program in identifying and communicating potential environmental effects and engaging the public in the review process.
- 3) Effectiveness of collaborative policy development on priority and emerging environmental issues.

**RESOLUTION OF THE  
MINNESOTA ENVIRONMENTAL QUALITY BOARD**

**Authorizing Initiation of Rulemaking to Adopt Amendments to the Environmental Review Rules, Minn. Rules, Part 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, and 4410.4600. Authorizing EQB Staff to Issue a Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received in Minnesota Revisor of Statutes File Numbers: RD-04157, With Any Modifications Approved By the Board.**

WHEREAS, the Environmental Policy Act, Minnesota Statutes sections 116D.04 and 116D.045 authorize the Environmental Quality Board to adopt rules governing the Environmental Review Program; and

WHEREAS, The Board's statutory authority to adopt the rule amendments is given in the Minnesota Environmental Policy Act, [Minn. Stat. 116D.04, subdivisions 2a\(a\), 4a and 5a](#) and [116D.045, subdivision 1](#); and

WHEREAS, In the 2015 Minnesota legislative session, [Laws of Minnesota 2015, Chapter 4, Article 5, Section 33](#), the Minnesota Legislature directed the Environmental Quality Board to amend environmental Review thresholds applicable to motorized trails; and

WHEREAS, In the 2013 Minnesota legislative session, [Laws of Minnesota 2013, chapter 114, article 4, section 105](#), the Minnesota Legislature directed the Environmental Quality Board to amend the rules for environmental review for silica sand mining and processing; and

WHEREAS, In the 2017 Minnesota legislative session, [Laws of Minnesota 2017, Chapter 93, article 1, Section 105](#), the Minnesota Legislature authorized the Environmental Quality Board to amend the rules for environmental review for silica sand mining and processing; and

WHEREAS, Minnesota Rules, part 4410.0400, subpart 1 directs the Environmental Quality Board (EQB) to take appropriate measures to improve the effectiveness of the Environmental Review Program rules; and

WHEREAS, the EQB published a Request for Comments on the proposed rule amendments to Minnesota Rules 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, and 4410.4600 (Revisor Number ID: RD-04157) in the State Register, on:

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

WHEREAS, the EQB staff developed draft rule amendments and an associated draft Statement of Need and Reasonableness, September 19, 2018; and

NOW THEREFORE BE IT RESOLVED, that David J. Frederickson, Chair of the Board, is hereby granted the authority and directed to sign and to give the Notice of the Board's Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received in the State Register and to perform any and all acts incidental thereto.

AND BE IT FURTHER RESOLVED, that if there are 25 or more outstanding hearing requests, William Seuffert, the Executive Director of the Environmental Quality Board, is hereby granted the authority and directed to utilize EQB staff to act as the Board's representative at the hearing and to perform any and all acts incidental thereto.

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David Frederickson, Chair  
Minnesota Environmental Quality Board



**STATE OF MINNESOTA  
ENVIRONMENTAL QUALITY BOARD**

In the Matter of Adopting the order Authorizing Initiation of Rulemaking to Adopt Amendments to the Environmental Review Rules, Minn. Rules, Part 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, and 4410.4600, Revisor Number: RD-04157; With Any Modifications Approved By the Board.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

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The above-captioned matter came before the Minnesota Environmental Quality Board (EQB) at a regular meeting on September 19, 2018.

Based upon all of the proceedings herein and the entire record, the Minnesota Environmental Quality Board makes the following:

**FINDINGS OF FACT:**

1. The Environmental Policy Act, Minnesota Statutes sections 116D.04 and 116D.045 authorize the Environmental Quality Board to adopt rules governing the Environmental Review Program; and
2. The 2015 Minnesota legislative session, [Laws of Minnesota 2015, Chapter 4, Article 5, Section 33](#), the Minnesota Legislature passed legislation changing the EAW thresholds applicable to motorized trails; and
3. In the 2013 Minnesota legislative session, [Laws of Minnesota 2013, chapter 114, article 4, section 105](#), the Minnesota Legislature directed the Environmental Quality Board to amend the rules for environmental review for silica sand mining and processing; and
4. The 2017 Minnesota legislative session, [Laws of Minnesota 2017, Chapter 93, article 1, Section 105](#), the Minnesota Legislature authorized the Environmental Quality Board to amend the rules for environmental review for silica sand mining and processing; and
5. The rulemaking is proposed under mandatory categories rulemaking (Revisor's ID Number R-04157) and includes amendments to rules relating to environmental review. Specifically, mandatory categories for environmental assessment worksheets (EAW) and environmental impact statements (EIS), definitions to support those categories, responsible governmental unit (RGU) selection process, categories of exemptions from environmental review, required notices, licensing of explorers, content of an application for drilling permit and, abandonment of exploratory borings; and

6. The proposed rulemaking will also include the amendments to rules relating to silica sand projects. This includes the mandatory categories related to mining facilities, transfer and processing facilities and storage facilities related to silica sand projects. The purpose of these amendments is to adopt the threshold levels for silica sand projects established by the Minnesota Legislature through Laws of Minnesota 2013, Chapter 114, Article 4, Section 91. In 2014, the EQB began rulemaking for silica sand projects under Revisor's ID Number RD-4305; and
7. Additionally, the proposed mandatory categories rulemaking will also include the proposed amendments to rules relating to Recreational trails. This includes thresholds for different types of recreational trails that require preparation of an EAW. In the 2015 Minnesota legislative session, Laws of Minnesota 2015, Chapter 4, Article 5, Section 33, the Minnesota Legislature passed legislation changing the EAW thresholds applicable to motorized trails. In 2015, the EQB began rulemaking for recreational trails projects under Revisor's ID Number RD-4381; and
8. The EQB published a Request for Comments on the proposed rule amendments to Minnesota Rules 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, and 4410.4600 (Revisor Number ID: RD-04157) in the State Register, on:
  - July 22, 2013 - The Request for Comments closed on August 23, 2013 at 4:30pm.
  - November 9, 2015 - The Request for Comments closed on December 31, 2015 at 4:30pm.
  - October 24, 2016 - The Request for Comments closed on November 28, 2016 at 4:30pm; and
9. The EQB staff developed draft rule amendments and an associated draft Statement of Need and Reasonableness, dated September 19, 2018; and

Based on the foregoing Findings of Fact, the Minnesota Environmental Quality Board makes the following:

#### **CONCLUSIONS OF LAW**

- 1) Any of the foregoing Findings more properly designated as Conclusions are hereby adopted as such.
- 2) The proposed rulemaking is necessary and reasonable.

Based on the Findings of Fact, Conclusions of Law and the entire record of this proceeding, the Minnesota Environmental Quality Board hereby makes the following:

## **ORDER**

The EQB hereby authorizes the Initiation of Rulemaking to Adopt Amendments to the Environmental Review Rules, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, and 4410.4600 (Revisor Number ID: RD-04157). Authorizing EQB Staff to Issue a Notice of Intent to Adopt Rules in the Revisor of Statutes File Number R-04494, dated November 9, 2017, Identified as Minnesota Rules, Part 4410.2550, With Any Modifications Approved By the Board.

Approved and adopted this 19th day of September 2018.

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David Frederickson, Chair  
Environmental Quality Board

[When you prepare your Notice for review by OAH, leave blanks for the name and phone number of the ALJ. After OAH gives approval and the name of the ALJ, fill in the blanks. You may adjust the margins so that the notice fits on two or four pages for mailing purposes.]

[Revised in 2016] Editor's note: To alert you to changes, 2016 additions appear in bold typeface. Remember to remove the bracketed notations and to restore text before submitting it to the ALJ for review.]

## Environmental Quality Board

**DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number RD-04157**

**Proposed Amendment to Rules Governing Environmental Review, *Minnesota Rules*, 4410.0200, 4410.0500, 4410.4300, 4410.4400, 410.5200, 4410.7904, 4410.7906, 4410.7926, 4410.4600**

- [Identify the title and rule chapter or part numbers as assigned by the Revisor. Note: if you are proposing to repeal any entire rule parts, you must specifically list the rule parts you are proposing to repeal, per Minnesota Rules, part 1400.2080, subpart 2, item D.]

**Introduction.** The Environmental Quality Board intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on November 16, 2018 (46 days), the Environmental Quality Board will hold a public hearing in [room], [building], [address], [city], Minnesota [zip], starting at [time hearing starts] on [day of week], **January \_\_, 2019**. To find out whether the Environmental Quality Board will adopt the rules without a hearing or if it will hold the hearing, you should contact the agency contact person after November 16, 2018 and before **January \_\_, 2019**.

**Agency Contact Person.** Submit any comments or questions on the rules or written requests for a public hearing to the Environmental Quality Board contact person. The Environmental Quality Board contact person is:

Erik Cedarleaf Dahl  
Environmental Quality Board,  
520 Lafayette Rd. St. Paul, MN, 55101,  
651-757-2364 (phone), 651-757-2343 (fax), [erik.dahl@state.mn.us](mailto:erik.dahl@state.mn.us).

You may also review the proposed rule and submit written comments via the Office of Administrative Hearings Rulemaking e-comments website at <https://minnesotaoah.granicusideas.com/discussions> .

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**Subject of Rules and Statutory Authority.** The proposed rules are about Environmental Review: definitions, RGU selection process, Mandatory EAW Categories, Mandatory EIS categories, Exemptions, Required notices, Licensing of Explorers, Content of an application for drilling permit, Abandonment of Exploratory Borings. The statutory authority to adopt the rules is *Minnesota Statutes, section 116D.04, subdivisions 2a(a), 4a, 5a; Minnesota Statutes 116D.045, subdivision 1; Laws of Minnesota 2013, Chapter 114, Article 4, Section 105; Laws of Minnesota 2015, Chapter 4, Article 4, Section 121; Minnesota Statutes 116C.991; Laws of Minnesota 2015, Chapter 4, Section 33.* A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

**Comments.** You have until 4:30 p.m. on November 16, 2018 to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

**Request for a Hearing.** In addition to submitting comments, you may also request that the Environmental Quality Board hold a hearing on the rules. You must make your request for a public hearing in writing, which the agency contact person must receive by 4:30 p.m. on November 16, 2018. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

**Withdrawal of Requests.** If 25 or more persons submit a valid written request for a hearing, the Environmental Quality Board will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes, sections 14.131 to 14.20.*

**Alternative Format/Accommodation.** Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

**Modifications.** The Environmental Quality Board might modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted to the agency or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the Environmental Quality Board follows the procedure under *Minnesota Rules, part 1400.2110.* If

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the proposed rules affect you in any way, the Environmental Quality Board encourages you to participate in the rulemaking process.

**Cancellation of Hearing.** The Environmental Quality Board will cancel the hearing scheduled for [month] [date], [year], if the Environmental Quality Board does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the Environmental Quality Board will notify you before the scheduled hearing whether the hearing will be held. You may also call the agency contact person at 651-757-2364 after November 16, 2018 (4:30pm) to find out whether the hearing will be held.

**Notice of Hearing.** If 25 or more persons submit valid written requests for a public hearing on the rules, the Environmental Quality Board will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The Environmental Quality Board will hold the hearing on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge [judge's name] is assigned to conduct the hearing. Judge [name] can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone (651) 361-7875, and fax (651) 539-0310.

**Hearing Procedure.** If the Environmental Quality Board holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the Administrative Law Judge may order that this five-day comment period is extended for a longer period but not more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when the agency and any interested person may respond in writing to any new information submitted. No one may submit **new** evidence during the five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge via the Office of Administrative Hearings Rulemaking e-comments website at <https://minnesotaoah.granicusideas.com/discussions> no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Environmental Quality Board or on the Environmental Quality Board website at <https://www.eqb.state.mn.us/content/eqb-mandatory-categories-rulemaking>. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge.

The agency requests that any person submitting written views or data to the Administrative Law Judge before the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the agency contact person at the address stated above.

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**Statement of Need and Reasonableness.** The statement of need and reasonableness summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the agency contact person. You may review or obtain copies for the cost of reproduction by contacting the agency contact person. The SONAR will be available at the Environmental Quality Board's website here: <https://www.eqb.state.mn.us/content/eqb-mandatory-categories-rulemaking>.

**Lobbyist Registration.** *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of 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.

**Adoption Procedure if No Hearing.** If no hearing is required, the agency may adopt the rules after the end of the comment period. The Environmental Quality Board will submit the rules and supporting documents to the Office of Administrative Hearings for a legal review. You may ask to be notified of the date the rules are submitted to the office. If you want either to receive notice of this, to receive a copy of the adopted rules, or to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

**Adoption Procedure after a Hearing.** If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the agency adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the agency contact person stated above.

**Order.** I order that the rulemaking hearing be held at the date, time, and location listed above.

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Date

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[Name]

[Title]

[Date and signature are required on the Notice. OAH Rules, part 1400.2080, subpart 2, item I.]

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# OFFICE OF THE REVISOR OF STATUTES

Minnesota Legislature

Cindy K. Maxwell, Assistant Deputy Revisor

September 5, 2018

Erik Dahl  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155-4194

RE: File No. 4157

Dear Erik:

I am enclosing four copies of your rules, approved as to form. Submit the revisor file number from the upper right corner of this document to the State Register for publication. Copies of the rules approved as to form do not need to be submitted to the State Register.

If you have any questions, please call me.

**Please use the revisor file number on all rulemaking documents and all communications with the governor's office.**

Sincerely,

A handwritten signature in cursive script that reads "Cindy K. Maxwell".

Cindy K. Maxwell

(651) 296-0955

[cindy.maxwell@revisor.mn.gov](mailto:cindy.maxwell@revisor.mn.gov)



# Office of the Revisor of Statutes Administrative Rules



**TITLE:** Proposed Permanent Rules Relating to Environmental Review: Mandatory Categories

**AGENCY:** Environmental Quality Board

**REVISOR ID:** R-4157

**MINNESOTA RULES:** Chapter 4410

The attached rules are approved for  
publication in the State Register

*Cindy K. Maxwell*

Cindy K. Maxwell  
Assistant Deputy Revisor

1.1 **Environmental Quality Board**

1.2 **Proposed Permanent Rules Relating to Environmental Review: Mandatory Categories**

1.3 **4410.0200 DEFINITIONS AND ABBREVIATIONS.**

1.4 *[For text of subps 1 and 1a, see M.R.]*

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

1.7 *[For text of subps 2 to 5, see M.R.]*

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

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

1.11 B. **supplements through-traffic movement.**

1.12 *[For text of subps 6 to 9a, see M.R.]*

1.13 Subp. 9b. **Compost facility.** "Compost facility" means a facility used to compost or  
1.14 co-compost solid waste, including; has the meaning given in part 7035.0300.

1.15 A. **structures and processing equipment used to control drainage or collect and**  
1.16 treat leachate; and

1.17 B. **storage areas for incoming waste, the final product, and residuals resulting**  
1.18 from the composting process.

1.19 *[For text of subps 10 to 36, see M.R.]*

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

1.22 *[For text of subps 37 to 40a, see M.R.]*

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

2.5 *[For text of subps 41 to 42a, see M.R.]*

2.6 Subp. 43. **Local governmental unit.** "Local governmental unit" means any unit of  
2.7 government other than the state or a state agency or the federal government or a federal  
2.8 agency. Local governmental unit includes watershed districts established pursuant  
2.9 according to Minnesota Statutes, chapter 103D, soil and water conservation districts,  
2.10 watershed management organizations, counties, towns, cities, port authorities, housing  
2.11 authorities, and the Metropolitan Council. Local governmental unit does not include  
2.12 courts, school districts, and regional development commissions.

2.13 *[For text of subps 44 to 52, see M.R.]*

2.14 Subp. 52a. Mixed municipal solid waste land disposal facility. "Mixed municipal  
2.15 solid waste land disposal facility" has the meaning given in part 7035.0300.

2.16 *[For text of subps 53 to 59, see M.R.]*

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

2.19 *[For text of subps 60 to 71, see M.R.]*

2.20 Subp. 71a. **Refuse-derived fuel.** "Refuse-derived fuel" means the product resulting  
2.21 from techniques or processes used to prepare solid waste by shredding, sorting, or compacting  
2.22 for use as an energy source has the meaning given in Minnesota Statutes, section 115A.03,  
2.23 subdivision 25d.

2.24 *[For text of subps 71b to 82, see M.R.]*

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

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

3.5 [For text of subps 83 to 92c, see M.R.]

3.6 Subp. 93. **Wetland.** "Wetland" has the meaning given wetlands in U.S. Fish and  
3.7 Wildlife Service Circular No. 39 (1971 edition) Minnesota Statutes, section 103G.005,  
3.8 subdivision 19.

3.9 [For text of subps 94 to 96, see M.R.]

3.10 **4410.0500 RGU SELECTION PROCEDURES.**

3.11 [For text of subps 1 to 3, see M.R.]

3.12 Subp. 4. **RGU for EAW by order of EQB.** If the ~~QB~~ EQB orders an EAW pursuant  
3.13 to part 4410.1000, subpart 3, item C, the EQB shall, at the same time, designate the RGU  
3.14 for that EAW.

3.15 [For text of subp 5, see M.R.]

3.16 Subp. 6. **Exception.** Notwithstanding subparts 1 to 5, the EQB or EQB chair may  
3.17 designate, within five days of receipt of the completed data portions of the EAW, a different  
3.18 RGU for the project if ~~the EQB~~ determines the designee has greater expertise in analyzing  
3.19 the potential impacts of the project.

3.20 **4410.4300 MANDATORY EAW CATEGORIES.**

3.21 [For text of subp 1, see M.R.]

3.22 Subp. 2. **Nuclear fuels and nuclear waste.** Items A to F designate the RGU for the  
3.23 type of project listed:

4.1 A. For construction or expansion of a facility for the storage of high level nuclear  
4.2 waste, other than an independent spent-fuel storage installation, the EQB ~~shall be~~ is the  
4.3 RGU.

4.4 *[For text of items B to F, see M.R.]*

4.5 Subp. 3. **Electric-generating facilities.** Items A to D designate the RGU for the type  
4.6 of project listed:

4.7 A. For construction of an electric power generating plant and associated facilities  
4.8 designed for or capable of operating at a capacity of ~~between 25 megawatts and 50~~  
4.9 megawatts, the EQB shall be the RGU or more but less than 50 megawatts and for which  
4.10 an air permit from the PCA is required, the PCA is the RGU.

4.11 B. For construction of an electric power generating plants plant and associated  
4.12 facilities designed for and capable of operating at a capacity of 25 megawatts or more but  
4.13 less than 50 megawatts or more, environmental review shall be conducted according to parts  
4.14 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600 and for which an air permit from the  
4.15 PCA is not required, the local governmental unit is the RGU.

4.16 C. For construction of an electric power generating plant and associated facilities  
4.17 designed for and capable of operating at a capacity of 50 megawatts or more, the PUC is  
4.18 the RGU, and environmental review must be conducted according to parts 7849.1000 to  
4.19 7849.2100 and chapter 7850.

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

5.1 Subp. 4. **Petroleum refineries.** For expansion of an existing petroleum refinery facility  
5.2 that increases ~~its~~ the refinery's capacity by 10,000 ~~or more~~ barrels per day or more, the PCA  
5.3 ~~shall be~~ is the RGU.

5.4 Subp. 5. **Fuel conversion facilities.**

5.5 ~~Items A and B~~ Subitems (1) and (2) designate the RGU for the type of project  
5.6 listed:

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

5.10 ~~B.~~ (2) For construction ~~or expansion~~ of a new fuel conversion facility for the  
5.11 production of alcohol fuels ~~which that~~ would have ~~or would increase its~~ the capacity ~~by to~~  
5.12 produce 5,000,000 or more gallons or more per year of alcohol ~~produced~~, the PCA ~~shall be~~  
5.13 is the RGU.

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

5.16 Subp. 6. **Transmission lines.** For construction of a transmission line at a new location  
5.17 ~~with a nominal capacity of between 70 kilovolts and 100 kilovolts with 20 or more miles~~  
5.18 ~~of its length in Minnesota, the EQB shall be the RGU.~~ For construction of a high-voltage  
5.19 transmission lines line and associated facilities ~~designed for and capable of operating at a~~  
5.20 nominal voltage of 100 kilovolts or more, as defined in part 7850.1000, the PUC is the  
5.21 RGU. Environmental review ~~shall~~ must be conducted according to parts 7849.1000 to  
5.22 7849.2100 and 7850.1000 to 7850.5600.

5.23 Subp. 7. **Pipelines.** ~~Items A to D~~ designate the RGU for the type of project listed: For  
5.24 construction, as defined in Minnesota Statutes, section 216G.01, subdivision 2, of a pipeline,  
5.25 as defined in Minnesota Statutes, section 216G.01, subdivision 3, or 216G.02, subdivision

6.1 1, the PUC is the RGU. Environmental review must be conducted according to chapter 7852  
6.2 and Minnesota Statutes, chapter 216G.

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

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

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

6.12 (2) ~~0.75 miles if the pipeline will occupy private property;~~

6.13 ~~the EQB or the municipality is the RGU.~~

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

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

6.20 (2) ~~0.75 miles if construction or operation will require new temporary or~~  
6.21 ~~permanent right-of-way;~~

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

7.1 ~~D. For construction of a pipeline to convey natural or synthetic gas that is not~~  
7.2 ~~subject to regulation under the federal Natural Gas Act, United States Code, title 15, section~~  
7.3 ~~717, et seq.; or to a license, permit, right, or franchise that has been granted by a municipality~~  
7.4 ~~under authority of Minnesota Statutes, section 216B.36; designed to operate at pressures in~~  
7.5 ~~excess of 275 pounds per square inch (gauge) with a length greater than 0.75 miles, the~~  
7.6 ~~EQB is the RGU.~~

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

7.10 Subp. 8. **Transfer facilities.** Items A ~~and B~~ to C designate the RGU for the type of  
7.11 project listed:

7.12 A. For construction of a new facility designed for or capable of transferring 300  
7.13 tons or more of coal per hour or with an annual throughput of 500,000 tons of coal from  
7.14 one mode of transportation to a similar or different mode of transportation; or the expansion  
7.15 of an existing facility by these respective amounts, the PCA ~~shall be~~ is the RGU.

7.16 B. For construction of a new facility or the expansion by 50 percent or more of  
7.17 an existing facility for the bulk transfer of hazardous materials with the capacity of 10,000  
7.18 or more gallons per transfer, if the facility is located in a shoreland area, a delineated flood  
7.19 plain floodplain, a state or federally designated wild and scenic rivers district, the Minnesota  
7.20 River Project Riverbend area, or the Mississippi headwaters area, the PCA ~~shall be~~ is the  
7.21 RGU.

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

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

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



8.1

[For text of subp 9, see M.R.]

8.2

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

8.3

listed:

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

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B. For construction of a new major facility ~~on a single site designed for or capable of storing 1,000,000 gallons or more of hazardous materials, 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 ~~shall be~~ is the RGU.

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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~~ is the RGU.

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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~~ is the RGU.

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~~C.~~ E. For construction of a new facility designed for or capable of storing on a single site 100,000 gallons or more of liquefied natural gas, as defined in Minnesota Statutes, section 299F.56, subdivision 14, or synthetic gas, or anhydrous ammonia as defined in Minnesota Statutes, section 216B.02, subdivision 6b, the PCA ~~shall be~~ PUC is the RGU, except as provided in item G.

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

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

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

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

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

9.12 [For text of subp 11, see M.R.]

9.13 **Subp. 12. Nonmetallic mineral mining.** Items A to ~~C~~ D designate the RGU for the  
 9.14 type of project listed:

9.15 [For text of item A, see M.R.]

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

9.20 [For text of item C, see M.R.]

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

9.24 [For text of subp 13, see M.R.]

10.1 Subp. 14. **Industrial, commercial, and institutional facilities.** Items A and B  
 10.2 designate the RGU for the type of project listed, except as provided in items C and D:

10.3 A. For construction of a new or expansion of an existing warehousing or light  
 10.4 industrial facility equal to or in excess of the following thresholds, expressed as gross floor  
 10.5 space, the local governmental unit ~~shall be~~ is the RGU:

- 10.6 (1) unincorporated area, 150,000 square feet;
- 10.7 (2) third or fourth class city, 300,000 square feet;
- 10.8 (3) second class city, 450,000 square feet; and
- 10.9 (4) first class city, 600,000 square feet.

10.10 B. For construction of a new or expansion of an existing industrial, commercial,  
 10.11 or institutional facility, other than a warehousing or light industrial facility, equal to or in  
 10.12 excess of the following thresholds, expressed as gross floor space, the local ~~government~~  
 10.13 governmental unit ~~shall be~~ is the RGU:

10.14 *[For text of subitems (1) and (2), see M.R.]*

- 10.15 (3) second class city, 300,000 square feet; and
- 10.16 (4) first class city, 400,000 square feet.

10.17 *[For text of items C and D, see M.R.]*

10.18 *[For text of subp 15, see M.R.]*

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

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

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

11.5 C. For expansion of a an existing facility for hazardous waste processing facility  
11.6 storage or treatment that increases its the facility's capacity by ten percent or more, the PCA  
11.7 shall be is the RGU.

11.8 *[For text of item D, see M.R.]*

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

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

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

11.15 *[For text of item C, see M.R.]*

11.16 D. For construction or expansion of a mixed municipal solid waste energy recovery  
11.17 facility or incinerator, ~~or the utilization~~ use of an existing facility for the combustion of  
11.18 mixed municipal solid waste or refuse-derived fuel, with a permitted capacity of 30 tons or  
11.19 more ~~tons~~ per day of input, the PCA is the RGU.

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

12.1 F. For expansion by at least ten percent but less than 25 percent of ~~previous~~  
12.2 previously permitted capacity of a mixed municipal solid waste land disposal facility for  
12.3 100,000 cubic yards or more of waste fill per year, the PCA is the RGU.

12.4 [For text of item G, see M.R.]

12.5 Subp. 18. **Wastewater systems.** Items A to ~~E~~ F designate the RGU for the type of  
12.6 project listed:

12.7 A. For expansion, modification, or replacement of a municipal sewage collection  
12.8 system resulting in an increase in design average daily flow of any part of that system by  
12.9 1,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with  
12.10 a capacity less than 20,000,000 gallons per day ~~or for expansion, modification, or replacement~~  
12.11 ~~of a municipal sewage collection system resulting in an increase in design average daily~~  
12.12 ~~flow of any part of that system by 2,000,000 gallons per day or more if the discharge is to~~  
12.13 ~~a wastewater treatment facility with the capacity of 20,000,000 gallons or greater, the PCA~~  
12.14 ~~shall be~~ is the RGU.

12.15 B. For expansion, modification, or replacement of a municipal sewage collection  
12.16 system resulting in an increase in design average daily flow of any part of that system by  
12.17 2,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with  
12.18 the capacity of 20,000,000 gallons or greater, the PCA is the RGU.

12.19 ~~B. C.~~ C. For expansion or ~~reconstruction~~ modification of an existing municipal or  
12.20 domestic wastewater treatment facility ~~which that~~ that results in an increase by 50 percent or  
12.21 more and by at least 200,000 gallons per day of ~~its~~ the facility's average wet weather design  
12.22 flow capacity, ~~or~~ the PCA is the RGU.

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

13.1 ~~C.~~ E. For expansion or ~~reconstruction~~ modification of an existing industrial process  
 13.2 wastewater treatment facility ~~which that~~ increases its the facility's design flow capacity by  
 13.3 50 percent or more and by at least 200,000 gallons per day or more, ~~or the PCA is the~~ RGU.

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

13.10 *[For text of subps 19 and 19a, see M.R.]*

13.11 **Subp. 20. Campgrounds and RV parks.** For construction of a seasonal or permanent  
 13.12 recreational development, accessible by vehicle, consisting of 50 or more sites, or the  
 13.13 expansion of such a facility by 50 or more sites, the local ~~government~~ governmental unit  
 13.14 ~~shall be~~ is the RGU.

13.15 **Subp. 20a. Resorts, campgrounds, and RV parks in shorelands.** The local  
 13.16 ~~government~~ governmental unit is the RGU for construction or expansion of a resort or other  
 13.17 seasonal or permanent recreational development located wholly or partially in shoreland,  
 13.18 accessible by vehicle, of a type listed in item A or B:

13.19 *[For text of items A and B, see M.R.]*

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

13.22 A. For construction of a paved, new airport runway, the DOT, local governmental  
 13.23 unit, or the Metropolitan Airports Commission ~~shall be~~ is the RGU.

13.24 B. For construction of a runway extension that would upgrade an existing airport  
 13.25 runway to permit usage by aircraft over 12,500 pounds that are at least three decibels louder

14.1 than aircraft currently using the runway, the DOT, local ~~government~~ governmental unit, or  
14.2 the Metropolitan Airports Commission ~~shall be~~ is the RGU. The RGU ~~shall be~~ is selected  
14.3 according to part 4410.0500, subpart 5.

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

14.6 A. For construction of a road on a new location over one mile in length that will  
14.7 function as a collector roadway, the DOT or local ~~government~~ governmental unit ~~shall be~~  
14.8 is the RGU.

14.9 B. For construction of additional ~~travel~~ through lanes or passing lanes on an  
14.10 existing road for a length of ~~one~~ two or more miles, exclusive of auxiliary lanes, the DOT  
14.11 or local ~~government~~ governmental unit ~~shall be~~ is the RGU.

14.12 C. For the addition of one or more new interchanges to a completed limited access  
14.13 highway, the DOT or local ~~government~~ governmental unit ~~shall be~~ is the RGU.

14.14 *[For text of subps 23 and 24, see M.R.]*

14.15 Subp. 25. **Marinas.** For construction or expansion of a marina or harbor that results  
14.16 in a 20,000 or more square foot total or a 20,000 or more square foot increase of water  
14.17 surface area used temporarily or permanently for docks, docking, or maneuvering of  
14.18 watercraft, the local ~~government~~ governmental unit ~~shall be~~ is the RGU.

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

14.23 Subp. 27. **~~Wetlands and Public waters, public waters wetlands, and wetlands.~~** Items  
14.24 A and B designate the RGU for the type of project listed:

15.1 A. For projects that will change or diminish the course, current, or cross-section  
 15.2 of one acre or more of any public water or public waters wetland except for those to be  
 15.3 drained without a permit ~~pursuant~~ according to Minnesota Statutes, chapter 103G, the DNR  
 15.4 or local government governmental unit ~~shall be~~ is the RGU.

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

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

15.13 A. For harvesting ~~of~~ timber for commercial purposes on public lands within a  
 15.14 state park, a historical area, a wilderness area, a scientific and natural area, a wild and scenic  
 15.15 rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area,  
 15.16 or a critical area that does not have an approved plan under Minnesota Statutes, section  
 15.17 86A.09 or 116G.07, the DNR ~~shall be~~ is the RGU.

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

15.21 *[For text of subp 29, see M.R.]*

15.22 Subp. 30. **Natural areas.** For projects resulting in ~~the~~ permanent physical encroachment  
 15.23 on lands within a national park, a state park, a wilderness area, state lands and waters within  
 15.24 the boundaries of the Boundary Waters Canoe Area, or a scientific and natural area, ~~or state~~  
 15.25 ~~trail corridor~~ when the encroachment is inconsistent with laws applicable to or the



16.1 management plan prepared for the recreational unit, the DNR or local ~~government~~  
16.2 ~~governmental~~ unit ~~shall be~~ is the RGU.

16.3 Subp. 31. **Historical places.** For the destruction, in whole or part, or the moving of  
16.4 a property that is listed on the National Register of Historic Places or State Register of  
16.5 Historic Places, the permitting state agency or local ~~government~~ ~~shall~~  
16.6 ~~be~~ is the RGU, except this does not apply to projects reviewed under section 106 of the  
16.7 National Historic Preservation Act of 1966, United States Code, title ~~16~~ 54, section 470  
16.8 306108, or the federal policy on lands, wildlife and waterfowl refuges, and historic sites  
16.9 pursuant to United States Code, title 49, section 303, or projects reviewed by a local heritage  
16.10 preservation commission certified by the State Historic Preservation Office pursuant to  
16.11 Code of Federal Regulations, title 36, sections 61.5 and 61.7. This subpart does not apply  
16.12 to a property located within a designated historic district if the property is listed as  
16.13 "noncontributing" in the official district designation or if the State Historic Preservation  
16.14 Office issues a determination that the property is noncontributing.

16.15 *[For text of subps 32 to 35, see M.R.]*

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

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

16.24 B. For projects resulting in the conversion of 640 or more acres of forest or  
16.25 naturally vegetated land to a different open space land use, the local ~~government~~  
16.26 ~~governmental~~ unit ~~shall be~~ is the RGU.

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

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

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

17.8 [For text of item C, see M.R.]

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

17.15 A. Constructing a trail at least ~~ten~~ 25 miles long on forested or other naturally  
17.16 vegetated land for a recreational use ~~other than snowmobiling or cross-country skiing~~, unless  
17.17 exempted by part 4410.4600, subpart 14, item D, ~~or constructing a trail at least 20 miles~~  
17.18 ~~long on forested or other naturally vegetated land exclusively for snowmobiling or~~  
17.19 ~~cross-country skiing.~~

17.20 B. Designating at least 25 miles of an existing trail for a new motorized recreational  
17.21 use other than snowmobiling. When designating an existing motorized trail or existing  
17.22 corridor in current legal use by motor vehicles, the designation does not contribute to the  
17.23 25-mile threshold under this item. When adding a new recreational use or seasonal  
17.24 recreational use to an existing motorized recreational trail, the addition does not contribute  
17.25 to the 25-mile threshold if the treadway width is not expanded as a result of the added use.

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

18.7 *[For text of items C to F, see M.R.]*

18.8 **4410.4400 MANDATORY EIS CATEGORIES.**

18.9 *[For text of subp 1, see M.R.]*

18.10 Subp. 2. **Nuclear fuels and nuclear waste.** Items A to ~~D~~ E designate the RGU for  
 18.11 the type of project listed:

18.12 A. For the construction or expansion of a nuclear fuel or nuclear waste processing  
 18.13 facility, including fuel fabrication facilities, reprocessing plants, and uranium mills, the  
 18.14 DNR ~~shall be~~ is the RGU for uranium mills; otherwise, the PCA ~~shall be~~ is the RGU.

18.15 B. For construction of a high level nuclear waste disposal site, the EQB ~~shall be~~  
 18.16 is the RGU.

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

18.19 ~~€~~ D. For construction of an away-from-reactor facility for temporary storage of  
 18.20 spent nuclear fuel, the ~~Public Utilities Commission shall be~~ PUC is the RGU.

18.21 ~~Đ~~ E. For construction of a low level nuclear waste disposal site, the MDH ~~shall~~  
 18.22 be is the RGU.

18.23 Subp. 3. **Electric-generating facilities.** For construction of a large electric power  
 18.24 generating plant, as defined in Minnesota Statutes, section 216E.01, subdivision 5, the PUC

19.1 is the RGU. Environmental review ~~shall~~ must be conducted according to parts 7849.1000  
19.2 to 7849.2100 and 7850.1000 to 7850.5600.

19.3 Subp. 4. **Petroleum refineries.** For construction of a new petroleum refinery facility,  
19.4 the PCA ~~shall be~~ is the RGU.

19.5 Subp. 5. **Fuel conversion facilities.** Items A and B designate the RGU for the type  
19.6 of project listed:

19.7 A. For construction of a new fuel conversion facility for ~~the conversion of~~  
19.8 converting coal, peat, or biomass sources to gaseous, liquid, or solid fuels if ~~that~~ the facility  
19.9 has the capacity to ~~utilize~~ use 250,000 dry tons or more per year of input, the PCA ~~shall be~~  
19.10 is the RGU.

19.11 B. For construction of a new or expansion of a an existing fuel conversion facility  
19.12 for the production of alcohol fuels ~~which that~~ would have or would increase ~~its~~ the facility's  
19.13 capacity by 50,000,000 or more gallons per year of alcohol produced if the facility will be  
19.14 in the seven-county Twin Cities metropolitan area or by 125,000,000 or more gallons per  
19.15 year of alcohol produced if the facility will be outside the seven-county Twin Cities  
19.16 metropolitan area, the PCA ~~shall be~~ is the RGU.

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

19.19 Subp. 6. **Transmission lines.** For construction of a high-voltage transmission line  
19.20 and associated facilities, as defined in part 7850.1000, the PUC is the RGU. Environmental  
19.21 review ~~shall~~ must be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000  
19.22 to 7850.5600.

19.23 [For text of subp 7, see M.R.]

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

20.1 ~~A.~~ For mineral deposit evaluation involving the extraction of 1,000 tons or more  
 20.2 of material that is of interest to the proposer principally due to its radioactive characteristics;  
 20.3 ~~the DNR shall be the~~ RGU.

20.4 ~~B.~~ A. For construction of a new facility for mining metallic minerals or for the  
 20.5 disposal of tailings from a metallic mineral mine, the DNR ~~shall be~~ is the RGU.

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

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

20.10 A. For development of a facility for the extraction or mining of peat which will  
 20.11 utilize 320 acres of land or more during its existence, the DNR ~~shall be~~ is the RGU.

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

20.16 *[For text of item C, see M.R.]*

20.17 *[For text of subp 10, see M.R.]*

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

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

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

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

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

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

21.3 B. For construction of a new or expansion of an existing industrial, commercial,  
21.4 or institutional facility, other than a warehousing or light industrial facility, equal to or in  
21.5 excess of the following thresholds, expressed as gross floor space, the local ~~government~~  
21.6 governmental unit shall be is the RGU:

21.7 *[For text of subitems (1) and (2), see M.R.]*

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

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

21.10 *[For text of items C and D, see M.R.]*

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

21.13 *[For text of items A and B, see M.R.]*

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

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

21.18 A. For construction of a mixed municipal solid waste land disposal facility for  
21.19 100,000 cubic yards or more of waste fill per year, the PCA is the RGU.

21.20 B. For construction or expansion of a mixed municipal solid waste land disposal  
21.21 facility in a water-related land use management district; or in an area characterized by soluble  
21.22 bedrock, the PCA is the RGU.

22.1 C. For construction or expansion of a mixed municipal solid waste energy recovery  
 22.2 facility or incinerator; or ~~the utilization~~ use of an existing facility for the combustion of  
 22.3 mixed municipal solid waste or refuse-derived fuel; with a permitted capacity of 250 ~~or~~  
 22.4 ~~more tons~~ or more per day of input, the PCA is the RGU.

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

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

22.12 *[For text of subps 14 and 14a, see M.R.]*

22.13 Subp. 15. **Airport runway projects.** For construction of a paved and lighted airport  
 22.14 runway of 5,000 feet of length or greater, the DOT or local ~~government~~ governmental unit  
 22.15 ~~shall be~~ is the RGU.

22.16 Subp. 16. **Highway projects.** For construction of a road on a new location which is  
 22.17 four or more lanes in width and two or more miles in length, the DOT or local ~~government~~  
 22.18 governmental unit ~~shall be~~ is the RGU.

22.19 *[For text of subps 17 and 18, see M.R.]*

22.20 Subp. 19. **Marinas.** For construction of a new or expansion of an existing marina,  
 22.21 harbor, or mooring project on a state or federally designated wild and scenic river, the local  
 22.22 ~~government~~ governmental unit ~~shall be~~ is the RGU.

22.23 Subp. 20. **~~Wetlands and Public waters~~ and public water wetlands.** For projects  
 22.24 that will eliminate a public water or public waters wetland, the DNR or the local ~~government~~  
 22.25 governmental unit ~~shall be~~ is the RGU.

23.1 [For text of subps 21 to 24, see M.R.]

23.2 Subp. 25. ~~Incineration of Incinerating~~ **Incineration of Incinerating wastes containing PCBs.** For the incineration  
 23.3 of incinerating wastes containing ~~PCB's~~ PCBs for which an EIS is required by Minnesota  
 23.4 Statutes, section 116.38, subdivision 2, the PCA ~~shall be~~ is the RGU.

23.5 [For text of subps 26 to 28, see M.R.]

23.6 **4410.4600 EXEMPTIONS.**

23.7 [For text of subps 1 to 9, see M.R.]

23.8 Subp. 10. **Industrial, commercial, and institutional facilities.** The following projects  
 23.9 are exempt:

23.10 [For text of item A, see M.R.]

23.11 B. ~~The~~ Construction of a warehousing, light industrial, commercial, or institutional  
 23.12 facility with less than 4,000 square feet of gross floor space, and with associated parking  
 23.13 facilities designed for 20 vehicles or less, ~~is exempt~~ fewer.

23.14 C. Construction of a new parking facility for less fewer than 100 vehicles if the  
 23.15 facility is not located in a shoreland area, ~~a delineated flood plain~~ floodplain, ~~a~~ state or  
 23.16 federally designated wild and scenic rivers district, the Minnesota River Project Riverbend  
 23.17 area, or the Mississippi headwaters area ~~is exempt~~.

23.18 [For text of subp 11, see M.R.]

23.19 Subp. 12. **Residential development.** The following projects are exempt:

23.20 A. Construction of a sewerred residential development, of:

23.21 (1) ~~less~~ fewer than ten units in an unincorporated area;<sub>2</sub>

23.22 (2) ~~less~~ fewer than 20 units in a third or fourth class city;<sub>2</sub>

23.23 (3) ~~less~~ fewer than 40 units in a second class city;<sub>2</sub> or



24.1 (4) ~~less fewer~~ than 80 units in a first class city, no part of which is within a  
 24.2 shoreland area, ~~a delineated flood plain~~ floodplain, a state or federally designated wild and  
 24.3 scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi  
 24.4 headwaters area, ~~is exempt.~~

24.5 *[For text of item B, see M.R.]*

24.6 C. Construction of a single residence or multiple residence with four dwelling  
 24.7 units or ~~less fewer~~ and accessory appurtenant structures and utilities ~~is exempt.~~

24.8 *[For text of subp 13, see M.R.]*

24.9 Subp. 14. **Highway projects.** The following projects are exempt:

24.10 A. Highway safety improvement projects ~~are exempt.~~

24.11 B. Installation of traffic control devices, individual noise barriers, bus shelters  
 24.12 and bays, loading zones, and access and egress lanes for transit and paratransit vehicles ~~is~~  
 24.13 ~~exempt.~~

24.14 C. Modernization of an existing roadway or bridge by resurfacing, restoration, or  
 24.15 rehabilitation that may involve ~~the acquisition of~~ acquiring minimal amounts of right-of-way  
 24.16 ~~is exempt.~~

24.17 D. Roadway landscaping, ~~or~~ or construction of bicycle and pedestrian lanes, paths,  
 24.18 and facilities within an existing right-of-way ~~are exempt.~~

24.19 E. Any stream diversion, realignment, or channelization within the right-of-way  
 24.20 of an existing public roadway associated with bridge or culvert replacement ~~is exempt.~~

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

24.24 *[For text of subps 15 to 17, see M.R.]*

25.1 Subp. 18. **Agriculture and forestry.** The following projects are exempt:

25.2 A. Harvesting of timber for maintenance purposes is ~~exempt~~.

25.3 B. Public and private forest management practices, other than clearcutting or the  
25.4 application of applying pesticides, that involve less than 20 acres of land, ~~are exempt~~.

25.5 *[For text of subps 19 to 26, see M.R.]*

25.6 Subp. 27. **Recreational trails.** The projects listed in items A to ~~F~~ H are exempt. For  
25.7 purposes of this subpart, "existing trail" means an established corridor in current legal use.

25.8 *[For text of items A to F, see M.R.]*

25.9 G. Paving a trail located on an abandoned railroad grade retired in accordance  
25.10 with Code of Federal Regulations, title 49, part 1152.

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

25.14 **4410.5200 EQB MONITOR; PUBLICATION REQUIREMENTS.**

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

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

25.24 *[For text of subitem (1), see M.R.]*

26.1 (2) For notice of public sales of permits for or leases to mine iron ore,  
 26.2 copper-nickel, or other minerals on state-owned or administered mineral rights, Minnesota  
 26.3 Statutes, sections 93.16, and 93.335, ~~and 93.351~~, and part 6125.0500, the DNR is the  
 26.4 permitting authority.

26.5 *[For text of subitems (3) and (4), see M.R.]*

26.6 *[For text of items B to R, see M.R.]*

26.7 *[For text of subps 2 and 3, see M.R.]*

26.8 **4410.7904 LICENSING OF EXPLORERS.**

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

26.12 **4410.7906 PROCEDURE FOR THE ISSUANCE OF A ISSUING DRILLING**  
 26.13 **PERMIT.**

26.14 *[For text of subp 1, see M.R.]*

26.15 Subp. 2. **Content of an application for drilling permit.** An application for a drilling  
 26.16 permit ~~shall~~ must be filed by the applicant with the ~~board~~ EQB and ~~shall~~ must include:

26.17 *[For text of items A and B, see M.R.]*

26.18 C. the applicant's explorer's license, issued under Minnesota Statutes, section  
 26.19 ~~156A.071~~ 103I.601, subdivision 2, and parts 4727.0400 to ~~4727.0900~~ 4727.0860;

26.20 *[For text of items D to J, see M.R.]*

26.21 *[For text of subps 3 and 4, see M.R.]*

27.1 **4410.7926 ~~ABANDONMENT OF~~ ABANDONING EXPLORATORY BORINGS.**

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

27.6 **TERM CHANGE.** The term "shall be the RGU" is changed to "is the RGU" wherever it  
27.7 appears in Minnesota Rules, chapter 4410.



# Environmental Quality Board

## **STATEMENT OF NEED AND REASONABLENESS**

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

Revisor Number ID: RD-04157

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

**Alternative Format:**

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

To make a request, contact Erik Cedarleaf Dahl at the Environmental Quality Board,  
520 Lafayette Road North, St, Paul, MN 55155; telephone 651-757-2364; or e-mail [erik.dahl@state.mn.us](mailto:erik.dahl@state.mn.us)

**Notice Regarding the Excerpted Language in this SONAR:**

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

# Table of contents

Acronyms or abbreviations .....	7
Introduction and background .....	8
A. Introduction .....	8
B. Background .....	8
<b>Mandatory categories rulemaking</b> .....	9
<b>Silica sand projects rulemaking</b> .....	9
<b>Recreational trails projects rulemaking</b> .....	10
Public participation and stakeholder involvement .....	11
Statutory authority .....	14
Statement of general need .....	15
Reasonableness of the amendments.....	16
A. General reasonableness.....	16
B. Specific reasonableness .....	17
<b>Part 4410.0200, subpart 1b. Acute hazardous waste.</b> .....	17
<b>Part 4410.0200, subpart 5a. Auxiliary lane.</b> .....	17
<b>Part 4410.0200, subpart 9b. Compost facility.</b> .....	18
<b>Part 4410.0200, subpart 36a. Hazardous material.</b> .....	19
<b>Part 4410.0200, subpart 40b. Institutional facility.</b> .....	19
<b>Part 4410.0200, subpart 43. Local governmental unit.</b> .....	19
<b>Part 4410.0200, subpart 52a. Mixed municipal solid waste land disposal facility.</b> .....	20
<b>Part 4410.0200, subpart 59a. Petroleum refinery.</b> .....	20
<b>Part 4410.0200, subpart 71a. Refuse-derived fuel.</b> .....	20
<b>Part 4410.0200, subpart 82a. Silica sand.</b> .....	21
<b>Part 4410.0200, subpart 82b. Silica sand project.</b> .....	21
<b>Part 4410.0200, subpart 93. Wetland.</b> .....	21
<b>Part 4410.0500, subpart 4. RGU for EAW by order of EQB.</b> .....	22
<b>Part 4410.0500, subpart 6. Exception.</b> .....	22
<b>Part 4410.4300, subpart 2. Nuclear fuels and nuclear waste.</b> .....	23
<b>Part 4410.4300, subpart 3. Electric-generating facilities.</b> .....	23
<b>Part 4410.4300, subpart 4. Petroleum refineries.</b> .....	24
<b>Part 4410.4300, subpart 5. Fuel conversion facilities.</b> .....	24
<b>Part 4410.4300, subpart 6. Transmission lines</b> .....	25



Part 4410.4300, subpart 7. Pipelines.....	26
Part 4410.4300, subpart 8. Transfer facilities. ....	27
Part 4410.4300, subpart 10. Storage facilities. ....	31
Part 4410.4300, subpart 12. Nonmetallic mineral mining.....	34
Part 4410.4300, subpart 14. Industrial, commercial, and institutional. ....	36
Part 4410.4300, subpart 16. Hazardous waste. ....	37
Part 4410.4300, subpart 17. Solid waste.....	37
Part 4410.4300, subpart 18. Wastewater system.....	38
Part 4410.4300, subpart 20. Campgrounds and RV parks. ....	40
Part 4410.4300, subpart 20a. Resorts, campgrounds, and RV parks in shorelands .....	40
Part 4410.4300, subpart 21. Airport projects.....	40
Part 4410.4300, subpart 22. Highway projects. ....	41
Part 4410.4300, subpart 25. Marinas. ....	42
Part 4410.4300, subpart 26. Stream diversion.....	42
Part 4410.4300, subpart 27. Wetlands and public waters.....	43
Part 4410.4300, subpart 28. Forestry. ....	44
Part 4410.4300, subpart 30. Natural areas. ....	45
Part 4410.4300, subpart 31. Historical places.....	46
Part 4410.4300, subpart 36. Land use conversion, including golf courses.....	46
Part 4410.4300, subpart 36a. Land conversions in shoreland.....	46
Part 4410.4300, subpart 37. Recreational trails.....	47
Part 4410.4400, subpart 2. Nuclear fuels. ....	49
Part 4410.4400, subpart 3. Electric-generating facilities. ....	50
Part 4410.4400, subpart 4. Petroleum refineries.....	50
Part 4410.4400, subpart 5. Fuel conversion facilities.....	51
Part 4410.4400, subpart 6. Transmission lines. ....	51
Part 4410.4400, subpart 8. Metallic mineral mining and processing.....	52
Part 4410.4400, subpart 9. Nonmetallic mineral mining.....	53
Part 4410.4400, subpart 11. Industrial, commercial, and institutional facilities.....	53
Part 4410.4400, subpart 12. Hazardous waste. ....	54
Part 4410.4400, subpart 13. Solid waste.....	54
Part 4410.4400, subpart 15. Airport runway projects. ....	55
Part 4410.4400, subpart 16 Highway projects. ....	55
Part 4410.4400, subpart 19. Marinas. ....	55
Part 4410.4400, subpart 20. Wetlands and public waters.....	56

Part 4410.4600, subpart 10. Industrial, commercial, and institutional facilities.....	56
Part 4410.4600, subpart 12. Residential development. ....	57
Part 4410.4600, subpart 14. Highway projects. ....	57
Part 4410.4600, subpart 18. Agriculture and forestry. ....	58
Part 4410.4600, subpart 27. Recreational trails.....	59
Part 4410.5200, subpart 1. Required notices.....	59
Part 4410.7904, Licensing of Explorers.....	60
Part 4410.7906, subpart 2. Content of an application for drilling permit.....	60
Part 4410.7926. Abandonment of Exploratory Borings.....	61
Regulatory analysis .....	61
Regulatory Analysis: Minn. Rules 4410.0200 .....	62
Regulatory Analysis: Minn. Rules 4410.4300, subpart 2 Nuclear fuels and Nuclear Waste.....	62
Regulatory Analysis: Minn. Rules 4410.4300, subpart 3. Electric-generating facilities.....	62
Regulatory Analysis: Minn. Rules 4410.4300, subpart 4. Petroleum refineries .....	63
Regulatory Analysis: Minn. Rules 4410.4300, subpart 5. Fuel conversion facilities.....	63
Regulatory Analysis: Minn. Rules 4410.4300, subpart 6. Transmission lines.....	63
Regulatory Analysis: Minn. Rules 4410.4300, subpart 7. Pipelines. ....	64
Regulatory Analysis: Minn. Rules 4410.4300, subpart 8. Transfer facilities.....	64
Regulatory Analysis: Minn. Rules 4410.4300, subpart 10. Storage facilities. ....	64
Regulatory Analysis: Minn. Rules 4410.4300, subpart 12. Nonmetallic mineral mining. ....	66
Regulatory Analysis: Minn. Rules 4410.4300, subpart 14. Industrial, commercial and institutional facilities.....	66
Regulatory Analysis: Minn. Rules 4410.4300, subpart 16. Hazardous waste.....	66
Regulatory Analysis: Minn. Rules 4410.4300, subpart 17. Solid waste. ....	67
Regulatory Analysis: Minn. Rules 4410.4300, subpart 18. Wastewater system.....	67
Regulatory Analysis: Minn. Rules 4410.4300, subparts 20, 20a, 21.....	68
Regulatory Analysis: Minn. Rules 4410.4300, subpart 22. Highway projects.....	68
Regulatory Analysis: Minn. Rules 4410.4300, subparts 25, 30, 31, 36.....	68
Regulatory Analysis: Minn. Rules 4410.4300, subpart 26. Stream diversion. ....	68
Regulatory Analysis: Minn. Rules 4410.4300, subpart 27. Wetlands and public waters. ....	68
Regulatory Analysis: Minn. Rules 4410.4300, subpart 30. Natural Areas.....	69
Regulatory Analysis: Minn. Rules 4410.4300, subpart 31. Historical places.....	69
Regulatory Analysis: Minn. Rules 4410.4300, subpart 37. Recreational Trails.....	69

Regulatory Analysis: Minn. Rules 4410.4400.....	69
Regulatory Analysis: Minn. Rules 4410.4600.....	69
Regulatory Analysis: Minn. Rules 4410.5200.....	70
Regulatory Analysis: Minn. Rules 4410.7904, 4410.7906, 4410.7926.....	70
Notice plan 72	
A. Notice.....	72
Additional notice plan.....	73
Authors and SONAR exhibits.....	76
A. Authors.....	76
B. SONAR exhibits .....	76

# Acronyms or abbreviations

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

# Introduction and background

## A. Introduction

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

The proposed mandatory categories rulemaking will also include the amendments to rules relating to silica sand projects. This includes the mandatory categories related to mining facilities, transfer facilities, processing facilities and storage facilities related to silica sand projects. The purpose of these amendments is to adopt the threshold levels for silica sand projects established by the Minnesota Legislature through [Laws of Minnesota 2013, Chapter 114, Article 4, Section 92](#). In 2014, the EQB began rulemaking for silica sand projects under Revisor's ID Number RD-4305.

Additionally, the proposed mandatory categories rulemaking will also include the proposed amendments to rules relating to Recreational trails. This includes thresholds for different types of recreational trails that require preparation of an EAW. In the 2015 Minnesota legislative session, [Laws of Minnesota 2015, Chapter 4, Article 5, Section 33](#), the Minnesota Legislature passed legislation changing the EAW thresholds applicable to motorized trails. In 2015, the EQB began rulemaking for recreational trails projects under Revisor's ID Number RD-4381.

Consequently, for economic expediency, the EQB's mandatory categories rulemaking (Revisor's ID Number R-04157) will also incorporate the silica sand projects rulemaking (Revisor's ID Number RD-4305) and the Recreational trails projects rulemaking (Revisor's ID Number RD-4381).

This document explains the need for and reasonableness of proposed amendments to the environmental review rules specifically Minnesota Rules (Minn. R.) part(s) [4410.0200, 4410.0500, 4410.4300, 4410.4400, and 4410.4600](#). It summarizes the evidence and arguments that the Board is relying upon to justify the proposed amendments. It has been prepared to satisfy the requirements of Minnesota Statutes (Minn. Stat.) section (§) 14.131 and Minn. R. part 1400.2070.

## B. Background

The Minnesota Environmental Review Program, established by the Minnesota Environmental Policy Act (MEPA) of 1973, has been in existence since 1974. The program operates under rules adopted by the EQB, which are binding upon all state agencies and political subdivisions of the state.

The rules promulgated from MEPA contain two basic parts: 1) the procedures and standards for review under this program and 2) listings of types of projects, either for which are mandatory or which projects are exempted from review. Mandatory review can either be in the form of an Environmental Assessment Worksheet (EAW) or an Environmental Impact Statement (EIS). The lists of types of projects subject to these environmental review requirements are generally referred to as the "mandatory categories." The lists of exempt projects are referred to as "exemptions categories" or sometimes just "exemptions." The list of mandatory EAWs is found at Minn. R. part 4410.4300; mandatory EISs at 4410.4400; and exemptions at 4410.4600.

## Mandatory categories rulemaking

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

Additionally, [2015 Special Session Law, Chapter 4, Article 3, Section 2](#) direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection. (Note - as previously stated, there are also changes to Silica sand project and Recreational trails project EAW categories and related definitions as directed by the Minnesota Legislature within this rulemaking.)

## Silica sand projects rulemaking

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

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

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

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

*116C.991 ENVIRONMENTAL REVIEW; SILICA SAND PROJECTS.*

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

In 2016, the EQB determined that it would permanently adopt the original 2013 thresholds for when environmental review of silica sand projects must occur, as set by the Legislature, in the Mandatory categories rulemaking, R-04157. In 2017, [Laws of Minnesota 2017, Chapter 93, article 1, Section 105](#) was updated to read:

*Sec. 105.*

### ***RULES; SILICA SAND.***

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

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

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

### **Recreational trails projects rulemaking**

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

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

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

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

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

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

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

Under the Revisor ID Number R-4381, the EQB attempted to use the good cause exemption rulemaking procedure to adopt rules in accordance with the above Minn. Laws from the 2015 legislative session in November 2015. The proposed rules were not approved (OAH 82-9008-32965) due to “the legislature provided no direction to the Board with respect to how EAW requirements apply to a new trail that consists of a combination of newly constructed trail and an existing trail newly designated for motorized use...In response to the Board’s proposed rule, the author of the legislation and representatives from all-terrain vehicle associations commented that “[t]he draft rules as presented by the EQB do not follow the explicit intent of the rule changes as was my intent and as directed by the legislature...” The author states that “[u]nder the application of items A and B, the EQB should not be summing the parts of trail A and trail B, because it could result in a mandatory environmental assessment worksheet (EAW) for less than 25 miles of new trail, which is

what the legislation I authored specifically prohibited.”<sup>1</sup><sup>2</sup> Essentially, the Judge’s order states that “[I]n order to effectuate the identified intent of the legislation, the Board would have had to alter the formula paragraph or strike it entirely. To do either would go beyond the requirement of subdivision 1(3) of the good cause exemption, which allows the agency only to “incorporate specific changes set forth in the applicable statute when no interpretation of law is required.”<sup>3</sup> In February 2016, the EQB again submitted the proposed rules for adoption. The proposed rules were not adopted. Consequently, the rulemaking under Revisor ID Number R-4381 was incorporated into this rulemaking.

Furthermore, in the Administrative Law Judge Barbara J. Case’s Order on Review (OAH 82-9008-32965) it is stated that the phrases “legally constructed route” and “logging road” were, “...impermissibly vague if it is so indefinite that one must guess at its meaning.<sup>4</sup> A rule must establish a reasonably clear policy or standard to control and guide administrative officers so that the rule is carried out by virtue of its own terms and not according to the whim and caprice of the officer.<sup>5</sup> This language is impermissibly vague and therefore unconstitutional.<sup>6</sup>”

After the proposed rule was not approved, EQB decided to discontinue rule adoption through the good cause exempt rulemaking process and determined a standard rulemaking would provide more flexibility to deal with vague terms and the formula detailed above. Thus, this rulemaking is an attempt to incorporate the statutory rule language (Minn. Laws 2015, ch. 4, section 33.) while also adding more detail to vague terms, or changing to more appropriate terms, and amending the “new and old” trail formula.

## Public participation and stakeholder involvement

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

- A. The EQB provided the required notifications to the public and the entities identified in statute. Three Request for Comments were published in the *State Register*:
  - a. July 22, 2013 - The Request for Comments closed on August 23, 2013 at 4:30pm.
  - b. November 9, 2015 - The Request for Comments closed on December 31, 2015 at 4:30pm.
  - c. October 24, 2016 - The Request for Comments closed on November 28, 2016 at 4:30pm.
- B. The EQB has a self-subscribing rule-specific mailing list at: <https://www.eqb.state.mn.us/contact> which EQB used to disseminate rule-related information to interested and affected parties.

<sup>1</sup> Letter comment of Representative Tom Hackbarth dated November 25, 2015.

<sup>2</sup> Judge Barbara J. Case, Administrative Law Judge order dated December 2, 2015

<sup>3</sup> Minn. Stat. § 14.388, subd. 1(3)

<sup>4</sup> *In re the Proposed Amendment to and Repeal of Rule of the Minn. Dep’t of Emp’t and Econ. Dev. Relating to Unemployment Ins.; Modifying Appeals, Emp’r Records, and Worker Status Provisions; Minn. Rules Parts 3310 and 3315*, No. 80-1200-31264, 2014 WL 2156996, at \*3 (Minn. Off. Admin. Hrgs. May 5, 2014).

<sup>5</sup> See *Hard Times Café, Inc. v. City of Minneapolis*, 625 N.W.2d 165, 171 (Minn. Ct. App. 2001) (stating that “[a] statute is void due to vagueness if it defines an act in a manner that encourages arbitrary and discriminatory enforcement, or the law is so indefinite that people must guess at its meaning” (quotation omitted)).

<sup>6</sup> In order to be constitutional, a rule must be sufficiently specific to provide fair warning of the type of conduct to which the rule applies. See *Cullen v. Kentucky*, 407 U.S. 104, 110 (1972); *Thompson v. City of Minneapolis*, 300 N.W.2d 763, 768 (Minn. 1980).



- C. In addition, the EQB sent a GovDelivery notice and a notice the *EQB Monitor* encouraging interested and affected parties to register to receive rulemaking information via the self-subscribing rule-specific mailing list.
- D. The EQB established a rule-specific webpage: <https://www.eqb.state.mn.us/content/eqb-mandatory-categories-rulemaking>, which was used to disseminate rule-related information to interested and affected parties. (Prior to combining the silica sand projects rulemaking and the Recreational trails projects rulemaking with the mandatory categories rulemaking, each rulemaking had a rule-specific webpage. After the rulemakings were combined, all webpages directed viewers to the mandatory categories webpage for rulemaking information.)
- E. Specific to the silica sand project rulemaking, prior to merging the silica sand rulemaking with the mandatory categories rulemaking, EQB staff traveled to eighteen local governments around the State of Minnesota (every county with silica sand facilities) to interview local government staff on issues related to silica sand and the implementation of the potential rules.
- F. Specific to the silica sand project rulemaking, prior to merging the silica sand rulemaking with the mandatory categories rulemaking, the EQB sent out a survey on preliminary rule concepts to Counties, Cities and Townships in Minnesota via three organizations:
  - a. Minnesota Association of Counties (18 Counties)
  - b. Minnesota Association of Cities
  - c. Minnesota Association of Townships (745 Townships)

The survey was utilized to receive feedback on and refine rule concepts, RGU designations and develop need and reasonable arguments in the SONAR.

- G. Specific to the silica sand project rulemaking, prior to merging the silica sand rulemaking with the mandatory categories rulemaking, EQB released a preliminary draft of the proposed rule language on September 5, 2014 and presented the preliminary draft of the proposed rules to the Board at the public board meeting on September 17, 2014. This was an opportunity to provide an informal comment on the EQB rules. Informal comments were reviewed and appropriate changes made.
- H. Specific to the silica sand project rulemaking, prior to merging the silica sand rulemaking with the mandatory categories rulemaking, EQB staff presented an updated preliminary draft of the proposed rules to the EQB Board on November 18, 2015. This was another opportunity to provide an informal comment on the EQB rules and process.
- I. Specific to the silica sand project rulemaking, prior to merging the silica sand rulemaking with the mandatory categories rulemaking, a Silica Sand Rulemaking Advisory Panel (SSRAP) was created:
  - a. SSRAP members were selected by an application process. A November 2013 request for interest in a silica sand rule advisory panel (advisory panel) was released by PCA and DNR.
  - b. The focus of the advisory panel was to provide feedback and advise PCA, DNR and EQB on issues related to rule language, economic and environmental impacts and administrative elements of rules.
  - c. A 15-member advisory panel was established representing public and private statewide interests. Membership included citizens, industries and local government.

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

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

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

## Statutory authority

The Board's statutory authority to adopt the rule amendments is given in the Minnesota Environmental Policy Act, [Minn. Stat. 116D.04, subdivisions 2a\(a\), 4a and 5a](#) and [116D.045, subdivision 1](#). Under these provisions, the Board has the necessary statutory authority to adopt the proposed rules amendments. In particular, Minn. Stat. 116D.04, subdivision 2a(a) directs the Board to establish mandatory categories for EAWs, EISs and exemptions by rule.

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

# Statement of general need

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

The EQB is proposing amendments to Minn. R. ch. 4410 to:

- A. Fulfill the recommendations found in the Mandatory Environmental Review Categories Report (2013),
- B. Streamline environmental review through both technical and housekeeping changes to the rule—such as aligning environmental review rules with other state rules, statutes, or federal requirements, and;
- C. Develop or adopt, as directed by the Minnesota Legislature in 2013 and 2015, thresholds specific to Silica sand projects and to amend thresholds specific to Recreational trails respectively.

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

More specifically, the interagency 2013 Mandatory Environmental Review Categories Report provided proposed changes to the mandatory EAW, EIS and exemption categories, and their supporting definitions that came from state agencies and LGUs, which have extensive experience in the day-to-day application of the rule.

Many of the proposed rule amendments are technical and housekeeping changes to the EAW and EIS categories, which reflect the changes to corresponding Minnesota rules and statutes. The amendments include, as directed by the Minnesota Legislature in 2013 and 2015, adopting thresholds specific to silica sand projects and to amending thresholds specific to Recreational trails respectively.

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

Other rule amendments include updates to EAW and EIS categories’ thresholds to reflect the many years of rule application and experience from the practitioners as well as the changes to the regulatory oversight of various project types.

These amendments are further supported by the 2015 Minnesota Legislature which set aside funding for EQB to “streamline the environmental review.” The consistency with other state rules and statutes will reduce delay and confusion for project proposers, RGUs and the public in determining whether the environmental review rules must be applied.

Furthermore, proposed amended changes include updates to the definitions and project specific terminology that better reflects the corresponding regulatory programs that project proposers, RGUs and the public may also be navigating while working on environmental review. Amending the environmental review rules is reasonable because clear and consistent rules will clarify the environmental review process by creating greater continuity across state programs.

## Reasonableness of the amendments

### A. General reasonableness

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

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

Pursuant to a legislative charge to support environmental review efficiency and streamline the environmental review process, ([2015 Special Session Law, Chapter 4, Article 3, Section 2](#)), the EQB is pursuing technical updates to MN Rules ch. 4410 in this rulemaking. Specifically, focusing on mandatory EAW and EIS categories that were identified in the 2013 report to the legislature and categories identified by the public during rulemaking comment periods.

The goal in the streamlining efforts are to provide greater clarity and specificity for RGUs, project proposers and the public at large in applying the 4410 Minn. Rules (the mandatory categories) and completing environmental review. Moreover, the changes include legislatively directed changes for the Recreational trails categories. In all instances the rule amendments made during this rulemaking intend to draw clear lines as to when environmental review is necessary – by adding specificity to the definitions, the project types and thresholds provides clarity to the stakeholders as to whether environmental review is required or not. These amendments are generally reasonable because in three separate instances the MN legislature has requested that these changes have be made.

The proposed technical and housekeeping changes to the EAW and EIS categories, which reflect the changes to corresponding Minnesota rules and statutes, are necessary and reasonable as they update an outdated set of rules. And in some instances, new rule parts and amendments are reasonable to satisfy directives from the Minnesota Legislature; specifically regarding thresholds specific to silica sand projects and to amending thresholds specific to recreational trails. Other changes to EAW and EIS categories’ thresholds are to represent the many years of rule application and experience from the practitioners, as well as the changes in some industry specific regulatory frameworks. Moreover, these changes are necessary and reasonable because the majority of the EAW and EIS categories were established in the 1980’s and 1990’s and do not reflect the modern regulatory system or project types. Rule updates keep the rules relevant and more easily understood by project proposers, RGUs and citizens.

## B. Specific reasonableness

### INTRODUCTION

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

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

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

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

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

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

Currently, Minn. Rules ch. 4410 does not define acute hazardous waste. The definition provides greater clarity in determining if environmental review is required for a proposed project. The definition aligns Minn. Rules ch. 4410 with the other applicable State regulatory requirements ([Minn. Rules 7045.0020](#)). Using similar terminology with other applicable regulatory requirements helps the public with review, when environmental review documents and permits are co-noticed.

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

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

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

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

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

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

Both the MnDOT Manual and the AASHTO Green Book include the phrase "and other purposes" in the definition of "auxiliary lane." This phrase has been excluded from the definition of auxiliary lane

proposed for part 4410.0200, subpart 5a. The definition of auxiliary lane will be limited to just the lanes listed in the definition; i.e., speed change, turning, storage for turning, weaving, and truck climbing. The change is made to clarify the types of auxiliary lanes that would be included in the exclusion for ease of administration and interpretation.

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

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

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

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

As provided in the definition, auxiliary lanes serve specific purposes for shorter distances and are typically constructed within the existing right-of-way in urban settings. They have been supported by the public because they provide a benefit of improving traffic movement and increasing safety.

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

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

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

#### **Justification for Part 4410.0200, subpart 9b. Compost facility.**

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

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

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

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

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

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

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

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

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

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

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

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

**Local governmental unit.** “Local governmental unit” means any unit of government other than the state or a state agency of the federal government or a federal agency. ~~‡~~ Local governmental unit includes watershed districts established pursuant according to Minnesota Statutes, chapter 103 D, soil and water conservation districts, watershed management organizations, counties, towns,



cities, port authorities, housing authorities, and the Metropolitan Council. # Local governmental unit does not include courts, school districts, and regional development commissions.

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

It was unclear whether soil and water conservations districts and watershed management organizations could be considered responsible governmental units, with the authority to prepare environmental documents required under Minn. Rules ch 4410. The addition of soil and water conservation districts and watershed management organizations to this subpart does not make this subpart a comprehensive list of local governmental units. The change implements the common understanding of the terms and eliminates any confusion.

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

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

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

Currently, Minn. Rules ch. 4410 does not define mixed municipal solid waste land disposal facility. The definition provides greater clarity in determining if environmental review is required for a proposed project. Referencing other applicable State regulatory requirements ([Minn. Rule 7035.0300](#)) in the definition ensures that Minn. Rules ch. 4410 will stay current, when other applicable State regulatory requirements are updated. Using similar terminology with other applicable regulatory requirements helps the public with review, when environmental review documents and permits are co-noticed.

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

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

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

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

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

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

~~Refuse-derived fuel. "Refuse-derived fuel" means the product resulting from techniques or processes used to prepare solid waste by shredding, sorting, or compacting for use as an energy source.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The proposed change to the definition ([Minn. Stat. section 103G.005, subdivision 19](#)) aligns the current usage and understanding of the terms. The current definition for “wetlands” in Minn. Rule 4410.0200 was written in 1982 and does not reflect state rule or statutes that were specifically written for wetlands. Referencing other applicable State regulatory requirements in the definition ensures that Minn. Rules ch. 4410 will stay current, when other applicable State regulatory requirements are updated. Using similar terminology with other applicable regulatory requirements helps the public with review, when environmental review documents and permits are co-noticed.

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

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

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

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

### **Justification for subpart 4. RGU for EAW by order of EQB**

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

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

### **Part 4410.0500, subpart 6. Exception.**

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

### **Justification for Part 4410.0500, subpart 6. Exception.**

The EQB uses its regularly scheduled monthly Board meeting to process requests for a different RGU. The process under the current rule can take nearly 45-days to complete, therefore, it is not possible for the EQB to meet the timeline designated in the current rule. The addition of “EQB chair” allows the request to be processed more efficiently. This change is intended to allow flexibility for making non-controversial decisions, and does not prevent a request for the full Board to consider the decision. The request will be published in the monitor for one week prior to approval to give any board member, on behalf of the public, an opportunity to request a full review by the Board.

The requirement for “within five days of receipt of the completed data portions of the EAW” is removed because project proposers often work with the RGU to determine what type of information needed. Removing the requirement to have a complete data submittal before the RGU designation process is complete, will ensure that parties are identified early in the process and work together in the EAW development process. The EQB, or EQB chair, will identify what information is required.

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

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

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

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

**Nuclear fuels and nuclear waste.** Items A to F designate the RGU for the type of project listed:

- A. For construction or expansion of a facility of the storage of high level nuclear waste, other than an independent spent-fuel storage installation, the EQB ~~shall be~~ is the RGU.

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

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

The appropriate level of environmental review and the appropriate RGU for independent spent-fuel storage installation projects are established at [Minn. Stat. 116C.83, subdivision 6, paragraph \(b\)](#) which states:

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

The addition of "other than independent spent-fuel storage installation" makes this rule subpart consistent with [Minn. Stat. 116C.83, subdivision 6](#). The EQB will retain RGU status for preparation of an EAW for non-independent spent-fuel storage installation high-level nuclear waste storage facilities.

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

**Electric-generating facilities.**

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

- A. For construction of an electric power generating plant and associated facilities designated for or capable of operating at a capacity of ~~between 25 megawatts and 50 megawatts~~, the EQB shall be the RGU or more but less than 50 megawatts and for which an air permit from the PCA is required, the PCA is the RGU.
- B. For ~~construction of an~~ electric power generating ~~plants~~ plant and associated facilities designed for and capable of operating at a capacity of 25 megawatts or more but less than 50 megawatts ~~or more. Environmental review shall be conducted according to parts~~

~~7849.1000 to 7849.2100 and 7850.1000 to 7850.5600, and for which an air permit from the PCA is not required, the local governmental unit is the RGU.~~

- C. For construction of an electric power generating plant and associated facilities designed for and capable of operating at a capacity of 50 megawatts or more, the PUC is the RGU, environmental review must be conducted according to parts 7849.1000 to 7849.2100 and chapter 7850.
- D. For construction of a wind energy conversion system, as defined in Minnesota Statutes section 216F.01, designed for and capable of operating at a capacity of 25 megawatts or more, the PUC is the RGU and environmental review must be conducted according to chapter 7854.

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

This subpart has been divided into 3 sections:

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

Part B: The LGU is established as the RGU for plants for which an air permit from the PCA is not required. Such plants typically utilize a renewable resource in a non-combustion process (e.g., solar panels). These plants are well suited to be evaluated by LGUs because LGUs have more permitting authority over the project as a whole.

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

Part D: The proposed change specifies that construction of a wind energy conversion system, designed for and capable of operating at a capacity of 25 megawatts or more, is required to complete environmental review; and designates the PUC is the RGU. The PUC is assigned as the RGU based on their approval authority over the project as a whole and their expertise for evaluating these project types.

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

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

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

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

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

#### **Part 4410.4300, subpart 5. Fuel conversion facilities.**

**Fuel conversion facilities.**

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

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

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

The addition of Part B will align the language passed by the Minnesota Legislature in 2011 and found in [Minn. Stat. 116D.04, subdivision 2a, paragraph \(b\)](#), which deals exclusively with the expansion of fuel conversion facilities:

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

These changes align with the statutory change referenced in part B. The addition provides greater clarity, specificity and efficiency in determining if environmental review is required for a proposed project.

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

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

Transmission lines. ~~For construction of a transmission line at a new location with a nominal capacity of between 70 kilovolts and 100 kilovolts with 20 or more miles of its length in Minnesota, the EOB shall be the RGU. For construction of a high-voltage transmission lines line and associated facilities, as defined in part 7850.1000 designed for and capable of operating at a nominal voltage of 100 kilovolts or more, the PUC is the RGU. Environmental review shall~~ must be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.

## Justification for Part 4410.4300, subpart 6. Transmission lines.

The deletion of the requirement for mandatory environmental review of transmission lines with a nominal capacity of between 70 kilovolts and 100 kilovolts (kV) reflects the types of transmission lines constructed in Minnesota. The addition of the definition assures consistency for determining whether transmission lines and associated facilities require environmental review. The addition of the phrase “the PUC is the RGU” to this subpart makes clear that the PUC is the RGU for transmission line projects.

Transmission lines with voltages between 70 and 100 kV are not typically utilized in Minnesota. The addition of the phrases “construction of a high-voltage” and “as defined in part 7850.1000” clarifies the definition of “associated facilities” and “high-voltage transmission line.”

Referencing other applicable State regulatory requirements in the definition ensures that Minn Rules ch. 4410 will stay current, when other applicable State regulatory requirements are updated. Using similar terminology with other applicable regulatory requirements helps the public with review, when environmental review documents and permits are co-noticed.

## Part 4410.4300, subpart 7. Pipelines.

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

- A. ~~For routing of a pipeline, greater than six inches in diameter and having more than 0.75 miles of its length in Minnesota, used for the transportation of coal, crude petroleum fuels, or oil or their derivatives, the EQB shall be the RGU.~~
  - B. ~~For the construction of a pipeline for distribution of natural or synthetic gas under a license, permit, right, or franchise that has been granted by the municipality under authority of Minnesota Statutes, section 216B.36, designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than:
    - (1) five miles if the pipeline will occupy streets, highways, and other public property;
    - or
    - (2) 0.75 miles if the pipeline will occupy private property; the EQB or the municipality is the RGU.~~
- C. ~~For construction of a pipeline to transport natural or synthetic gas subject to regulation under the federal Natural Gas Act, United States Code, title 15, section 717, et. seq., designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than:
  - (1) five miles if the pipeline will be constructed and operated within an existing right-of-way; or
  - (2) 0.75 miles if construction or operation will require new temporary or permanent right of way;the EQB is the RGU. This item shall not apply to the extent that the application is expressly preempted by federal law, or under specific circumstances when an actual conflict exists with applicable federal law.~~

- ~~D. For construction of a pipeline to convey natural or synthetic gas that is not subject to regulation under the federal Natural Gas Act, United States Code, title 15, section 717, et seq.; or to a license, permit, right, or franchise that has been granted by a municipality under authority of Minnesota Statutes, section 216B.36; designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than 0.75 miles, the EOB is the RGU.~~

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

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

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

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

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

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

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

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

### **Part 4410.4300, subpart 8. Transfer facilities.**



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

- A. For construction of a new facility which is designed for or capable of transferring 300 tons or more of coal per hour or with an annual throughput of 500,000 tons of coal from one mode of transportation to a similar or different mode of transportation; or the expansion of an existing facility by these respective amounts, the PCA ~~shall be~~ is the RGU.
- B. For construction of a new facility or the expansion by 50 percent or more of an existing facility for the bulk transfer of hazardous materials with the capacity of 10,000 or more gallons per transfer, if the facility is located in a shoreland area, ~~a delineated flood plain~~ floodplain, a state or federally designated wild and scenic rivers district, ~~the Minnesota River Project Riverbend area, or the Mississippi headwaters area,~~ the PCA ~~shall be~~ is the RGU.
- C. The PCA is the RGU for a silica sand project that:
  - (1) is designed to store or is capable of storing more than 7,500 tons of silica sand; or
  - (2) has an annual throughput of more than 200,000 tons of silica sand.

#### Justification for Part 4410.4300, subpart 8. Transfer facilities.

The changes to part A provide clarity and alignment with the language in part B. The addition of part C is established to align with the thresholds found at Minn. Stat. 116C.991, section a, paragraph (2). The interim mandatory categories for silica sand projects are listed under Minn. Stat. § 116.991 and were established as provided by [Laws of Minnesota 2013, chapter 114, article 4, section 105](#):

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

*(2) is designed to store or is capable of storing more than 7,500 tons of silica sand or has an annual throughput of more than 200,000 tons of silica sand and is not required to receive a permit from the Pollution Control Agency. The Pollution Control Agency is the responsible governmental unit.*

*(b) In addition to the contents required under statute and rule, an environmental assessment worksheet completed according to this section must include:*

*(1) a hydrogeologic investigation assessing potential groundwater and surface water effects and geologic conditions that could create an increased risk of potentially significant effects on groundwater and surface water;*

*(2) for a project with the potential to require a groundwater appropriation permit from the commissioner of natural resources, an assessment of the water resources available for appropriation;*

*(3) an air quality impact assessment that includes an assessment of the potential effects from airborne particulates and dust;*

*(4) a traffic impact analysis, including documentation of existing transportation systems, analysis of the potential effects of the project on transportation, and mitigation measures to eliminate or minimize adverse impacts;*

*(5) an assessment of compatibility of the project with other existing uses; and*

*(6) mitigation measures that could eliminate or minimize any adverse environmental effects for the project.*

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

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

*116C.991 ENVIRONMENTAL REVIEW; SILICA SAND PROJECTS.*

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

The EQB determined that it would permanently adopt the original 2013 thresholds for when environmental review of silica sand projects must occur, as set by the Legislature, in the Mandatory categories rulemaking, R-04157.

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

*Sec. 105. RULES; SILICA SAND.*

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

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

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

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

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

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

The proposed rule is due to the increased silica sand activities in the state caused by the increased demand for silica sand nationwide, and the need for a clear determination for which governmental unit

will serve as the RGU. The proposed language will provide clarity for stakeholders as to which projects require an EAW and which projects do not.

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

The proposed rule language in subpart 8, Item C, is due to the potential for air emissions related to silica sand facility operations. Silica sand dust may be emitted during mining, handling, transferring, open storage piles and transport at a silica sand transloading or processing facility. Transloading or processing at a mine or standalone facility may include the storage of silica sand or the transfer of raw materials into trucks or railcars for transport. Depending on how a processing, transloading or mining operation is configured, the proximity of businesses, residences— including sensitive populations – older, asthmatics, young children from inhalation or aspiration of particles can be directly related to its potential for environmental and health effects related to air quality.

The proposed rule at subpart 8, Item C, establishes a throughput threshold of 200,000 tons or more of silica sand annually and a facility designed to store 7,500 tons or more of silica. The throughput threshold is reasonable because it was developed on the basis that the legislature determined the threshold level of 200,000 tons or more of annual throughput on a silica sand project requires environmental review due to the potential for significant environmental effects. The storage threshold is reasonable on the basis that the legislature determined 7,500 tons or more of storage was an appropriate and necessary threshold due to the potential for significant environmental effects related to air quality and transportation related issues.

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

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

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

PCA as the RGU is necessary due to several factors:

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

- The key characteristics of processing and transloading facilities which have the potential for significant environmental effects are air quality and water quality, which are incredibly complicated and which PCA has unique expertise to best assess the potential impacts.
- Permitting authority rests with the PCA for air permits and water discharge permits for processing and transloading facilities.
- If a silica sand facility proposes to process or transload sand from offsite, it is likely to be a larger facility and require more transportation infrastructure, a larger water appropriation (for the processing), and due to a larger size, it may have the potential to have increased significant environmental effects.
- The legislature determined the PCA was the appropriate RGU when it developed and established the statutory language.
- The EQB surveyed 94 LGUs in Minnesota and 71% (63) agreed that the Minnesota Pollution Control Agency (MPCA) should be the RGU.

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

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

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

Minnesota Statutes, section 299F.56, subdivision 14, synthetic gas, as defined in Minnesota Statutes, section 216B.02, subdivision 6b, or anhydrous ammonia, the PUC is the RGU.

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

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

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

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

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

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

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

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

Historically a single threshold was established for multiple substances in part C – liquefied natural gas, synthetic gas and anhydrous ammonia were all contained in the same part with the PCA as the RGU. However, the PCA has no approval authority of any of the substances, while the PUC regulates liquefied natural gas and synthetic gas, making them the more appropriate RGU. Similarly, the PCA does not regulate anhydrous ammonia, but the MDA does and is the more appropriate RGU. Consequently, while the thresholds have not changed, but the RGU has changed to a more appropriately qualified RGU. Additionally, part G maintains that when all of the substances are combined at a single site, as the original rule implied, then the RGU with the greatest approval authority over the project, the PUC, has the

obligation to review the project when the threshold is met. This change is consistent with other parts of Minn. Rules ch. 4410 and is consistent with the regulatory system around each substance.

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

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

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

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

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

*116C.991 ENVIRONMENTAL REVIEW; SILICA SAND PROJECTS.*

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

The EQB determined that it would permanently adopt the original 2013 thresholds for when environmental review of silica sand projects must occur, as set by the Legislature, in the Mandatory categories rulemaking, R-04157.

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

**RULES; SILICA SAND.**

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

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

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

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

*silica sand and whether the requirements should be different for different geographic areas of the state. The rulemaking is exempt from Minnesota Statutes, section 14.125.*

In 2017, the Legislature changed the language from “shall” to “may” amend EQB rules for environmental review (see above). The EQB determined that the potential for significant environmental effects persists in relation to silica sand projects in Minnesota and it would be to the public’s benefit to have the mandatory category threshold within the Environmental Review Mandatory Category rules, 4410.4300 (see need and justification section for [Minnesota Rules 4410.4300, subpart 8, item C](#)).

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

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

- B. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will extract 40 or more acres of land to a mean depth of ten feet or more during its existence, the local ~~government~~ governmental unit shall be is the RGU.
- D. For development of a silica sand project that excavates 20 or more acres of land to a mean depth of ten feet or more during the project’s existence, the local governmental unit is the RGU.

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

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

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

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

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

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

Activities and features associated with the extraction and mining processes and mine area land disturbance directly relate to the need for environmental review due to the potential for significant environmental effects caused by these activities. Specifically, the activities include truck transport of the silica sand from the mine site, which has the potential to result in increased traffic impacts, road degradation, increased noise, safety concerns and increased dust. Mine area activities also include permanent landscape alterations caused by removing overburden to access the silica sand resources and permanent landscape alterations from removing the silica sand resources from the site. The landscape alterations have the potential to change the way-of-life in a community in which these facilities are located. This ‘change’ in the ‘way-of-life’ may be characterized as the loss of a notable land feature from an area’s viewshed or the disruption of the character of a place due to mine area activities that alter the

landscape. Additional activities and features associated with the extraction and mining process that have the potential to change the 'way of life' include lights, sounds, and hours of operation.

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

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

The proposed rule part Minn. Rule 4410.4300, subpart 12, D. is reasonable because the Minnesota Legislature set the 20-acre and the mean depth of 10-feet or more silica sand project threshold, indicating a legislative intent and concern that a silica sand project that excavates 20-acres or more to a mean depth of 10 feet has the potential for significant environmental effects, and therefore warrants environmental review.

In 2015, EQB completed a survey of LGUs throughout the state of Minnesota. The survey is available on EQB's website:

<https://www.eqb.state.mn.us/sites/default/files/documents/Sand%20survey%20for%20LGU%27s%20April%2015%20EQB.pdf>). The survey recorded responses from 11 counties, 13 cities and 70 townships. The survey recorded 56% (49) respondents agreeing with the 20 acre mine threshold and 77% (69) agreed that the LGU should be the RGU.

Survey respondents stated

(<https://www.eqb.state.mn.us/sites/default/files/documents/Silica%20Sand%20Survey%20Comments%20Final%20April%2015%20EQB.pdf>) that non-metallic mining causes disruption to traffic flows in an area, noise, odor, dust and have a significant impact on area residents 'way of life'.

Designation of the local government unit as the RGU:

- Mines are a land-use issue; LGUs have the greatest authority for supervising and permitting authority over land-use and projects in their community; LGUs have local knowledge and expertise regarding what is appropriate for their community and quality of life; thus it is necessary to involve the LGU and reasonable to designate it as the RGU.
- LGUs are in a better position to understand and protect the unique local resources that the local community deems valuable, rather than state regulators, who do not have as strong of an incentive as LGUs to ensure that all risks of silica sand mining are mitigated.
- The historic precedent of the environmental review program that LGUs are the RGU when land use is the permit with the greatest approval authority.

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

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

*116C.991 ENVIRONMENTAL REVIEW; SILICA SAND PROJECTS.*

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

The EQB determined that it would permanently adopt the original 2013 thresholds for when environmental review of silica sand projects must occur, as set by the Legislature, in the Mandatory



categories rulemaking, R-04157. In 2017, [Laws of Minnesota 2017, Chapter 93, article 1, Section 105](#) was updated to read:

*sec. 105. RULES; SILICA SAND.*

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

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

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

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

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

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

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

- A. For construction of a new or expansion of an existing warehousing or light industrial facility equal to or in excess of the following thresholds, expressed as gross floor space, the local governmental unit ~~shall be~~ is the RGU:
  - (1) unincorporated area, 150,000 square feet;
  - (2) third or fourth class city, 300,000 square feet;
  - (3) second class city, 450,000 square feet; and
  - (4) first class city, 600,000 square feet.
  
- B. For construction of a new or expansion of an existing industrial, commercial, or institutional facility, other than a warehousing or light industrial facility, equal to or in excess of the following thresholds, expressed as gross floor space, the local governmental unit shall be is the RGU:
  - (1) unincorporated area, 100,000 square feet;
  - (2) third or fourth class city, 200,000 square feet;
  - (3) second class city, 300,000 square feet; and
  - (4) first class city, 400,000 square feet.

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

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

The addition of “square feet” to Minn. Rule part 4410.4300, subpart 14 eliminates any question regarding which units of measurement must be used in applying part A.

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

#### **Part 4410.4300, subpart 16. Hazardous waste.**

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

- A. For construction of a new or expansion of a an existing hazardous waste disposal facility ~~the PCA shall be~~ is the RGU.
- B. For construction of a new facility for hazardous waste storage, processing facility with a capacity of 1,000 or more kilograms per month or treatment that is generating or receiving 1,000 kilograms or more per month of hazardous waste or one kilogram or more per month of acute hazardous waste, the PCA ~~shall be~~ is the RGU.
- C. For expansion of an existing facility for hazardous waste storage processing facility storage or treatment, that increases ~~it's~~ the facility's capacity by ten percent or more, the PCA ~~shall be~~ is the RGU.

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

In parts B and C, the word “processing” is removed, as the term is confusing when applied to hazardous waste treatment. The terms “storage” and “treatment” are more often used by the regulatory authority when permitting hazardous waste facilities. In part B, “acute hazardous waste” is added to address a gap in coverage for the types of wastes typically collected at these facilities. Removing the term “processing facility” and using hazardous waste “storage” or “treatment,” aligns the environmental review rules with the language in other State rules. Using similar terminology also helps the public with review when environmental review documents and permits are co-noticed.

In part B, acute hazardous waste was added to the category as there are two types of hazardous waste collected at storage and treatment facilities, acute and non-acute and the threshold currently does not differentiate between the two. Technical experts at the PCA recommended that the category provide a separate, smaller, volume threshold for acute hazardous waste because it consists of wastes which are more toxic, therefore posing more risk to human health and the environment at smaller exposure amounts. The threshold volume of one kilogram (kg) was chosen due to the Federal hazardous waste laws that, because of the more toxic nature of acute hazardous waste, regulate businesses generating 1kg of acute hazardous waste per month equivalently to businesses generating 1000 kg per month of non-acute hazardous waste.

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

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

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

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

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

**Part 4410.4300, subpart 18. Wastewater system.**

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

- A. For expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of any part of that system by 1,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with a capacity less than 20,000,000 gallons per day ~~or for expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of any part of that system by 2,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with the capacity of 20,000,000 gallons or greater,~~ the PCA is ~~shall be~~ the RGU.
- B. ~~For expansion or reconstruction of an existing municipal or domestic wastewater treatment facility which results in an increase by 50 percent or more and by at least 200,000 gallons per day of its average wet weather design flow capacity, or construction of a new municipal or domestic wastewater treatment facility with an average wet weather design flow capacity of 200,000 gallons per day or more, the PCA shall be the RGU.~~

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

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

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

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

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

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

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

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

##### **Campgrounds and RV parks.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Part B: change “travel” lane to “through” lane, excluding “auxiliary lanes” but including “passing lanes,” and extend the threshold length of through lanes from one to two miles. Auxiliary lanes is a new term in the rules as further defined in [part 4410.0200, subpart 5a](#).

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

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

<http://roaddesign.dot.state.mn.us/> See Chapter 4, section 4-3.0. As described in section 4-3.0 “travel lanes” is the overall umbrella term for lanes and then a subset of travel lanes is “through lanes” and “auxiliary lanes.” Because the rule will now include the term “auxiliary lane,” it is necessary to clarify the lane terminology and separate out both through lane and auxiliary lane. Managed lanes, such as bus lanes, value- priced lanes, and high occupancy vehicle (HOV) lanes are considered standard higher speed through lanes to provide optimum transportation services and fully utilize the capacity of congested highways in urban areas. Often times these types of lanes are accomplished by using existing highway facilities. The definition of “auxiliary lane” is consistent with the DOT Road Design Manual (Section 4-3.02) and the 2011 American Association of State Highway Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets (Chapter 1076). This AASHTO publication is known in the industry as the “Green Book.” (Green Book, 8-35, and MnDOT Manual 4-4(8))

Also, the threshold will increase from one mile to two miles. The 1982 SONAR (<https://www.leg.state.mn.us/archive/sonar/SONAR-00003.pdf>) does not specifically state why one mile was chosen; however, comments made by the public in 1982 rulemaking provided that: “A one mile threshold for additional travel lanes is also too restrictive. Five or ten miles ... would be more reasonable.” (December 1, 1981 Comment by John Voss, Planning consultant, Urban Planning and Design, Inc.). As the designated RGU, the DOT conducted a 10-year historical data review of projects that completed an EAW for this subpart and found that projects between 1 mile and 2 miles did not have the

potential for significant environmental effects. Project files and comments received were reviewed to determine whether potential environmental effects were identified that would not have otherwise been mitigated by a permit or other required governmental approvals. Based on that data review, the DOT determined that it is reasonable to increase the threshold from one mile to two miles.

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

**Part 4410.4300, subpart 25. Marinas.**

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

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

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

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

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

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

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

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

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

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

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

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

- A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetlands except for those to be drained without a permit ~~pursuant~~ according to Minnesota Statutes, chapter 103G, DNR or the local governmental ~~unit shall be~~ is the RGU.
- B. For projects that will ~~change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more~~ cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated flood plain floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local governmental ~~unit shall be~~ is the RGU.

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

Part A of Minn. Rule 4410.4300, subpart 27 currently assigns the RGU to only the LGU. However, there are circumstances where the DNR is the more appropriate RGU, because the DNR may have similar or greater approval authority of the project as a whole. In some cases, the DNR may also have greater expertise in analyzing the potential impacts. Some examples of these types of projects may include wetland or stream habitat restoration projects, and floodplain management projects. In Part A, the term government is replaced with the term governmental, to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410

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

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

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



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

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

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

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

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

**Part 4410.4300, subpart 28. Forestry.** Items A and B designate the RGU for the type of project listed:

- A. For harvesting of timber for commercial purposes on public lands within a state park, a historical area, a wilderness area, a scientific and natural area, a wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or a critical area that does not have an approved plan under Minnesota Statutes, section [86A.09](#) or [116G.07](#), the DNR ~~shall be~~ is the RGU.
- B. For a clearcutting of 80 or more contiguous acres of forest, any part of which is located within a shoreland area and within 100 feet of the ordinary high water mark of the lake or river, the DNR ~~shall be~~ is the RGU.

**Justification for Part 4410.4300, subpart 28. Forestry.**

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

**Part 4410.4300, subpart 30. Natural areas.**

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

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

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

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

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

The category was adopted to allow for the review of non-DNR projects that are proposed within established recreation units, particularly those projects that may be inconsistent or incompatible with the recreational purposes or management plan of the unit. The DNR proposed the category to ensure the agency had the chance to review projects in conflict with the management plan. The most likely situation would be a private development proposal on an inholding within a state park, not a state trail. Prior to legislative action in 2003, Recreational trails were not identified as exhibiting impacts that may be potentially significant.

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

category requires review for projects that conflict with approved master plans for outdoor recreation units.

**Part 4410.4300, subpart 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 ~~of government shall be~~ is the RGU, except this does not apply to projects reviewed under section 106 of the National Historic Preservation Act of 1966, United States Code, title ~~46~~ 54, section ~~470~~ 306108, or the federal policy on lands, wildlife and waterfowl refuges, and historic sites pursuant to United States Code, title 49, section 303, or projects reviewed by a local heritage preservation commission certified by the State Historic Preservation Office pursuant to Code of Federal Regulations, title 36, sections 61.5 and 61.7. This subpart does not apply to a property located within a designated historic district if the property is listed as "noncontributing" in the official district designation or if the State Historic Preservation Office issues a determination that the property is noncontributing.

**Justification for Part 4410.4300, subpart 31. Historical places.**

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

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

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

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

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

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

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

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

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

**Justification for Part 4410.4300, subpart 36a. Land conversions in shoreland.**

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

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

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

**Part 4410.4300, subpart 37. Recreational trails.**

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

- A. Constructing a trail at least ~~ten~~ 25 miles long on forested or other naturally vegetated land for a recreational use ~~other than snowmobiling or cross-country skiing~~, unless exempted by part 4410.4600, subpart 14, item D, ~~or constructing a trail at least 20 miles long on forested or other naturally vegetated land exclusively for snowmobiling or cross-country skiing.~~
- B. Designating at least 25 miles of an existing trail for a new motorized recreational use other than snowmobiling. When designating an existing motorized trail or existing corridor in current legal use by motor vehicles, the designation does not contribute to the 25-mile threshold under this item. When adding a new recreational use or seasonal recreational use to an existing motorized recreational trail, the addition does not

contribute to the 25-mile threshold if the treadway width is not expanded as a result of the added use.

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

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

#### **Justification for Part 4410.4300, subpart 37. Recreational trails.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Justification for Part 4410.4400, subpart 2. Nuclear fuels.**

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

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

The addition of part C makes this rule subpart consistent with Minn. Stat. 116C.83, subdivision 6. The addition of part C clarifies that for a specific type of storage facility for high-level nuclear waste, an independent spent fuel storage installation, the Minnesota Legislature has directed that the Minnesota Department of Commerce prepare an EIS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



## Justification for Part 4410.4400, subpart 6. Transmission lines.

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

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

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

**Metallic mineral mining and processing.** Items A to ~~C~~ and B designate the RGU for the type of projected listed:

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

A. For construction of a new facility for mining metallic minerals or for the disposal of tailings from a metallic mineral mine, the DNR ~~shall be~~ is the RGU.

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

## Justification for Part 4410.4400, subpart 8. Metallic mineral mining and processing.

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

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

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

According to the DNR Division of Lands and Minerals, exploration for uranium has not occurred in Minnesota since the 1970s. It is also believed that future radioactive mineral exploration is unlikely to occur in Minnesota. It should be noted that although the mandatory EIS category is proposed to be eliminated, if future exploration were to occur, an EAW would be mandatory under Minn. Rules part 4410.4300, subpart 11A. If such extraction of radioactive minerals were proposed, such exploration could be subject to preparation of an EIS if a positive declaration is made, or preparation of a discretionary EIS is volunteered, both under Minn. Rules part 4410.2000, subpart 3.

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

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

**Nonmetallic mineral mining.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 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<sub>z</sub> in a water-related land use management district<sub>z</sub> 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<sub>z</sub> or incinerator<sub>z</sub> or ~~the utilization use of~~ an existing facility for the combustion of mixed municipal solid waste or refuse-derived fuel, with a permitted capacity of 250 tons or more ~~tons~~ per day of input, the PCA is the RGU.
- D. For construction or expansion of a mixed municipal solid waste compost facility<sub>z</sub> or a refuse-derived fuel production facility when the construction or expansion results in a facility with a permitted capacity of 500 tons or more ~~tons~~ per day of input, the PCA is the RGU.
- E. For expansion by 25 percent or more of previous capacity of a mixed municipal solid waste land disposal facility for 100,000 cubic yards or more of waste fill per year, the PCA is the RGU.

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

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

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

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

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

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

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

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

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

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

**Part 4410.4400 Subp. 19. Marinas.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Projects within this subpart are exempt from parts 4410.0200 to 4410.6500, unless they have characteristics which meet or exceed any of the thresholds specified in part 4410.4300 or 4410.4400.

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

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

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

- B. ~~The~~ Construction of a warehousing, light industrial, commercial, or institutional facility with less than 4,000 square feet of gross floor space, and with associated parking facilities designed for 20 vehicles or ~~less, is exempt~~ fewer.
- C. Construction of a new parking facility for ~~less~~ fewer than 100 vehicles if the facility is not located in a shoreland area, ~~a delineated flood plain~~ floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area ~~is exempt~~.

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

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

**Part 4410.4600, subpart 12. Residential development.**

**Residential development.** The following projects are exempt:

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

**Justification for Part 4410.4600, subpart 12. Residential development.**

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

**Part 4410.4600, subpart 14. Highway projects.**

**Highway projects.** The following projects are exempt:

- ~~A.~~ Highway safety improvement projects ~~are exempt~~.
- B. Installation of traffic control devices, individual noise barriers, bus shelters and bays, loading zones, and access and egress lanes for transit and paratransit vehicles ~~is exempt~~.

- C. Modernization of an existing roadway or bridge by resurfacing, restoration, or rehabilitation that may involve ~~the acquisition of~~ acquiring minimal amounts of right-of-way ~~is exempt.~~
- D. Roadway landscaping, and construction of bicycle and pedestrian lanes, paths, and facilities within an existing right-of-way ~~are exempt.~~
- E. Any stream diversion, realignment, or channelization within the right-of-way of an existing public roadway associated with bridge or culvert replacement ~~is exempt.~~
- E. Reconstruction or modification of an existing bridge structure on essentially the same alignment or location that may involve ~~the acquisition of~~ acquiring minimal amounts of right-of-way ~~is exempt.~~

**Justification for Part 4410.4600, subpart 14. Highway projects.**

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

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

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

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

**Agriculture and forestry.** The following projects are exempt:

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

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

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

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

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

G. Paving a trail located on an abandoned railroad grade retired in accordance with Code of Federal Regulations, title 49, part 1152.

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

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

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

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

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

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

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

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

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



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

- A. When a project has been noticed pursuant to item D, separate notice of individual permits required by that project need not be made unless changes in the project are proposed that will involve new and potentially significant environmental effects not considered previously. No decision granting a permit application for which notice is required to be published by this part ~~shall be~~ is effective until 30 days following publication of the notice.
- (1) For all public hearings conducted pursuant to water resources permit applications, Minnesota Statutes, chapter 103G, the DBR is the permitting authority.
  - (2) For notice of public sales of permits for or leases to mine iron ore, copper-nickel, or other minerals on state-owned or administered mineral rights, Minnesota Statutes, section 93.16, and 93.335, ~~and 93.351~~, and part 6125.0500, the DBR is the permitting authority.

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

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

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

**Part 4410.7904, Licensing of Explorers.**

**LICENSING OF EXPLORERS.**

An applicant ~~shall~~ must comply with Minnesota Statutes, section ~~156A.071~~ 1031.601, subdivision 2, and parts 4727.0400 to ~~4727.0900~~ 4727.0860, relating to the regulation of exploratory boring.

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

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

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

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

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

- C. the applicant's explorer's license, issued under Minnesota Statutes, section ~~156A.071~~ 1031.601, subdivision 2 and parts 4727.0400 to ~~4727.0900~~ 4727.0860;

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

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

## I. AMENDMENTS TO CHAPTER AND PART 4410.7926 - ABANDONMENT OF EXPLORATORY BORINGS.

### Part 4410.7926. Abandonment of Exploratory Borings.

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

### Justification for Part 4410.7926. Abandonment of Exploratory Borings.

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

## Regulatory analysis

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

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

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

A majority of the changes proposed in this rulemaking will have little to no effect on the cost to proposers or Responsible Government Units (RGU) responsible for Environmental Review due to the fact that a majority of the changes proposed in this rulemaking are an attempt to align with statute, and provide more clarity and certainty on which types of projects require Environmental Review for potential proposers and RGUs. Below, EQB will discuss in detail the classes of person who probably will be affected by the proposed rules. If EQB does not discuss a change as it relates

to classes of person probably affected by the proposed rule, EQB believes there would be no effect.

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

#### **Regulatory Analysis: Minn. Rules 4410.0200**

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

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

For the proposed rule language change in *Minn. Rules 4410.4300, subpart 2. Nuclear fuels and Nuclear Waste*; EQB expects there to be less EAWs and more EISs due to the language clarity and certainty which carves out the specifics of an "independent spent-fuel storage installation". Since this threshold update is already required in statute, EQB does not anticipate there to be any change in costs to proposers or the RGU. This clarification and change was required by the Minnesota Legislature in [Minn. Stat. 116C.83, subdivision 6](#), paragraph (b). The addition of "other than independent spent-fuel storage installation" makes this rule subpart consistent with [Minn. Stat. 116C.83, subdivision 6](#).

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

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

Similarly, the change to *Minn. Rules 4410.4300, subp. 3., item B* the proposed project between 25 megawatts and 50 megawatts will be reviewed with the Local Government Unit (LGU) instead of going before the EQB Board and then being referred to a Local Government Unit (LGU). This change is expected to increase costs for LGUs because with this change LGUs will be the RGU where in the past EQB was the RGU. Since 2011, the EQB has records of thirteen projects in this

category, of the thirteen projects, one would have been between 25 and 50 megawatts and would have triggered an EAW that would have been conducted by a LGU. To mitigate any EAW costs, local government units have the option of creating a local ordinance to require project proposers to pay the costs of an environmental assessment worksheet.

Item C; EQB expects there to be less cost to EQB due to the reduction in process steps by directly referring the proposed project to the Public Utilities Commission (PUC) instead of a proposed project coming before the EQB Board and then being referred to the PUC (as usually occurs). Overall, the EQB anticipates reduced costs from the proposed changes by a reduction in process and time for a proposed project to being undergoing review.

Item D; EQB expects there to be less cost to EQB due to the reduction in process steps by directly referring the proposed project to the Public Utilities Commission (PUC) instead of a proposed project coming before the EQB Board and then being referred to the PUC.

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

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

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

The proposed rule language change to *Minn. Rules 4410.4300, subpart 5. Fuel conversion facilities*; EQB expects the changes to rule language in items A. and B., adding “new fuel conversion” will help provide clarity to the proposer, RGU and EQB in assessing the need for Environmental Review in this mandatory category. The clarity of specifying “new fuel conversion” as the facility that would undergo review will help a proposer and RGU more effectively and efficiently determine if a proposed project should undergo Environmental Review and complete an EAW.

The change to item B, that deletes “or expansion” from the mandatory category is expected to reduce the number of EAWs in this category—thus reducing the cost for proposers and RGU (MPCA). The additional change to item B, that deletes “or would increase its capacity by...” and changes it to “a capacity” provides more certainty on when a “new fuel conversion facility” should undergo Environmental Review—any facility over 5,000,000 or more gallons of alcohol fuels.

Finally, the proposed new rule language addition to *Minn. Rules 4410.4300, subpart 5. Fuel conversion facilities item C*. EQB expects this change to provide more clarity and certainty to proposers, RGUs and citizens when determining which projects in this category must undergo mandatory Environmental Review. This change is an attempt to align with [Minnesota Statutes 116D.04, subdivision 2a, paragraph \(b\)](#) and thus there is no actual change to the mandatory category because Minnesota Statutes preempt rule and thus is already in effect when determining if a proposed project in the “fuel conversion facilities” category must undergo mandatory Environmental Review. The additional language in item c, helps the proposer, RGU and citizens more easily access the statutory language by its inclusion in 4410.4300.

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

The proposed rule language change to *Minn. Rules 4410.4300, subpart 6. Transmission lines*, is expected to change little in the cost to proposers, RGUs or citizens of Minnesota. The changes to this category are a language alignment of rule language with already existing Minnesota Rule and statutory language. Inclusion of Minnesota Rule references of the “high-voltage transmission lines” definition will provide more ease of access for proposers, citizens and RGUs and EQB expects no change to cost for EQB, RGUs, proposers, or citizens. The additional change to subpart 6, the change of the RGU from EQB to PUC should reduce costs for EQB, because EQB will no longer need to hold a Board meeting to re-designate a proposed Transmission line project. Per Minnesota Rules, [7849.1000](#) to [7849.2100](#) and [7850.1000](#) to [7850.5600](#); Environmental Review for a proposed high-voltage transmission line project must be conducted by the PUC as required by Minn. Stat., section [216B.243](#) or [216B.2425](#).

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

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

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

The proposed rule language change to *Minn. Rules 4410.4300, subpart 8. Transfer facilities. Items A and item B* are simple readability changes and should have no effect on the cost to EQB, RGUs, citizens or proposers.

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

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

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

The proposed rule language change to Item B is a change that should provide more clarity through defining “new major facility” ([Minn. Rule 7151.1200](#)) and “hazardous materials” ([CFR, title 49, section 171.8](#)) to help the RGU, proposer and citizens more easily determine when a facility is required to conduct a mandatory Environmental Assessment Worksheet. These changes should

benefit the proposer, RGUs, EQB and citizens by clarifying what a “new major facility” is and what “hazardous materials” are through other, already established, Minnesota rules and Federal codes. All other changes for item B are for readability and should have no effect on costs.

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

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

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

The purpose of the proposed rule language for item F is to better align a mandatory category with an agency that has oversight over anhydrous ammonia, Minnesota Department of Agriculture (MDA) and is better equipped (by having oversight) to know when and if a site should undergo mandatory Environmental Review. Minnesota Department of Agriculture tracks anhydrous ammonia locations and the size of the storage at the locations in Minnesota. This change may increase costs for proposers and the RGU because with the previous RGU, PCA, there is not much evidence that anhydrous ammonia projects went through Environmental Review. This change will benefit all Minnesotans because now these projects will undergo Environmental Review if a project is above the mandatory Environmental Review threshold.

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

The proposed rule language for item H is an incorporation of existing statutory language and is expected to have no effect on the cost to EQB, RGUs, citizens or proposers due to the fact that

these statutory requirements are already in effect through statute. Including this change into 4410.4300 rule language will benefit proposers and the RGU by making it easier to know when a proposed project requires Environmental Review.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

The proposed change to *Minn. Rules 4410.4300, subpart 27, item B*, may increase costs for project proposers that trigger this mandatory threshold. The proposed language change incorporates “impact”, defines it through existing Minnesota Rule ([Minn. Rule 8420.0111](#)). The deletion of “change or diminish the course, current, or cross-section of 40 percent or more of five or more acres of types 3 through 8 wetlands of 2.5 acres or more” and the replacement with “cause an impact” simplifies the determination of if a project crosses the mandatory threshold and thus requires Environmental Review. From this perspective, the simplification in language will reduce costs for the RGU and potentially the project proposer due to the renewed ease of determining if a project requires Environmental Review. Although, the change in “cause an impact” of “one or

more acre or wetland” may increase costs for project proposers that impact wetlands with a proposed project due to clarity and removal of a confusing formula and replacement with a simple threshold. This may mean more Environmental Assessment Worksheets (EAW) will be required and thus increase costs for proposers and RGUs. All other changes to item B are for readability and will have no effect on cost.

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

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

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

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

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

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

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

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

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

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

**Regulatory Analysis: Minn. Rules 4410.4400.**

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

**Regulatory Analysis: Minn. Rules 4410.4600.**

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

**Regulatory Analysis: Minn. Rules 4410.5200**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Notice plan

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

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

### A. Notice

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

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

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

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

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

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

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

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

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

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

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

## Additional notice plan

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

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

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

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

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

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

4. Providing an extended comment period to allow additional time for the review of the proposed revisions. The EQB intends to provide more than the minimum 30-day comment period prior to the hearings and to request that the administrative law judge provide the maximum allowed post-hearing comment period.

5. Email the Notice of Intent to Adopt Rules; the proposed rules; links to the SONAR and any additional documents related to the rulemaking; to persons on the EQB's broader email list, the "EQB Monitor".
  - The EQB Monitor is a weekly publication announcing environmental review documents, public comment periods and other actions of the Environmental Quality Board. The EQB Monitor is published every Monday at 8:00 am.
6. The EQB believes that by following the steps of this Additional Notice Plan, and its regular means of public notice, including early development of the GovDelivery mail list for this rulemaking, publication in the State Register, and posting on the EQB's webpages, the EQB will adequately provide additional notice pursuant to Minn. Stat. § 14.14, subd. 1a.

## Performance-based rules

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

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

## Consult with MMB on local government impact

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

## Impact on local government ordinances and rules

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

## Costs of complying for small business or city



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

The Board has determined that the cost of complying with the proposed rules in the first year after the rules take effect may or may not exceed \$25,000 for any small business or small city. The Board has made this determination based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis section of this SONAR. The potential or probable costs of adopting the proposed rules are discussed in detail in item A. of this section. Environmental Review costs are project and RGU dependent. Costs are wide ranging and difficult to ascertain since the complexity and location of a proposed project plays a significant factor in determining costs for affected parties.

According to 2017 survey data collected from project proposers and Responsible Government Units (RGUs), the average cost for Environmental Review for RGUs was \$35,960, with a range of \$200 to \$75,000 (see attached document in Exhibits). It is worth noting there was a small sample size related to RGU costs and a large range reported. To mitigate any EAW costs, local government units have the option of creating a local ordinance to require project proposers to pay the costs of an environmental assessment worksheet.

## Authors and SONAR exhibits

### A. Authors

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

### B. SONAR exhibits

Exhibits are located at the end of this document.

## Conclusion

In this SONAR, the EQB has established the need for and the reasonableness of each of the proposed amendments to *Minn. R. chs. 4410*. The EQB has provided the necessary notifications and in this SONAR documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules.

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

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Date

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David Frederickson, Chair  
Environmental Quality Board



# SONAR exhibits

1. Mandatory Categories Report (2013)
2. 2017 Survey Results RGUs and Project Proposers Debrief

## References

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

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

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



**Environmental Quality Board  
in Cooperation With  
Department of Transportation  
Department of Natural Resources  
Pollution Control Agency  
and With the Assistance of  
Department of Commerce and  
Department of Agriculture**

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## **Mandatory Environmental Review Categories**

**January 2013**

**Prepared In Response to  
Minnesota Laws 2012  
Chapter 150—S.F. No. 1567  
Article 2, Section 3**



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**Table of Contents**

**Purpose of Report .....1**

**History of Environmental Review in Minnesota.....1**

**Analysis of Mandatory Categories .....4**

**Amending the Mandatory Categories: Rulemaking.....5**

**Summary of Recommendations.....7**

**Appendix A: Local Government Unit RGU Categories**

**Appendix B: Department of Transportation (MnDOT) RGU Categories**

**Appendix C: Environmental Quality Board (EQB) RGU Categories**

**Appendix D: Department of Natural Resources (DNR) RGU Categories**

**Appendix E: Pollution Control Agency (MPCA) RGU Categories**





# **Mandatory Environmental Review Categories**

## **Purpose of Report**

This report was prepared in response to the Minnesota Legislature's 2012 amendment of Minnesota Statutes Chapter 116D, known as the Minnesota Environmental Policy Act (MEPA). This statutory amendment directs specific state agencies to examine the categories for mandatory environmental review that were created by Minnesota Rules 4410. The amendment was as follows:

LAWS of MINNESOTA for 2012  
CHAPTER 150–S.F.No. 1567  
ARTICLE 2

Sec. 3. Minnesota Statutes 2010, section 116D.04, is amended by adding a subdivision to read:

Subd. 5b. Review of environmental assessment worksheets and environmental impact statements. By December 1, 2012, and every five years thereafter, the Environmental Quality Board, Pollution Control Agency, Department of Natural Resources, and Department of Transportation, after consultation with political subdivisions, shall submit to the governor and the chairs of the house of representatives and senate committees having jurisdiction over environment and natural resources a list of mandatory environmental assessment worksheet and mandatory environmental impact statement categories for which the agency or a political subdivision is designated as the responsible government unit, and for each worksheet or statement category, a document including:

- (1) intended historical purposes of the category;
- (2) whether projects that fall within the category are also subject to local, state, or federal permits; and
- (3) an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances.

## **History of Environmental Review in Minnesota**

A brief history is necessary in order to understand the purposes of the environmental review program. The program was established in 1973 by Minnesota Statute 116D, otherwise known as the Minnesota Environmental Policy Act (MEPA). This statute created the environmental review program for the state and required the preparation of rules for the program (Minnesota Rules 4410). Specific authority for the Environmental Quality Board (EQB) to promulgate rules relating to the mandatory categories is granted under Minn. Statute 116D.04, Subd. 2a.(a) and Subd. 5a.

Rulemaking, including rule amendments, must follow a process that is defined in Minn. Statute 14, the Administrative Procedure Act. The process requires public notification of the rulemaking and the proposed rule changes must be made available for public review and comment. Comments are considered and decisions made for the final version of the rules. Though an agency prepares the draft rules, the process is overseen by the Office of Administrative Hearings. The statute requires an open public process for preparing and amending agency rules.

The statute also requires that a rule amendment proposal include a Statement of Need and Reasonableness (SONAR), which explains the reasons for proposed rule changes. The SONAR also discusses such things as who will be affected, alternative methods for achieving the purpose of the rule amendment, and other points listed in statute.

The following excerpt from the SONAR prepared in 1982 will help understand the historical purposes of the environmental review program overall.

*Excerpt from 1982 Statement of Need and Reasonableness (SONAR)*

I. AUTHORITY

These rules are proposed to implement the 1980 amendments to the Minnesota Environmental Policy Act, Minn. Stat. Ch. 116D. Existing rules 6 MCAR § 3.021 through 3.032 are deleted in their entirety and are replaced by proposed rules 6 MCAR §§ 3.021 through 3.041. Existing rules 6 MCAR §§ 3.033 through 3.047 are amended to become 6 MCAR §§ 3.042 through 3.054. These sections contain minor revisions as indicated. Rules 6 MCAR §§ 3.055 and 3.056 replace the existing rule 6 MCAR § 3.025 G.

Specific authority to promulgate rules relating to the Environmental Review Program is granted under Minn. Stat. § 116D.04, subd. 5 (a) and Minn. Stat. § 116D.045. General rule-making authority is given the Environmental Quality Board in Minn. Stat. § 116C.04 and Minn. Stat. § 116D.

II. HISTORY OF ENVIRONMENTAL REVIEW IN MINNESOTA

The concept of environmental review was spawned in the late 1960s with the developing environmental conscience. Its purpose was to implement environmental protection as a matter of public policy and to utilize the Environmental Impact Statement (EIS) as a planning tool in the decision-making process. Environmental review does not of itself make decisions; rather it provides necessary information to governmental units which they can utilize to make environmentally sensitive decisions in the best interests of the public. It has a further purpose in allowing the public to participate in decisions that affect them. The intent is to prevent environmental degradation by wise and informed decisions.

Minnesota's Environmental Review Program was established by the Minnesota Environmental Policy Act (MEPA) of 1973. Companion legislation, found at Minn. Stat. ch. 116c, established the Minnesota Environmental Quality Board (EQB). Rules implementing the process were promulgated in 1974 and remained in effect until 1977. Under the initial process all decision-making authority was centralized in the EQB. The EQB decided on a case-by-case basis which projects were major actions with the potential for significant environmental effects.

In 1977 the Environmental Review Program Rules were amended to incorporate recommendations based on the history of the first three years of the program. The most significant change was the decentralization of the process by allowing local and state agencies to assume more authority in decisions on the need for EISs for proposed projects under their jurisdiction. The agency that had the most approval authority over a project was required to prepare an Environmental Assessment Worksheet (EAW) to determine whether the project warranted an EIS. Decisions made by the responsible agencies were subject to review and reversal by the EQB. These rules are currently in effect for the Environmental Review Program and are referred to throughout this Statement as the "current rules".

During the 1979-80 legislative session, the EQB, a business group, and an environmental group submitted proposals to the legislature for revisions to MEPA. The EQB staff was given these three proposals and told to work out a compromise. The staff drew elements from each of the three proposals, the new Council on Environmental Quality regulations, and existing processes in other states, and developed compromise legislation. This draft legislation was submitted to the legislature and served as the basis for amendments to MEPA which became law on April 3, 1980.

### III. 1980 AMENDMENTS TO THE MINNESOTA ENVIRONMENTAL POLICY ACT

The main elements of the amended MEPA include:

1. Further decentralization of decision-making authority to allow local units of government and permitting state agencies to make final administrative decisions regarding the need for and adequacy of environmental review. The EQB retains the authority to make rules governing the environmental review process, however, the EQB may intervene only at specified times during the process. Local and state agency administrative decisions may no longer be appealed to the EQB. Appeals must be filed directly in district court.
2. Establishment of specific thresholds for projects and impacts that will automatically require preparation of an EAW or EIS to assure greater predictability in the process. Categories of projects which are exempt from environmental review were also required.
3. Establishment of strict time limits for the preparation and review of environmental documents.
4. Encouragement of citizen participation early in the process of environmental review to promote a non-adversarial process. The agency responsible for preparing the EAW must submit the EAW for a 30 day public review and comment period. The final decision on the need for an EIS is not made until after public comment has been received.
5. Establishment of a relaxed process of citizen initiation of environmental review to enable citizen involvement early in the process to promote non-adversarial interaction on controversial projects.
6. Provision for flexible content requirements for EISs. An early and open scoping process is established as the first step in EIS preparation. Through this process, only the relevant issues are analyzed in the EIS. This provides for a shorter, more timely and less expensive document that is more relevant and useable for decision makers.
7. Provision for alternative forms of environmental review. The intent is to allow environmental review to proceed in the most timely, cost effective manner as long as the alternative process meets base criteria.

## Analysis of Mandatory Categories

To comply with Minnesota Laws 2012 Ch. 150, Art. 2, Sec. 3, several state agencies analyzed the categories for mandatory environmental review that are established by Minn. Rules 4410. The Department of Transportation, Department of Natural Resources, and the Pollution Control Agency examined the categories for which they are the designated Responsible Governmental Unit (RGU). The statute does not assign a specific agency to address categories designating the local governmental unit—political subdivisions of the state—as the RGU, so EQB staff took on the responsibility to analyze those categories.

The EQB is designated as the RGU for the categories for nuclear waste facilities, power generating facilities, electrical transmission lines, and pipelines. However, these categories were altered significantly by the statutory transfer of siting and routing authority to the Public Utilities Commission. Because the Department of Commerce administers the review and analysis of siting, routing, and certificate of need applications and also conducts the environmental review required for the Public Utilities Commission's decisions in those matters, Commerce staff provided the majority of the review of those categories. Similarly, because all releases of genetically engineered organisms have been agriculturally-related, the Dept. of Agriculture provided the analyses for those categories.

These analyses reviewed rule amendment SONARs prepared in 1982, 1986, 1988, 1997, 2003, 2004, 2005, and 2007. Some amendments occurred to reflect amendments to the MEPA statute. Others occurred based on experience over time, whether in response to particular issues that arose or a need to clarify the rules. (Amendments under the “good cause” provisions of statute were not examined because they simply reflect statutory changes and thus do not have reasoning behind the changes explained in a SONAR.)

Each agency performed the review of its categories. While the agencies consulted on the work and the present similar information, the reports differ in some aspects. For example, in the MnDOT table the recommendations column has separate EAW and EIS discussions. In the local government table, the EAW and EIS categories themselves are shown separately but the historical purpose, potential permits, and recommendations are combined unless specifically indicated. These differences are due to the types of projects, the agencies' roles, and the format of the information found in past SONARS.

## Permits, Approvals, Laws, Ordinances Applicable to Projects

The legislation requires the analysis to address “whether projects that fall within the category are also subject to local, state, or federal permits”. Recommendations for amending the category are to be based on the “relationship to existing permits or other federal, state, or local laws or ordinances”.

This element of the analysis is extremely complex several reasons. First, it is important to understand that an environmental review is not a decision document: a project does not “pass” or “fail” an environmental review. In contrast, a permit is a decision document: either a project meets the requirements and a permit is issued, or the permit is not issued. On some projects, the environmental review provides a basis of information for preparing permits and approvals. On other projects, permit information will be fundamental for the analyses performed for the environmental review document. Permits and environmental review are different tools. It is not true that they duplicate the same function.

Second, many of the mandatory categories are very broad. For example the category for “industrial, commercial, and institutional facilities” covers a very broad spectrum: retail, warehousing, heavy manufacturing, schools, hospitals, etc. A shopping mall and a steel manufacturing facility will have some common types of environmental impacts. However, the traffic generation, lighting, noise, air emissions, stormwater runoff, water usage, and wastewater discharges will differ greatly. Because of those differences, the specific permits or approvals that might be involved will vary greatly. It is impossible to create a definitive list of every permit that applies to every type of project in this and other categories.

Third, both state and local government units issue many project permits and approvals: thousands each year across the state. In contrast, relatively few environmental reviews are prepared. An environmental review examines all potential impacts, consolidating information in one document. A specific permit often focuses on one type of impact such as air emissions. This is one of the important purposes of environmental review compared to permits.

Fourth, different local governments have different permit/approvals that apply to projects. What might be required in one county will not reflect requirements in another county. Fifth, local governmental units frequently have very different levels of experience and expertise for project review and approval. The local permits or approvals often do not consider the entire project, nor do they consider all potential effects on the community and the environment.

In summary, there is no one-size-fits-all permit, approval, or ordinance for projects within a single mandatory category. The variation in possibilities is extensive. Thus, it is impossible to create a definitive list of the permits/approvals/ordinances/laws that will apply and the relationships to environmental reviews. The tables do not pretend to do so. Instead, the tables attempt to list examples of that might be applicable with the caveat that it will depend on the specific project and location in the state as well as the mandatory category for that project type.

### **Amending the Mandatory Categories: Rulemaking**

The agencies arrived at a number of recommendations regarding potential amendments to the mandatory categories. The recommendations are summarized below and listed with more detail in the tables in the appendices. EQB intends to initiate the rulemaking process to open the process for public dialogue and comments on the mandatory thresholds. The EQB plans to publish a notice of its intent to initiate the process in early 2013.

This rulemaking process will be conducted in accordance with the statute that governs agency rulemaking and amendment. Rulemaking according to the statute ensures public accountability, access, and participation. In fact, these are stated as important purposes of how the rulemaking process is designed. The purposes of the statute are as follows:

CHAPTER 14  
ADMINISTRATIVE PROCEDURE

14.001 STATEMENT OF PURPOSE.

The purposes of the Administrative Procedure Act are:

- (1) to provide oversight of powers and duties delegated to administrative agencies;
- (2) to increase public accountability of administrative agencies;
- (3) to ensure a uniform minimum procedure;
- (4) to increase public access to governmental information;
- (5) to increase public participation in the formulation of administrative rules;
- (6) to increase the fairness of agencies in their conduct of contested case proceedings; and
- (7) to simplify the process of judicial review of agency action as well as increase its ease and availability.

In accomplishing its objectives, the intention of this chapter is to strike a fair balance between these purposes and the need for efficient, economical, and effective government administration. The chapter is not meant to alter the substantive rights of any person or agency. Its impact is limited to procedural rights with the expectation that better substantive results will be achieved in the everyday conduct of state government by improving the process by which those results are attained.

## Summary of Recommendations

<b>RGU: Local Governmental Unit Mandatory Category Number, Title</b>	<b>recommendation</b>	<b>page number</b>
4410.4300 EAW CATEGORY. Subp. 14. Industrial, commercial, and institutional facilities. 4410.4400 EIS CATEGORY. Subp. 11. Industrial, commercial, and institutional facilities.	Consider possible change in thresholds, but this merits very careful examination. Clarification of language may be productive for A. and B., definitely for C. and D.	A 5
4410.4300 EAW CATEGORY. Subp. 19. Residential development. 4410.4400 EIS CATEGORY. Subp. 14. Residential development.	Consider possible change in thresholds in larger cities with comprehensive and environmental planning expertise, but this merits very careful examination because of the variation in expertise among local governments.	A 7
4410.4300 EAW CATEGORY .Subp. 32. Mixed residential and industrial-commercial projects. 4410.4400 EIS CATEGORY. Subp. 21. Mixed residential and commercial-industrial projects.	Consider possible change in thresholds for communities with comprehensive plans that include specified elements, but this merits very careful examination. The variation in expertise, sophistication, interest, and effectiveness in planning and regulatory methods across local governments remains. The diversity of projects also continues. The threshold quantities were controversial in 1982 and there's little reason to believe this has changed.	A 16
4410.4300 EAW CATEGORY. Subp. 36. Land use conversion, including golf courses.	Consider possible change to threshold quantity. Consider possible clarification of language for project type.	A 17
4410.4300 EAW CATEGORY. Subp. 36a. Land conversions in shoreland.	Review intent and consider clarifying language.	A 18
<b>RGU: Department of Transportation Mandatory Category Number, Title</b>	<b>recommendation</b>	<b>page number</b>
4410.4300 EAW CATEGORY. Subp. 22. Highway projects.	"B. For construction of additional travel lanes on an existing road for a length of one or more miles..." threshold should be increased from 1 mile to 2 miles.	B 2
<b>RGU: Environmental Quality Board Mandatory Category Number, Title</b>	<b>recommendation</b>	<b>page number</b>
4410.4300 EAW CATEGORY. Subp. 2. Nuclear fuels and nuclear waste. 4410.4400 EIS CATEGORY. Subp. 2. Nuclear fuels and nuclear waste.	There may be overlap between 4410.4300 Subp. 2.A. and 4410.4400, Subp. 2.C. This should be examined.	C 1
4410.4300 EAW CATEGORY. Subp. 3. Electric generating facilities. 4410.4400 EIS CATEGORY. Subp. 3. Electric generating facilities.	Initiate discussion on RGU for EAW on facilities under 50 MW other than Large Wind energy Conversion Systems.	C 1
4410.4300 EAW CATEGORY. Subp. 7. Pipelines 4410.4400 EIS CATEGORY. Subp. 24. Pipelines.	Based on review by the Dept. of Commerce, the category should be reviewed to confirm if all pipelines are addressed with Minn. Rules 7852.	C 2

<b>RGU: Department of Natural Resources Mandatory Category Number, Title</b>	<b>recommendation</b>	<b>page number</b>
4410.4300 EAW CATEGORY Subp. 28 B. Forestry	Eliminate this mandatory EAW category.	D 5
4410.4300 EAW CATEGORY. Subp. 30. Natural areas	<ul style="list-style-type: none"> <li>• The DNR believes it is unlikely an inconsistent project would encroach on a state trail corridor and therefore recommends deleting state trail corridors from the category.</li> <li>• Clarification could be considered regarding how this category applies when master plan revisions (that are subject to a public review process) are proposed.</li> </ul>	D 5
4410.4300 EAW CATEGORY. Subp. 37 B. Recreational trails	Consider modifications regarding how miles of new types of motorized trail use are calculated. Also consider not counting new motorized uses on abandoned rail grades toward Item 37B threshold.	D 9
4410.4300 EAW CATEGORY. Subp. 37 C. Recreational trails	Maintain this EAW category, but provide an exemption for paving trails on abandoned railroad grades.	D 10
<b>RGU: Pollution Control Agency Mandatory Category Number, Title</b>	<b>recommendation</b>	<b>page number</b>
4410.4300 EAW CATEGORY. Subp 5. Fuel Conversion Facilities.	Recommend review of definition of biomass in EQB Rules to ensure consistency with term as used in other rules or statutes.	E 2
4410.4300 EAW CATEGORY. Subp. 8. Transfer Facilities.	A review of the use of coal and peat is suggested as it relates to Subpart A.	E 4
4410.4300 EAW CATEGORY. Subp. 16. Hazardous Waste.	<ul style="list-style-type: none"> <li>• Suggested language changes to reflect current permit language</li> <li>• Suggest rule change - work with DNR to add sediment cleanups at Superfund or other remediation program sites as exemptions to Subp. 27 (wetlands and public waters)</li> </ul>	E 9
4410.4300 EAW CATEGORY. subp. 17. Solid Waste  4410.4400 EIS CATEGORY Subp. 13. Solid Waste	<p>EAW and EIS :</p> <ul style="list-style-type: none"> <li>• Category language should be changed to reflect current permitting process</li> <li>• Future review of landfill projects may be accomplished by means of an alternative environmental review or AUAR-like process.</li> <li>• Transfer facilities should be reviewed for possible elimination.</li> </ul> <p>No change to the remainder of the subparts.</p>	E 10



<p>Wastewater Systems</p> <p>4410.4300 Subp. 18</p>	<p>Review for possible change in requirements for expansion of WWTF.</p> <p>Review for possible addition to the category for the following items. The following wastewater is not currently being addressed:</p> <ul style="list-style-type: none"> <li>· Utility wastewater (cooling tower blowdown, reject, etc.) NOT associated with an industrial wastewater classified as process wastewater under the federal regulations should be considered for review.</li> <li>· Waste streams resulting from the removal of pollutants or “impurities” from water being used for either industrial or drinking water should be considered for review.</li> <li>· Water Treatment Plant Residual (backwash, reject, etc.) from a domestic water treatment plant should be considered for review.</li> </ul>	<p>E 13</p>
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## APPENDIX A

### LOCAL GOVERNMENT RGU CATEGORIES

EQB staff sent out a draft table to select representatives of local governmental units including counties and municipalities in both Greater Minnesota and the Metropolitan Area. These units were selected to include experience with a broad range of mandatory categories. Recognizing that this focused method does not capture all possible experiences or perspectives, it was chosen because of limitations on time and on EQB staff resources. Input addressed specific categories as well as the environmental review program overall.

Input was received from staff from the following:

Crow Wing County	City of Bloomington
Kandiyohi County	City of Hugo
Scott County	
Sherburne County	
Washington County	

General statements are included here first. Category-specific input is listed in the table in the respective mandatory categories.

#### General Input from a Metro county:

*I have been coordinating the preparation of environmental reviews for private projects located within the townships in (the county) since the mid 1980s. Most of the projects triggering a mandatory EAW were for residential developments or golf courses triggered by Subparts 19, 36 or gravel mining triggered by Subpart 12B. The EAWs provide answers to questions often resulting in proposed mitigation and eventually becoming conditions for plats, conditional or interim use permits. Without the knowledge gathered by the preparation of an EAW it would be difficult to identify and justify many of the conditions that we need to place on such permits to protect the environment or public health and safety. Since such projects are normally just dealt with by land use planners who lack the understanding for many of the technical environmental issues those issues would likely not have been noted before approval was recommended by staff to the Planning Commission and County Board. In the past unrecognized impacts became costly for local officials to address. Some examples we have observed with developments that were approved before environmental reviews were required include lack of planning and funding for necessary road improvements, failure to recognize flooding impacts and establish storm water drainage infrastructure and easements, incompatible land uses resulting in later complaints for odor, noise, and air pollution. Recognizing this we have worked closely with planners, traffic engineers, township officials, soil and water conservation staff and other experts as needed for each environmental review we prepare. Our approach has evolved into a County-coordinated team approach involving townships and even adjacent city officials in addition to state and*

*federal officials (when appropriate) who meet, review the issues and approve drafts before they are released for comment. Following comments, the responses to comments are prepared by staff and then reviewed and edited by the team. In this way, we build rapport, understanding and trust among all affected jurisdictions. The meetings are open for observance by interested parties as well.*

*I have no suggestions for changing the thresholds associated with triggers for environmental review. I generally feel that the thresholds are appropriate and have weathered the test of time. Though, some of the categories are more associated with municipal development than with the unsewered areas we deal with.*

*The EAW process has been streamlined somewhat in recent years to enable completion by the project proposer in response to complaints by affected groups that the process was taking too long. Since we had always worked with a project proposer to prepare a draft EAW we haven't seen much change from our perspective. The projects that seem to run into the biggest problems are those where the proponents' own consultants fail to communicate effectively with the (proposer's) development team or to advise them of major obstacles they are likely to encounter or even worse, downplay such obstacles leaving the proponent with false expectations.*

*I also did not add to your permits column. I got the impression that if permits are required then perhaps an environmental review is not as important. This might be the case if every local jurisdiction had the advantages of technically knowledgeable staff in the issues related to a permit but most local permits are land use permits with open-ended conditions attached. The MPCA, DNR and MDH, MNDOT have such expertise for issues related to the permits they issue for air quality, water quality, ground water and traffic, but local jurisdictions mostly do not and they are concerned about these issues whether or not there are state permits involved. In most cases separate state permits are not involved, but even when they are, these permits are limited to address issues for which rules have been written. When rules have not kept pace with changing developments valid concerns may not be addressed. An example is the recent growth of silica sand mining and processing. Arguably, the MPCA Air Quality rules are lacking in their ability to address silica dust effectively. Local land use permits can still do this regardless of the lack of rules. Even when rules exist, like the state noise rules, they don't address impacts such as impulse noise and nuisance sounds or wildlife disturbance that may be important local area concerns. So, I didn't feel that listing potential permits was appropriate, since it might give some people (who lack a technical appreciation for the scope of rules) the false impression that environmental reviews were redundant and not important if permits were otherwise required anyway.*

*The historical purpose sections in your table for some of the subparts suggest justification because such projects are often "controversial". Controversy or the lack of it shouldn't be a determining factor for conducting an environmental review, but rather the purpose should be to obtain a better understanding of the potential impacts associated with projects that have the potential to result in adverse impact to improve decisions. Controversy can be totally unrelated to the questions associated with an environmental review and often is borne out of fear of the unknown.*

*The environmental review process has been tinkered with for various reasons over the years. Some changes were beneficial to improving the process and some appeared to be politically motivated to satisfy powerful interests. For example, the environmental review process was significantly compromised in 2005, with passage of legislation that transferred the environmental review process away from the EQB and to the Public Utilities Commission for things like crude oil pipelines. The first project to evade a proper environmental review was the MinnCan pipeline by Koch Industries, a project that arguably instigated the change in the rules in 2005. Recognizing that the first major pipeline constructed in Minnesota since the EQB rules went into effect crossed through the center of Minnesota and through three rapidly developing metropolitan counties did not receive one comment from a State Agency as part of the so-called environmental review process is indicative of the failure of the environmental review process conducted by the PUC. Crude oil is not even a PUC regulated commodity and crude oil pipelines are certainly not a public utility, but rather a private commodity conveyance system that has wrongfully been afforded the power of eminent domain.*

*The failure of the environmental review process for the MinnCan pipeline suggests the need for a reversal of the politically inspired decision to short circuit the environmental review process and restore to the EQB the responsibility of conducting environmental reviews for crude oil pipelines and for any other private transmission or conveyance systems for which rates are not regulated by the PUC.*

*One change that might also be considered is more logistical, considering the current role the MPCA has been given in regard to administering the EQB rules. Many smaller governmental units lack the experienced staff needed to tackle an environmental review. The result has either been review documents that have been completely prepared by the developer's consultants and then simply signed by unwitting local officials or have resulted in long preparatory times frustrating the developers. I would suggest that the MPCA field officers become familiar with the environmental review process and provide hands on assistance to local units guiding them through the process of preparing an environmental review document. This would also help engage the MPCA in the process as well.*

*Many of the EAWs we have distributed for comment receive only a cursory review by the state agencies if any. Local units of government rely on the expertise at the state level that they lack locally. When that doesn't happen, the process sometimes isn't even worth doing. Often we have had to badger state agencies to respond to environmental reviews when we recognize concerns but lack the expertise, or political support to weigh in on them. On some recent environmental reviews with significant environmental issues, after pestering state agencies we have received belated comments that we then had to acknowledge despite the end of the official comment period or try to incorporate into conditions in a land use permit. This has created problems for the official record when challenged by the developer. We recognize the lack of resources environmental agencies face now, but as environmental impacts become more critical to identify and prevent as population grows, failure in this regard can have significant consequences.*

## General Input from a Metro suburb:

*The difference between cities of the first class and cities of the second class is blurring. Many cities of the second class are fully developed now. Recommend merging these into one category, using the thresholds for cities of the first class.*

*In general, there is a lot of duplication in review related to storm water:*

- *City Comprehensive Stormwater Management Plan requirements*
- *Grading, drainage, utility, and erosion control plans approved by the City Engineer*
- *Watershed District requirements*
- *National Pollutant Discharge Elimination System (NPDES) requirements – facilitated by MPCA*

*There can also be some duplication when it comes to sanitary sewer and watermain review:*

- *Grading, drainage, utility, and erosion control plans approved by the City Engineer (reviewed by Utilities)*
- *MPCA Sanitary Sewer Extension Permit (dual review by Metropolitan Council)*
- *MDH Watermain Permit*

*From a PW (public works) perspective, it seems that everything PW related in an EIS/EAW is covered in other parts of the City review process. We have conditions and City code requirements that ensure that environmental issues are covered before the development is constructed. That being said, for a larger project, staff have found the preliminary environmental review helpful. For smaller projects, less helpful.*

## Mandatory Categories Analysis

The following table includes:

- All mandatory categories for an environmental assessment worksheet (EAW) and environmental impact statement (EIS) for which the responsible government unit is a local government (political subdivision).
- Intended historical purposes of the category: summaries of reasons for past rule amendments.
- Examples of possible local, state, or federal permits to which projects may or may not be subject.
- Recommendations regarding whether the mandatory category should be modified, eliminated, or unchanged. This column also input from local governments specific to a category.

LOCAL GOVERNMENT (Political Subdivisions): Prepared by EQB

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b>                      Subp. 12. <b>Nonmetallic mineral mining.</b> Items A to C designate the RGU for the type of project listed:                      A. For development of a facility for the extraction or mining of peat which will result in the excavation of 160 or more acres of land during its existence, the DNR shall be 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 <b>local government unit</b> shall be 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 <b>local governmental unit</b> shall be the RGU.</p> <p><b>4410.4400 MANDATORY EIS CATEGORY.</b>                      Subp. 9. <b>Nonmetallic mineral mining.</b> Items A to C designate the RGU for the type of project listed:                      A. For development of a facility for the extraction or mining of peat which will utilize 320 acres of land or more during its existence, the DNR shall be the RGU.                      B. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 160 acres of land or more to a mean depth of ten feet or more during its existence, the <b>local government unit</b> shall be 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 40 or more acres of forested or other naturally vegetated land in a sensitive shoreland area or 80 or more acres of forested or other naturally vegetated land in a nonsensitive shoreland area, the <b>local governmental unit</b> is the RGU.</p>	<p>page 127 OF 1982 SONAR This category area was proposed because of the potential for significant effects on ground and surface water quality and quantity, air quality, land use, and the local and state economy. Other local and state regulations relating to these activities do not necessarily deal with the full spectrum of potential impacts. Environmental review would facilitate multi-agency coordination.</p> <p>This category area is subdivided into categories relating to peat and categories relating to aggregate minerals because the impacts relating to these activities differ.</p> <p>The extraction of peat resources has the potential for causing environmental impacts relating to land use, air quality, water quality, mining and drainage. Peat mining activities tended to be of small scale and for the purpose of marketing the peat as a horticultural product or as a briquet fuel. Peat mining was expected to be extremely controversial if proposals developed to utilize the resource for other energy uses. Data based on actual development of these resources on a broad scale is limited. The threshold levels of 160 acres for a mandatory EAW and 320 acres for a mandatory EIS coincided with Department of Natural Resources policy as set forth in the Minnesota Permit Program Policy Recommendations. In the previous rules the 320 acre threshold for an EAW for nonmetallic resources would have applied to peat extraction.</p> <p>The extraction of aggregate resources has the potential for causing environmental impacts relating to land use, transportation, noise, air quality, water quality and vibrations. Proposed activities are frequently in or near populated areas and therefore tend to be controversial. The threshold levels of 40 acres to a ten foot depth for a mandatory EAW and 160 acres to a ten foot depth for a mandatory EIS were developed pursuant to the public participation process and on the basis of the history of environmental review for these activities. A previous rule was not specific as to the degree of mining required to trigger the threshold. If a lesser area is actually developed, the entire parcel of land would still be included in the measurement. Petitions have been received for environmental review on facilities as low as 10 acres.</p> <p>pages 42 and 52 of 2007 SONAR: The clauses for projects in shoreland areas were added in 2007 due to concern over lakeshore development. (See Subp. 19a.)</p>	<p><b>Local government:</b>                      -Comprehensive plan amend if the community has a plan.                      -Rezoning if the community has zoning.                      -Subdivision/platting approval.                      -Conditional Use Permit or a local mining permit.                      -Site plan approval.                      -Grading/drainage/erosion control plan.                      -Wetlands mitigation plan.                      -Road access permit on local road.                      -Building permits for structures.</p> <p><b>State:</b>                      -Water appropriation permit                      -Permit to mine (Reclamation permit)                      -Land lease                      -NPDES/SDS permit                      -Clean Water Act 401 certif.                      -Driveway permit (Mn/DOT) if state highway.</p> <p><b>Federal:</b>                      -Clean Water Act 404 permit (wetlands)</p>	<p>Great variation remains across local governments in expertise, sophistication, interest, and effectiveness in planning and regulatory methods.</p> <p>Judging from the enormity of the frac sand mining issue, and the number of citizen petitions regarding proposed frac sand mines received in 2012, it would be premature to alter this category now. No consensus on changes is evident.</p> <p><u>Recommendation:</u> No change to this category.</p> <hr/> <p><i>INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:</i></p> <ul style="list-style-type: none"> <li>Threshold for an EAW could be raised to something over the current 40 acres: ultimately through our conditional use permit process we rely on input from state agencies, and often there are state permits required.</li> <li>Keep this unchanged.</li> <li>Companies have done projects in phases with just enough years in between to avoid doing the EAW process. Category should be amended to solve this issue.</li> <li>Keep this unchanged.</li> </ul>
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b>                      Subp. 14. <b>Industrial, commercial, and institutional facilities.</b> 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 <b>local governmental unit</b> shall be the RGU:                      (1) unincorporated area, 150,000;                      (2) third or fourth class city, 300,000;                      (3) second class city, 450,000;                      (4) first class city, 600,000.                      B. For construction of a new or expansion of an existing industrial, commercial, or institutional facility, other than a warehousing or light industrial facility, equal to or in excess of the following thresholds, expressed as gross floor space, the <b>local government unit</b> shall be the RGU:                      (1) unincorporated area, 100,000 square feet;                      (2) third or fourth class city, 200,000 square feet;</p>	<p>page 130 OF 1982 SONAR This category area is proposed because of the potential for significant impacts on water quality, air quality, solid waste generation, hazardous waste generation, transportation, land use, demographic and economic impacts on local economies. The spectrum of impacts is diverse and the regulation of the impacts varies in effectiveness with the units of government responsible. This type of project tends to be controversial, as witnessed by the number of projects previously subjected to environmental review.</p> <p>The diversity of projects precludes fine tuning of categories further. Thresholds relating to the operational size of the facility relative to the size of the local community are used. The basic theory is that the larger the facility, the greater the output and the greater the potential for local societal and environmental disruption. Square footage thresholds were set at relatively high levels (i.e., not likely to be proposed) for the EIS category and at moderate levels for the EAW category to allow discretion of the RGU in evaluating the merit of the other variables.</p> <p>The actual quantitative thresholds proposed were the subject of considerable controversy through the public meeting process used in preparation of these rules. Although these thresholds do not represent consensus, they do represent a negotiated workable threshold.</p>	<p><b>Local government:</b>                      -Comprehensive plan amend if the community has a plan.                      -Rezoning if the community has zoning.                      -Subdivision/platting approval.                      -Conditional Use Permit.                      -Site plan approval.                      -Wetlands mitigation plan.                      -Building permits for structures.</p> <p><b>State:</b> -Driveway permit (Mn/DOT) if state highway.</p> <p><b>Federal:</b> -Clean Water Act 404 permit (wetlands)</p>	<p>Great variation remains across local governments in expertise, sophistication, interest, and effectiveness in planning and regulatory methods.</p> <p>The diversity of projects also continues.</p> <p>The threshold quantities were controversial in 1982 and there's little reason to believe this has changed.</p> <p><u>Recommendation:</u> Consider possible change in thresholds, but this merits very careful examination. Clarification of language may be productive for A. and B., definitely for C. and D.</p> <hr/> <p><i>INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:</i></p> <ul style="list-style-type: none"> <li>Keep this unchanged.</li> </ul>

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<p>(3) second class city, 300,000 square feet;                      (4) first class city, 400,000 square feet.</p> <p>C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2 to 10, 12, 13, 15, or 17, for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EAW. If the project meets or exceeds the thresholds specified in any other subpart as well as that of item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.</p> <p>D. This subpart does not apply to projects for which there is a single mandatory category specified in subparts 2 to 13, 16, 17, 20, 23, 25, 29, or 34, or part 4410.4400, subparts 2 to 10, 12, 13, 17, or 22, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for 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.</p> <p><b>4410.4400 MANDATORY EIS CATEGORY.</b></p> <p>Subp. 11. <b>Industrial, commercial, and institutional facilities.</b> Items A and B designate the RGU for the type of project listed, except as provided in items C and D:</p> <p>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 <b>local governmental unit</b> is the RGU:</p> <p>(1) unincorporated area, 375,000;                      (2) third or fourth class city, 750,000;                      (3) second class city, 1,000,000;                      (4) first class city, 1,500,000.</p> <p>B. For construction of a new or expansion of an existing industrial, commercial, or institutional facility, other than a warehousing or light industrial facility, equal to or in excess of the following thresholds, expressed as gross floor space, the <b>local governmental unit</b> shall be the RGU:</p> <p>(1) unincorporated area, 250,000 square feet;                      (2) third or fourth class city, 500,000 square feet;                      (3) second class city, 750,000 square feet;                      (4) first class city, 1,000,000 square feet.</p> <p>C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 10, 12, 13, 15, or 17, or part 4410.4300, subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29 for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EIS. If the project meets or exceeds the thresholds specified in any other subparts as well as those in item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.</p> <p>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.</p>	<p><u>pages 9 and 14 of 1986 SONAR</u>: The amendment adding C. and D. was intended to make explicit in the rules how to interpret the general mandatory categories for industrial, commercial, and institutional projects. This amendment was needed to avoid confusion about how this category should applied in two types of situations: (1) where the project consists of several components, some of which may be of types for which mandatory EAW categories have been established; and (2) where the project is of an industrial, commercial or institutional nature, but of a single specific type for which there is a mandatory EAW category.</p> <p><u>page 39 of 1988 SONAR</u>: The category was separated into two types of projects, distinguishing “warehousing or light industrial facility” from others. The rationale was that traffic generation was the greatest impact, and warehousing and light industry generated less traffic than other types of industrial, commercial, and institutional projects. Therefore, the thresholds could be higher for warehousing and light industry.</p>		<ul style="list-style-type: none"> <li>• <i>Eliminate this category for both EAW and EIS (comprehensive plan establishes the use, local planning and project reviews are enough).</i></li> <li>• <i>Use higher thresholds for all, not separate and lower thresholds for ‘other than warehouse or light industrial’.</i></li> <li>• <i>Improve language to clarify whether the threshold refers to the addition only or the total square footage of the building after the addition (existing plus addition).</i></li> </ul>



Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<p>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.</p>			
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b></p> <p>Subp. 19. <b>Residential development.</b> 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 <b>local governmental unit</b> 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 <b>local governmental unit</b> is the RGU for construction of a permanent or potentially permanent residential development of:</p> <p>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;</p> <p>B. 100 unattached units or 150 attached units in a city that does not meet the conditions of item D;</p> <p>C. 100 unattached units or 150 attached units in a city meeting the conditions of item D if the project is not consistent with the adopted comprehensive plan; or</p> <p>D. 250 unattached units or 375 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:</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(4) a capital improvements plan for public facilities; and</p>	<p><u>page 141 OF 1982 SONAR:</u> This category area is proposed because of the potential for significant impacts on land use, demographic and economic impacts on local economies, transportation facilities, wildlife habitat and water quality. Additional concerns are generated because of increased potential for secondary development fostered by increased population and human activity. The spectrum of impacts is diverse and the regulation of the impacts varies in effectiveness with the units of government responsible. This type of project tends to be controversial, as witnessed by the number of projects previously subjected to environmental review.</p> <p>The diversity of projects precludes fine tuning of categories further. Thresholds relating the number of residential dwellings to the size of the local community were used. This measure was used because larger communities are more likely to be able to provide social and economic services to accommodate a greater population increase; therefore, the societal and environmental disruption per capita increase is likely to be lower. Thresholds were set at relatively high levels (i.e., not likely to be proposed) for the EIS categories and at moderate levels for the EAW categories to allow discretion by the RGU in evaluating the merit of all variables.</p> <p>The 1982 SONAR included separate thresholds for projects in shoreland, floodplain, or wild and scenic river areas if the community had not adopted ordinances for those areas.</p> <p>The category for developments near water resources was further tied to whether or not the local governmental unit has complied with existing regulations. Those that have are presumed to have incorporated adequate environmental protection measure and are therefore subject to the same threshold as developments in upland areas. Those that have not are subject to more stringent thresholds. In actual application developments in shoreland areas are most likely to be involved. All Minnesota counties have adopted shoreland ordinances; therefore, all developments in unincorporated areas actually would have the same measure applied. Approximately 50 of Minnesota's approximately 850 cities have adopted shoreland ordinances. Approximately 150 more cities will have adopted ordinances within the next biennium. This schedule will cover almost all cities likely to have proposed developments of sizes exceeding this threshold. Communities that feel they may be adversely impacted may develop ordinances ahead of the DNR schedule. Therefore, the use of this measurement for developments near water resources is projected to have relatively minimal long range impact in relation to the number of projects subject to environmental review.</p> <p>The actual quantitative thresholds proposed were the subject of considerable controversy through the public meeting process used in preparation of these rules. Although these thresholds do not represent consensus, they do represent a negotiated workable threshold.</p> <p><u>pages 47 and 63 of 1988 SONAR:</u> Added the beginning passage to avoid circumvention of the rules by segmenting of larger projects into smaller increments. Means of addressing mixed residential projects (attached and unattached units in one project) also are added. In addition, the rule was amended to raise the thresholds for cities with approved comprehensive plans. The existence of comprehensive plans, which anticipate development and allow a city to plan for it, increases a city's capacity to absorb growth without serious environmental or social disruption. Also added that when a project crosses the mandatory EIS threshold, an initial stage up to ten percent of the project could be reviewed with an EAW. This was intended to recognize the uncertainty of the ultimate size of a project, and that it may be unreasonable to delay it all for the length of time</p>	<p><b>Local government:</b></p> <ul style="list-style-type: none"> <li>-Comprehensive plan amend if the community has a plan.</li> <li>-Rezoning if the community has zoning.</li> <li>-Subdivision/platting approval.</li> <li>-Conditional Use Permit.</li> <li>-Site plan approval.</li> <li>-Wetlands mitigation plan.</li> <li>-Building permits for structures.</li> </ul> <p><b>State:</b> -Driveway permit (Mn/DOT) if state highway.</p> <p><b>Federal:</b> -Clean Water Act 404 permit (wetlands)</p>	<p>Great variation remains across local governments in expertise, sophistication, interest, and effectiveness in planning and regulatory methods.</p> <p>The diversity of projects also continues.</p> <p>The threshold quantities were controversial in 1982 and they continue to be. However, in communities with expertise and extensive planning experience, the thresholds are worth examining.</p> <p><u>Recommendation:</u> Consider possible change in thresholds in larger cities with comprehensive and environmental planning expertise, but this merits very careful examination because of the variation in expertise among local governments.</p> <p><i>INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:</i></p> <ul style="list-style-type: none"> <li>• <i>Number of units in unsewered unincorporated area could be increased, perhaps 100 for EAW.</i></li> <li>• <i>(though have not done EAW or EIS for residential) have had a couple residential developments approach the current thresholds: based on working through those projects, I am comfortable with current thresholds</i></li> <li>• <i>Although a good exercise for review, I don't think other agencies pay much attention to this category for all the work put into it.</i></li> <li>• <i>Threshold of 50 lots is too low to bother with.</i></li> <li>• <i>Eliminate this category for both EAW and EIS (comprehensive plan establishes the use, local planning and project reviews are enough).</i></li> <li>• <i>For EIS category, change to 250+ units in unsewered unincorporated area.</i></li> <li>• <i>Clarify language regarding C. and D. What triggers the EAW: when development plan is submitted or when Comprehensive Plan amendment application is submitted? If Comprehensive Plan amendment submitted and approved, then project is consistent, thus avoiding the lower threshold. Is this the intent?</i></li> </ul>

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<p>(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 those controls. The EQB chair may specify the form to be used for making a certification under this item.</p>	<p>needed for an EIS.</p>		
<p><b>4410.4400 MANDATORY EIS CATEGORY.</b></p> <p>Subp. 14. <b>Residential development.</b> An EIS is required for residential development if the total number of units that the proposer may ultimately develop on all contiguous land owned by the proposer or for which the proposer has an option to purchase, 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 4410.2000, subpart 4. The RGU may review an initial stage of the project, that may not exceed ten percent of the applicable EIS threshold, by means of the procedures of parts 4410.1200 to 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 <b>local governmental unit</b> is the RGU for construction of a permanent or potentially permanent residential development of:</p> <p>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;</p> <p>B. 400 unattached units or 600 attached units in a city that does not meet the conditions of item D;</p> <p>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</p> <p>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:</p> <p>(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;</p> <p>(2) a transportation plan describing, designating, and</p>			

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<p>scheduling the location, extent, function, and capacity of existing and proposed local public and private transportation facilities and services;</p> <p>(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;</p> <p>(4) a capital improvements plan for public facilities; and</p> <p>(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.</p>			
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b></p> <p>Subp. 19a. <b>Residential development in shoreland outside of the seven-county Twin Cities metropolitan area.</b></p> <p>A. The <b>local governmental unit</b> 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.</p> <p>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:</p> <p>(1) less than 50 percent of the area in shoreland is common open space;</p> <p>(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</p> <p>(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 be allowable on the parcel calculated according to the applicable lot area standards for nonriparian unsewered single lots under part 6120.3300, subparts 2a and 2b.</p> <p>C. A development containing 25 or more unattached or attached units for a sensitive shoreland area or 50 or more unattached or attached units for a nonsensitive shoreland area, if none of the conditions listed in item B is present.</p> <p>D. A development in a sensitive shoreland area that provides permanent mooring space for at least one nonriparian unattached or attached unit.</p> <p>E. A development containing at least one unattached or attached</p>	<p>pages 39 and 43 and 52 of 2007 SONAR: Major impetus was significant change in pattern of lakeshore development: conversion of seasonal cabins into year-round homes, size of new homes, and increasing density of new projects. Shoreland areas once less desirable or difficult to develop being proposed for development often are low-lying and marshy, with shallow water offshore and beds of aquatic vegetation, features that make the areas important to the lake ecology. The number of citizen petitions for lakeshore development was increasing. There was widespread concern about the consequences of poor development on water quality and fish and wildlife habitat caused by poorly functioning onsite septic systems and increased impervious surface runoff that negatively affected water quality. These factors led to the recognition that existing mandatory review categories may not be adequate for the changing conditions.</p> <p>The category does not apply within the Twin City Metro because questions arose whether the common open space and unit density criteria were appropriate to projects located in urbanized areas. (p. 28 of ALJ report May 7, 2009)</p>	<p><b>Local government:</b></p> <ul style="list-style-type: none"> <li>-Comprehensive plan amend if the community has a plan.</li> <li>-Rezoning if the community has zoning.</li> <li>-Subdivision/platting approval.</li> <li>-Conditional Use Permit.</li> <li>-Site plan approval.</li> <li>-Grading/drainage/erosion control plan.</li> <li>-Wetlands mitigation plan.</li> <li>-Road access permit on local road.</li> <li>-Building permits for structures.</li> </ul> <p><b>State:</b> -Driveway permit (Mn/DOT) if state highway.</p> <p><b>Federal:</b> -Clean Water Act 404 permit (wetlands)</p>	<p>This category was among those specifically created in 2007. Little has changed since then that would merit revisiting this category.</p> <p><b>Recommendation:</b> No change to this category.</p> <p><i>INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:</i></p> <ul style="list-style-type: none"> <li>· <i>Thresholds are appropriate in shoreland or sensitive area.</i></li> <li>· <i>Eliminate this category (for both EAW and EIS).</i></li> </ul>

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<p>unit created by the conversion of a resort, motel, hotel, recreational vehicle park, or campground, if either of the following conditions is present:</p> <p>(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 standards for nonriparian unsewered single lots under part 6120.3300, subparts 2a and 2b; or</p> <p>(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.</p> <p>F. 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 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</p>			
<p><b>4410.4400 MANDATORY EIS CATEGORY.</b></p> <p>Subp. 14a. <b>Residential development in shoreland outside of the seven-county Twin Cities metropolitan area.</b></p> <p>A. <b>The local governmental unit</b> 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.</p> <p>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:</p> <p>(1) less than 50 percent of the area in shoreland is common open space;</p> <p>(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</p> <p>(3) any portion of the project is in an unincorporated area.</p>			

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<p>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.</p> <p>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:</p> <p>(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</p> <p>(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.</p> <p>E. An EIS is required for residential development if the total number of units that the proposer may ultimately develop on all contiguous land owned by the proposer or for which the proposer has an option to purchase, 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 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.</p>			
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b></p> <p>Subp. 20. <b>Campgrounds and RV parks.</b> 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 <b>local government unit</b> shall be the RGU.</p>	<p><u>page 144 of 1982 SONAR</u>: Category Area: Recreational Development This category is proposed because recreational developments are typically proposed adjacent to areas with significant natural resources. Such development may significantly impact human activity in sensitive areas. These developments often are very controversial locally and may have significant impacts on local land use. The threshold measure as proposed is designed to exclude wilderness camps accessible only by foot, canoe or plane: facilities usually not located in areas where local controversy is likely. The 50 unit threshold was developed through the public meeting process. It corresponds to the threshold in the current rules for recreational developments in sensitive areas (see next subp.) The alternative of a higher threshold for developments that are not located in shoreland areas, flood plain areas, and wild and scenic river areas was considered but rejected at the request of- representatives of local governmental unit. This alternative was rejected because of the likelihood of local controversy regardless of the proximity to water resources. Projects of this nature may be proposed to facilitate hunting, snowmobiling, hiking, horseback riding, bike riding, etc. These activities may have significant impacts on local land use for the EAW categories to allow discretion by the RGU in evaluating the merit of all variables.</p> <p><u>PAGE 19 of 1997 SONAR</u>: Caption changed to recognize the specific types of development intended for inclusion in the category. Added "expansion" language to recognize that, given the high natural resource values generally present where these facilities are located, expansion has the same potential for environmental impacts as original construction.</p>	<p><b>Local government:</b></p> <ul style="list-style-type: none"> <li>-Comprehensive plan amend if the community has a plan.</li> <li>-Rezoning if the community has zoning.</li> <li>-Subdivision/platting approval.</li> <li>-Conditional Use Permit.</li> <li>-Site plan approval.</li> <li>-Grading/drainage/erosion control plan.</li> <li>-Wetlands mitigation plan.</li> <li>-Road access permit on local road.</li> <li>-Building permits for structures.</li> </ul> <p><b>State:</b></p> <ul style="list-style-type: none"> <li>-Water appropriation permit.</li> <li>-Driveway permit (Mn/DOT) if state highway.</li> </ul> <p><b>Federal:</b> -Clean Water Act 404 permit (wetlands).</p>	<p>Original reasoning still stands.</p> <p>Great variation remains across local governments in expertise, sophistication, interest, and effectiveness in planning and regulatory methods.</p> <p><u>Recommendation:</u> No change to this category.</p> <hr/> <p><i>INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:</i></p> <ul style="list-style-type: none"> <li>• <i>Keep this unchanged. Although this type of project would probably require a Conditional Use Permit from the local authority, it is not the type of use a local government unit deals with on a regular basis. It presents many different issues not normally dealt with the by local government.</i></li> <li>• <i>Change threshold to 100 for construction and 100 for expansion.</i></li> </ul>

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b>                      Subp. 20a. <b>Resorts, campgrounds, and RV parks in shorelands.</b> The <b>local government unit</b> 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.</p>	<p>pages 49 and 55 of 2007 SONAR: This new category was created to parallel Subp. 20 but incorporate the concerns regarding shoreland development as described for Subp. 19a.</p> <p><i>Note: Page 144 of 1982 SONAR includes the following:                      "DISCUSSION: Under the current rules, the following category is directly relevant to the recreational development category area:                      Mandatory EAW – 6 MCAR§ 3.024 Construction of a development consisting of "condominium type" campgrounds, mobile home parks, or other semi-permanent residential and/or recreational facilities, any part of which is within a shoreland area (as defined by Minn. Stat. § 105.485 (1974) for floodplain (as defined by the "Statewide Standards and Criteria for Management of Floodplain Areas of Minnesota" exceeding a total of 50 units or, if located in areas other than the above, exceeding a total of 100 units – (Local);"</i></p>	<p><b>Local government:</b>                      -Comprehensive plan amend if the community has a plan.                      -Rezoning if the community has zoning.                      -Subdivision/platting approval.                      -Conditional Use Permit.                      -Site plan approval.                      -Grading/drainage/erosion control plan.                      -Wetlands mitigation plan.                      -Road access permit on local road.                      -Building permits for structures.</p> <p><b>State:</b>                      -Water appropriation permit.                      -Driveway permit (Mn/DOT) if state highway.</p> <p><b>Federal:</b> -Clean Water Act 404 permit (wetlands).</p>	<p>This category was among those specifically created in 2007. Little has changed since then that would merit revisiting this category.</p> <p>Great variation remains across local governments in expertise, sophistication, interest, and effectiveness in planning and regulatory methods.</p> <p><b>Recommendation:</b> No change to this category.</p> <div style="border: 1px solid black; padding: 5px;"> <p><b>INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:</b></p> <ul style="list-style-type: none"> <li>• <i>Keep this unchanged. Although this type of project would probably require a Conditional Use Permit from the local authority, it is not the type of use a local government unit deals with on a regular basis. It presents many different issues not normally dealt with the by local government.</i></li> <li>• <i>Eliminate this category (for both EAW and EIS).</i></li> </ul> </div>
<p><b>4410.4400 MANDATORY EIS CATEGORY.</b>                      Subp. 26. <b>Resorts, campgrounds, and RV parks in shorelands.</b> For construction or expansion of a resort or other seasonal or permanent recreational development located wholly or partially in shoreland, accessible by vehicle, adding 100 or more units or sites in a sensitive shoreland area or 200 or more units or sites in a nonsensitive shoreland area, the <b>local governmental unit</b> is the RGU. 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.</p>			
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b>                      Subp. 21. <b>Airport projects.</b> Items A and B designate the RGU for the type of project listed:                      A. For construction of a paved, new airport runway, the DOT, <b>local governmental unit</b>, or the Metropolitan Airports Commission shall be the RGU.                      B. For construction of a runway extension that would upgrade an existing airport runway to permit usage by aircraft over 12,500 pounds that are at least three decibels louder than aircraft currently using the runway, the DOT, <b>local governmental unit</b>, or the Metropolitan Airports Commission shall be the RGU. The RGU shall be selected according to part 4410.0500, subpart 5.</p>	<p>page 145 of 1982 SONAR: This category area is proposed because of the potential for significant impacts related to local and regional land use, local economic and demographic issues, transportation, noise, air quality, and energy. New facilities and expansion of existing facilities to accommodate noisier aircraft are likely to be very controversial. The EAW threshold for a new airport runway in the "key system" existed in the previous rule. The basic qualitative measure applied to these categories is that airports able to accommodate jet aircraft have greatest potential to create significant environmental impacts. Facilities to accommodate jet aircraft must include a runway of 5,000 length or greater. The construction of a new facility to accommodate jet air traffic is proposed as a mandatory EIS threshold. The more likely case is that an existing facility would be expanded from a strictly small aircraft facility to a jet aircraft facility. Similar concerns could arise with runway modifications to allow use by larger jet facilities. Such potential expansion is addressed as a mandatory EAW with the need for an EIS discretionary. The 12,500 pound aircraft weight corresponds to a minimal weight for jet aircraft. The three decibel increase corresponds to a noise increase 1000 times the prior noise level. Construction of new facilities for multi-engine, twin engine and single engine aircraft and</p>	<p><b>Local government:</b>                      -Site plan approval.                      -Grading/drainage/erosion control plan.                      -Wetlands mitigation plan.</p> <p><b>State:</b> See MnDOT analysis of this category in Appendix B.</p> <p><b>Federal:</b> See MnDOT analysis of this category in Appendix B.</p>	<p>See MnDOT analysis of these categories in Appendix B.</p> <div style="border: 1px solid black; padding: 5px;"> <p><b>INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:</b></p> <ul style="list-style-type: none"> <li>• <i>Keep this unchanged: a use that could have potential impacts.</i></li> <li>• <i>Keep this unchanged.</i></li> </ul> </div>
<p><b>4410.4400 MANDATORY EIS CATEGORY.</b>                      Subp. 15. <b>Airport runway projects.</b> For construction of a paved and lighted airport runway of 5,000 feet of length or greater, the DOT or <b>local governmental unit</b> shall be the RGU.</p>			

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
	<p>expansion of these facilities to less than jet aircraft capacity is subject to environmental review on a discretionary basis. The proposed EIS category corresponds to the current EAW threshold. Minnesota has 18 key system airports. Key system airports are airports capable of handling jet aircraft. Minnesota has 73 intermediate system airports (light to medium sized multi-engine aircraft) and 50 landing strip system airports (single and twin engine aircraft).</p> <p><u>page 19 of 1997 SONAR</u>: In 1997, the rule was amended to require an EAW for all new airport runways.</p>		
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b>                      Subp. 22. <b>Highway projects.</b> Items A to C designate the RGU for the type of project listed:                      A. For construction of a road on a new location over one mile in length that will function as a collector roadway, the DOT or <b>local government unit</b> shall be the RGU.                      B. For construction of additional travel lanes on an existing road for a length of one or more miles, the DOT or <b>local government unit</b> shall be the RGU.                      C. For the addition of one or more new interchanges to a completed limited access highway, the DOT or <b>local government unit</b> shall be the RGU.</p>	<p><u>page 146 of 1982 SONAR</u>: This category area is proposed because of the potential for significant impacts related to local and regional land use, local economic and demographic issues, transportation, noise, air quality, energy, water quality, erosion, drainage, water resources, habitat destruction, and construction impacts. New facilities and the expansion of existing facilities to accommodate increased traffic are likely to be very controversial. Although the cumulative impact of local roadways is greatest, primary concern is generated by the construction of arterial and collector roadways because they tend to induce secondary development in the area and they accommodate approximately 85% of the total mileage driven by motorists. Arterial roadways are commonly four or more lanes in width. The EIS category at uses this as a qualitative threshold.</p>	<p><u>Local government</u>:                      -Grading/drainage/erosion control plan.                      -Wetlands mitigation plan.                      -Subdivision/platting approval.</p> <p><u>State</u>: See MnDOT analysis of this category in Appendix B.</p> <p><u>Federal</u>: See MnDOT analysis of this category in Appendix B.</p>	<p>See MnDOT analysis of these categories in Appendix B.</p> <p><i>INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:</i></p> <ul style="list-style-type: none"> <li>Eliminate this category for both EAW and EIS. Local comprehensive plans and Metropolitan Council transportation planning anticipates traffic and land use impacts.</li> </ul>
<p><b>4410.4400 MANDATORY EIS CATEGORY.</b>                      Subp. 16. <b>Highway projects.</b> For construction of a road on a new location which is four or more lanes in width and two or more miles in length, the DOT or <b>local government unit</b> shall be the RGU.</p>			
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b>                      Subp. 23. <b>Barge fleeting.</b> For construction of a new or expansion of an existing barge fleeting facility, the DOT or <b>port authority</b> shall be the RGU.</p>	<p><u>page 149 of 1982 SONAR</u>: This category is proposed because of the potential for significant environmental impacts related to water quality, sedimentation and erosion, recreational use of water resources, commercial transportation, habitat deterioration, and adjacent land use. No single agency is responsible for coordinated programming of proposed activities, therefore, environmental review is necessary. Under the current rules there are no mandatory EAW or exemption categories directly relevant to the barge fleeting category area. Regulation of barge fleeting is not focused with any central agency. Local government comprehensive plans typically do not address the problems and needs of a commercial barge navigation system. Primary problems associated with the environmental impacts center on the effects of dredging and spoil disposal on water quality and habitat disruption for wildlife populations.</p>	<p><u>Local government</u>: Site Plan Approval. Possible subdivision/platting review, grading permit, building permit for structures, or conditional use permits (operator facilities)</p>	<p>See MnDOT analysis of these categories in Appendix B.</p>
<p><b>4410.4400 MANDATORY EIS CATEGORY.</b>                      Subp. 17. <b>Barge fleeting facilities.</b> For construction of a barge fleeting facility at a new off-channel location that involves the dredging of 1,000 or more cubic yards, the DOT or <b>port authority</b> shall be the RGU.</p>	<p>The EAW category sets forth an all or none threshold relating to the construction or expansion of the capacity of facilities at either on channel or off-channel locations. Dredging for the purpose of maintaining existing capacity would not be included in this category. The all or none threshold is reasonable to facilitate coordination between governmental units involved and to address the impacts related to disturbance of the habitat and operation of the facility in addition to potential dredging impacts.</p> <p>The threshold used for the EIS category centers on off-channel facilities at new locations which entail controversial siting and land use issues. A minimum dredge threshold was set to allow minor or temporary facilities. The threshold was established as a reasonable cut-off pursuant to the public meeting process.</p> <p>No exemptions for this category: coordination between governmental units is needed, and adequate site specific information is usually lacking.</p>	<p><u>State</u>: See MnDOT analysis of this category in Appendix B.</p> <p><u>Federal</u>: See MnDOT analysis of this category in Appendix B.</p>	

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b>                      Subp. 25. <b>Marinas.</b> For construction or expansion of a marina or harbor that results in a 20,000 or more square foot total or a 20,000 or more square foot increase of water surface area used temporarily or permanently for docks, docking, or maneuvering of watercraft, the <b>local government unit</b> shall be the RGU.</p> <p><b>4410.4400 MANDATORY EIS CATEGORY.</b>                      Subp. 19. <b>Marinas.</b> For construction of a new or expansion of an existing marina, harbor, or mooring project on a state or federally designated wild and scenic river, the <b>local government unit</b> shall be the RGU.</p>	<p><u>page 151 of 1982 SONAR:</u> This category area is proposed because of the potential for significant impacts related to water quality, air quality, noise, wildlife habitat, aesthetics, and the use of public resources. The qualitative measure of the thresholds applied to the EAW category is the area of water surface occupied by the facility. This measure most appropriately reflects the total potential for impacts from the facility. The quantitative threshold proposed corresponds to approximately one half acre. Such a facility would accommodate approximately 80 boats. The proposed category is the same as the current rules. This threshold has proven to be reasonable for defining major facilities. Marinas may be constructed in wild and scenic river areas. However, because of the unique character of these areas, the areas are generally inappropriate for marinas. Under the current rules, requests for EISs on marinas have mostly been confined to wild and scenic river systems.</p>	<p><b>Local government:</b>                      -Comprehensive plan amend if community has a plan.                      -Rezoning if the community has zoning.                      -Subdivision/platting approval.                      -Conditional Use Permit.                      -Site plan approval.                      -Grading/drainage/erosion control plan.                      -Wetlands mitigation plan.                      -Road access permit on local road.                      -Building permits for structures.</p> <p><u>State:</u> work in public waters</p>	<p><u>Recommendation:</u> No change to this category.</p> <p><i>INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:</i>                      • <i>Change threshold to eliminate “results in 20,000 sf total” and only include <u>adding</u> an additional 20,000 sf.</i></p>
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b>                      Subp. 26. <b>Stream diversion.</b> For a diversion, realignment, or channelization of any designated trout stream, or affecting greater than 500 feet of natural watercourse with a total drainage area of ten or more square miles unless exempted by part 4410.4600, subpart 14, item E, or 17, the <b>local government unit</b> shall be the RGU.</p>	<p><u>page 152 of 1982 SONAR:</u> This category area is proposed because the alteration of watercourses affects flooding in downstream and adjacent areas, wildlife habitat, fisheries resources, water quality, and area land use. The traditional analysis of flood control and drainage projects usually does not consider broad and long range environmental implications. Environmental review will facilitate a more comprehensive analysis. The qualitative measure applied to the EAW category is restricted to trout streams and natural watercourses because they have significant habitat, recreational, and resource values. Alteration of these watercourses may significantly impact natural drainage. A ten square mile quantitative threshold is applied to make the category administratively feasible and because minor diversion of headwaters watercourses is likely to have minimal flooding and habitat impacts. A ten square mile drainage area corresponds to approximately 6,400 acres.</p> <p><u>page 20 of 1997 SONAR:</u> "Realignment" is added as an activity that <i>will</i> require an EAW. Realignment often means straightening, which has a serious effect on water flows and stream habitat. The 500-foot minimum length was added so that the category would no longer apply to minor stream alterations; this minimum threshold does not apply to trout streams. Experience has 20 shown that stream diversions of less than this length generally have minimal environmental impacts and do not warrant a mandatory EAW requirement.</p>	<p><b>Local government:</b>                      -Grading/drainage/erosion control plan.                      -Wetlands mitigation plan.</p> <p><u>State:</u> Work in public waters.</p> <p><u>Federal:</u> Section 404 Clean Water Act by USACOE.</p>	<p>Great variation exists across local governments regarding technical/scientific expertise for potential environmental impacts from projects of this type.</p> <p><u>Recommendation:</u> No change to this category.</p> <p><i>INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:</i>                      • <i>DNR should be the RGU.</i></p>
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b>                      Subp. 27. <b>Wetlands and public waters.</b> Items A and B designate the RGU for the type of project listed:                      A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant to Minnesota Statutes, chapter 103G, the <b>local government unit</b> shall be the RGU.                      B. For projects that will change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more, excluding public waters wetlands, if any part of the wetland is within a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the <b>local government unit</b> shall be the RGU.</p>	<p><u>page 153 of 1982 SONAR:</u> This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects.                      An EIS is required for the elimination of a protected water or protected wetland. This is reasonable because these resources have been determined to be significant pursuant to the DNR’s inventory program. The elimination of such resources would have significant local and regional impacts. A quantitative threshold of one acre is set to require an EAW. This is reasonable because an alteration of one acre is likely to affect the total aquatic ecosystem. In addition, impacts of that size are likely to foster additional in the area. Environmental review is reasonable to reduce the possibility of piecemealing the elimination or degradation of the resource.</p>	<p><b>Local government:</b>                      -Grading/drainage/erosion control plan.                      -Wetlands mitigation plan.</p> <p><u>State:</u> Work in public waters.</p> <p><u>Federal:</u> Section 404 Clean Water Act by USACOE.</p>	<p>Great variation exists across local governments regarding technical/scientific expertise for potential environmental impacts from projects of this type.</p> <p><u>Recommendation:</u> No change to this category.</p> <p><i>INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:</i>                      • <i>Keep this unchanged: if such large areas are being impacted, EAW should be required to look at the big picture.</i>                      • <i>Eliminate EIS category (EAW category remains).</i></p>



Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<p><b>4410.4400 MANDATORY EIS CATEGORY.</b>                      Subp. 20. <b>Wetlands and public waters.</b> For projects that will eliminate a public water or public waters wetland, the <b>local government unit</b> shall be the RGU.</p>			
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b>                      Subp. 29. <b>Animal feedlots.</b> The PCA is the RGU for the types of projects listed in items A and B unless the <b>county</b> will issue the feedlot permit, in which case the <b>county</b> is the RGU. However, the county is not the RGU prior to January 1, 2001.                      A. For the construction of an animal feedlot facility with a capacity of 1,000 animal units or more or the expansion of an existing facility by 1,000 animal units or more if the facility is not in an area listed in item B.                      B. For the construction of an animal feedlot facility of more than 500 animal units or expansion of an existing animal feedlot facility by more than 500 animal units if the facility is located wholly or partially in any of the following sensitive locations: shoreland; a delineated flood plain, except that in the flood plain of the Red River of the North the sensitive area includes only land within 1,000 feet of the ordinary high water mark; a state or federally designated wild and scenic river district; the Minnesota River Project Riverbend area; the Mississippi headwaters area; or an area within a drinking water supply management 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.</p>	<p><u>page 156 of 1982 SONAR:</u> This category is proposed because of the potential for significant environmental impacts relating to ground and surface water quality, odors, and local land use issues. This type of activity is likely to be controversial if the location is in a sensitive area or near residential or recreational developments. Thresholds were amended in 1988.                       The MEPA statute (116D) was amended in 2003 to exempt feedlots from environmental review if they are under 1,000 animal units or the county holds a public hearing on the project and the project complies with MPCA permit requirements. The exemptions section in the rules was amended accordingly. The result is that few, if any, environmental reviews have local governments RGUs anymore. The MPCA is the RGU for the ones that are prepared.</p>	<p><b>Local government:</b>                      -Conditional Use Permit.                      -Grading/drainage/erosion control plan.                      -Wetlands mitigation plan.   <u>State:</u> NPDES/SDS permit, construction stormwater permit, water appropriation permit   <u>Federal:</u> NPDES administered by State</p>	<p>Amendment of MEPA in 2003 eliminated most local government environmental reviews.   <u>Recommendation:</u> No change to this category.   <u>INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:</u>                      • <i>Not all counties have taken over the feedlot regulations. Local conditional use permit may or may not be required. The EAW process would give all affected (people) the opportunity to comment and larger agencies to review.</i></p>
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b>                      Subp. 30. <b>Natural areas.</b> For projects resulting in the permanent physical encroachment on lands within a national park, state park, wilderness area, state lands and waters within the boundaries of the Boundary Waters Canoe Area, scientific and natural area, or state trail corridor when the encroachment is inconsistent with laws applicable to or the management plan prepared for the recreational unit, the DNR or <b>local government unit</b> shall be the RGU.</p>	<p><u>page 157 of 1982 SONAR:</u> This category is proposed because natural areas are publicly owned properties that have been set aside to preserve significant natural resources for future generations. These are sensitive areas of unique quality which may be significantly impacted by inappropriate development. Environmental review is necessary for these activities to allow public involvement in decisions affecting publicly owned resources. Enabling legislation conferring authority for the designation of these public facilities mandates the preparation of a master management plan for the unit. These plans may vary according to the characteristics of the area and purposes for designation. As a result, the standard of inconsistent with the management plan is proposed. This is the most reasonable method of addressing the diversity among these units.</p>	<p><b>Local government:</b>                      -Comprehensive plan amend if community has a plan.                      -Rezoning if community has zoning.                      -Subdivision/platting approval.                      -Conditional Use Permit.                      -Site plan approval.                      -Grading/drainage/erosion control plan.                      -Wetlands mitigation plan.                      -Road access permit on local road.                      -Building permits for structures.   <u>State:</u> Master plan per M.S. 86A.09  <u>Federal:</u> National park or forest management plans.</p>	<p>Great variation exists across local governments regarding technical/scientific expertise for potential environmental impacts from projects of this type.   <u>Recommendation:</u> No change to this category from local government perspective, but see MnDNR recommendation for this category in Appendix D.   <u>INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:</u>                      • <i>Perhaps the DNR should be the RGU and not have an option of DNR or local government RGU.</i>                       • <i>Keep this unchanged.</i></p>

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b>                      Subp. 31. <b>Historical places.</b> 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 <b>local unit of government</b> shall be 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 16, section 470, 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.</p>	<p><u>page 157 of 1982 SONAR:</u> This category area is proposed because there is very little government authority to protect sites listed on the National Register of Historic Places. The requirement for environmental review prior to the destruction of such facilities is needed to provide the public an opportunity to take part in decisions that may significantly affect the preservation of our national heritage. Historical resources are protectable natural resources under the Minnesota Environmental Rights Act.                      Approximately 907 sites in Minnesota are currently listed on the National Register. Sites so listed are regarded to be nationally significant resources. These sites are frequently privately owned and there may be little financial incentive for the owner to maintain the site. Public review may produce feasible alternatives to the destruction of the facility. The opportunity to review these alternatives via environmental review is reasonable because of the lack of other forms of regulation.  <u>page 21 of 1997 SONAR:</u> The rules were amended to: clarify moving of a building was included; add the State Register of Historic Places; and add two exemptions for federal program review.  <u>page 39 of 2005 SONAR:</u> The 2005 rules amendment added two situations where an EAW is not required. The first is when destruction will be reviewed by a certified local heritage preservation commission. The State Historic Preservation Office believes that review by such a commission gives adequate oversight over historic places without preparation of an EAW. To be certified, a local heritage preservation commission applies to SHPO, which reviews the application and local ordinance for consistency with nationwide standards established in the Code of Federal Regulations at the cited locations. The second situation added has to do with the nature of the property proposed for destruction. In some cases, the historic place included on the National or State Register is an entire district rather than a single structure. In such districts, not all the properties actually have or contribute to the historic value of the district.</p>	<p><b>Local government:</b>                      -Maybe a demolition permit.</p> <p><b>State:</b></p> <p><b>Federal:</b></p>	<p>Reasoning of past SONARs still remains sound. Mandatory review by a qualified entity is appropriate: if a historic resource is destroyed, it's gone.</p> <p>Recommendation: No change to this category.</p> <hr/> <p><i>INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:</i></p> <ul style="list-style-type: none"> <li>Keep this unchanged: gives other agencies the opportunity to weigh in on local buildings that may be of broader significance than just for local culture.</li> <li>Eliminate this category.</li> </ul>
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b>                      Subp. 32. <b>Mixed residential and industrial-commercial projects.</b> 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 <b>local governmental unit</b> is the RGU.</p>	<p><u>page 55 and 66 of 1988 SONAR:</u> A new category created to close a loophole whereby mixed use projects were not covered by either the residential or industrial/commercial/institutional categories.</p>	<p><b>Local government:</b>                      -Comprehensive plan amend if the community has a plan.                      -Rezoning if the community has zoning.                      -Subdivision/platting approval.                      -Conditional Use Permit.                      -Site plan approval.                      -Wetlands mitigation plan.                      -Building permits for structures.</p> <p><b>State:</b> -Driveway permit (Mn/DOT) if state highway.</p> <p><b>Federal:</b> -Clean Water Act 404 permit (wetlands)</p>	<p>Recommendation: Consider possible change in thresholds for communities with comprehensive plans that include specified elements, but this merits very careful examination. The variation in expertise, sophistication, interest, and effectiveness in planning and regulatory methods across local governments remains. The diversity of projects also continues. The threshold quantities were controversial in 1982 and there's little reason to believe this has changed.</p> <hr/> <p><i>INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:</i></p> <ul style="list-style-type: none"> <li>There should be some exception for communities with a comprehensive land use plan. Maybe exempt if mixed use developments are addressed in the land use plan. How a community separates or combines uses is a zoning function.</li> <li>Eliminate this category for both EAW and EIS (comprehensive plan establishes the use, local planning and project reviews are enough).</li> </ul>
<p><b>4410.4400 MANDATORY EIS CATEGORY.</b>                      Subp. 21. <b>Mixed residential and commercial-industrial projects.</b> If a project includes both residential and commercial-industrial components, the project must have an EIS prepared if the sum of the quotient obtained by dividing the number of residential units by the applicable residential threshold of subpart 14, plus the quotient obtained by dividing the amount of industrial-commercial gross floor space by the applicable industrial-commercial threshold of subpart 11, equals or exceeds one.</p>			

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b>                      Subp. 33. <b>Communications towers.</b> 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 <b>local governmental unit</b> is the RGU.</p>	<p><u>page 56 in 1988 SONAR:</u> Category created in response to a number of petitions involving communication towers, which apparently were reflective of the increasing number of towers being constructed. Information from the DNR indicates that towers have a high potential for killing night migrating birds. There also was the potential for significant aesthetic impacts. Up until just before this time, the federal FCC prepared an environmental assessment for any tower in excess of 500 feet, but had recently eliminated that procedure. The new rule adopted the former federal threshold.  <u>page 22 of 1997 SONAR:</u> added the 300' height in sensitive areas.</p>	<p><b>Local government:</b>                      -Conditional Use Permit.                      -Grading/drainage/erosion control plan.                      -Wetlands mitigation plan.                      -Site plan approval.                      -Building permits for structures.                      -Road access permit local road.  <b>State:</b> -Driveway permit (Mn/DOT) if state highway.  <b>Federal:</b></p>	<p>Reasoning of original SONAR still remains sound.   <u>Recommendation:</u> No change to this category.</p>
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b>                      Subp. 34. <b>Sports or entertainment facilities.</b> 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 <b>local governmental unit</b> is the RGU.</p>	<p><u>pages 57 and 66 of 1988 SONAR:</u> New category created. A significant number of such facilities had been reviewed since 1982 (horse tracks, amphitheaters, a sports complex, a basketball arena, and a zoo expansion.). Experience demonstrated that environmental review was appropriate. However, existing categories were not well-suited to such facilities. Industrial/commercial/institutional category is based on gross floor space. Experience reviewing sports facilities led to the conclusion that attendance rather than floor space is a better estimator of environmental effects.</p>	<p><b>Local government:</b>                      -Comprehensive plan amend if community has a plan.                      -Rezoning if the community has zoning.                      -Subdivision/platting approval.                      -Conditional Use Permit.                      -Site plan approval.                      -Building permits for structures.</p>	<p>Reasoning of original SONAR still remains sound.   <u>Recommendation:</u> No change to this category.</p>
<p><b>4410.4400 MANDATORY EIS CATEGORY.</b>                      Subp. 22. <b>Sports or entertainment facilities.</b> For construction of a new outdoor sports or entertainment facility designed for or expected to accommodate a peak attendance of 20,000 or more persons or a new indoor sports or entertainment facility designed for or expected to accommodate a peak attendance of 30,000 or more persons, or the expansion of an existing facility by these amounts, the local governmental unit is the RGU.</p>		<p><b>State:</b> NPDES, highway improvements   <b>Federal:</b> highway improvements</p>	<p><i>INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:</i>                      • <i>Keep this unchanged. Activities of such large scale can have more than a local impact and regionally can impact other communities. Also gives a broader group the opportunity to comment.</i></p>
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b>                      Subp. 36. <b>Land use conversion, including golf courses.</b> 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 <b>local government unit</b> shall be the RGU, except that this subpart does not apply to agricultural land inside the boundary of the Metropolitan Urban Service Area established by the Metropolitan Council.                      B. For projects resulting in the conversion of 640 or more acres of forest or naturally vegetated land to a different open space land use, the <b>local government unit</b> shall be the RGU.</p>	<p><u>page 54 of 1988 SONAR:</u> The exemption for land within the Metropolitan Urban Service Area was added because the planning policies for the metropolitan area was considered to have adequately addressed the issue of agricultural land conversion.  <u>page 22 of 1997 SONAR:</u> The land conversion for golf courses threshold formerly was part of the "forestry and agriculture" category of Subp. 28. Residential development for lots larger than urban size was added as well. The intent was to acknowledge that conversion of land can have environmental effects, not just the number of units as is the measure for the residential category.</p>	<p><b>Local government:</b>                      -Comprehensive plan amend if community has a plan.                      -Rezoning if the community has zoning.                      -Subdivision/platting approval.                      -Conditional Use Permit.                      -Site plan approval.                      -Wetlands mitigation plan.                      -Road access permit on local road.                      -Building permits for structures.                      -Grading/drainage/erosion control plan.  <b>State:</b> -Water appropriation permit.                      -Driveway permit if state hwy.  <b>Federal:</b> -CWA 404 permit</p>	<p><u>Recommendation:</u> Consider possible change to threshold quantity. Consider possible clarification of language for project type.   <i>INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:</i>                      • <i>Threshold of 80 acres too low for golf courses or residential: could be as few as 30 residential lots. Maybe 160 acres.</i>                      • <i>Language should be clarified. Does conversion to any land use cross the EAW threshold? This may be too broad. Converting from golf course to park or open space should not trigger an EAW.</i></p>

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b>                      Subp. 36a. <b>Land conversions in shoreland.</b>                      A. For a project that alters 800 feet or more of the shoreline in a sensitive shoreland area or 1,320 feet or more of shoreline in a nonsensitive shoreland area, the <b>local governmental unit</b> is the RGU.                      B. For a project that alters more than 50 percent of the shore impact zone if the alteration measures at least 5,000 square feet, the <b>local governmental unit</b> is the RGU.                      C. For a project that permanently converts 20 or more acres of forested or other naturally vegetated land in a sensitive shoreland area or 40 or more acres of forested or other naturally vegetated land in a nonsensitive shoreland area, the <b>local governmental unit</b> is the RGU.</p>	<p><u>pages 50 and 55 of 2007 SONAR:</u> As a result of the concerns over shoreland development (see Subp. 19.a.) this threshold was added to parallel the existing Subp. 36 conversion category while focusing on shorelands.</p>	<p><b>Local government:</b>                      -Comprehensive plan amend if community has a plan.                      -Rezoning if the community has zoning.                      -Subdivision/platting approval.                      -Conditional Use Permit.                      -Site plan approval.                      -Grading/drainage/erosion control plan.                      -Wetlands mitigation plan.                      -Road access permit on local road.                      -Building permits for structures.  <b>State:</b>                      -Water appropriation permit.                      -Driveway permit (Mn/DOT) if state highway.                      -Permit to mine (Reclamation permit).                      -Clean Water Act 401 certif.  <b>Federal:</b> -Clean Water Act 404 permit (wetlands).</p>	<p>This category was among those specifically created in 2007. Experience has raised questions about whether the language of the category fully reflects the intent regarding permanent land conversion.</p> <p><u>Recommendation:</u> Review intent and consider clarifying language.</p> <hr/> <p><i>INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:</i></p> <ul style="list-style-type: none"> <li>• <i>Keep this unchanged.</i></li> <li>• <i>Eliminate this category for both EAW and EIS.</i></li> </ul>
<p><b>4410.4400 MANDATORY EIS CATEGORY.</b>                      Subp. 27. <b>Land conversion in shorelands.</b> For a project that permanently converts 40 or more acres of forested or other naturally vegetated land in a sensitive shoreland area or 80 or more acres of forested or other naturally vegetated land in a nonsensitive shoreland area, the <b>local governmental unit</b> is the RGU.</p>			
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b>                      Subp. 37. <b>Recreational trails.</b> If a project listed in items A to F will be built on state-owned land or funded, in whole or part, by grant-in-aid funds administered by the DNR, the DNR is the RGU. For other projects, if a <b>governmental unit is sponsoring</b> the project, in whole or in part, that governmental unit is the RGU. If the project is not sponsored by a unit of government, the RGU is the <b>local governmental unit</b>. For purposes of this subpart, "existing trail" means an established corridor in current legal use.                      A. Constructing a trail at least ten miles long on forested or other naturally vegetated land for a recreational use other than snowmobiling or cross-country skiing, unless exempted by part 4410.4600, subpart 14, item D, or constructing a trail at least 20 miles long on forested or other naturally vegetated land exclusively for snowmobiling or cross-country skiing.                      B. Designating at least 25 miles of an existing trail for a new motorized recreational use other than snowmobiling. In applying items A and B, if a proposed trail will contain segments of newly constructed trail and segments that will follow an existing trail but be designated for a new motorized use, an EAW must be prepared if the sum of the quotients obtained by dividing the length of the new construction by ten miles and the length of the existing but newly designated trail by 25 miles, equals or exceeds one.                      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</p>	<p><u>2004 SONAR dedicated exclusively to this category</u>  <u>pages 4 &amp; 5:</u> One particular aspect of the controversy over motorized recreational vehicle usage in Minnesota led to this rulemaking (to create this category) in a direct way. When the DNR released its first trail system plans for the three regions of northern Minnesota in 2000 and 2001, citizens petitioned for Environmental Review and filed lawsuits when the DNR, in part, denied the petitions. While the Court of Appeals ruled that only some of the actions in the system plans constituted actual "projects" subject to environmental review, trail planning by the DNR was seriously impeded for several years. This situation brought attention to the fact that the existing Environmental Review program rules did not have any guidance in the form of mandatory review and exemption categories regarding which kinds of trails were subject to review. This realization is a major factor leading to this rulemaking. The legislature in 2003 ordered the EQB to adopt rules providing for threshold levels for environmental review for recreational trails.</p> <p>RGU assignment is consistent with the general principles for RGU assignment in the rules: (1) if a state agency will carry out a project it is the RGU and (2) the RGU is the unit with the greatest responsibility for supervising or approving the project as a whole or has expertise that is relevant for the review. The Department of Natural Resources (DNR) is named as RGU for all trail projects for which it is either the project constructor or the provider of grant-in-aid funds. This gives the DNR a strong degree of authority over the project. In addition, the DNR staff has expertise with the review of recreational trails that is likely to be greater than that available to a local unit of government that would be a sponsor for a grant-in-aid trail. For those projects not constructed by the DNR or involving state grant-in-aid funds, but which will be sponsored by another unit of government, the sponsoring unit will be the RGU; this is consistent with the general principle of RGU assignment.</p>	<p><b>Local government:</b>                      -Subdivision/platting approval.                      -Conditional Use Permit.                      -Grading/drainage/erosion control plan.                      -Wetlands mitigation plan.                      -Road access permit on local road.  <b>State:</b>                      -Driveway permit (Mn/DOT) if state highway.  <b>Federal:</b> -Clean Water Act 404 permit (wetlands).                      -Clean Water Act 401 certif.</p>	<p>The reasoning of the 2004 category SONAR still stands.</p> <p><u>Recommendation:</u> No change to this category. See DNR comments in Appendix D for additional discussion.</p> <hr/> <p><i>INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:</i></p> <ul style="list-style-type: none"> <li>• <i>Not clear if environmental review is required for non-motorized trails such as a bicycle trail. Questionable if environmental review is needed for non-motorized trail.</i></li> </ul> <p>The option to only include trails for motorized uses in the mandatory category was rejected in 2004 because it was recognized that motorized use is not the only reason why recreational trail projects may have environmental impacts.</p>

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<p>agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities such as mineral mining.</p> <p>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.</p>			



APPENDIX B: MINNESOTA DEPARTMENT OF TRANSPORTATION CATEGORIES: Prepared by MnDOT

Mandatory Categories: MnDOT as RGU	Intended Historical Purpose	Potential Local, State, or Federal Permits that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b>                      Subp. 21. <b>Airport projects.</b> Items A and B designate the RGU for the type of project listed:                      A. For construction of a paved, new airport runway, the DOT, local governmental unit, or the Metropolitan Airports Commission shall be the RGU.                      B. For construction of a runway extension that would upgrade an existing airport runway to permit usage by aircraft over 12,500 pounds that are at least three decibels louder than aircraft currently using the runway, the DOT, local government unit, or the Metropolitan Airports Commission shall be the RGU. The RGU shall be selected according to part 4410.0500, subpart 5.</p>	<p><u>page 145 of 1982 SONAR:</u> This category area is proposed because of the potential for significant impacts related to local and regional land use, local economic and demographic issues, transportation, noise, air quality, and energy. New facilities and expansion of existing facilities to accommodate noisier aircraft are likely to be very controversial. The EAW threshold for a new airport runway in the “key system” existed in the previous rule. The basic qualitative measure applied to these categories is that airports able to accommodate jet aircraft have greatest potential to create significant environmental impacts. Facilities to accommodate jet aircraft must include a runway of 5,000 length or greater. The construction of a new facility to accommodate jet air traffic is proposed as a mandatory EIS threshold. The more likely case is that an existing facility would be expanded from a strictly small aircraft facility to a jet aircraft facility. Similar concerns could arise with runway modifications to allow use by larger jet facilities. Such potential expansion is addressed as a mandatory EAW with the need for an EIS discretionary. The 12,500 pound aircraft weight corresponds to a minimal weight for jet aircraft. The three decibel increase corresponds to a noise increase 1000 times the prior noise level. Construction of new facilities for multi-engine, twin engine and single engine aircraft and expansion of these facilities to less than jet aircraft capacity is subject to environmental review on a discretionary basis. The proposed EIS category corresponds to the current EAW threshold. Minnesota has 18 key system airports. Key system airports are airports capable of handling jet aircraft. Minnesota has 73 intermediate system airports (light to medium sized multi-engine aircraft) and 50 landing strip system airports (single and twin engine aircraft).</p>	<p><b>Local:</b> Possible subdivision/platting review, grading permit, building permit for structures, or conditional use permits</p> <p><b>State:</b> NPDES Construction General Permit (stormwater pollution prevention during construction)</p> <p><b>Federal:</b> FAA 7460 Notification (height, safety and operational hazards related to airspace)</p>	<p>Zoning issues are all handled at the local level. Stormwater concerns are addressed at the state level with the NPDES Construction permit. At the federal level, the RGU must work with FAA to meet all applicable federal regulations, per the 7460 Notification process (e.g. height restrictions, safety and operational issues). MnDOT, as approved by the FAA, often assists locals with preparation of the <b>EAW</b> and related environmental documents on projects where MnDOT is not the RGU. This is an efficiency measure, as locals are unlikely to be familiar with environmental review as it pertains to airport construction, and would otherwise need to hire expensive consultants or train staff for that particular project. This relationship works well for all organizations and there are no recommended changes for this category at this time. The environmental review process is the only process which allows for public input, and will identify potential issues of contamination, historical and cultural significance, community issues (e.g. noise and socio-economics) or cumulative impacts and land use considerations. In the metropolitan area, the Metropolitan Airport Commission (MAC) conducts air quality or noise analyses, if the environmental review identifies an area of concern. In outstate areas, the airport conducts these analyses.</p>
<p><b>4410.4400 MANDATORY EIS CATEGORY.</b>                      Subp. 15. <b>Airport runway projects.</b> For construction of a paved and lighted airport runway of 5,000 feet of length or greater, the DOT or local government unit shall be the RGU.</p>	<p><u>page 19 of 1997 SONAR:</u> In 1997, the rule was amended to require an EAW for all new airport runways.</p>		<p>Zoning issues are all handled at the local level. Stormwater concerns are addressed at the state level with the NPDES Construction permit. At the federal level, the RGU must work with FAA to meet all applicable federal regulations, per the 7460 Notification process (e.g. height restrictions, safety and operational issues). MnDOT, as approved by the FAA, often assists locals with preparation of the <b>EIS</b> and related environmental documents on projects where MnDOT is not the RGU. This is an efficiency measure, as locals are unlikely to be familiar with environmental review as it pertains to airport construction, and would otherwise need to hire expensive consultants or train staff for that particular project. This relationship works well for all organizations and there are no recommended changes for this category at this time. The environmental review process is the only process which allows for public input, and will identify potential issues of contamination, historical and cultural significance, community issues (e.g. noise and socio-economics) or cumulative impacts and land use considerations. In the metropolitan area, the Metropolitan Airport Commission (MAC) conducts air quality or noise analyses, if the environmental review identifies an area of concern. In outstate areas, the airport conducts these analyses.</p>
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b>                      Subp. 22. <b>Highway projects.</b> Items A to C designate the RGU for the type of project listed:                      A. For construction of a road on a new location over one mile in length that will function as a collector roadway, the DOT or local government unit shall be the RGU.                      B. For construction of additional travel lanes on an existing road for a length of one or more miles, the DOT or local government unit shall be the</p>	<p><u>page 146 of 1982 SONAR:</u> This category area is proposed because of the potential for significant impacts related to local and regional land use, local economic and demographic issues, transportation, noise, air quality, energy, water quality, erosion, drainage, water resources, habitat destruction, and construction impacts. New facilities and the expansion of existing facilities to accommodate increased traffic are likely to be very controversial. Although the cumulative impact of local roadways is greatest, primary concern is generated by the construction of arterial and collector roadways because they tend to induce secondary development in the area and they accommodate approximately 85% of</p>	<p><b>Local:</b> Possible subdivision/platting review, grading permit, building permit for structures, or conditional use permits</p> <p><b>State:</b> NPDES Construction (stormwater pollution prevention)</p>	<p>EAW: Different levels of local coordination or permits are necessary, depending on the project proposer, city, county, and watershed where the project is located. Water quality, wetland preservation/mitigation, and construction stormwater issues are addressed through state and federal permits. The environmental review process is the only process which allows for public input, and will identify potential issues of contamination, historical and cultural significance, community issues (e.g. noise and socio-economics) or cumulative impacts and land use</p>

Mandatory Categories: MnDOT as RGU	Intended Historical Purpose	Potential Local, State, or Federal Permits that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<p>RGU.</p> <p>C. For the addition of one or more new interchanges to a completed limited access highway, the DOT or local government unit shall be the RGU.</p>	<p>the total mileage driven by motorists. Arterial roadways are commonly four or more lanes in width. The EIS category at uses this as a qualitative threshold.</p>	<p>during construction) Watershed District permit (wetland mitigation, stormwater pollutant restrictions, infiltration requirements, or volume control reductions) , 401 Certification (MPCA authority to review 404 permit applications (per CWA))</p>	<p>considerations. At this time, the only change to the categorical thresholds that MnDOT and the LGUs recommend is that category <b>B. For construction of additional travel lanes on an existing road for a length of one or more miles...</b> should be increased <b>from one mile to two miles</b>. This recommendation is proposed because these operational improvement projects, which are unlikely to induce secondary impacts, are a low risk to those resources not already covered in the existing permit requirements. EAWs in these instances provide little value to the community and environment for the effort and resources they require.</p>
<p><b>4410.4400 MANDATORY EIS CATEGORY.</b> Subp. 16. <b>Highway projects.</b> For construction of a road on a new location which is four or more lanes in width and two or more miles in length, the DOT or local government unit shall be the RGU.</p>		<p><b>Federal:</b> USACE Section 10 (work on structures other than bridges or causeways that affect the course, condition, or capacity of navigable waters of the United States) or USACE 404 (regulates the discharge of dredged and fill material into waters of the United States, including wetlands)</p>	<p>EIS: Different levels of local coordination or permits are necessary, depending on the project proposer. Water quality, wetland preservation/mitigation, and construction stormwater issues are addressed through state and federal permits. However, the environmental review process is the only process which allows for public input, and will identify potential issues of contamination, historical and cultural significance, community issues (e.g. noise and socio-economics), cumulative impacts and land use considerations. At this time, MnDOT, in coordination with LGUs do not recommend changes to this categorical threshold</p>
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b> Subp. 23. <b>Barge fleeting.</b> For construction of a new or expansion of an existing barge fleeting facility, the DOT or port authority shall be the RGU.</p>	<p><u>page 151 of 1982 SONAR:</u> This category area is proposed because of the potential for significant impacts related to water quality, air quality, noise, wildlife habitat, aesthetics, and the use of public resources. The qualitative measure of the thresholds applied to the EAW category is the area of water surface occupied by the facility. This measure most appropriately reflects the total potential for impacts from the facility. The quantitative threshold proposed corresponds to approximately one half acre. Such a facility would accommodate approximately 80 boats. The proposed category is the same as the current rules. This threshold has proven to, be reasonable for defining major facilities. Marinas may be constructed in wild and scenic river areas, however, because of the unique character of these areas, the areas are generally inappropriate for marinas. Under the current rules, requests for EISs on' marinas have mostly been confined to wild and scenic river systems.</p>	<p><b>Local:</b> Site Plan Approval. Possible subdivision/platting review, grading permit, building permit for structures, or conditional use permits (operator facilities)</p> <p><b>State:</b> MNDNR, MPCA and MnDOT (review or permitting of sheet pile at edge of slip)</p>	<p>EAW: Local entities review siting, and permits related to buildings and operational facilities. State and Federal agencies take an interest in work that is done in the water. The international treaty guarantees that international waters remain open for navigational purposes. However, the environmental review process is the only process which allows for public input, and will identify potential issues of contamination, historical and cultural significance, community issues (e.g. noise and socio-economics) or cumulative impacts and land use considerations. MnDOT and the Minnesota Port Authorities agree that the state categorical thresholds are set at a reasonable level, which protects environmental resources, without negatively impacting state commerce.</p>
<p><b>4410.4400 MANDATORY EIS CATEGORY.</b> Subp. 17. <b>Barge fleeting facilities.</b> For construction of a barge fleeting facility at a new off-channel location that involves the dredging of 1,000 or more cubic yards, the DOT or port authority shall be the RGU.</p>		<p><b>Federal:</b> USACE Section 404 permit, FAA Temporary Airspace Permit (for construction cranes) FAA Permanent Airspace Permit (with mapping revisions for cranes and building locations in area)</p> <p><b>International:</b> Boundary Waters Treaty of 1909 (guarantees international navigable waters be free and open)</p>	<p>EIS: Local entities review siting, and permits related to buildings and operational facilities. State and Federal agencies take an interest in work that is done in the water. The international treaty guarantees that international waters remain open for navigational purposes. However, the environmental review process is the only process which allows for public input, and will identify potential issues of contamination, historical and cultural significance, community issues (e.g. noise and socio-economics) or cumulative impacts and land use considerations. MnDOT and the Minnesota Port Authorities agree that the state categorical thresholds are set at a reasonable level, which protects environmental resources, without negatively impacting state commerce.</p>



ENVIRONMENTAL QUALITY BOARD CATEGORIES

Mandatory Categories: EQB as RGU Prepared with assistance of Department of Commerce	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b> Subp. 2. <b>Nuclear fuels and nuclear waste.</b> 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, the EQB shall be 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 shall be the RGU. C. For expansion of a high level nuclear waste disposal site, the EQB shall be the RGU. D. For expansion of a low level nuclear waste disposal site, the MDH shall be the RGU. E. For expansion of an away-from-reactor facility for temporary storage of spent nuclear fuel, the EQB shall be the RGU. F. For construction or expansion of an on-site pool for temporary storage of spent nuclear fuel, the EQB shall be the RGU.</p> <p><b>4410.4400 MANDATORY EIS CATEGORY.</b> Subp. 2. <b>Nuclear fuels and nuclear waste.</b> Items A to D designate the RGU for the type of project listed: A. For the construction or expansion of a nuclear fuel or nuclear waste processing facility, including fuel fabrication facilities, reprocessing plants, and uranium mills, the DNR shall be the RGU for uranium mills; otherwise, the PCA shall be the RGU. B. For construction of a high level nuclear waste disposal site, the EQB shall be the RGU. C. For construction of an away-from-reactor facility for temporary storage of spent nuclear fuel, the Public Utilities Commission shall be the RGU. D. For construction of a low level nuclear waste disposal site, the MDH shall be the RGU.</p>	<p><u>Page 112 of 1982 SONAR:</u> In establishing these categories, nuclear waste was categorized into three main types: high level waste, low level waste, and spent nuclear fuel. In addition, nuclear fuel processing facilities are addressed. Waste facilities are distinguished by whether they are designed for disposal or for temporary storage and by whether the proposal entails construction at a new site or the expansion of an existing facility. These categories are addressed on an all or none basis, i.e. no quantitative thresholds are applied. The basic reason for this is that commercially feasible operations are likely to generate enough waste to be of concern and that even small amounts of nuclear waste are likely to generate significant public concern and could be hazardous. The Minnesota Department of Health has regulatory authority relating to fissionable materials pursuant to Minn. Stat. § 144.12. The Radioactive Waste Management Act at Minn. Stat. § 116C.71 requires legislative authorization of any radioactive waste management facility. Primary authority relating to the impacts of processing facilities rests with the Pollution Control Agency pursuant to Minn. Stat. § 115.03 and Minn. Stat. § 116.07. Environmental review documents prepared pursuant to these proposed rules would be subject to cooperative state/federal procedures. The U.S. Nuclear Regulatory Commission has jurisdiction over nuclear materials.</p>	<p>Fissionable materials: Minnesota Department of Health pursuant to Minn. Stat. § 144.12 Minn. Stat. § 116C.72 requires legislative authorization of any radioactive waste management facility. processing facilities: Pollution Control Agency pursuant to Minn. Stat. § 115.03 and Minn. Stat. § 116.07 Environmental review documents prepared pursuant to these proposed rules would be subject to cooperative state/federal procedures. The U.S. Nuclear Regulatory Commission has jurisdiction over nuclear materials.</p>	<p>Any amendment of these categories requires extensive, multiagency analysis because of the complex issues surrounding nuclear waste and the need to protect public health and safety. If an EAW is prepared on a nuclear waste project it is unlikely that there would be a negative declaration (no EIS). <u>Recommendation:</u> There may be overlap between 4410.4300 Subp. 2.A. and 4410.4400, Subp. 2.C. This should be examined. <u>Dept. of Commerce notes:</u> A project with the profile described in 4410.4300 Subp.2.A. (construction or expansion of a storage facility) would actually be a mandatory EIS per Minn. Stat. 116C.83, Subd. 6(b). Environmental review and protection. (a) The siting, construction, and operation of an independent spent-fuel storage installation located on the site of a Minnesota generation facility for dry cask storage of spent nuclear fuel generated solely by that facility is subject to all environmental review and protection provisions of this chapter and chapters 115, 115B, 116, 116B, 116D, and 216B, and rules associated with those chapters, except those statutes and rules that apply specifically to a radioactive waste management facility as defined in section 116C.71, subdivision 7. (b) An environmental impact statement is required under chapter 116D for a proposal to construct and operate a new or expanded independent spent-fuel storage installation. The commissioner of the Department of Commerce shall be the responsible governmental unit for the environmental impact statement. Prior to finding the statement adequate, the commissioner must find that the applicant has demonstrated that the facility is designed to provide a reasonable expectation that the operation of the facility will not result in groundwater contamination in excess of the standards established in section 116C.76, subdivision 1, clauses (1) to (3).</p>
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b> Subp. 3. <b>Electric generating facilities.</b> For construction of an electric power generating plant and associated facilities designed for or capable of operating at a capacity of between 25 megawatts and 50 megawatts, the EQB shall be the RGU. For electric power generating plants and associated facilities designed for and capable of operating at a capacity of 50 megawatts or more, environmental review shall be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.</p> <p><b>4410.4400 MANDATORY EIS CATEGORY.</b> Subp. 3. <b>Electric generating facilities.</b> For construction of a large electric power generating plant, environmental review shall be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.</p>	<p><u>Page 115 of 1982 SONAR:</u> This category area is proposed because of the need for coordinating public review with relation to the need for and alternatives to generating facilities as well as with relation to the siting of proposed facilities and because of potential significant environmental impacts relating to air quality, energy use and secondary development resulting from these facilities. Environmental impacts likely to be of concern include air pollution, water pollution, thermal pollution, transportation and storage related impacts, and adjacent land use issues. Hydro, alternative fuel, solar or wind powered facilities are likely to be less than 25 megawatts in size. All nuclear facilities would require an EIS. <u>Page 1 of 2003 SONAR:</u> In 1977 language was added to rules to specifically address how environmental review would be conducted on large power plants and high voltage transmission lines: the Minnesota Energy Agency (the predecessor to the Public Utilities Commission) would prepare an Environmental Report when it received an application. A</p>	<p>Permitting is addressed through Minn. Rules 7849, 7850 for projects of 50 MW and larger.</p>	<p>For facilities between 25 MW and 50MW, the EQB is the RGU for an EAW. While EQB can reassign RGU duties per 4410.0500, it's worth considering if the rule should be amended to designate PUC the RGU even if no permitting/approval authority currently exists at PUC. EQB has no permitting authority either. <u>Recommendation:</u> Initiate discussion on RGU for EAW on facilities under 50 MW other than Large Wind energy Conversion Systems. <u>Dept. of Commerce notes:</u> It is important to note for this category that environmental review of Large Wind Energy Conversion Systems over the 5 MW exemption threshold is regulated—as allowed under 4410.3600:Alternative Review—per the MN Wind Siting Act</p>

Mandatory Categories: EQB as RGU Prepared with assistance of Department of Commerce	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
	<p>separate Environmental Report would be prepared by the EQB when a permit was applied for from the EQB. The environmental review rules were amended again in 1981 including "Special Rules for Certain Large Energy Facilities" that stated that the Department of Energy, Planning and Development would prepare an Environmental Report for inclusion in the record of the certificate of need hearing, and the EQB would prepare an Environmental Impact Statement when a permit was applied for. In 1986 the rules were amended to recognize that the Public Utilities Commission could request approval from the EQB of an alternative form of review for high voltage transmission lines. No corresponding language was included for large electric power generating plants. In 1990 the EQB again amended parts 4410.7000 to 4410.7500. Some editing was made, and parts 4410.7200 and 4410.7300 were repealed. 4410.7010 to 4410.7050 were renumbered 7849.7010-7090 in 2009.</p>		<p>(216F) and its associated rules (Minn. Rules 7854). For other types of electric generating facilities, neither the PUC, nor Commerce, has any approval authority over projects with a capacity less than 50MW.</p>
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b> Subp. 6. <b>Transmission lines.</b> For construction of a transmission line at a new location with a nominal capacity of between 70 kilovolts and 100 kilovolts with 20 or more miles of its length in Minnesota, the EQB shall be the RGU. For transmission lines and associated facilities designed for and capable of operating at a nominal voltage of 100 kilovolts or more, environmental review shall be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.</p> <p><b>4410.4400 MANDATORY EIS CATEGORY.</b> Subp. 6. <b>Transmission lines.</b> For construction of a high voltage transmission line, environmental review shall be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.</p>	<p><u>Page 118 of 1982 SONAR:</u> This category area is proposed because of the potential for significant adverse environmental impacts associated with construction, operation, and maintenance of a linear facility, as well as significant social and economic impacts associated with the location of a linear facility. The proposed EAW threshold is set for facilities that exceed 20 miles in length. These facilities frequently traverse more than one county and usually entail greater impact as a function of increased length. The abbreviated EAW format would place little additional burden upon the utility because the information requested would be developed pursuant to their own internal environmental review or pursuant to federal requirements. The EIS threshold proposed is consistent with regulations relating to the routing of transmission lines.</p>	<p>Permitting is addressed through Minn. Rules 7849, 7850 for projects of 100 kilovolts or more.</p>	<p><u>Recommendation:</u> No change to this category.</p> <p><u>Dept. of Commerce notes:</u> The utility industry does not construct transmission lines between 70 kV and 100 kV. They construct operate 69kV lines (exempt per 4410.4600), and the next capacity "interval" is 115 kV (which requires the environmental review provided by Minn. Rules 7850.)</p>
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b> Subp. 7. <b>Pipelines.</b> Items A to D designate the RGU for the type of project listed: A. For routing of a pipeline, greater than six inches in diameter and having more than 0.75 miles of its length in Minnesota, used for the transportation of coal, crude petroleum fuels, or oil or their derivatives, the EQB shall be the RGU. B. For the construction of a pipeline for distribution of natural or synthetic gas under a license, permit, right, or franchise that has been granted by the municipality under authority of Minnesota Statutes, section 216B.36, designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than: (1) five miles if the pipeline will occupy streets, highways, and other public property; or (2) 0.75 miles if the pipeline will occupy private property; the EQB or the municipality is the RGU. C. For construction of a pipeline to transport natural or synthetic gas subject to regulation under the federal Natural Gas Act, United States Code, title 15, section 717, et. seq., designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than: (1) five miles if the pipeline will be constructed and operated within an existing right-of-way; or (2) 0.75 miles if construction or operation will require new temporary or permanent right-of-way; the EQB is the RGU. This item shall not apply to the extent that the application is expressly preempted by federal law, or under specific circumstances when an actual conflict exists with applicable federal law.</p>	<p><u>Page 119 of 1982 SONAR:</u> This category area is proposed because of the potential for significant adverse environmental effects during construction as well as during the use of the facility if a leak should develop. These categories are needed because, although a certificate of need must be prepared for large energy facilities, the certificate of need process does not entail a comprehensive assessment of potential environmental impacts. The thresholds were selected to promote consistency with the certificate of need process.</p> <p><u>Page 37 of 1988 SONAR:</u> Paragraphs A. and B. amended to be consistent with pipeline routing and permitting requirements. The purpose was to ensure environmental review requirements were addressed with the pipeline routing and permitting requirements adopted by 1987 Legislature. This was intended to avoid delay in the routing and permitting process. This effort was intended to be an alternative review process as allowed under 4410.3600 of the environmental review rules.</p>	<p>Permitting is addressed under Minn. Rules 7852.</p>	<p><u>Recommendation:</u> Based on review by the Dept. of Commerce, the category should be reviewed to confirm if all pipelines are addressed with Minn. Rules 7852.</p> <p><u>Dept. of Commerce notes:</u> Based on our review of these mandatory categories, we believe that any project matching the description under these subparts would be required to undergo the approved alternative environmental review (per 4410.3600) as regulated by the Pipeline Routing Act (216G) and its associated rules (Chp. 7852)</p> <p><b>216G.02 ROUTING OF CERTAIN PIPELINES.</b> Subdivision 1. <b>Definition.</b> For purposes of this section and notwithstanding section 216G.01, subdivision 3, "pipeline" means: (1) pipe with a nominal diameter of six inches or more that is designed to transport hazardous liquids, but does not include pipe designed to transport a hazardous liquid by gravity, and pipe designed to transport or store a hazardous liquid within a refining, storage, or manufacturing facility; or (2) pipe designed to be operated at a pressure of more than 275 pounds per square inch and to carry gas. Subd. 2. <b>Prohibition.</b></p>

Mandatory Categories: EQB as RGU Prepared with assistance of Department of Commerce	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<p>D. For construction of a pipeline to convey natural or synthetic gas that is not subject to regulation under the federal Natural Gas Act, United States Code, title 15, section 717, et. seq.; or to a license, permit, right, or franchise that has been granted by a municipality under authority of Minnesota Statutes, section 216B.36; designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than 0.75 miles, the EQB is the RGU. Items A to D do not apply to repair or replacement of an existing pipeline within an existing right-of-way or to a pipeline located entirely within a refining, storage, or manufacturing facility.</p>			<p>A person may not construct a pipeline without a pipeline routing permit issued by the Public Utilities Commission unless the pipeline is exempted from the commission's routing authority under this section or rules adopted under this section. A pipeline requiring a permit may only be constructed on a route designated by the commission.</p>
<p><b>4410.4400 MANDATORY EIS CATEGORY.</b> Subp. 24. <b>Pipelines.</b> For routing of a pipeline subject to the full route selection procedures under Minnesota Statutes, section 216G.02, the Public Utilities Commission is the RGU.</p>			

Mandatory Categories: EQB as RGU Prepared with assistance of Department of Agriculture	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<p><b>4410.4300 MANDATORY EAW CATEGORY.</b> Subp. 35. <b>Release of genetically engineered organisms.</b> 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.</p>	<p>The 1991 SONAR for Proposed Permanent Rules Relating to Release of Genetically Engineered Organisms stated:</p> <p>“This new mandatory EAW category is proposed to carry out the statutory mandate of Minn. Stat. S 116C.94 that the board adopt rules to require an EAW for the proposed release of genetically engineered organisms.</p> <p>“The requirement for an EAW for the release of a genetically engineered organism is needed because a number of potentially serious environmental impacts could result from such activities, if not properly conducted. These environmental impacts could include but are not limited to:</p> <p>“(1) genetically engineered organism could be better suited to the environment than natives species and consequently could take over an ecological niche;</p> <p>“(2) genetically engineered organisms could evolve and become more adapted to their environment, resulting in increased competition for native organisms or increased risks to native organisms; and</p> <p>“(3) undesirable traits could be transferred to pests (e.g., insects or weeds) making them more resistant to pesticides or other methods of control.”</p>	<p><b>Local government:</b> -none</p> <p><b>State:</b> The EQB issues a release permit unless the Board has authorized an agency with a significant environmental permit. The EQB determined that the MDA had a significant environmental permit for agriculturally-related GEOs, and the MDA adopted rules in 1994 (MN Rules Ch. 1558). To date, all releases of GEOs have been agriculturally-related. The potential exists, however, for non-agriculturally-related GEOs (e.g., genetically-engineered fish).</p> <p><b>Federal:</b> The USDA has jurisdiction over agriculturally-related GEOs. The MDA cooperated with the USDA in regulation of agriculturally-related GEOs.</p>	<p><u>Recommendation:</u> No change to these categories.</p>
<p><b>4410.4400 MANDATORY EIS CATEGORY.</b> Subp. 28. <b>Genetically engineered wild rice.</b> For the release and a permit for a release of genetically engineered wild rice for which an EIS is required by Minnesota Statutes, section 116C.94, subdivision 1, paragraph (b), the EQB is the RGU.</p>	<p>The 2007 SONAR for Proposed Rules of the Environmental Quality Board Governing the Environmental Review Program stated:</p> <p>“This new subpart establishes a mandatory category for preparation of an EIS for any project proposed in Minnesota that would involve the release and a permit for a release of genetically engineered wild rice. The 2007 session of the Minnesota Legislature enacted a law making this specific requirement (Laws of Minnesota, Chapter 57, Article 1, Section 141). The wording of this category follows the language of the enactment of that session law.</p>		

Mandatory Categories: EQB as RGU Prepared with assistance of Department of Agriculture	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
	<p>“Currently there are no EIS thresholds for release of any genetically engineered organisms; hence this new category. There is a requirement for an EAW at chapter 4410.4300, subpart35. This is for release of any genetically engineered organism that requires a permit under chapter 4420 or for genetically engineered organisms covered by a significant environmental permit program of a permitting state agency. This new EIS requirement goes beyond that and is specific to genetically engineered wild rice only.</p> <p>“The Minnesota Department of Agriculture has a significant environmental permit program, authorized at Minnesota Statutes 2006, Chapter 18F- Genetically Engineered Organisms. Under that statute, wild rice is specifically named as an Agriculturally Related Organism (chapter 18F.02, Definitions, subdivision 2a). Wild rice is subject to the Department of Agriculture permit program if produced by genetic engineering methods.</p> <p>“A further requirement of Laws of Minnesota, Chapter 57, Article 1, Section 142 applies the requirement to prepare an EIS in essentially all cases. It eliminates the availability of exceptions or exemptions from environmental review to any permit covered by a qualified federal program, or application by an individual permit applicant seeking an exemption from the board or permitting state agency. The requirement for an EIS for the release and a permit for a release of genetically engineered wild rice is uniform.”</p>		

**APPENDIX D: MINNESOTA DEPARTMENT OF NATURAL RESOURCES CATEGORIES: Prepared by MDNR**

Appendix D identifies each category in the environmental review rules (Minnesota Rules, chapter 4410) for which DNR would be the Responsible Governmental Unit (RGU). The Table below identifies those categories for which DNR recommends a change to the current language in Rule. For each category, the current language in Rule and the number of Environmental Assessment Worksheets (EAWs) or Environmental Impact Statements (EISs) completed or in preparation during the past five years are identified. Justification from Statements of Need and Reasonableness (SONAR) was referenced to describe the historical purpose of the category. Permits and other governmental actions associated with DNR-prepared EAWs and EISs were identified, and staff was consulted for recommendation. The following factors were considered in developing staff recommendations:

- (1) How have environmental issues associated with our EAWs and EISs related to what's regulated?
- (2) What are the regulatory gaps and overlaps?
- (3) What is the extent of public review process, beyond that provided by the EAW or EIS?
- (4) What is the extent to which regulatory actions are fragmented or unlikely to integrate?
- (5) What is the ability of regulations to allow assessment of "project as a whole"?
- (6) What new laws, policies, regulations have been promulgated since the category created and do they make the category less necessary?
- (7) Is this category still an issue (e.g., radioactive mineral exploration)?
- (8) Consider purpose of category and threshold as described in applicable SONAR(s).

Category/Subject	Recommendation	Appendix page #
4410.4300 subp. 28 B Forestry	Eliminate	D5
4410.4300 subp. 30 Natural areas	Modify	D5
4410.4300 subp. 37 B Recreational trails	Modify	D9
4410.4300 subp. 37 C Recreational trails	Modify	D10
4410.4400 subp. 8 A Metallic mineral mining and processing	Eliminate	D11

TABLE D-1: MANDATORY EAW CATEGORIES: MINNESOTA DEPARTMENT OF NATURAL RESOURCES as RGU				
Mandatory EAW Category	Category Text	Intended Historical Purpose (SONAR)	Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<p><b>4410.4300</b></p> <p><b>Underground Storage</b></p> <p>subp. 9 A</p>	<p>Subp. 9. <b>Underground storage.</b> Items A and B designate the RGU for the type of project listed:</p> <p>A. For expansion of an underground storage facility for gases or liquids that requires a permit, pursuant to Minnesota Statutes, section <a href="#">1031.681</a>, subdivision 1, paragraph (a), the DNR shall be the RGU.</p>	<p>(1982) This category is proposed because this type of project is new and largely untested, is very large in scope, has the potential for groundwater contamination and serious human health impacts and is very controversial.</p> <p>Minn. Stat. § 84.57 mandates a permit for the displacement of groundwater by the underground storage of gases or liquids under pressure. The Department of Natural Resources (DNR) is the responsible permitting agency. No specific rules have been promulgated regarding this authority. One facility of this type has been constructed in Minnesota. No EIS was prepared for that facility. The DNR is currently processing a second application. An EIS has been ordered on the proposed facility. The primary environmental effects of concern on this type of project are groundwater quantity and quality impacts. The lack of a formal process for citizen comment further documents the need for environmental review of this type of activity.</p>	<p><b>State:</b> Minnesota Statutes, section 1031.681 Minnesota Rules, part 6115.0130 Minnesota Statutes, chapter 216B Minnesota Rules, Chapter 7851</p>	<p>Summary: Two state projects currently involve underground storage. Both were developed prior to MEPA. Both also require a great deal of ongoing regulatory oversight indicating that potential long-term management and possible environmental and human health consequences of such projects are high.</p> <p><u>Recommendation:</u> Maintain this EAW category.</p>
<p><b>4410.4300</b></p> <p><b>Underground Storage</b></p> <p>subp. 9 B</p>	<p>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 <a href="#">1031.681</a>, subdivision 1, paragraph (b), the DNR shall be the RGU.</p>	<p>(1982) Minn. Stat. § 84.621 mandates a permit for the storage Of gases or liquids, other than water, in natural rock formations underground. These formations could be naturally occurring or the result of the mining of rock material to create a storage site in a rock formation. No facilities of this .type currently are found in Minnesota and no formal proposals have been presented. It is known, however, that the concept of mining rock to create an underground Cavity in the bedrock is being discussed. The purpose of the cavity would .be to potentially store petroleum products. The primary environmental concerns associated with such an activity would be related to groundwater quality and safety concerns. The DNR is the responsible permitting agency for this type of activity. No specific rules have been promulgated regarding this authority. The lack of a formal process for citizen comment further documents the need for environmental review of this type of activity.</p>	<p><b>State:</b> Minnesota Statutes, section 1031.681 Minnesota Rules, part 6115.0130 Minnesota Statutes, chapter 216B Minnesota Rules, Chapter 7851</p>	<p>Summary: Two state projects currently involve underground storage. Both were developed prior to MEPA. Both also require a great deal of ongoing regulatory oversight indicating that potential long-term management and possible environmental and human health consequences of such projects are high.</p> <p><u>Recommendation:</u> Maintain this EAW category.</p>
<p><b>4410.4300</b></p> <p><b>Metallic mineral mining and processing</b></p> <p>subp. 11 A</p>	<p>Subp. 11. <b>Metallic mineral mining and processing.</b> Items A to C designate the RGU for the type of project listed:</p> <p>A. For mineral deposit evaluation of metallic mineral deposits other than natural iron ore and taconite, the DNR shall be the RGU.</p>	<p>(1982) Mineral deposit evaluation activities have the potential for causing environmental impacts similar to those of mining - but on a smaller scale. This type of mining activity was not specifically addressed in the current rules. Minnesota has had lengthy experience in evaluating the impacts of mineral deposit evaluation and mining of natural iron ore and taconite. These activities are regulated pursuant to the Mineland Reclamation Rules, 6 MCAR § 1.401. This regulation provides adequate review for most natural iron ore and taconite mineral deposit evaluation activities, therefore, this type of activity is excluded from 6 MCAR § 3.038 J.1. and is subject to environmental review on a discretionary basis. Minnesota has had relatively little experience in evaluating the impacts of mining and mineral deposit evaluation of other types of mineral deposits. Such mining is considered most likely in Minnesota for ores of copper, nickel, and uranium. Because of the lack of experience and lack of other regulations related to these mining activities, they are subject to mandatory environmental review.</p>	<p><b>State:</b> Underground injection control permit Dam safety permit Public Waters Work permit Water appropriation permit Permit to mine Approval of reclamation plan Approval of exploration plans on state lands Listed species takings permit Option D registration air permit Construction stormwater general permit Title V construction/operating air permit SDS/NPDES permit State grant award</p>	<p>Summary: A review of recently prepared EAWs indicates that several potential environmental issues, including some that are not directly regulated, were evaluated. Unregulated potential impacts included wildlife habitat effects, native plant community impacts, indirect impacts to surface waters and cumulative effects. No single permit regulates the project as a whole, so environmental review was the only opportunity to analyze effects of the whole project. Permits associated with this category have gaps and overlaps in authority, and many do not include a public review process. Several public comment letters were received on the EAW, including requests for preparation of EISs. Public comments identified substantive environmental concerns and offered monitoring and mitigation recommendations for implementation by the proposer or via ongoing regulatory authority.</p> <p><u>Recommendation:</u> Maintain this EAW category.</p>
<p><b>4410.4300</b></p> <p>subp. 11 B</p>	<p>B. For expansion of a stockpile, tailings basin, or mine by 320 or more acres, the DNR shall be the RGU.</p>	<p>(1982) At 6 MCAR § 3.038 J.2. an acreage threshold is used for the EAW for expansion of an existing facility. The lesser EAW requirement is provided for expansions because the impacts related to land use, siting, and demographics are reduced and the primary concerns relate to the mitigation of direct physical</p>	<p><b>Local:</b> Conditional use permit Building permit (variance) Burn permit</p>	<p>Summary: Review of a recently prepared EAW indicates that several potential environmental issues, including some that are not directly regulated, were evaluated. Unregulated potential impacts included wildlife habitat effects, native plant community impacts, and cumulative effects to headwater streams. No single permit regulates the project</p>

TABLE D-1: MANDATORY EAW CATEGORIES: MINNESOTA DEPARTMENT OF NATURAL RESOURCES as RGU				
Mandatory EAW Category	Category Text	Intended Historical Purpose (SONAR)	Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
		impacts. This could be done without an EIS.	Septic system permit  <b>State:</b> Water appropriation permit Public waters work permit Dam safety permit Permit to mine amendment Approval of reclamation plan Listed species takings permit Construction stormwater general permit SDS permit 401 Certification Well installation permit  <b>Federal:</b> Section 404 permit	as a whole, so environmental review was the only opportunity to analyze effects of the whole project. Permits associated with this category have gaps and overlaps in authority, and many do not include a public review process. About 200 public comment letters were received, including requests for preparation of EISs. Public comments identified substantive environmental concerns.  <u>Recommendation:</u> Maintain this EAW category.
<b>4410.4300</b>  <b>Metallic mineral mining and processing</b>  subp. 11 C	C. For expansion of a metallic mineral plant processing facility that is capable of increasing production by 25 percent per year or more, provided that increase is in excess of 1,000,000 tons per year in the case of facilities for processing natural iron ore or taconite, the DNR shall be the RGU.	(1982) At 6 MCAR § 3.038 J.3. a percentage expansion figure is used as a threshold for an EAW. The lesser EAW requirement is provided for expansions because the impacts related to siting and demographics are reduced and the primary concerns relate to the mitigation of direct physical impacts. This could be done without an EIS.	<b>Local:</b> Building permit Zoning variances Permit for construction in shoreland area  <b>State:</b> Permit to mine amendment Public waters work permit Listed species takings permit Part 70 operating permit – major modification NPDES/SDS permit Industrial stormwater permit Construction stormwater general permit Storage tank permit Solid waste permit Hazardous waste generator license Radioactive material registration	Summary: The only recent project in this category underwent a joint state-federal EIS, for which the state EIS was discretionary. Experience with this project identified similar issues to those described for 441.4300, subparts 11A and 11B.  <u>Recommendation:</u> Maintain this EAW category.
<b>4410.4300</b>  <b>Nonmetallic mineral mining</b>  subp. 12A	Subp. 12. <b>Nonmetallic mineral mining.</b> Items A to C designate the RGU for the type of project listed:  A. For development of a facility for the extraction or mining of peat which will result in the excavation of 160 or more acres of land during its existence, the DNR shall be the RGU.	(1982) The extraction of peat resources has the potential for causing environmental impacts relating to land use, air quality, water quality, mining and drainage. Current peat mining activities tend to be of small scale and for the purpose of marketing the peat as a horticultural product or as a briquet fuel. Peat mining is expected to be extremely controversial if proposals develop to utilize the resource for other energy uses. Data based on actual development of these resources on a broad scale is limited. The threshold levels of 160 acres for a mandatory EAW (6 MCAR § 3.038 K.1.) and 320 acres for a mandatory EIS (6 MCAR § 3.039 H.1.) coincide with Department of Natural Resources policy as set forth in the Minnesota Permit Program Policy Recommendations. In the current rules the 320 acre threshold for an EAW for nonmetallic resources would have	<b>Local:</b> Conditional use permit Land exchange  <b>State:</b> Water appropriation permit Permit to mine (Reclamation permit) Land lease Listed species takings permit NPDES/SDS permit 401 certification	Summary: Very few peat mining operations have prepared environmental documents in the last ten years; however DNR has been in communication and has received proposed projects within this same time period. Each of these projects may have had the potential for significant environmental effects and thus environmental review was appropriate. The relationship of these proposals to federal requirements under Section 404 of the Clean Water Act has been difficult. There has been no information or data to indicate that the 160 acre threshold needs revision.  <u>Recommendation:</u> Maintain this EAW category

TABLE D-1: MANDATORY EAW CATEGORIES: MINNESOTA DEPARTMENT OF NATURAL RESOURCES as RGU				
Mandatory EAW Category	Category Text	Intended Historical Purpose (SONAR)	Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
		applied to peat extraction.	Driveway permit (Mn/DOT)  <b>Federal:</b> 404 permit Loan application	
<b>4410.4300</b>  <b>Water appropriation and impoundments</b>  subp. 24 A	Subp. 24. <b>Water appropriation and impoundments.</b> Items A to C designate the RGU for the type of project listed:  A. For a new appropriation for commercial or industrial purposes of either surface water or ground water averaging 30,000,000 gallons per month; or a new appropriation of either ground water or surface water for irrigation of 540 acres or more in one continuous parcel from one source of water, the DNR shall be the RGU.	(1982) Water appropriation may have significant impact upon existing users of the water and the rights of potential users as well as potential water table impacts that may alter entire ecosystems. Water appropriation is regulated by the Department of Natural Resources (DNR) pursuant to 6 MCAR § 1.5050, however, for large projects more comprehensive environmental review is necessary. The proposed categories and thresholds are the same as the current rules with one exception. The threshold for agricultural appropriation is reduced from 640 to 540 acres. This was done to clarify the threshold. The original intent was to cover center pivot irrigation systems capable of irrigating one section (640 acres) of land. However, such a system actually wets approximately 540 acres. The 540 figure was used in response to requests to Clarify the intent of the category. An acreage measure is used for agricultural appropriations because this measurement is more compatible with the DNR's regulatory system.  (1988) (Earlier versions also required preparation of an EAW if appropriations exceeded 2 mgd; this was eliminated in 1988). This revision will provide that industrial-commercial projects will be reviewed according to the essential nature of the project, rather than because a water appropriation may be involved as a secondary component of the project.  Confusion has arisen in the past between the mandatory category for water appropriations and other mandatory categories for projects which involve large appropriations of water; the most common example has been peat mining projects. Peat mines of less than 160 acres do not require an EAW according to the non-metallic mineral mining categories; however, such projects sometimes must appropriate more than 2 million gallons of water per day over a short period of time, such as periods of heavy rainfall. Deleting the 2 million gallon per day component of the threshold would eliminate confusion of this nature. Projects which appropriate large quantities of water on a continuous basis will still be covered by the 30 million gallon per month threshold.	<b>Local:</b> Grade and fill permit Building permit Conditional use permit Land use permit  <b>State:</b> Water appropriation permit Public water work permit Utility crossing license Permit to appropriate from infested waters Listed species takings permit Construction stormwater general permit Tank registration Air emissions permit  <b>Federal:</b> 404 permit	Summary: DNR has recently completed an EAW for this category. Potential impacts of highest concern were to resources affected by the discharge of the water, not its appropriation (erosion and water quality impacts). We found that ongoing regulatory authority over those impacts was limited and would not have addressed some likely impacts of the project. Also, most of the required permits do not have a public input process, so provision of public comments occurred only via the EAW.  <u>Recommendation:</u> Maintain this EAW category
<b>4410.4300</b>  <b>Water appropriation and impoundments</b>  subp. 24 B	B. For a new permanent impoundment of water creating additional water surface of 160 or more acres or for an additional permanent impoundment of water creating additional water surface of 160 or more acres, the DNR shall be the RGU.	(1982) The impoundment category at 6 MCAR § 3.038 W.2. utilized a surface area-qualitative measure because this measure is most closely tied to changes in land use. The volume threshold of acre-feet of water was considered but rejected as having a less direct correlation with impacts and as being more difficult to use administratively. This category was restricted to permanent impoundments because temporary impoundments frequently do not last long enough to modify the current land use. The quantitative threshold was reduced from 200 acres as in the current rules to the proposed 160 acres. This measurement is more consistent with conventional land measurement and with other categories proposed relating to permanent conversion of natural and agricultural lands.  (1997) In item B language is inserted for clarification to avoid the	N/A	Summary: Although a project has not recently been proposed that would require preparation of an EAW under this threshold, the DNR still believes the issues identified in the 1982 and 1997 SONARs that created this category remain valid.  <u>Recommendation:</u> Maintain this EAW category.



TABLE D-1: MANDATORY EAW CATEGORIES: MINNESOTA DEPARTMENT OF NATURAL RESOURCES as RGU				
Mandatory EAW Category	Category Text	Intended Historical Purpose (SONAR)	Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
		misinterpretation that small additions to impoundments might be interpreted to require a mandatory EAW once the 160-acre threshold had been passed. It is the size of the addition and not the total size of the impoundment that is the crucial factor.		
<b>4410.4300</b>  <b>Water appropriation and impoundments</b>  subp. 24 C	C. For construction of a dam with an upstream drainage area of 50 square miles or more, the DNR shall be the RGU.	(1997) In item C, "class II dam" has been deleted since it is a hazard classification and does not relate directly to environmental impacts. In place of "class II" dams has been substituted "dams with an upstream drainage area of at least 50 square miles." This will include many of the class II dams, but will also include some dams of lower hazard classification. It is believed that the watershed size is a better indicator of potential environmental impacts than is hazard classification.	<b>Local:</b> Conditional use permit WCA mitigation plan Lake level manipulation application  <b>State:</b> Public water work permit Dam safety permit WCA mitigation plan (state project) NPDES/SDS permit  <b>Federal:</b> 404 permit 401 certification (EPA – reservation)	Summary: One EAW has been prepared in recent years under this threshold, but DNR has also prepared 2 other EAWs (one voluntary) for projects that included construction of an outlet control structure. In all cases, there was strong public policy interest in how lake levels would be managed. In some, there were concerns with impacts to fisheries resources to benefit wildlife that were not manageable through ongoing regulatory authority. Other potential impacts were to downstream water quality, shoreline property, access to the lake. In these projects, the EAW was able to assess the project as a whole, while regulatory permits regulated parts of the project and partial impacts, and some key permits did not include a public review process.  <u>Recommendation:</u> Maintain this EAW category.
<b>4410.4300</b>  <b>Forestry</b>  subp. 28 A	Subp. 28. <b>Forestry.</b> Items A and B designate the RGU for the type of project listed:  A. For harvesting of timber for commercial purposes on public lands within a state park, historical area, wilderness area, scientific and natural area, wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or critical area that does not have an approved plan under Minnesota Statutes, section <a href="#">86A.09</a> or <a href="#">116G.07</a> , the DNR shall be the RGU.	(1982) Harvesting of timber on publicly owned lands is likely to be controversial. Most activities of this nature are- subjected to public review pursuant to the development of a management plan for the area. Environmental review for timber harvesting on public lands not included in such plans is proposed pursuant to 6 MCAR § 3.038 AA.1. It is reasonable to require public review over activities that may significantly alter publicly owned resources.  (1997) The caption is proposed to be changed because after the other revisions proposed, this subpart will apply only to forestry activities.  Item C is proposed to be moved from this subpart to proposed new subpart 35 that deals with land use conversions.  Item D is proposed to be moved from this subpart and reinserted in a modified form at the new subpart 35 dealing with land use conversions.	<b>State:</b> Master plan prepared under M.S. 86A.09 Critical Area plan prepared under M.S. 116G.07	Summary: Although a project has not recently been proposed that would require preparation of an EAW under this threshold, the DNR still believes the issues identified in the 1982 and 1997 SONARs that created this category remain valid.  <u>Recommendation:</u> Maintain this EAW category.
<b>4410.4300</b>  <b>Forestry</b>  subp. 28 B	B. For a clearcutting of 80 or more contiguous acres of forest, any part of which is located within a shoreland area and within 100 feet of the ordinary high water mark of the lake or river, the DNR shall be the RGU.	(1982) Clearcutting of timber may be controversial depending on the location of the clearcut. A mandatory EAW is required at 6 MCAR § 3.038 AA. 2. for large clearcutting activities adjacent to water resources. Significant erosion and runoff may result from such activities. The 80 acre quantitative threshold and the 100 foot proximity threshold were established pursuant to the public meeting process as being reasonable. In practice, clearcuts usually do not exceed 20 to 40 acres. It should be noted that private timber management practices are not subject to this category if they do not require government approval.	<b>Federal, State, Local:</b> Timber sale	Summary: Updating of shoreland rules in 1989, passage of the Sustainable Forest Incentive Act in 2001 and implementation of SFI and FSC certification have put additional protections in place so this category is no longer needed.  <u>Recommendation:</u> Eliminate this mandatory EAW category.
<b>4410.4300</b>  <b>Natural areas</b>  subp. 30	<b>Natural areas.</b> For projects resulting in the permanent physical encroachment on lands within a national park, state park, wilderness area, state lands and waters within the boundaries of the Boundary Waters Canoe Area, scientific and natural area, or state trail corridor when the encroachment is	(1982) Enabling legislation conferring authority for the designation of these public facilities mandates the preparation of a master management plan for the unit. These plans may vary according to the characteristics of the area and purposes for designation. As a result, the standard of "inconsistent with the management plan" is proposed: This is the most reasonable method of addressing the diversity among these units.	<b>Local:</b> Private developments within a recreation unit would be subject to local permits  <b>State:</b> Master plan prepared under M.S.	Summary: This category requires review for projects that conflict with approved master plans for outdoor recreation units. The category should be retained in the event an inconsistent project is proposed. The most likely situation would be a private development proposal on an inholding within a state park. The DNR believes it is unlikely an inconsistent project would encroach on a state trail corridor and therefore recommends deleting state trail corridors from the category. Clarification could be considered regarding how this category

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	inconsistent with laws applicable to or the management plan prepared for the recreational unit, the DNR or local government unit shall be the RGU.		86A.09  <b>Federal:</b> National Park management plans SNF Management Plan	applies when master plan revisions (that are subject to a public review process) are proposed.  <u>Recommendation:</u> delete "...or state trail corridor..."
<b>4410.4300</b> <b>Historical places</b> subp. 31	<b>Historical places.</b> 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 unit of government shall be 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 16, section 470, 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.	(1982) Approximately 907 sites in Minnesota are currently listed on the National Register. Sites so listed are regarded to be nationally significant resources. These sites are frequently privately owned and there may be little financial incentive for the owner to maintain the site if it is located in a high development potential area. Public review may produce feasible alternatives to the destruction of the facility. The opportunity to review these alternatives via environmental review is reasonable because of the lack of other forms of regulation.  (1997) Three changes are being proposed to this category.  First, "destruction" of a historic property is being clarified to explicitly include being moved to a new location and partial destruction of the physical structure of the place. In practice, the existing category has been interpreted in this way in the past by the Historical Society and the EQB, and it would be beneficial to make this explicit. The logic behind the interpretation is that in some or many cases the historic value of a designated property derives from its association with its locale (e.g., a remaining example of the type of dwelling built by the earliest settlers in a particular place) or from certain features of a building design rather than from the structure as a whole (e.g., certain details of a building facade might be exemplary of a certain architectural style). In these cases, moving the structure or demolishing part of the structure might destroy the historical value of the place without the literal destruction of the property.  Second, the scope of this category is being proposed to be expanded to cover places listed on the State Register of Historic Places as well as the National Register.  Third, it is being proposed that the EAW requirement not be applied to historic places that undergo historic review under two federal programs. The first is review under the National Historic Preservation Act of 1966 (16 U.S.C. 470), section 106; this review is commonly referred to as "section 106" review. The second is review pursuant to 49 U.S.C. 303, federal policy of lands, wildlife and waterfowl refuges, and historic sites; this review is commonly referred to as "section 4f" review. These reviews apply to projects sponsored or assisted by federal agencies, including many highway construction projects. The review of historical resources under these programs is typically more rigorous than would be the case with an EAW, and therefore, requiring projects to undergo both would be redundant.  (2006) <i>(Additional wording added)</i> The revisions to this category were suggested in discussions about the present category thresholds with the staff of	<b>State:</b> Funding for state project Building and electrical permit	Summary: Although DNR is RGU for its own projects in this category, the agency provides no recommendation on this category. DNR defers to the State Historic Preservation Office because of its special expertise with respect to historic sites.  <u>Recommendation:</u> None

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		<p>the Minnesota Historical Society’s State Historic Preservation Office (SHPO). The revisions would add two additional reasons or situations where no EAW would be required prior to the destruction of a property on the National or State registers of Historic Places.</p> <p>The present rules recognize two situations as not requiring preparation of the EAW. These both involve review of historic values through other established federal processes. It is now proposed to add another such situation, namely where the destruction will be reviewed by a certified local heritage preservation commission. The State Historic Preservation Office believes that review by such a commission gives adequate oversight over historic places without preparation of an EAW. To be certified, a local heritage preservation commission applies to SHPO, which reviews the application and local ordinance for consistency with nationwide standards established in the Code of Federal Regulations at the cited locations.</p> <p>The second situation proposed to be added is not a substitute form of review but rather has to do with the nature of the property proposed for destruction. In some cases, the historic place included on the National or State Register is an entire district rather than a single structure. In such districts, not all the properties actually have or contribute to the historic value of the district. A “non-contributing property” is a property located within the boundaries of a designated historic district but which itself is not historic and does not contribute to the historical attributes of the district as a whole. Often, non-contributing properties are buildings constructed many years after the period during which the historic buildings of the district were built. Sometimes these non-contributing properties are identified as being non-contributing in the historic place designation documents, but not always. It is proposed that the destruction of non-contributing properties not require preparation of an EAW if either they are identified as being non-contributing in the designation documents or if the State Historic Preservation Office reviews the matter and issues a determination that the property is non-contributing.</p>		
4410.4300  Recreational trails  subp. 37	<p><b>Recreational trails.</b> If a project listed in items A to F will be built on state-owned land or funded, in whole or part, by grant-in-aid funds administered by the DNR, the DNR is the RGU. For other projects, if a governmental unit is sponsoring the project, in whole or in part, that governmental unit is the RGU. If the project is not sponsored by a unit of government, the RGU is the local governmental unit. For purposes of this subpart, "existing trail" means an established corridor in current legal use.</p>	<p>(2004) This paragraph prescribes which governmental unit will be the RGU, which stands for “Responsible Governmental Unit,” for preparing EAWs for the recreational trails for which review will be required under this subpart. Each mandatory category has an RGU designation listed for it in the appropriate subpart of part 4410.4300. The Department of Natural Resources (DNR) is named as RGU for all trail projects for which it is either the project constructor or the provider of grant-in-aid funds. This assignment is consistent with the general principles for RGU assignment at part 4410.0500 that (1) if a state agency will carry out a project it is the RGU (4410.0500, subp. 1) and (2) the RGU is the unit with the greatest responsibility for supervising or approving the project as a whole or has expertise that is relevant for the review (4410.0500, subp. 5, item B). Where grant-in-aid funds are being supplied to assist with a project the DNR must review and approve the plans for the project prior to entering into the grant agreement.</p> <p>This gives the DNR a strong degree of authority over the project. In addition, the DNR staff has expertise with the review of recreational trails that is likely to be greater than that available to a local unit of government that would be a sponsor for a grant-in-aid trail. Furthermore, assigning all grant-in-aid projects</p>	N/A	

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		to the DNR will promote more uniform review of all grant-in-aid projects regardless of where they take place. For those projects not constructed by the DNR or involving state grant-in-aid funds, but which will be sponsored by another unit of government, the sponsoring unit will be the RGU; this is consistent with the general principle of RGU assignment cited as #2 above. For all other projects, the RGU will be the local governmental unit, in keeping with the RGU assignment in other mandatory categories where the permitting responsibility is at the local level. It should be noted that there may be some private trail projects which require no governmental permits, and therefore would not be "governmental actions" under these rules and not be subject to Environmental Review at all.		
<p><b>4410.4300</b></p> <p><b>Recreational trails</b></p> <p>subp. 37 A</p>	<p>A. Constructing a trail at least ten miles long on forested or other naturally vegetated land for a recreational use other than snowmobiling or cross-country skiing, unless exempted by part <a href="#">4410.4600</a>, subpart 14, item D, or constructing a trail at least 20 miles long on forested or other naturally vegetated land exclusively for snowmobiling or cross-country skiing.</p>	<p>(2004) Item A would require mandatory preparation of an EAW for the kinds of trails named with the thresholds based on trail length. Item A covers construction of new trails (or extensions of existing trails) which do not follow the alignment of an existing trail. Except for winter uses, the threshold proposed for this category is 10 miles. For the named winter uses, the threshold is proposed to be twice as long, 20 miles, as these uses are generally considered to have lesser potential for environmental impacts due to the fact that frozen soil conditions and snow or ice cover greatly reduce the potential for physical environmental damage. Item A would only apply to trails crossing land that was now forested or otherwise covered with natural vegetation for a distance of at least 10 continuous miles. If a trail was to be partially on naturally vegetated land only the length on such land would be counted.</p> <p>Length was chosen as the primary threshold parameter in order to make the recreational trail categories analogous to the existing categories for linear-type projects, including electrical transmission lines (subp. 6), pipelines (subp. 7), and highways (subp. 22). As stated in the 1982 SONAR, linear projects "usually entail greater impact as a function of increased length." (pg. 119) Although different types of linear projects differ in the extent of their potential for various environmental impacts, generally speaking they all vary in accordance with project length. Specifically for recreational trails, while different types of trails or trail uses vary in their potential for impacts such as ecological damage, runoff and erosion, damage to water resources, and noise, the potential for these impacts will tend to increase with the length of the project simply because, all else being equal, a longer trail has more likelihood of encountering sensitive resources of whatever kind. Another benefit of using length as a surrogate for impact potential is that it is "use neutral." A number of commenters, particularly motorized use organizations, were very concerned about some trail users being "singled out" in the proposed rules, i.e., treated differently than other types of users. Using trail length as the threshold parameter avoids this concern. Finally, length is a basic parameter of trail design that is easy to determine in the early stages of design, promoting an early determination of the need for EAW preparation with accompanying planning efficiency.</p> <p>The thresholds of 10 and 20 miles were chosen for a number of reasons. Most fundamentally, for almost all types of projects covered by the existing mandatory and exemption categories there is a "gap" between the magnitudes of project that are exempt and the smallest projects for which review is mandatory. Following this principle (in the absence of any compelling reasons</p>	<p><b>Local:</b>                      Permission to cross land                      Land alteration permit                      Site permit application                      WCA mitigation plan</p> <p><b>State:</b>                      Construction stormwater general permit                      401 certification                      Section 4(f) evaluation                      Special use permit for highway crossings                      Lease agreement                      State grant                      Public water work permit                      WCA mitigation plan                      SNA permit to cross &amp; trail maintenance agreement</p> <p><b>Federal:</b>                      404 permit                      Federal grant</p>	<p>Summary: 4 EAWs have been prepared for projects under this category since the rule came into effect in 2004. Two were for hiking trails, one for a mountain bike trail and one for an OHV trail. Several potential environmental issues, including some that are not directly regulated, were evaluated. Unregulated potential impacts included wildlife habitat effects, wildlife disturbance, and native plant community impacts. No single permit regulates these projects as a whole, so environmental review was the only formal opportunity to analyze effects of the whole project. Permits associated with this category have gaps and overlaps in authority, and many do not include a public review process.</p> <p><u>Recommendation:</u> Maintain this EAW category.</p>

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		<p>not to), the EQB chose to set the mandatory EAW thresholds at some reasonable number of miles, rather than including trails of all lengths (as many commenters had advocated, at least for motorized trails). Further, the most common ratio of the sizes of exemption thresholds to mandatory EAW thresholds among the existing categories is 1:10. Following that reasoning, the proposed threshold of 10 miles for mandatory EAWs for most trails and the numerical exemption thresholds of (less than) 1 mile at items A and C of the proposed exemption categories are reasonable choices. Since snowmobiles and cross-country skiing have a lesser potential for impacts, doubling the threshold to 20 miles is a reasonable choice for those types of trails.</p> <p>Another reason for choosing 10 miles as the basic threshold number is that it makes sense when compared to the thresholds for the other linear-type projects in other subparts. The highway categories have a length threshold of 1 mile, pipelines, either 0.75 or 5 miles depending upon the nature of the product transported and other factors, and transmission lines, 20 miles. Most people would undoubtedly agree that recreational trails in general pose less potential for environmental impacts than most highway or pipeline projects, and somewhat more than electrical transmission line corridors (where there is little activity after construction is completed, little potential for impacts beyond the right-of-way, and less direct physical intrusion by the structures than from a continuous trail surface).</p> <p>One way to check on the reasonableness of proposed thresholds is to compare estimates of how many EAWs would result with the numbers of EAWs prepared due to other existing mandatory categories. The EQB recently examined mandatory EAW records from the 4-year period 2000-2003 to compare one category with another. The data from that analysis showed that during that time 570 EAWs were prepared due to the 35 existing EAW categories, an average of 143 per year. Only 10 of the 35 categories resulted in at least 5 EAWs per year and the median number was 1 EAW per year per category. Using the DNR's estimate from section III.A factor #5 of 3 EAWs per year likely to result from the proposed recreational trail categories, it appears that the number of EAWs likely due to the proposed thresholds would fall roughly mid-pack when compared to all 36 categories.</p>		
<p><b>4410.4300</b></p> <p><b>Recreational trails</b></p> <p>subp. 37 B</p>	<p>B. Designating at least 25 miles of an existing trail for a new motorized recreational use other than snowmobiling.</p> <p>In applying items A and B, if a proposed trail will contain segments of newly constructed trail and segments that will follow an existing trail but be designated for a new motorized use, an EAW must be prepared if the sum of the quotients obtained by dividing the length of the new construction by ten miles and the length of the existing but newly designated trail by 25 miles, equals or exceeds one.</p>	<p>(2004) Item B covers situations where a governmental unit is proposing a change in authorized uses on an existing trail to allow use by a form of motorized recreational vehicle not previously allowed to use the trail. The threshold is proposed as 25 miles, two and one-half times the main threshold of item A, on the basis that the potential for environmental damage is diminished by the fact that a trail already traverses the route. This category is proposed to exclude the designation of snowmobile use, which instead is proposed for an exemption (see the section later on Exemptions for the rationale).</p> <p>This provision is proposed to deal with the likely common occurrence where a planned trail will include segments of new alignment and also segments with new use designations on existing trails. In such cases, how can it be determined if the mandatory review thresholds are exceeded? The solution proposed is borrowed from existing subparts of 4410.4300. At subparts 19 and 32, residential developments and mixed residential and commercial projects a</p>	<p><b>Local:</b> Approval for bridges Lease amendment</p> <p><b>State:</b> Construction stormwater general permit 401 certification State trail plan amendment State funding Public water work permit WCA mitigation plan</p> <p><b>Federal:</b> 404 permit</p>	<p>Summary: 1 EAW has been prepared for a project under this category since the rule came into effect in 2004. Currently, many trail projects are proposed for State Forest lands that went through the legislatively mandated designation process (2004-2008). Classification of the State Forests with respect to motor vehicle use was pursuant to Minnesota Laws 2003, Chapter 128, Article 1, Section 167, Subdivision 1 (as amended) and Minnesota Rules, part 6100.1950. Trail segments where the proposed type of OHV use is already allowed are not included in the mileage for determining whether the subpart 37A or 37B threshold has been reached or exceeded. In addition, mileage of OHV trails that use existing road corridors outside of state forests is not included in the threshold determination. Although few projects have recently been proposed that would require preparation of an EAW under this threshold, the DNR still believes the issues identified in the 2004 SONAR that created this category remain valid.</p> <p><b>Recommendation:</b> Retain this EAW category; consider modifications regarding how miles of new types of motorized trail use are calculated. Also consider not counting new motorized uses on abandoned rail grades toward Item 37B threshold.</p>

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		similar arithmetic operation is prescribed for determining if review is mandatory. Here is an example of how this method would work: suppose an ATV trail is proposed with a total length of 18 miles, 8 on new alignment and 10 as a designation of an existing snowmobile trail for ATV use. To determine if an EAW is mandatory divide 8 by 10 (quotient = 0.8), and 10 by 25 (quotient = 0.4), then add the quotients (0.8 + 0.4 = 1.2). Since the sum of 1.2 exceeds 1, review is mandatory for this project.		
4410.4300 <b>Recreational trails</b>  subp. 37 C	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.	(2004) Item C would require preparation of a mandatory EAW for situations where an existing unpaved trail is upgraded by paving it for a length of at least 10 miles. The rationale is that creating an impervious surface over that length of trail creates sufficient potential for runoff and erosion problems to warrant review. The clause about exemptions is included to clarify that the reconstruction of a paved trail or the construction or rehabilitation of a paved, non-motorized trail within the Twin Cities Metropolitan Regional Park System is exempt, rather than covered by this category if the length exceeds 10 miles.	<b>Local:</b> Roadway utility permit WCA mitigation plan  <b>State:</b> Construction stormwater general permit 401 certification State grant Public water work permit  <b>Federal:</b> 404 permit Federal grant	Summary: 1 EAW has been prepared for a project under this category since the rule came into effect in 2004. In that project, DNR found that paving on an abandoned railroad grade had minor environmental effects because environmental disturbance in the corridor had already occurred and project-specific disturbance was minimal; and since significant compaction had already occurred. Although few projects have recently been proposed that would require preparation of an EAW under this threshold, the DNR still believes the issues identified in the 2004 SONAR that created this category remain valid.  <u>Recommendation:</u> Maintain this EAW category, but provide an exemption for paving trails on abandoned railroad grades.
4410.4300 <b>Recreational trails</b>  subp. 37 D	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.	(2004) Item D deals with recreation areas for off-highway vehicles. Such areas would include an intensive network of trails as well as special events areas designed especially for various types of off-highway vehicles. Because of the concentrated network of trails, it is appropriate to provide a separate mandatory EAW category for recreation areas, and to base the threshold on acreage rather than trail length. Two thresholds are proposed, one for “undisturbed,” naturally vegetated land or agricultural land and another for land that either is not naturally-vegetated or agricultural, or has been previously disturbed to a great extent by human activities.  The proposed 80 acre threshold for naturally-vegetated and agricultural areas corresponds with the threshold used in the land use conversion mandatory category at subpart 36, which deals with the permanent conversion of such lands to more intensive human uses.		Summary: No EAWs have been prepared for a project under this category since the rule came into effect in 2004. The DNR still believes the issues identified in the 2004 SONAR that created this category remain valid.  <u>Recommendation:</u> Maintain this EAW category.
4410.4300 <b>Recreational trails</b>  subp. 37 E	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.	(2004) The most likely disturbed areas to be used for recreation areas are former mine sites, so the rule explicitly lists metallic and non-metallic mining as past human activities making land suitable for the “disturbed” classification. The only existing recreation area for OHVs was established by the DNR on a former mine site near Gilbert and another similar area near Virginia has been authorized but not yet built.  For non-naturally-vegetated lands, agricultural, or disturbed lands, a much higher threshold is appropriate and thus 640 acres was chosen; this provides a 1:8 ratio and sets the threshold equal to the common land measure of one section.		Summary: No EAWs have been prepared for a project under this category since the rule came into effect in 2004. The DNR still believes the issues identified in the 2004 SONAR that created this category remain valid.  <u>Recommendation:</u> Maintain this EAW category.
4410.4300 <b>Recreational trails</b>	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,	(2004) Since it is likely that recreation areas could be proposed on lands subject to both thresholds, the same arithmetic method for determining if review is mandatory as is proposed at items A and B is proposed to be used here as well.	<b>Local:</b> Land use zoning approval  <b>State:</b> Construction stormwater general	Summary: 1 EAW has been prepared for a project under this category since the rule came into effect in 2004. Potential environmental issues, including some that are not directly regulated, were evaluated. Unregulated potential impacts included wildlife habitat effects, wildlife disturbance, native plant community impacts and disturbance of nearby residents. No single permit regulates these types of projects as a whole, so environmental review was

TABLE D-1: MANDATORY EAW CATEGORIES: MINNESOTA DEPARTMENT OF NATURAL RESOURCES as RGU				
Mandatory EAW Category	Category Text	Intended Historical Purpose (SONAR)	Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
subp. 37 F	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.		permit 401 certification State funding Public water work permit WCA mitigation plan  <b>Federal:</b> 404 permit	the only opportunity to analyze effects of the whole project. Permits associated with this category have gaps and overlaps in authority, and many do not include a public review process.  <u>Recommendation:</u> Maintain this EAW category.

TABLE D-2: MANDATORY EIS CATEGORIES: MINNESOTA DEPARTMENT OF NATURAL RESOURCES as RGU				
Mandatory EIS Category	Category Text	Intended Historical Purpose (SONAR)	Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
<b>4410.4400</b>  <b>Underground Storage</b>  subp. 7 A	<b>Underground storage.</b> 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 <a href="#">1031.681</a> , subdivision 1, paragraph (a), the DNR shall be the RGU.	(1982) This category is proposed because this type of project is new and largely untested, is very large in scope, has the potential for groundwater contamination and serious human health impacts and is very controversial.  Minn. Stat. § 84.57 mandates a permit for the displacement of groundwater by the underground storage of gases or liquids under pressure. The Department of Natural Resources (DNR) is the responsible permitting agency. No specific rules have been promulgated regarding this authority. One facility of this type has been constructed in Minnesota. No EIS was prepared for that facility. The DNR is currently processing a second application. An EIS has been ordered on the proposed facility. The primary environmental effects of concern on this type of project are groundwater quantity and quality impacts. The lack of a formal process for citizen comment further documents the need for environmental review of this type of activity.	<b>State:</b> Minnesota Statutes, section 1031.681 Minnesota Rules, part 6115.0130 Minnesota Statutes, chapter 216B Minnesota Rules, Chapter 7851	Summary: Two state projects currently involve underground storage. Both were developed prior to MEPA. Both also require a great deal of ongoing regulatory oversight indicating that potential long-term management and possible environmental and human health consequences of such projects are high.  <u>Recommendation:</u> Maintain this EIS category.
<b>4410.4400</b>  <b>Underground Storage</b>  subp. 7 B	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 <a href="#">1031.681</a> , subdivision 1, paragraph (b), the DNR shall be the RGU.	(1982) Minn. Stat. § 84.621 mandates a permit for the storage Of gases or liquids, other than water, in natural rock formations underground. These formations could be naturally occurring or the result of the mining of rock material to create a storage site in a rock formation. No facilities of this .type currently are found in Minnesota and no formal proposals have been presented. It is known, however, that the concept of mining rock to create an underground Cavity in the bedrock is being discussed. The purpose of the cavity would .be to potentially store petroleum products. The primary environmental concerns associated with such an activity would be related to groundwater quality and safety concerns. The DNR is the responsible permitting agency for this type of activity. No specific rules have been promulgated regarding this authority. The lack of a formal process for citizen comment further documents the need for environmental review of this type of activity.	<b>State:</b> Minnesota Statutes, section 1031.681 Minnesota Rules, part 6115.0130 Minnesota Statutes, chapter 216B Minnesota Rules, Chapter 7851	Summary: Two state projects currently involve underground storage. Both were developed prior to MEPA. Both also require a great deal of ongoing regulatory oversight indicating that potential long-term management and possible environmental and human health consequences of such projects are high.  <u>Recommendation:</u> Maintain this EIS category.
<b>4410.4400</b>  <b>Metallic mineral mining and</b>	<b>Metallic mineral mining and processing.</b> Items A to C designate the RGU for the type of project listed:	(1982) Extensive evaluation of radioactive deposits has been elevated to a mandatory EIS category pursuant to 6 MCAR § 3.039 G.I. because of the increased potential for adverse environmental impacts and human health impacts. The 1,000 ton threshold was recommended by the DNR as a feasible		Summary: Review of recently prepared EISs indicates that several potential environmental issues, including some that are not directly regulated, were evaluated. Unregulated potential impacts included wildlife habitat effects, native plant community impacts, and cumulative effects to a number of natural resources and environmental concerns such as mercury in fish

TABLE D-2: MANDATORY EIS CATEGORIES: MINNESOTA DEPARTMENT OF NATURAL RESOURCES as RGU				
Mandatory EIS Category	Category Text	Intended Historical Purpose (SONAR)	Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not ) apply	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
processing subp. 8 A	A. For mineral deposit evaluation involving the extraction of 1,000 tons or more of material that is of interest to the proposer principally due to its radioactive characteristics, the DNR shall be the RGU.	threshold to indicate a concern for significant adverse environmental impacts. This threshold is near the limit of ore commonly analyzed for evaluation of the deposit.		tissue and wild rice abundance. No single permit regulates the project as a whole, so environmental review was the only opportunity to analyze effects of the whole project. Permits associated with this category have gaps and overlaps in authority, and many do not include a public review process. EISs are commonly joint state-federal. Numerous public comment letters are commonly received. Public comments have often identified substantive environmental concerns and offered recommendations for modification, mitigation and areas needing further evaluation.  <u>Recommendation:</u> Maintain this EIS category.
4410.4400 <b>Metallic mineral mining and processing</b> subp. 8 B	B. For construction of a new facility for mining metallic minerals or for the disposal of tailings from a metallic mineral mine, the DNR shall be the RGU.	(1982) Metallic mineral mining activities may have the potential for significant impacts on ground and surface water quality and quantity, air quality, land use impacts and demographic impacts that may disrupt the local economy. 6 MCAR § 3.039 G.2. requires a mandatory EIS for all new metallic mineral mining proposals. An all or none threshold is used because these activities must be of an economically feasible scale and that scale would, of necessity, be sufficient to potentially pose the threat of significant impacts.	<b>Local:</b> Commercial septic tank permit Building permit Grading permit  <b>State:</b> Permit to mine Water appropriation permit Public water work permit Dam safety permit Burning permit Listed species takings permit Part 70 operating permit Title V air permit modification Construction stormwater general permit Industrial stormwater permit NPDES/SDS permit 401 certification Waste tire storage permit Storage tank permit Solid waste permit Hazardous waste generator and storage Demolition debris disposal facility permit Radioactive material registration Noncommunity nontransient public water system  <b>Federal:</b> 404 permit	Summary: Review of recently prepared EISs indicates that several potential environmental issues, including some that are not directly regulated, were evaluated. Unregulated potential impacts included wildlife habitat effects, native plant community impacts, and cumulative effects to a number of natural resources and environmental concerns such as mercury in fish tissue and wild rice abundance. No single permit regulates the project as a whole, so environmental review was the only opportunity to analyze effects of the whole project. Permits associated with this category have gaps and overlaps in authority, and many do not include a public review process. EISs are commonly joint state-federal. Numerous public comment letters are commonly received. Public comments have often identified substantive environmental concerns and offered recommendations for modification, mitigation and areas needing further evaluation.  <u>Recommendation:</u> Maintain this EIS category.
4410.4400 <b>Metallic mineral mining and processing</b> subp. 8 C	C. For construction of a new metallic mineral processing facility, the DNR shall be the RGU.	(1982) Metallic mineral processing facilities have the potential for significant impacts on ground and surface water quantity and quality, air quality, and demographic impacts that may disrupt the local economy. 6 MCAR § 3.039 G.3. requires a mandatory EIS for all new processing facilities. An all or none threshold is used because these facilities must be of an economically feasible scale and that scale would of necessity, be sufficient to pose the threat of significant impacts.	<b>Local:</b> Commercial septic tank permit Building permit Permit for construction in shoreland area Zoning variances  <b>State:</b> Permit to mine Water appropriation permit Public water work permit	Summary: Review of recently prepared EISs indicates that several potential environmental issues, including some that are not directly regulated, were evaluated. Unregulated potential impacts included wildlife habitat effects, native plant community impacts, and cumulative effects to a number of natural resources and environmental concerns such as mercury in fish tissue and wild rice abundance. No single permit regulates the project as a whole, so environmental review was the only opportunity to analyze effects of the whole project. Permits associated with this category have gaps and overlaps in authority, and many do not include a public review process. EISs are commonly joint state-federal. Numerous public comment letters are commonly received. Public comments have often identified substantive environmental concerns and offered recommendations for modification, mitigation and areas needing further evaluation.



TABLE D-2: MANDATORY EIS CATEGORIES: MINNESOTA DEPARTMENT OF NATURAL RESOURCES as RGU				
Mandatory EIS Category	Category Text	Intended Historical Purpose (SONAR)	Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not ) apply	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
			Dam safety permit Burning permit Listed species takings permit Part 70 operating permit Title V air permit modification Construction stormwater general permit Industrial stormwater permit NPDES/SDS permit 401 certification Waste tire storage permit Storage tank permit Solid waste permit Hazardous waste generator and storage Demolition debris disposal facility permit Radioactive material registration Noncommunity nontransient public water system Government loan/grant High Voltage Transmission Line routing permit  <b>Federal:</b> 404 permit Permit for tower construction next to existing radar	<u>Recommendation:</u> Maintain this EIS category.
<b>4410.4400</b>  <b>Nonmetallic mineral mining</b>  subp. 9 A	<b>Nonmetallic mineral mining.</b> Items A to C designate the RGU for the type of project listed:  A. For development of a facility for the extraction or mining of peat which will utilize 320 acres of land or more during its existence, the DNR shall be the RGU.	(1982) The extraction of peat resources has the potential for causing environmental impacts relating to land use, air quality, water quality, mining and drainage. Current peat mining activities tend to be of small scale and for the purpose of marketing the peat as a horticultural product or as a briquet fuel. Peat mining is expected to be extremely controversial if proposals develop to utilize the resource for other energy uses. Data based on actual development of these resources on a broad scale is limited. The threshold levels of 160 acres for a mandatory EAW (6 MCAR § 3.038 K.1.) and 320 acres for a mandatory EIS (6 MCAR § 3.039 H.1.) coincide with Department of Natural Resources policy as set forth in the Minnesota Permit Program Policy Recommendations. In the current rules the 320 acre threshold for an EAW for nonmetallic resources would have applied to peat extraction.	<b>Local:</b> Land exchange/purchase lease Permit to divert water (Watershed District) Reassessment of drainage tax Ditch improvements  <b>State:</b> Permit to mine peat Water appropriation permit Construction stormwater general permit Industrial stormwater permit NPDES/SDS permit 401 certification Above ground storage tank permit Air quality permit Land exchange/purchase/lease  <b>Federal:</b> 404 permit	Summary: Very few peat mining operations have prepared environmental documents in the last ten years; however DNR has been in communication and has received proposed projects within this same time period. Each of these projects may have had the potential for significant environmental effects and thus environmental review was appropriate. The relationship of these proposals to federal requirements under Section 404 of the Clean Water Act has been difficult. There has been no information or data to indicate that the 320 acre threshold needs revision.  <u>Recommendation:</u> Maintain this EIS category
<b>4410.4400</b>	<b>Water appropriation and impoundments.</b> For construction of a Class I dam, the DNR shall be the RGU.	(1982) Dam construction and safety is regulated by the ONR pursuant to 6 MCAR § 1.5030. Environmental review is necessary because of the potential for significant property damage and danger to human safety. The ONR	<b>State:</b> Dam safety permit Public water work permit	Summary: DNR is currently preparing an EIS under this category. In addition to property damage/loss and human safety, potential significant impacts to fish habitat, river ecology, hydrology, water quality have been identified. Some of these impacts, for example water

TABLE D-2: MANDATORY EIS CATEGORIES: MINNESOTA DEPARTMENT OF NATURAL RESOURCES as RGU				
Mandatory EIS Category	Category Text	Intended Historical Purpose (SONAR)	Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not ) apply	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
Water appropriation and impoundments subp. 18		regulations are based on the comparative impact potential of the dams. The existing DNR dam classifications were used as thresholds for the EIS category at 6 MCAR § 3.039 Q.	Water appropriation permit  <b>Federal:</b> Federal funding 404/10 approval	quality and fisheries, are not addressed thoroughly in dam safety permitting, which is a dominant regulatory approval for this type of project. State environmental review is also the only available public review process for this type of project.  <u>Recommendation:</u> Maintain this EIS category
4410.4400  Water diversions subp. 23	<b>Water diversions.</b> For a diversion of waters of the state to an ultimate location outside the state in an amount equal to or greater than 2,000,000 gallons per day, expressed as a daily average over any 30-day period, the DNR is the RGU.	(1988) This new category is proposed at the suggestion of the DNR, and is in recognition of the awareness that has been developed in recent years that the state may be faced in the future with the question of whether and under what circumstances it should permit the diversion of water to other parts of the country. Obviously, environmental impacts of any such diversion would be one of the major factors involved in decisions. Since the EIS is the established and recognized tool for examining environmental impacts of alternatives, it would be appropriate to require an EIS as part of the decision-making process for out-of-state diversion proposals.  This proposal is also consistent with the intent of the water supply provisions of Minn. Stat., section 105.405, subdivisions 2 and 4. Subdivision 2 requires that prior to the issuance of permits for out-of-state diversions, the DNR must determine that the water remaining in the basin of origin will be adequate to meet the basin's water resources needs throughout the diversion project. Subdivision 4 specifically applies to very large water diversions (over 5,000,000 gallons per day average in any 30-day period) of waters from the Great Lakes basin and requires that prior to the issuance of permits for such diversions, the DNR must notify, solicit comments, and consider the comments and concerns of other states, Canadian provinces, and certain joint U.S.-Canadian study groups. Preparation of an EIS is an appropriate method to provide the information necessary for the DNR to make these determinations.  The numerical threshold is based on the recommendation of the DNR. It is proposed as the threshold at which a diversion proposal becomes significant enough to warrant analysis through the EIS process.  Because of its statutory authorities over water appropriations and its expertise, the DNR is proposed as the RGU.	<b>State:</b> Water appropriation permit M.S. 103G.261(5)(f) M.S. 103G.265 M.S. 103G.801	Summary: Although a project has not yet been proposed that would require preparation of an EIS under this threshold, the DNR still believes the issues identified in the 1988 SONAR that created this category remain valid.  <u>Recommendation:</u> Maintain this EIS category.

APPENDIX E: MINNESOTA POLLUTION CONTROL AGENCY CATEGORIES

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
<p><b><u>Petroleum Refineries</u></b></p> <p>4410.4300 subp. 4</p> <p>EAW Threshold: Expansion of an existing petroleum refinery facility that increases its capacity by 10,000 or more barrels per day,</p> <p>4410.4400 subp 4</p> <p>EIS Threshold: Construction of a new petroleum refinery facility,</p>	<p>(1982) – SONAR</p> <p><b>General:</b> This category area is proposed because of the potential for environmental impacts relating to air pollution, transportation, energy use, toxic discharge, spills, water pollution, and odors resulting from these facilities.</p> <p><b>EIS:</b> The EIS threshold proposed was a part of the EAW threshold of the current rules. It is likely that an EIS would have been prepared on new facilities pursuant to the current procedures because of the expected impacts and the need for environmental review.</p>	<p><b>MPCA</b> Air Emissions Permit NPDES Wastewater Discharge NPDES General Stormwater construction Permit NPDES Stormwater Permit for Industrial Activity Above Ground Storage Tank</p> <p><b>MnDOT</b> Highway Crossing Permit Utility Permit to work in the State Right-of-way</p> <p><b>Fire Marshall</b></p> <p>Plan Review for Above Ground Storage Tanks <b>COUNTY</b></p> <p>Conditional Use Permit Building Permit <b>CITY</b></p> <p>Conditional Use Permit Permit for Discharge of Industrial Wastewater Plan Review and Approval Building Permit</p>	<p><b>EAW: No Changes</b> <b>EIS: No Changes</b></p> <p>– The issues, concerns and potential impacts outlined in the SONAR are still valid today. Project information and the opportunity to comment are provided to decision makers in multiple jurisdictions. High level of public interest.</p>

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
<p><b><u>Fuel Conversion Facilities</u></b></p> <p>4410.4300 subp 5</p> <p>EAW Thresholds:</p> <p>A. Construction of a facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 25,000 dry tons or more per year of input,</p> <p>B. Construction or <u>expansion</u> of a facility for the production of alcohol fuels which would have or would increase its capacity by 5,000,000 or more gallons per year of alcohol produced,</p> <p>4410.4400 subp. 5</p> <p>EIS Thresholds:</p> <p>A. Construction of a facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 250,000 dry tons or more per year of input,</p> <p>B. For construction or <u>expansion</u> of a facility for the production of alcohol fuels which would have or would increase its capacity by 50,000,000 or more gallons per year of alcohol produced if in the 7-county Twin Cities Metro area or by 125,000,000 or more gallons per year if outside that area,</p>	<p>(1982 – SONAR</p> <p>This category area is proposed because of the potential for environmental impacts resulting from these facilities and because there are many areas of controversy relating to potential impacts of these types of categories since they are largely untested in practice. Specific categories recommended with this category area include:</p> <p>A. The current EAW category was designed primarily to deal with the potential for coal or peat conversion. This category was developed at a time when the likelihood of such a proposal was fairly remote. The proposed rules attempt to distinguish potential size differences for such projects and to distinguish those projects from alcohol production.</p> <p>Fuel conversion facilities for coal and peat have the potential for significant impacts with regard to air pollutant and water pollutant discharges, and transportation impacts. The state currently has no facilities of this nature. If such a proposal is submitted, it is likely to be highly controversial because of these potential impacts and because of the energy policy issues it would present.</p> <p>B. Fuel conversion facilities for alcohol production are generally viewed as having a lesser potential for significant environmental impact. In addition, the technology for alcohol production has been tested and applied; consequently, more data on environmental impacts is available. These facilities are likely to become more common in the future; therefore, controversy relating to use of natural areas for energy production and the use of agricultural land for energy production is anticipated.</p> <p>EIS Same as above</p> <p>A. Same as above</p> <p>B. Same as above</p>	<p><u>FEDERAL</u></p> <p>Alcohol Tobacco Tax and Trade Bureau Distiller’s Permit <b>U.S. Corp of Engineers</b> 404 General Permit Section 404 Permit for the installation of water supply pipeline U.S. Fish and Wildlife Service</p> <p><u>STATE</u></p> <p><b>MPCA</b></p> <p>Air Emissions Permit NPDES/SDS industrial stormwater Discharge Permit NPDES Authorization to discharge hydrostatic test water SDS Utility Water Holding Pond Permit NPDES General stormwater Permit for construction activity Very Small Hazardous Waste Generators License Above Ground Storage Tank Permit Minnesota River Basin General Permit</p> <p><b>DNR</b></p> <p>Water Appropriation Permit Work in Public Waters Permit Work in Public Lands Permit Natural Heritage and Nongame Database Review</p> <p><b>Mn Department of Agriculture</b></p> <p>Agricultural Liming License <b>Minnesota Historical Society</b> Archeological Survey Construction Easements <b>Minnesota State Historical</b> Concurrences on Findings of Cultural <b>Preservation Office</b> Resource Impacts <b>Mississippi National River and Recreation Area</b></p>	<p><b>Subpart A:</b> Recommend review of definition of biomass in EQB Rules to ensure consistency with term as used in other rules or statutes.</p> <p><b>EAW Threshold – No Change</b> <b>EIS Threshold – No change</b></p> <p>Legislative changes have been made to this category (Item A) over the years. No additional changes appear to be necessary or warranted at this time.</p> <p>Project information is provided to decision makers in multiple jurisdictions. High level of public interest. Coal and peat conversion facilities have not been reviewed under this category.</p>

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
		Critical Area Site Plan Approval <b>Mn Department of Transportation</b> Highway Crossing Permit Utility Permit to work in the State Right-of-way <b>Mn Department of Health</b> Dewatering Well Construction Permit Monitoring Well Construction Permit Plumbing and Engineering Plumbing Plan Review Special Well Construction Area Approval <b>Fire Marshal</b>  Plan Approval <b>Mn Department of Public Safety</b> Above Ground Flammable and Combustible Liquids Review <u>COUNTY</u> Conditional Use Permit Utilities Permit On-site Septic Permit Building Permit Driveway Permit Incinerator Permit Permit to dispose at the County Landfill Ditch Use Authorization <b>Watershed Districts</b>  Watershed District Permit <u>CITY</u> Building Permit Utilities Permit Industrial Stormwater Agreement Conditional Use Permit	

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
<p><b><u>Transfer Facilities</u></b></p> <p>4410.4300 subp. 8</p> <p>EAW Thresholds:</p> <p>A. Construction of a facility designed for or capable of transferring 300 tons or more of coal per hour or with an annual throughput of 500,000 tons of coal from one mode of transportation to a similar or different mode of transportation; or the expansion of an existing facility by these respective amounts,</p> <p>B. Construction of a new facility or the expansion by 50 percent or more of an existing facility for the bulk transfer of hazardous materials with the capacity of 10,000 or more gallons per transfer, if the facility is located in a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers district, Minnesota River Project Riverbend area, or the Mississippi headwaters area,</p>	<p><b>1982 - SONAR</b></p> <p>The category area is proposed because of environmental impacts associated with operation of the facilities, because these facilities are typically located near water resources and because these facilities are often very controversial in the immediate vicinity. Specific categories recommended within this category area include:</p> <p>A.</p> <p>The need for the category relating to coal transfer facilities was voiced early in the process of developing category areas. Concerns documenting this need included fugitive dust emissions, leaking, noise levels, transportation related issues, local land use issued, and potential water pollution issues if the facilities is located near a water resource. The threshold was developed to be consistent with certificate of need definitions. The threshold used corresponds to the definition of "coal transshipment facility". The exemption category threshold was set at 10% of this threshold. The intention of the exemption threshold is to prevent petitions for minor industrial operations where coal is used as an energy source. If operations of this nature have the potential for significant impacts, the issue should be raised pursuant to the primary purpose of the activity.</p> <p>B. The need for the category relating to the transfer of hazardous materials was raised during the public participation process. The primary concerns documenting this need included the potential for spills resulting in serious water contamination if that facility is near water resources. The threshold was derived to be higher than the amount of material carried by an average truck transport but still sensitive enough to apply to large transfer facilities associated with barge transportation.</p>	<p><b>FEDERAL</b></p> <p>Army Corp of Engineers</p> <p>Section 404 Wetland Permit</p> <p><b>STATE</b></p> <p>MPCA</p> <p>NPDES General Construction Stormwater permit</p> <p>NPDES Industrial Stormwater Permit</p> <p>Above Ground Storage Tank Permit</p> <p>Section 401 Water Quality Certificate</p> <p>Air Emissions Permit</p> <p><b>Minnesota Department Of Transportation</b></p> <p>Access Permit</p> <p><b>DNR</b></p> <p>Minnesota Natural Heritage Database Search</p> <p>Work with in Waters of the State Permit</p> <p><b>Minnesota State Historical Preservation Office</b></p> <p>Cultural Resources Review</p> <p><b>COUNTY</b></p> <p>Conditional Use Permits</p> <p>Septic System Permit</p> <p><b>Watershed Districts</b></p> <p>Watershed Permits</p> <p><b>CITY</b></p> <p>Building Permit</p> <p>Conditional Use Permit</p> <p>Fire Department Re</p>	<p><b>Subpart A:</b></p> <p><b>EAW Threshold – No changes</b></p> <p><b>EIS Threshold – No changes</b></p> <p>No change to this category, however, a review of the use of coal and peat is suggested as it relates to Subpart A.</p> <p>Project information is provided to decision makers in multiple jurisdictions</p> <p><b>Subp B. No change</b></p> <p>Project information is provided to decision makers in multiple jurisdictions</p>

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
<p><b>Storage Facilities</b></p> <p>4410.4300 subp 10</p> <p>EAW Thresholds:</p> <ul style="list-style-type: none"> <li>A. Construction of a 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, -</li> <li>B. Construction of a facility on a single site designed for or capable of storing 1,000,000 gallons or more of hazardous materials,</li> <li>C. Construction of a facility designed for or capable of storing on a single site 100,000 gallons or more of liquefied natural gas, synthetic gas, or anhydrous ammonia,</li> </ul>	<p>1982 SONAR</p> <p>This category area is proposed because of concerns relating to potential environmental impacts and because of the likelihood of controversy relating to the siting of these types of projects. Specific categories recommended within this category area include:</p> <ul style="list-style-type: none"> <li>A. The need for proposed category was voiced early in the process of developing category areas. Concerns documenting the need for this category include fugitive dust emissions, leaching, transportation related issues, and water pollution issues. The threshold was developed to be consistent with certificate of need definitions.</li> <li>B. The category was changed as a result of comments received during the public participation process to apply to all hazardous materials as opposed to only petroleum fuels. It is likely, however, that only petroleum fuels will be stored in sufficient quantities to trigger this threshold.</li> <li>C. Natural gas and synthetic gas facilities were separated from the proposed petroleum category because the 1,000,000 gallon threshold was unrealistic. Natural and synthetic gases are typically stored in much smaller facilities. These facilities are stored under pressure and create controversy relating to the explosive nature of the facility.</li> </ul> <p>1988 SONAR</p> <p>In the experience of the PCA staff, an anhydrous ammonia tank facility of 100,000 gallons or more size has a comparable potential for significant environmental impacts, including danger to the public health, as liquefied or natural gas storage facilities. Consequently, it is reasonable to explicitly add anhydrous ammonia tanks to this category with the same threshold.</p>	<p><b>Army Corp of Engineers</b> Section 404 Wetland Permit</p> <p><b>MPCA</b> NPDES General Construction Stormwater permit NPDES Industrial Stormwater Permit Above Ground Storage Tank Permit Section 401 Water Quality Certificate Minnesota Department Of Transportation</p> <p>Access Permit DNR</p> <p>Minnesota Natural Heritage Database Search Minnesota State Historical Preservation Office</p> <p>Cultural Resources Review COUNTY Conditional Use Permits Septic System Permit Watershed Districts</p> <p>Watershed Permits CITY Building Permit Conditional Use Permit</p>	<p><b>No Changes</b></p> <p>Issues and concerns identified in the SONAR are still valid.</p> <p>Project information is provided to decision makers in multiple jurisdictions</p> <p>A. Issues and concerns identified in the SONAR are still valid.</p> <p>Project information is provided to decision makers in multiple jurisdictions</p> <p>B. Issues and concerns identified in the SONAR are still valid.</p> <p>Project information is provided to decision makers in multiple jurisdictions</p> <p>C. Issues and concerns identified in the SONAR are still valid.</p> <p>Project information is provided to decision makers in multiple jurisdictions</p>

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
<p><b><u>Paper and Pulp Processing Mills</u></b></p> <p>4410.4300 subp 13</p> <p>EAW Threshold:</p> <p>For expansion of an existing paper or pulp processing facility that will increase its production capacity by 50 percent or more,</p> <p>4410.4400 subp 10</p> <p>EIS Threshold:</p> <p>For construction of a new paper or pulp processing mill.</p>	<p>1982 SONAR</p> <p>This category area is proposed because of the potential for significant effects on water quality, air quality, solid waste generation, and transportation impacts. These potential impacts are regulated by several different agencies. Environmental review would facilitate multi-agency coordination. Specific categories recommended within this category area include:</p> <p>Paper and pulp processing mills have a broad range of environmental impacts. Water related impacts include the use of large quantities of water and the discharge of both cooling and process waters. Air quality related impacts are primarily associated with power generation at the facility. The degree of the problem is tied to the type and amount of fuel used. Solid wastes in the form of ashes from power generation and sludges from process water treatment may pose serious disposal problems. Raw materials and products of these facilities are bulky materials and the facilities are labor intensive; therefore, transportation and sludges from process water treatment may pose serious disposal problems. Raw materials and products of these facilities are bulky materials and the facilities are labor intensive; therefore, transportation related impacts are likely to be a further issue.</p> <p>Expansions greater than 50% should require an EAW because of the magnitude of additional wastewater and solid waste generated and because of additional air quality and transportation impacts. The current rules did not have a category related to the expansion of these facilities.</p> <p>A ten percent figure is used to exempt minor expansions. This exemption is intended to allow equipment changes, alterations that may increase production efficiency, and minor operational changes without environmental review. Expansions between ten and 50 percent are subject to environmental review on a discretionary basis because such expansions are likely to be of a magnitude that will generate controversy and because of the scope and potential significance of impacts. The current rules do not contain exemptions relating to paper and pulp processing mills.</p> <p>This category area is proposed because of the potential for significant impacts on water quality, air quality, solid waste generation, hazardous waste generation, transportation, land use, demographic and economic impacts on local economies. The spectrum of impacts is diverse and the regulation of the impacts varies in effectiveness with the units of government responsible. This type of project tends to be controversial, as witnessed by the number of projects previously subjected to environmental review. Specific categories recommended within this category area include:</p> <p>EIS The EIS threshold, 6 MCAR § 3.039 I. is set at an all or none threshold for new facilities. This is reasonable because the size of these facilities must be economically practical and that size would have the potential for significant impacts. These are new impacts on the local environment and significant wildlife and land use questions must also be addressed. This category corresponds to the current EAW threshold; however, in practice an EIS is likely to be prepared on a new facility pursuant to current procedures. Therefore, this</p>	<p>MPCA</p> <p>Air Emissions Permit NPDES Discharge Permit NPDES General Construction Permit NPDES Industrial Stormwater Permit Above Ground Tank Permit DNR Water Appropriation Permit MnDOT Highway Crossing Permit Utility Permit COUNTY Conditional Use Permit Building Permit CITY Building Permit Utility Permit Capacity Allocation Agreement Wastewater Treatment Plant</p>	<p>No Changes</p> <p>The issues and concerns identified in the SONAR are still valid.</p> <p>Project information is provided to decision makers in multiple jurisdictions</p> <p>EIS No Changes</p> <p>The issues and concerns identified in the SONAR are still valid.</p> <p>Project information is provided to decision makers in multiple jurisdictions</p>



Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
	does not represent a major change in the requirements for environmental documents.		

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
<p><b>Air Pollution</b></p> <p>4410.4300 subp. 15</p> <p>EAW Threshold:</p> <p>A. For construction of a stationary source facility that generates 250 tons or more per year or modification of a stationary source facility that increases generation by 250 tons or more per year of any single air pollutant, other than those air pollutants described in item after installation of air pollution control equipment, the PCA shall be the RGU.</p> <p>B. For construction of a stationary source facility that generates a combined 100,000 tons or more per year or modification of a stationary source facility that increases generation by a combined 100,000 tons or more per year of greenhouse gas emissions, after installation of air pollution control equipment, expressed as carbon dioxide equivalents, the PCA shall be the RGU. For purposes of this subpart, "greenhouse gases" include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride, and their combined carbon dioxide equivalents shall be computed by multiplying the mass amount of emissions for each of the six greenhouse gases in the pollutant GHGs by the gas's associated global warming potential published in Table A-1 to subpart A of Code of Federal Regulations, title 40, part 98, Global Warming Potentials, as amended, and summing the resultant value for each.</p>	<p><b>(1982 SONAR)</b></p> <p>This category area is proposed because of public concern relating to air quality and its impact on human health and the environment, especially via implications relating to acid rain. This category area is proposed because other category areas may not be specific enough to review projects with potentially significant impacts on air quality. Specific categories recommended within this category area include:</p> <p>A</p> <p>The qualitative measure was changed from a measurement of only Particulates and sulfur oxides to a measurement for any single air pollutant. Emissions that would trigger the threshold are likely to be Particulates or sulfur oxides; however, other pollutants, especially nitrogen oxides and ozone, are also of major concern. The measurement is designated as post treatment as an incentive for the installation of proper pollution control equipment. Synergistic impacts are not addressed specifically in the category; however, a lower threshold will facilitate a review of potential synergistic impacts on a case-by-case basis. The quantitative measure was adjusted to a realistic figure. The threshold of 50 tons per day (18,250 tons per year) in the current rule's EAW category was so high it excluded all facilities. Very large and inefficient sources currently in operation in Minnesota would correspond to approximately only 1,000 tons per year. The proposed threshold coincides with federal regulations which classify facilities of 100 tons per year as a major source of air pollution. This threshold is also consistent with the proposed state off-set rule. Technology is available to minimize this impact and past experience has demonstrated that early environmental review can control problems associated with major sources of air pollution.</p> <p><b>1988 Sonar</b></p> <p>The words proposed to be added are intended to extend the coverage of this mandatory category to modifications of air emission facilities which will increase emissions by the same threshold amount as for new facilities. From an environmental standpoint, it is immaterial whether 100 tons of a pollutant came from a totally new facility or a modification of an existing facility. The omission of modified facilities from this category when the rules were adopted in 1982 was probably an unintentional oversight.</p> <p><b>Parking Facilities</b></p> <p>The mandatory category threshold was changed from 1,000 to 2,000 or more vehicles.</p> <p><b>2006 SONAR</b></p> <p>Two changes are proposed in this subpart. In item A, the threshold for air emission sources is proposed to be changed from 100 tons per year to 250 tons per year. Item B, relating to parking facilities, is proposed to be deleted entirely.</p> <p>The threshold for air emission facilities in item A was changed to 100 tons per year in 1982. Since then, item A has been changed only to add that the 100 tons per year threshold applies to modifications of existing facilities as well as new facilities. The MPCA has had 23 years of experience working with this threshold. A threshold change to 250 tons per year is based on recommendations of the MPCA staff. This staff is responsible for permitting facilities that emit air pollutants and environmental review of other projects that are sources of air emissions. A threshold of 250 tons would coincide with the federal threshold for the Prevention of Significant Deterioration permitting</p>	<p><b>FEDERAL</b></p> <p><b>U.S. Fish and Wildlife Service</b></p> <p>Threatened and Endangered Species Review</p> <p><b>EPA</b></p> <p>Hazardous Waste Generators Identification Number</p> <p><b>STATE</b></p> <p><b>MPCA</b></p> <p>Air Emissions Permit          NPDES General Stormwater Construction Permit          NPDES industrial Stormwater Activity Permit          NPDES Wastewater Discharge Permit          Above Ground Tanks Permit          Very Small Quantity Hazardous Generator License          Beneficial Use Approval for ash land application</p> <p><b>Minnesota State Historical Preservation Office</b></p> <p>Concurrence on Findings of Cultural Resources Impacts</p> <p><b>DNR</b></p> <p>Water Appropriation Permit          Minnesota Natural Heritage Database Search</p> <p><b>Fire Marshall</b></p> <p>Plan Review</p> <p><b>MnDOT</b></p> <p>Highway Crossing Permit</p> <p><b>COUNTY</b></p> <p>Water Shed District Permit          Conditional Use Permit</p> <p><b>CITY</b></p> <p>Building Permit          Conditional Use Permit          Sanitary Sewer Hook-up          Wastewater Discharge Permit          Zoning Certificate          Utility Permit</p>	<p><b>A. No Changes</b></p> <p>The issues, concerns and potential impacts outlined in the SONARs are still valid today. Project information and the opportunity to comment are provided to decision makers in multiple jurisdictions. Projects tend to have a high level of public interest.</p> <p><b>B. No Changes</b></p> <p>This category was changed recently, therefore no additional changes needed at this time.</p>

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
	<p>review.</p> <p>There are programs and permits in effect now that were not in effect at the time the current threshold of 100 tons was set. The state of Minnesota now has the Federal Clean Air Act Title V program (sometimes called Part 70 permit). In Minnesota, this is a combined construction and operating permit. A facility needs a Part 70 permit if its potential to emit air pollutants meets or exceeds specific thresholds, which are:</p> <ul style="list-style-type: none"> <li>• 100 tons per year of any criteria pollutant (sulfur dioxide, nitrogen oxides, particulate matter less than 10 microns in diameter; carbon monoxide, and lead);</li> <li>• 10 tons per year or more of any single hazardous air pollutant (about 185); or</li> <li>• 25 tons per year or more of any combination of hazardous air pollutants.</li> </ul> <p>There are public notice requirements for Part 70 permits as well as EPA review. In addition, facilities emitting over 100 tons per year of one or more air pollutants often have to conduct air dispersion modeling, undergo an air emissions risk analysis, and for some modifications to existing facilities, must go through a Prevention of Significant Deterioration review, which includes installing best available control technology. The MPCA staff believes that the air emissions permitting program addresses all major and minor concerns regarding air pollutants from new or expanding facilities, particularly those below 250 tons per year of a single pollutant.</p> <p>Certain air emission facilities of concern to the MPCA and the general public are captured in other mandatory environmental review categories. These are:</p> <ul style="list-style-type: none"> <li>• Electric Generating Facilities (25 Megawatts and over) – subpart 3;</li> <li>• Petroleum Refineries - subpart 4;</li> <li>• Fuel Conversion Facilities (mainly ethanol plants) – subpart 5;</li> <li>• Metallic Mineral Mining and Processing – subpart 11;</li> <li>• Paper or Pulp Processing Mills – subpart 13; and</li> <li>• Solid Waste (Incineration) – subpart 17D.</li> <li>• Other potential facilities of concern such as biomass to energy plants under 25 megawatts, soybean oil, and coatings (printing and painting) would most likely be over a 250 ton per year threshold.</li> </ul> <p>Environmental review serves the purpose of helping the public, proposer, and government bodies to understand the environmental impact of a proposed project. For that reason, an EAW for the Air Pollution category not only identifies the effects of air pollutants, it also addresses water and waste related issues, as well as issues such as transportation patterns, truck traffic, archeological significance, and wildlife impacts.</p> <p>Between 2000 to 2003, 14 EAWs were completed under the Air Pollution category. Based on a review of these 14 EAWs, it is reasonable to conclude that the amount of air emissions from these projects has little, or no, relationship to the impact of the other environmental issues listed above. Furthermore, of the few public comments that came in on these projects, almost all were about air emissions or issues related to air that are addressed in the air emissions permit. Therefore, the environmental review threshold provides a rather “hit-or-miss” approach for examining other issues, and does not justify setting the threshold at 100 tons per year.</p> <p>These rule revisions will not change the ability for the public to petition the EQB for a proposed project to complete an EAW that is less than 250 tons per year. There are no exemptions for environmental review given to the Air Pollution Category.</p> <p>Because of the extensiveness of air emission permit programs at the MPCA, other environmental review categories covering air emissions, the weak relationship between air emissions and other issues, and the ability of the public to petition for an</p>		

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
	EAW, it is reasonable to increase the air pollution category threshold from 100 to 250 tons.		

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<p><b>Hazardous Waste</b></p> <p>4410.4300 subp. 16</p> <p>EAW Thresholds:</p> <ul style="list-style-type: none"> <li>A. Construction or expansion of a hazardous waste disposal facility</li> <li>B. Construction of a hazardous waste processing facility with a capacity of 1,000 or more kilograms per month</li> <li>C. Expansion of a hazardous waste processing facility that increases its capacity by ten percent or more</li> <li>D. Construction or expansion of a facility that sells hazardous waste storage services to generators other than the owner and operator of the facility or construction of a facility at which a generator's own hazardous wastes will be stored for a time period in excess of 90 days, if the facility is located in a water-related land use management district, or in an area characterized by soluble bedrock</li> </ul> <p>4410.4400 subp. 12</p> <p>EIS Thresholds:</p> <ul style="list-style-type: none"> <li>A. Construction or expansion of a hazardous waste disposal facility for 1,000 or more kilograms per month</li> <li>B. 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</li> <li>C. Construction or expansion of a hazardous waste processing facility if the facility is located in a water-related land use</li> </ul>	<p><b>1982 Sonar</b></p> <p>This category area is proposed because of the potential for ground and surface water contamination and the resultant human health and environmental impacts that may result from the disposal, processing and storage of hazardous wastes. Additional concerns include potential air quality, noise and odor impacts, safety questions relating to handling, and transportation and land use issues. This issue was not specifically addressed in the current rules.</p> <p>These facilities are permanent and the danger of contamination is long lasting. The disposal facility categories have the same variable as processing facilities. The base line is that all disposal facilities will require some form of environmental review.</p> <p><b>A, B, C, and D</b></p> <p>The storage category is designed to apply to facilities for long term storage. The 5,000 gallon threshold is regarded as a likely dividing line between strictly temporary facilities and long term storage. Below this threshold it is likely that materials are being gathered primarily to make shipment economically practical. The gallon unit of measurement is used because these wastes are usually stored as liquids in 55 gallon drums. Concerns relating to storage facilities are mainly the potential for accidental spills and leaks. No EIS category is proposed because the need for an EIS can best be addressed on a case-by-case basis depending on the nature and location of the activity.</p> <p>The commercial/non-commercial distinction was included because commercial facilities are likely to acquire a variety of different substances from a variety of different sources. Such facilities are likely to generate a more board spectrum of pollutants and are likely to be more controversial. An all or none threshold is applied as an EIS threshold if the facility is to be located in a sensitive area. For other commercial facilities the 1,000 kilogram per month threshold is used. This threshold is selected because it is consistent with federal regulations relating to hazardous waste. For non-commercial facilities, environmental review is discretionary unless the facility is located in a sensitive area and processes in excess of 1,000 kilograms per month. This threshold was applied because the permit process is adequate to deal with non-commercial facilities in sensitive areas that process small amounts of hazardous waste. In non-sensitive areas, the permit process is capable of providing adequate review of non-commercial facilities.</p> <p><b>EIS</b></p> <p>If the facility is located within a sensitive area or if the facility has a capacity exceeding the federal threshold, an EIS is mandated. The need for an EIS on other disposal facilities id determined on a case-by-case basis. It is unlikely that small facilities will be proposed; therefore, an EIS will probably be mandated for all proposed facilities.</p> <p><b>1988 SONAR</b></p> <p>The substantive change proposed in the hazardous waste EIS categories is to expand coverage (in item c) of processing facilities to cover all processing facilities located in water-related sensitive areas. Presently, only commercial facilities are covered. The RGU for these categories, the PCA, believes there is no valid distinction to be made relative to potential for environmental impacts between commercial generator-operated facilities. Additionally, the cumbersome listing of types of water-related</p>	<p><b>FEDERAL</b></p> <p><b>Army Corp of Engineers</b> Section 404 Wetland Permit</p> <p><b>STATE</b></p> <p><b>MPCA</b> NPDES General Construction Stormwater permit NPDES Industrial Stormwater Permit Above Ground Storage Tank Permit Section 401 Water Quality Certificate Air Emissions Permit</p> <p><b>Minnesota Department Of Transportation</b> Access Permit</p> <p><b>DNR</b> Minnesota Natural Heritage Database Search Work with in Waters of the State Pemit</p> <p><b>Minnesota State Historical Preservation Office</b> Cultural Resources Review</p> <p><b>COUNTY</b> Conditional Use Permits Septic System Permit</p> <p><b>Watershed Districts</b> Watershed Permits</p> <p><b>CITY</b> Building Permit Conditional Use Permit Zoning Fire Department Review</p>	<p><b>Modify</b></p> <ul style="list-style-type: none"> <li>· Suggested language changes to reflect current permit language</li> <li>· Suggest rule change - work with DNR to add sediment cleanups at Superfund or other remediation program sites as exemptions to Subp. 27 (wetlands and public waters)</li> </ul> <p>Project information is provided to decision makers in multiple jurisdictions</p> <p><b>EIS</b> <b>No Changes</b></p>

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
	sensitive areas is proposed to be replaced by the new term "water-related land use management district."		

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
<p><b>Solid Waste</b></p> <p>4410.4300 subp. 17</p> <p>EAW Thresholds:</p> <ul style="list-style-type: none"> <li>A. Construction of a mixed municipal solid waste disposal facility for up to 100,000 cubic yards of waste fill per year</li> <li>B. Expansion by 25 percent or more of previous capacity of a mixed municipal solid waste disposal facility for up to 100,000 cubic yards of waste fill per year</li> <li>C. Construction or expansion of a mixed municipal solid waste transfer station for 300,000 or more cubic yards per year,</li> <li>D. Construction or expansion of a mixed municipal solid waste energy recovery facility or incinerator, or the utilization of an existing facility for the combustion of mixed municipal solid waste or refuse-derived fuel, with a capacity of 30 or more tons per day of input,</li> <li>E. Construction or expansion of a mixed municipal solid waste compost facility or a refuse-derived fuel production facility with a capacity of 50 or more tons per day of input</li> <li>F. Expansion by at least ten percent but less than 25 percent of previous capacity of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste fill per year,</li> <li>G. 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.</li> </ul> <p>4410.4400 subp. 13</p> <p>EIS Thresholds:</p> <ul style="list-style-type: none"> <li>A. Construction of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste fill per year,</li> </ul>	<p>1982 SONAR</p> <p>This category area is proposed because of the potential for significant impacts relating to ground and surface water contamination through the migration of leachate and because environmental review is needed to assist governmental units in adequately assessing resource recovery alternatives. Additional environmental concerns relate to methane gas generation, fugitive dust, emissions, odor and noise problems, transportation issues, aesthetic impacts, toxic air emissions and land use issues. This category area is extremely controversial.</p> <p><b>EAW</b></p> <p>A For new disposal facilities the issue of siting is of primary importance. Cost requirements of operation and transportation factors make small disposal facilities unlikely. The 100,000 cubic yard per year threshold coincides with state solid waste regulations. There are approximately 20 facilities in operation with a capacity of over 100,000 cubic yards per year. Smaller facilities are likely to be modified and are not subject to the same regulations as the large facilities. Environmental review is necessary for all new facilities; however, the decision on need for an EIS on a case -to-case basis is adequate for the small facilities. For expansions of existing facilities, siting is less of an issue; however, the 100,000 cubic yards per year threshold was utilized for an EIS to maintain consistency with state solid waste regulations and because of the potential for ground and surface water contamination from that amount of waste.</p> <p>B. The lesser EAW threshold is used for expansions that do not exceed 100,000 cubic yards per year and for very large facilities where the expansion exceeds that amount. A 25 percent cut off is used to allow small increases in capacity to accommodate minor changes in the configuration as may be necessary for final contour plans.</p> <p>C. The transfer facility category: Impacts associated with this type of facility are primarily transportation issues, noise, odor, aesthetics, rodent and pest problems, and land use issues. These problems are usually controversial because the facilities are typically located in populated areas. The cubic yard measure is used because transfer vehicles are measured in cubic yards and because existing state solid waste regulations utilize this measurement. The threshold of 300,000 cubic yards is proposed because only very large transfer stations are likely to require environmental review. Other facilities can be adequately regulated through the permit process. The experience of the PCA indicates 300,000 cubic yards is reasonable as a threshold.</p> <p>D. The resource recovery facility categories; Impacts associated with this type of facility are primarily air emissions, ash disposal, noise, odor, and transportation issues. A tons per day unit of measure is used because tons is the standard unit of measure for resource recovery and BTU's/ton is the standard unit of measure with relation to use of</p>	<p><b>Solid Waste Transfer Facilities</b></p> <p><b>MPCA</b></p> <p>Solid Waste Management Facility Permit            NPDES General Storm Water Permit for Industrial Activities            NPDES Storm Water Permit for Construction Activity            Metropolitan Area Policy Plan Review</p> <p><b>County</b></p> <p>Operating License            Conditional Use Permit            Septic Permit            Very Small Quantity Generator            Hazardous Waste License</p> <p><b>CITY</b></p> <p>License to Operate Waste Transfer Facility            Building Permit            Utility Permit            Conditional Use Permit            Zoning Amendment</p> <p><b>Watershed Districts</b></p> <p>Watershed Permit</p> <p><b>Compost Facilities</b></p> <p><b>MPCA</b></p> <p>Solid Waste Permit            Very small Quantity Generators            Hazardous Waste License            NPDES General Storm Water Permit for Industrial Activities            NPDES Storm Water Permit for Construction Activity</p> <p><b>COUNTY</b></p> <p>Conditional Use Permit</p>	<p><b>EAW and EIS</b></p> <p><b>Modify.</b></p> <ul style="list-style-type: none"> <li>• Category language should be changed to reflect current permitting process</li> <li>• Future review of landfill projects may be accomplished by means of an alternative environmental review or AUAR-like process.</li> </ul> <p><b>Eliminate</b></p> <ul style="list-style-type: none"> <li>• Transfer facilities should be reviewed for possible elimination.</li> </ul> <p><b>No change</b></p> <ul style="list-style-type: none"> <li>• The remainder of the subparts. The concerns expressed in the SONAR are still valid.</li> <li>• Project information is provided to decision makers in multiple jurisdiction</li> <li>• High level of public interest</li> </ul>

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
<p>B. Construction or expansion of a mixed municipal solid waste disposal facility in a water-related land use management district, or in an area characterized by soluble bedrock</p> <p>C. Construction or expansion of a mixed municipal solid waste energy recovery facility or incinerator, or the utilization of an existing facility for the combustion of mixed municipal solid waste or refuse-derived fuel, with a capacity of 250 or more tons per day of input,</p> <p>D. Construction or expansion of a mixed municipal solid waste compost facility or a refuse-derived fuel production facility with a capacity of 500 or more tons per day of input</p> <p>E. Expansion by 25 percent or more of previous capacity of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste fill per year</p>	<p>solid waste for energy production. The 100 tons per day threshold was used for the EAW because these facilities are likely to be modular units. Performance and construction standards for modular units are standardized; therefore, project specific review on a discretionary basis is adequate. One hundred tons per day corresponds to 10% of the major air emission threshold. Resource recovery facilities are likely to be located in heavily populated areas with air quality problems and are likely to have toxic air emissions. Therefore, environmental review at this threshold is reasonable.</p> <p><b>EIS</b></p> <p>A. For expansions of existing facilities, siting is less of an issue; however, the 100,000 cubic yards per year threshold was utilized for an EIS to maintain consistency with state solid waste regulations and because of the potential for ground and surface water contamination from that amount of waste.</p> <p>B. An all or none threshold was used for facilities in sensitive areas. These locations carry a high potential for ground and surface water pollution. PCA experience in dealing with existing facilities demonstrates that problems are likely and that an EIS is necessary to adequately assess the potential for problems in these locations.</p> <p>C. Facilities involving combustion of mixed municipal solid wastes, "energy recovery facilities" and combustion in other incinerators, are proposed to require mandatory EISs' at a threshold of 250 tons per day of input. Mandatory EISs would be required for mixed municipal solid waste compost facilities and refuse-derived fuel production facilities at the same threshold as in the present rules, i.e., 500 tons per day. The other types of resource recovery facilities, recycling centers and yard waste compost facilities, would no longer be subject to a mandatory EIS ,category.</p> <p>D. The 500 tons per day threshold was used for the EIS because this is approximately the level at which an incinerator would have to meet new source performance standards. Five hundred tons per day would yield approximately 50 tons per year of particulate emissions. This corresponds to approximately 50% of the major source threshold. However, these facilities are likely to be located in heavily populated areas and are likely to have additional toxic emissions; therefore, this more restrictive threshold is reasonable.</p> <p>Mandatory EISs would be required for mixed municipal solid waste compost facilities and refuse-derived fuel production facilities at the same threshold as in the present rules, i.e., 500 tons per day. The other types of resource recovery facilities, recycling centers and yard waste compost facilities, would no longer be subject to a mandatory EIS category.</p> <p>E. No specific language for this section.</p> <p><b>General Discussion</b></p> <p>The need for lower thresholds for projects involving the combustion of mixed municipal solid waste results from a better understanding of the air emissions of such facilities and</p>	<p>Building Permit <b>CITY</b></p> <p>Conditional Use Permit Building Permit <b>Landfills</b> <b>Corp of Engineers</b></p> <p>Section 404 General Permit <b>STATE</b> <b>MPCA</b></p> <p>Solid Waste Disposal Facility Permit NPDES Facility Stormwater Permit Certificate of Need Title V Air Permit NPDES Stormwater Permit for Industrial Activity <b>Metropolitan Control Commission</b> License for Leachate Disposal <b>Minnesota Historical Society</b></p> <p>Archeological Survey Construction Easements <b>Minnesota Historical Preservation Office</b> Concurrence on Findings of Cultural Resources Impacts <b>Minnesota Department Of Health</b> Monitoring Well Permits <b>COUNTY</b></p> <p>Wetland Conservation Act Approval Building Permit Conditional Use Permit Septic System Permit Transport License Solid Waste License <b>TOWNSHIP</b></p> <p>Conditional Use Permit <b>CITY</b></p> <p>Conditional Use Permit</p>	

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
	<p>the mechanisms of possible exposure to these emissions than was possessed in 1982. As indicated in Appendix 3, of 17 permits for such facilities considered by PCA, 14 were considered since 1982 and all of the EAWs and EISs have been done since then. In addition, the scope of nationally available information about the potential impacts of burning solid wastes has also greatly expanded in recent years. One consequence of this increased information base is a recognition by the State that potentially severe impacts may occur from facilities smaller than the 500 ton per day threshold adopted in 1982.</p> <p>According to a recent U.S. Environmental Protection Agency study (Municipal waste Combustion study, Emission Data Base for Municipal Waste Combustors, U. S. EPA, EPA/530-SW-8 7-021 , June, 1987 ) mixed municipal solid waste, incinerators emit toxic Chemicals including dioxins/furans, PCB' s , PAH's, arsenic, beryllium, cadmium, chromium, lead, mercury, and nickel. The toxic properties of these chemicals can cause acute or chronic poisoning ("systemic toxicity"), increased rates of mutations and birth defects, reproductive problems, immune system effects, and cancer (see, for example- Winona County Incinerator EIS, Technical Work Paper Hazard Identification, ICF/Clement Associates, 1987).</p> <p>The risks to human health posed by these emissions are dependent on many factors in addition to the capacity of the facility: facility design, pollution control equipment, operational parameters, composition of the fuel, facility location, local meteorology, surrounding terrain, and the types of receptors and land uses in the area. Depending' on the combination of specific factors for any given project, there may be considerable variation in environmental and health impacts for a facility of a given capacity. For example, the proposed Winona County incinerator was found, to have a projected health risk in excess of the Minnesota Dept. of Health guideline despite it relatively small size (150 tons per day) and state-of-the-art pollution control equipment because of potential exposure to humans through the consumption of contaminated fish. This was due to the proposed location near the Mississippi River, in an area noted as a fisheries resource (Winona County Resource Recovery Facility Draft (EIS, PCA, 1988.) This and other health risk assessments for resource recovery facilities have frequently indicated that human exposure to toxic emissions through the aquatic food chain is the exposure route of greatest significance (Anoka County RDF Facility EIS, MPCA, 1986; Hennepin Energy Recovery corporation Permit, MPCA, 1987; Summary of Risk Assessment and Proposed Risk Management Actions, Midland Michigan, U.S. EPA, Office of Public Affairs, Region 5, April 1988).</p> <p>The threshold proposed in item C for energy recovery facilities and incinerators has been a subject of considerable controversy between the PCA, local units of government interested in incineration as an alternative to landfilling of mixed municipal solid waste, the solid waste processing industry, and environmental groups. The 250 ton per day threshold represents a compromise between competing positions negotiated at two meetings of an ad hoc work group convened by the EQB to discuss the original PCA proposal to reduce the threshold to 100 tons per day.</p> <p>The 250 ton figure is the smallest-sized facility which is generally accepted to automatically have the potential for significant environmental effects. The work group concluded that while some -- perhaps many smaller facilities might warrant an EIS because if individual circumstances, it was not reasonable to set the mandatory</p>	<p><b>INCINERATORS</b>  <b>FEDERAL</b>  <b>U.S. Fish and Wildlife Service</b>    Threatened and Endangered Species Review  <b>Federal Aviation Administration</b>    FAA Notification Form 7460-1  <b>STATE</b>  <b>MPCA</b>    Air Emissions Permit  NPDES Stormwater Construction permit  NPDES Industrial Stormwater Permit  <b>Minnesota State Historical Preservation Office</b>  Cultural Resources Review  Minnesota Natural Heritage Database Review  <b>DNR</b>    Water Appropriation Permit  <b>COUNTY</b>    Conditional Use Permit  <b>CITY</b>    Conditional Use Permit  Building Permit and Zoning Certificate</p>	



Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
	<p>threshold below 250 tons per day. It was agreed by the work group that all energy recovery and incineration project EAWs in the future should include a health risk assessment, and the results of that assessment, as well as other EAW information, should form the basis for a case-by-case decision on the need for an EIS for facilities less than 250 tons per day. The EAW procedure will allow for consideration of the individual circumstances which largely dictate the magnitude of the potential impacts of each project, circumstances which it is not possible with present knowledge to specify in the rules themselves.</p>		

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
<p><b><u>Wastewater Systems</u></b></p> <p>4410.4300 subp. 18</p> <p>EAW Thresholds:</p> <p>A. Expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of any part of that system by 1,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with a capacity less than 20,000,000 gallons per day or for expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of any part of that system by 2,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with the capacity of 20,000,000 gallons or greater,</p> <p>B. Expansion or reconstruction of an existing municipal or domestic wastewater treatment facility which results in an increase by 50 percent or more and by at least 200,000 gallons per day of its average wet weather design flow capacity, or construction of a new municipal or domestic wastewater treatment facility with an average wet weather design flow capacity of 200,000 gallons per day or more,</p> <p>C. Expansion or reconstruction of an existing industrial process wastewater treatment facility which increases its design flow capacity by 50 percent or more and by at least 200,000 gallons per day or more, or construction of a new industrial process wastewater treatment facility with a design flow capacity of 200,000 gallons per day or more, 5,000,000 gallons per month or more, or 20,000,000</p>	<p><b>1982 Sonar</b></p> <p>This category area is proposed because of problems associated with treatment facilities including ground and surface water pollution due to effluent discharges and sludge and ash disposal, and air pollution from sludge incineration. Problems associated with sewer systems include erosion during construction and maintenance, elimination or degradation of wetland habitats and adjacent water resources, and ground and surface water pollution resulting from seepage from sewer lines. Additional concerns are generated because of increased potential for secondary development fostered by the installation of a new system.</p> <p>A. A sewage system may be viewed as consisting of the treatment facility and the sewer system or conveyance system to that facility. Sewage systems were formerly a major source of concern relating to water pollution; however, much progress has been made in lessening impacts pursuant to the federal Clean Water Act. For projects receiving federal funds pursuant to the Clean Water Act, limited environmental review takes place. For facilities not receiving federal funds no federal environmental review is required. The threshold is proposed to exclude small new facilities and minor additions to existing sewage systems. The threshold for new systems was set at a level approximately equivalent to the required size of a facility to service 300 people. The threshold for expansions was set at a level approximately equal to the expansion of services for 500 people. A second threshold for expansions was set for 50% because the base expansion threshold would potentially exclude small facility expansions for 150 to 500 people. Expansions of that relative magnitude are likely to generate significant local impacts such that environmental review is reasonable.</p> <p><b>1988 Sonar</b></p> <p>The threshold for collection system expansions in item A would be raised for cities of all sizes, including those which discharge to systems operated by Metropolitan Council Wastewater Services (MCWS) or the Western Lake Superior Sanitary District (WLSSD). Presently, EAWs are required for sewer projects with design flows of 500,000 gallons per day within 1st and 2nd class cities or the MCWS or WLSSD systems, 100,000</p>	<p><u>SEWER COLLECTION SYSTEMS</u></p> <p>FEDERAL  <b>U.S. Corp of Engineers</b>            Section 10 Permit for activities affecting navigable waters in the U.S.            Section 404 Letter of Permission            STATE  <b>MPCA</b></p> <p>Sewer Extension Permit            NPDES General Stormwater Construction Permit            Section 401 Water Quality Certificate  <b>DNR</b></p> <p>Water Appropriation Permit            Minnesota Natural Heritage Database Review            Utility Crossing License            Work Within Public Waters Permit  <b>MnDOT</b>            Utility Permit on Trunk Highway Right-Of-Way  <b>Minnesota Department of Health</b>            Watermain Plan Approval</p>	<p><b>Modify</b></p> <p>Reviewed for possible change in requirements for expansion of WWTF.</p> <p>Reviewed for possible addition to the category for the following items.</p> <p>The following wastewater is not currently being addressed</p> <p>Utility wastewater (cooling tower blowdown, reject, etc.) NOT associated with an industrial wastewater classified as process wastewater under the federal regulations should be considered for review</p> <ul style="list-style-type: none"> <li>Waste streams resulting from the removal of pollutants or "impurities" from water being used for either industrial or drinking water should be considered for review.</li> <li>Water Treatment Plant Residual (backwash, reject, etc.) from a domestic water treatment plant should be considered for review.</li> </ul> <p>Project information is provided to decision makers in multiple jurisdictions</p>

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
<p>gallons per year or more, This category does not apply to industrial process wastewater treatment facilities that discharge to a publicly-owned treatment works or to a tailings basin reviewed pursuant to subpart 11, item B.</p>	<p>gpd for 3rd class cities, and 50,000 gpd for 4th class cities and unincorporated areas. Over the most recent three-year period, the MPCA has prepared EAWs for approximately 15 projects per year under the sewage system category, more than half of which were sewer extensions. This level of review is believed to be unjustified because the majority of the sewer extensions are relatively minor expansions of much larger systems, and because the increases in wastewater flow accompanying sewer extensions usually occur gradually over a period of many years.</p> <p>Furthermore, problems which have been cited as associated with sewer systems, i.e., construction erosion, the degradation or loss of wetlands, seepage from sewer lines, and the potential for secondary development, are addressed by permit programs for runoff from construction sites and the preservation of wetlands, and by the application of minimum standards for sewer construction and maintenance. The potential for impacts from secondary development will also continue to be addressed through state and local requirements for environmental review and permitting.</p> <p>B. In item B, a clarification is proposed stating that an EAW is not mandatory for a domestic wastewater treatment expansion unless it increases the design flow capacity of the facility by at least 50\ AND it is an increase of at least 50,000 gallons per day. This is consistent with past and present policy of the MPCA that the preparation of EAWs should not be mandatory for projects that involve relatively minor expansions of existing, small treatment facilities.</p> <p>C. Regarding new item C, the rules currently provide for mandatory EAW categories for certain types of industrial facilities which may involve the generation of industrial wastewater. Examples are petroleum refineries, fuel conversion facilities, mineral mining and processing, and pulp and paper processing. These and other industrial project may also require environmental review because of their potential air emissions (under subpart 15). However, because there is currently no EAW category pertaining directly to the generation of industrial wastewater, some major industrial projects may not be subject to mandatory review. Examples would be food processing and the manufacture of wood products other than pulp or paper.</p> <p>The proposed new category at item C would establish a threshold for the construction of new or expansion of existing industrial process wastewater treatment facilities. Process wastewater is not intended to include noncontact cooling water, storm water runoff, or animal feedlot runoff. The proposed threshold is based on existing PCA nondegradation regulations for new or expanded discharges. Projects of this magnitude are likely to generate significant local impacts. This category would not apply to industries which discharge to publicly owned treatment facilities. Such discharges are subject to the terms and conditions of preexisting discharge permits and are also regulated by local jurisdictions under existing programs and subject to state and federal oversight. It also would not apply to tailings basins which are covered by the mandatory metallic mineral mining category at subpart 11, item B; this exclusion is stated in the proposed amendment to eliminate the potential for future questions over which agency, MPCA or DNR, should be the RGU for review of such facilities.</p>	<p>Water Extension Permit <b>Metropolitan Council</b></p> <p>Connection Permit <b>State Historical Preservation Office</b> Concurrence on Findings of Cultural Resources Impacts</p> <p><b>COUNTY</b></p> <p>Highway Access/Entrance Permit <b>Watershed District</b></p> <p>Project Approval Watershed Permit Application for Minnesota Wetland</p> <p>conservation Act Exemption <b>CITY</b></p> <p>Conditional Use Permit Street and Utility Plan Approval <b>WASTEWATER TREATMENT FACILITY PERMITS</b></p> <p><b>FEDERAL</b> <b>U.S. Corp of Engineers</b></p> <p>Section 404 Permt Wastewater Infrastructure Funding Program Outfall Permits <b>STATE</b> <b>MPCA</b></p> <p>WWTF Plans and Specifications Approval SDS Permit for land application of treated Wastewater NPDES General Stormwater Construction Permit Sanitary Sewer Extension Permit NPDES/SDS Surface Water</p>	

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
		Discharge Permit NPDES Industrial Stormwater discharge Permit Air Quality Permit for back up generators Non-degradation to All Waters Review <b>DNR</b>  Water Appropriation Permit License to Cross Public Lands and Waters Natural Heritage and Nongame Database Review Outfall Permits <b>Minnesota Department of Health</b> Well Abandonment Permit State Historic Preservation Office Concurrence on Findings of Cultural Resource Impacts <b>Public Facilities Authority</b>  Funding Application <b>Board of Water and Soil Resources</b> Wetland Conservation Act Permits <b>COUNTY</b>  Certificate of Wetland Conservation Act Exemption Conditional Use Permit Utility Permit Building Permits Right-Of-Way Permit Conditional Use Permit <b>CITY</b>  Building Permit	

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
	(1982 SONAR	STATE MPCA	No Change - Legislative changes have been made to this mandatory category over

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
<p><b>Animal Feedlots</b></p> <p>4410.4300 subp. 29</p> <p>A. Construction of an animal feedlot facility with a capacity of 1,000 animal units or more or the expansion of an existing facility by 1,000 animal units or more, provided the facility is not in an area listed in item B, PCA or county.</p> <p>B. Construction of an animal feedlot facility of more than 500 animal units or expansion of an existing animal feedlot facility by more than 500 animal units if the facility is located wholly or partially in any of the following sensitive locations: shoreland; a delineated flood plain, except that in the flood plain of the Red River of the North the sensitive area includes only land within 1,000 feet of the ordinary high water mark; a state or federally designated wild and scenic river district; the Minnesota River Project Riverbend area; the Mississippi headwaters area; or an area within a drinking water supply management 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, PCA or county.</p> <p>Exemptions</p> <p>Animal feedlots. The activities in items A to D are exempt.</p> <p>A. Construction of an animal feedlot facility with a capacity of less than 1,000 animal units or the expansion of an existing animal feedlot facility to a total cumulative capacity of less than 1,000 animal units, if all of the following apply:            (1) the feedlot is not in an environmentally sensitive location listed in part 4410.4300, subpart 29, item B;            (2) the application for the animal feedlot permit includes a written commitment by the proposer to design, construct, and operate the facility in full compliance with PCA feedlot rules; and            (3) the county board holds a public meeting for citizen input at least ten business days prior to the PCA or county issuing a feedlot permit for the facility, unless another public meeting for citizen input has been held with regard to the feedlot facility to be permitted.</p> <p>B. The construction of an animal feedlot facility of less than 300 animal units or the expansion of an existing facility by less than 100 animal units, no part of either of which is located within a shoreland area; delineated flood plain; state or federally designated wild and scenic rivers district; the Minnesota River Project Riverbend area; the Mississippi headwaters area; an area within a drinking water supply</p>	<p>This category was proposed because of the potential for significant environmental impacts relating to ground and surface water quality, odors, and local land use issues. This type of activity is likely to be controversial if the location is in a sensitive area or near residential or recreational developments. Specific categories proposed within this category area include:</p> <p>The current rules contain no EAW or exemption categories relating to the animal feedlot category area. Although the current rules do not contain a mandatory EAW category relating to these facilities, several citizen petitions were submitted on animal feedlot facilities pursuant to the current rules. Facilities petitioned were of a smaller size than the proposed threshold but the facilities were located in areas of soluble bedrock. The proposed threshold corresponds to the threshold established in the Clean Water Act. Facilities of this size must be evaluated to determine if a national Pollutant Discharge Elimination System (NPDES) permit is required. The alternative of requiring an EAW only for facilities located within a shoreland area, delineated flood plain area or area with soluble bedrock was considered but rejected on the basis of local government comments indicating that activities of this scale are very controversial and should be noticed to the public.</p> <p>Exemptions</p> <p>The exemption category is proposed because projects of this size are not likely to result in significant impacts. Projects of this type have the potential to generate petitions based more on "neighborhood disputes" than true impacts. This threshold is a reasonable level to prevent abuse of the environmental review process in this manner.</p>	<p>NPDES/SDS Feedlot Permit            NPDES Construction Stormwater Permit  <b>DNR</b></p> <p>Water Appropriations Permit  <b>Board of Animal Health</b> Notification to Compost Dairy Cattle  <b>Fire Marshall</b></p> <p>Plan Review  <b>COUNTY</b>            Conditional Use Permit            Building Permit  <b>Watershed District</b></p> <p>Discharge to Surface Waters  <b>TOWNSHIP</b></p> <p>Conditional Use Permit</p>	<p>the past 14 years. No additional changes appear to be necessary or warranted at this time.</p> <p>Project information is provided to decision makers in multiple jurisdictions</p> <p>High level of public interest.</p>

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
<p>management area designated under chapter 4720 where the aquifer is identified in the wellhead protection plan as vulnerable to contamination; or 1,000 feet of a known sinkhole, cave, resurgent spring, disappearing spring, Karst window, blind valley, or dry valley.</p> <p>C. The construction or expansion of an animal feedlot facility with a resulting capacity of less than 50 animal units regardless of location.</p> <p>D. The modification without expansion of capacity of any feedlot of no more than 300 animal units if the modification is necessary to secure a Minnesota feedlot permit.</p>			



# MINNESOTA

## ENVIRONMENTAL QUALITY BOARD

### Environmental Review – 2017 Survey Results Debrief

#### Overview

The Environmental Quality Board is responsible for monitoring the effectiveness of Environmental Review, taking measures to improve its effectiveness, and providing assistance to all parties involved. To that end, EQB staff have been collecting data to better understand trends and identify areas for program improvement. The results of EQB staff data collection are an important first step in understanding environmental review being completed around the state. 2017 data collection consisted of Project Proposers and Responsible Governmental Units (RGUs), the results of which are included in this report. 2017 data collection also included citizen petition representatives, however, the low distribution and response rate do not warrant ample information for a review at this time. 2018 data collection includes a Citizen Survey.

#### Purpose and Report Outline

The survey is broken into five sections, including demographics, each was focused on a different aspect of the ER process. The report is similarly broken into five sections, preceded by a Summary:

1. **2017 Survey Results Summary**
2. **Survey Demographics**
3. **General Environmental Review Process: Consultants, Timeliness and Cost**
4. **Environmental Review Effectiveness**
5. **Environmental Review Outcomes**
6. **EQB Technical Assistance**

#### I. **2017 Survey Results – Summary**

In 2017, 89 surveys were distributed to RGUs and 59 were distributed to project proposers upon completion of an Environmental Review (ER) process such as a Citizen Petition, Environmental Assessment Worksheet (EAW), Environmental Impact Statement (EIS), or Alternative Urban Areawide Review (AUAR). Upon closing the survey at the end of December 2017, RGUs had submitted 45 complete responses for a 51% response rate. Project proposers had submitted 24 completed surveys for a response rate of 41%. The survey focused on timeliness and cost of the ER process, perceptions of the effectiveness and outcomes of ER, and the quality of technical assistance provided by the EQB.

The following pages present a high-level summary of the results from the RGU surveys. While this report is fairly comprehensive, it does not include every piece of data collected. Instead, it presents the purpose of each section, followed by results that EQB Staff found to be the most surprising, informative, and useful. As you review the results below, we also ask that you keep in mind the following discussion questions, as they will guide the conversation at the meeting on April 18<sup>th</sup>:

#### **Survey Results Discussion Questions:**

- Is there anything surprising?
- How should EQB staff prioritize program improvements and data collection?
- Is there additional information we should be gathering?
- Are there areas that EQB should focus on next?
- What kind of program improvement initiatives can we implement based on this information?

## II. Survey Demographics

The majority of Monitor submissions (Figure 1, n=122) received in 2017 were for the EAW process (98, 80%), followed by AUARs (15, 12%), Petitions (6, 5%), and finally EISs (3, 3%). The RGU (Figure 3, n=45) and project proposer (Figure 4, n=24) samples reflect the submissions in that the majority of respondents (82% and 87%, respectively) had completed EAWs. EISs were not represented in the RGU sample. Neither AUARs nor EISs were represented in the project proposer sample. In terms of governmental unit type, the RGU sample (Figure 5, n=45) was fairly representative of the Monitor submissions (Figure 2, n=122), as was the proposer sample (Figure 6, n=23).

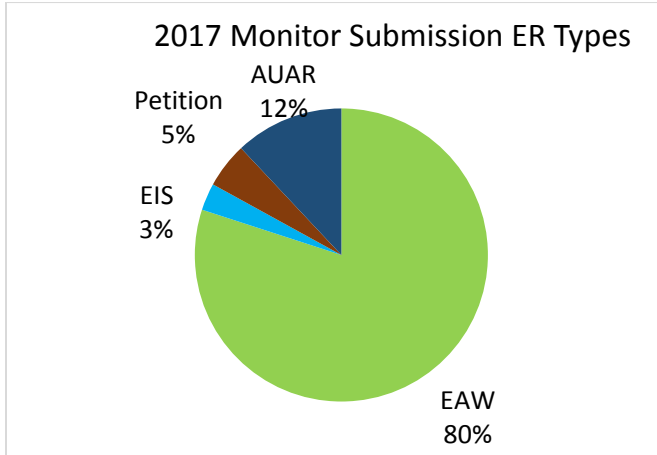


Figure 1

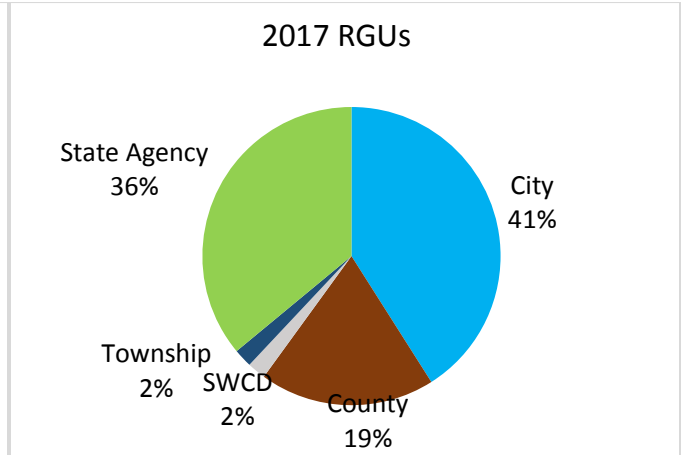


Figure 2

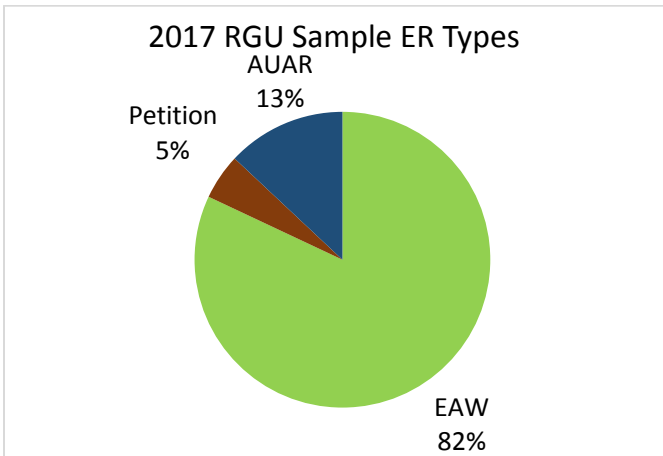


Figure 3

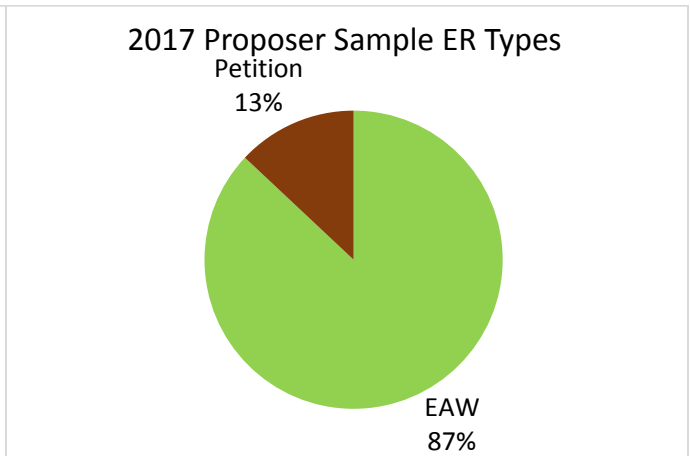


Figure 4

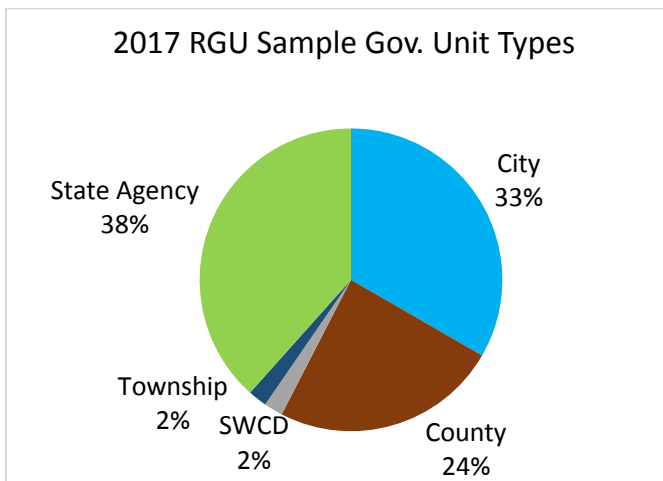


Figure 5

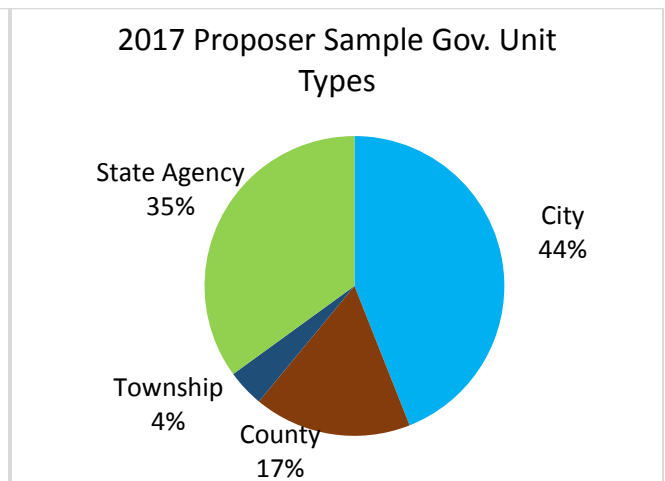


Figure 6

### III. The Environmental Review Process: Consultants, Timeliness and Cost

A key component of the survey was to gather quantitative data on the ER processes. This includes data on the staff time and cost required to complete an ER process, as well as data on the timeliness of the preparation of the ER document. This data is intended to better understand timeliness and cost concerns that have been raised by policy makers. For purpose of the survey and reporting the survey results, “ER process” includes the preparation and review of the ER document(s), the public comment period, public meetings, response to comments, and any other components required to complete the ER process for the project identified above. The number of respondents for each question may differ between questions as not all questions were mandatory.

*Did the (project proposer or RGU) hire a consultant to assist with the ER process?*

As the EQB looks to update guidance documents, it is important to know who is completing the environmental review process in order to better design the guidance documents. **Most project proposers (76%, n=21; Figure 7) and RGUs (53%, n=43, Figure 8) indicated that they hired a consultant to assist with the ER process.** Of the RGUs, three-quarters of LGU respondents (67%, n=27) and one-quarter of state agency respondents (25%, n=16) reported consultant use.

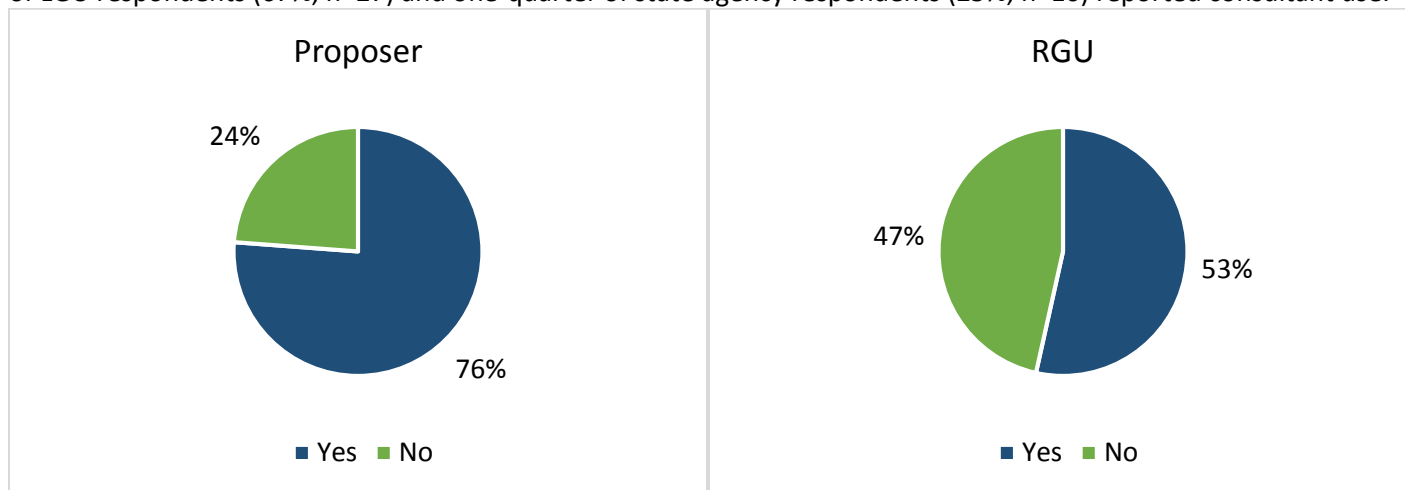


Figure 7

Figure 8

*Did the (project proposer or RGU) track the total amount of staff time required to complete the ER process for the project?*

This information can help inform EQB Staff on the relative time required to complete the entire environmental review process for different types of projects. **Most project proposers (71%, n=21; Figure 9) and RGU respondents, (72%, n=43; Figure 10) are not tracking staff time.** Of those who tracked and provided the staff time required, the average for proposers (n=4) was 70 hours, for RGUs (n=10) it was 62 hours.

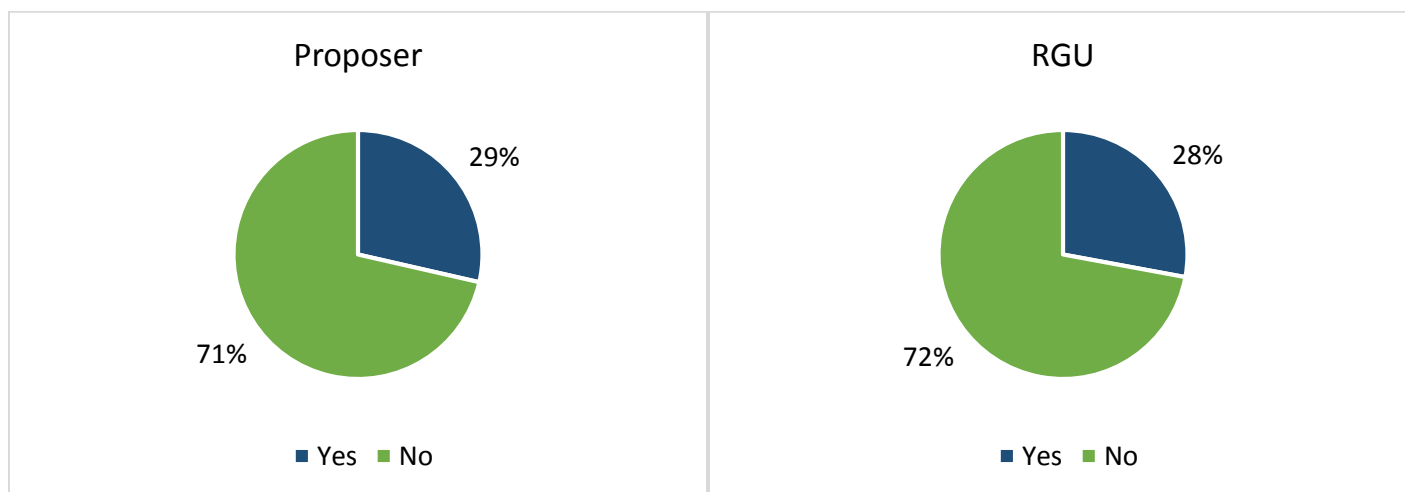


Figure 9

Figure 10



Did the (project proposer or RGU) track the total costs required to complete the ER process for the project?

This information allows EQB to gain a better understanding of the costs to RGUs and project proposers to complete the ER process. **Most project proposers (67%, n=21; Figure 11) are tracking cost information, but most RGUs (84%, n=43; Figure 12) are not.** The average cost provided for project proposers (n=12) was \$103,473, with a range of \$12K-\$550K. For RGUs (n=4) the average cost was \$35,960, with a range of \$200 – \$75K. It is worth noting both the small sample size for this question and the large range reported, especially from RGU respondents. The key takeaway from this data is that additional guidance is needed on how to report cost information, and a larger sample size is needed to make any definitive statement.

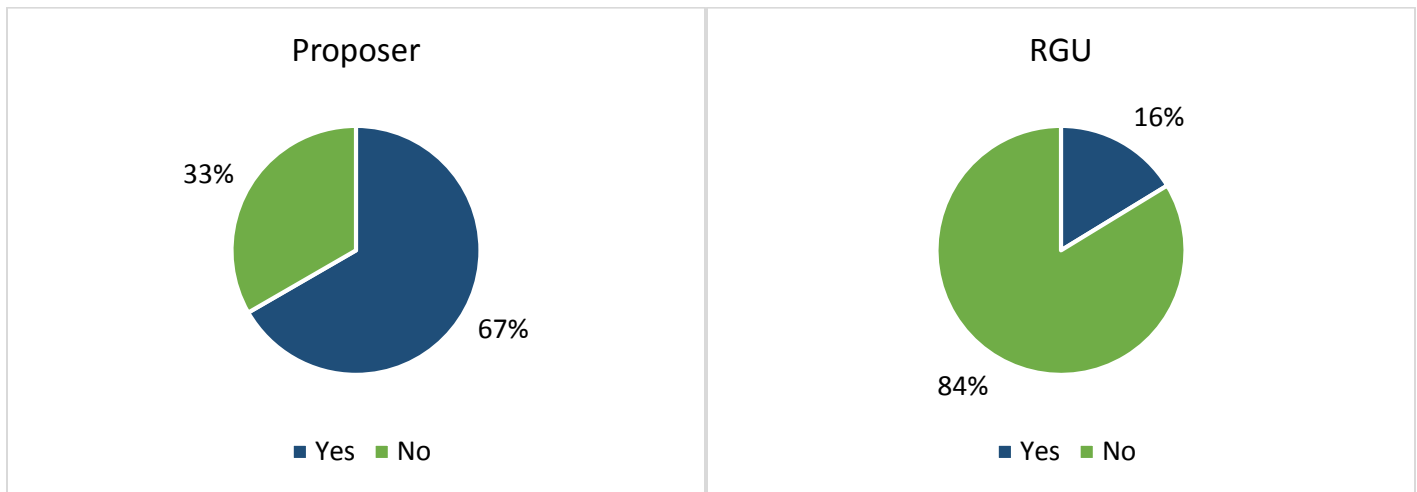


Figure 11

Figure 12

### Timeliness of the Environmental Review Process

EQB Staff are able to track the timeliness of the environmental review process upon publication of the ER documents in the *EQB Monitor*. However, this length of time only represents a portion of the process and fails to account for the time required to prepare the document for distribution. The RGU survey included detailed questions designed to gather information on the ER document preparation process timelines for EAWs and EISs. No respondents answered timeliness questions focused on EISs and few respondents (n=2) were able to provide pre-data submittal dates for EAWs. **RGU respondents reported an average of 106 days (n=18) from the time the project proposer first submitted data for the EAW to the time that the RGU distributed the draft EAW** (Figure 13). Responses ranged from 0 to 554 days. Of those respondents, local governmental units reported an average of 29 days with a range of 0-82 days (n=9). State agencies reported an average of 183 days and a range of 56-554 days (n=9). **EQB Staff track the time from EAW distribution to the EIS Need Decision, which is on average 95 days.** Of the RGUs, state agencies had an average of 113 days, and local governmental units averaged 84 days. The difference in timeliness averages is potentially due to the mandatory categories each RGU is responsible for, the complexity of which can vary widely between local units of government and state agencies.

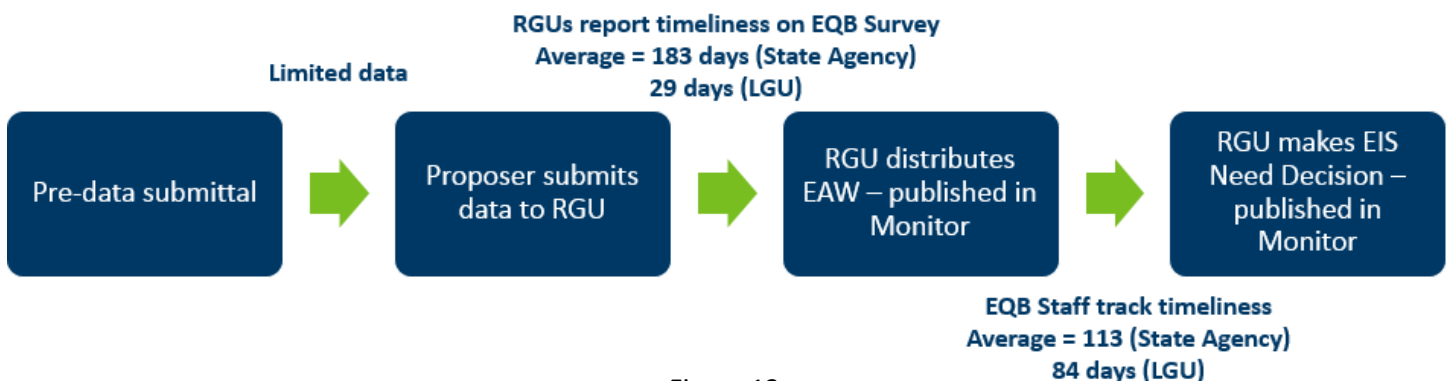


Figure 13  
SONAR ATTACHEMENT 2

Project proposers were not asked to report actual timeliness. They were asked about their experience compared to their expectations. **Two-thirds (67%, n=21) reported the entire ER process took more time than expected.** The remainder (33%) said the time required met their expectations. When asked which phases took more time than expected, most (79%, n=18) reported the EAW data submittal and prep phase took longer than expected. About one-third (36%) said it was the EIS ND, and the remainder (14%) said Monitor publication and comment period.

#### IV. Perceptions of Effectiveness Environmental Review

According to Minnesota Rules 4410.0400, it is the responsibility of the EQB to monitor the effectiveness of ER, and take measure to improve the effectiveness. Before taking steps to improve the effectiveness, EQB must first collect baseline data to establish how well the process is currently working. Consequently, a number of the survey questions asked RGUs and project proposers to share their perceptions of the effectiveness of various components of the ER process. Please note overlapping questions are not intended as a comparison between RGU and proposer perceptions, but to gauge each of their perceptions independently.

##### *Perceptions of Environmental Review Effectiveness*

The only effectiveness question answered by both project proposers and RGUs was whether the ER process was useful to the project proposer. **When asked if the ER process provided usable information to the project proposer regarding the proposed project’s potential environmental effects, about three-quarters (77%, n=43; Figure 14) of RGU respondents, and almost half of project proposer respondents (48%, n=21) agreed,** while 12% of RGUs and 24% of proposers, were neutral. The remainder of RGUS (12%) and project proposers (29%) disagreed.

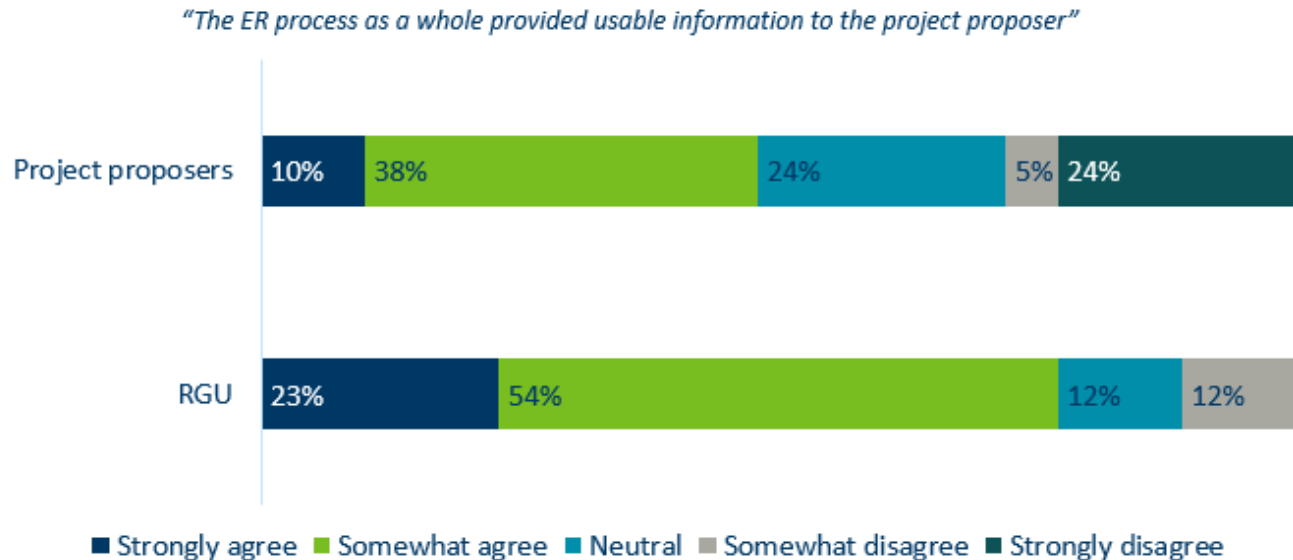


Figure 14

**RGUs conveyed predominately positive perceptions of the ER process when answering the remaining questions on ER process effectiveness.** Almost three-quarters of RGUs reported the ER process was useful in identifying the proposed project’s potential environmental effects that would not have otherwise been identified (72%, n=43; Figure 15). The remainder were split equally between neutral (14%) and disagree (14%). When asked whether the ER process allowed for public participation that would not otherwise have occurred, the majority (63%, n=43; Figure 15) agreed. Few responded as neutral (7%), and close to one-third disagreed (30%). Finally, the majority of RGUs (59%, n=43; Figure 15) reported that the comments received during the ER process provided usable information. Close to one-third (28%) were neutral, and the remainder (14%) disagreed.

*“The ER process as a whole was useful in identifying the proposed project’s potential environmental effects that would not have otherwise been identified by required governmental approvals, including permits”*



*“The ER process allowed for public participation that would not have otherwise occurred for the proposed project through required governmental approvals, including permits”*



*“The comments as a whole received during the ER process provided usable information regarding the proposed project’s potential environmental effects”*



■ Strongly agree ■ Somewhat agree ■ Neutral ■ Somewhat disagree ■ Strongly disagree

Figure 15

RGUs were also asked to assess whether the ER process provided usable information to other stakeholder groups (governmental units and citizens) involved in the ER process. **RGUs largely indicated that the ER process did provide usable information to each party.** A majority of RGUs agreed the ER process provides usable information to citizens (77%, n=43; Figure 16) and to RGUs (82%). More RGUs were neutral on whether the process provided usable information to citizens (21%) than to RGUs (7%). The remainder disagreed that the process provided information to citizens (2%) and RGUs (12%).

*“The ER process as a whole provided usable information to citizens”*



*“The ER process as a whole provided usable information RGUs”*



■ Strongly Agree ■ Somewhat agree ■ Neutral ■ Somewhat disagree ■ Strongly disagree

Figure 16

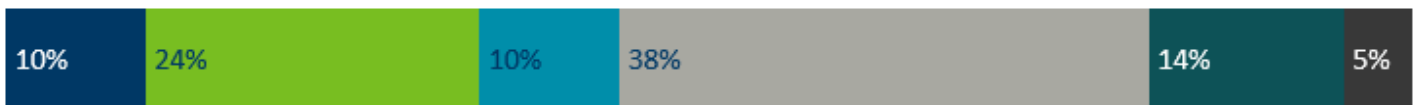
Project proposers were asked a slightly different set of questions: whether they found the opportunity for public engagement to be useful and whether the ER process was fair. **When asked whether they found the ER process as a whole to be fair, a majority of project proposers agreed (52%, n=21; Figure 17).** Almost one-third (29%) were neutral, and about one-fifth disagreed (19%).

**When asked whether they found the opportunity for public engagement to be a useful part of the ER process, the majority of project proposers (52%, n=21; Figure 17) disagreed.** One-third (34%) agreed, and the remainder (15%) were neutral or didn't know.

*"The ER process as a whole was fair"*



*"I found the opportunity for public engagement to be a useful part of the ER process"*



■ Strongly agree ■ Somewhat agree ■ Neutral ■ Somewhat disagree ■ Strongly disagree ■ Don't know

Figure 17

## V. Perceptions of Environmental Review Outcomes

The survey also included questions focused on the perceived outcomes of the ER process. Specifically, the survey asked about the mitigation measures identified exclusively through the ER process and the likelihood that these measures would be included in applicable permits. This data allows us to better understand how the ER program impacts environmental outcomes of a project.

**Project proposers and RGUs were both split on whether the ER process changed the design of the proposed project to reduce the potential negative environmental effects**, though they both lean towards disagreement with the statement. Almost half of RGUs (42%, n=43; Figure 18) and project proposers (47%, n=21; Figure 18) disagreed. The remainder of the RGUs were split between neutral (33%) and agree (25%), as were the remainder of project proposers (24% and 29%, respectively).

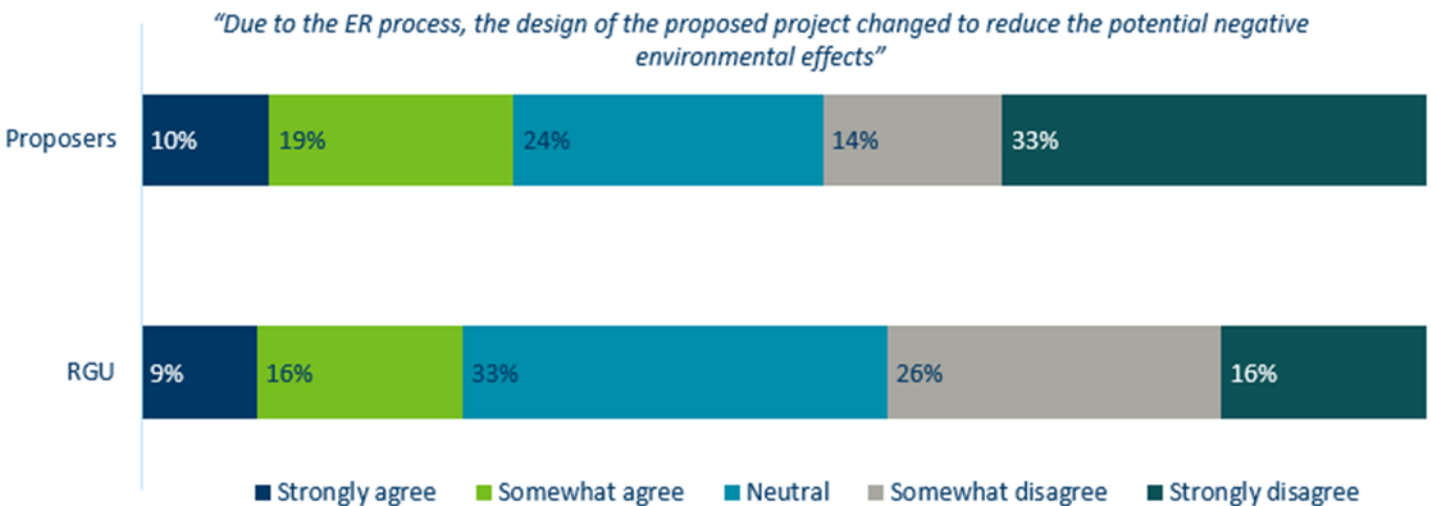
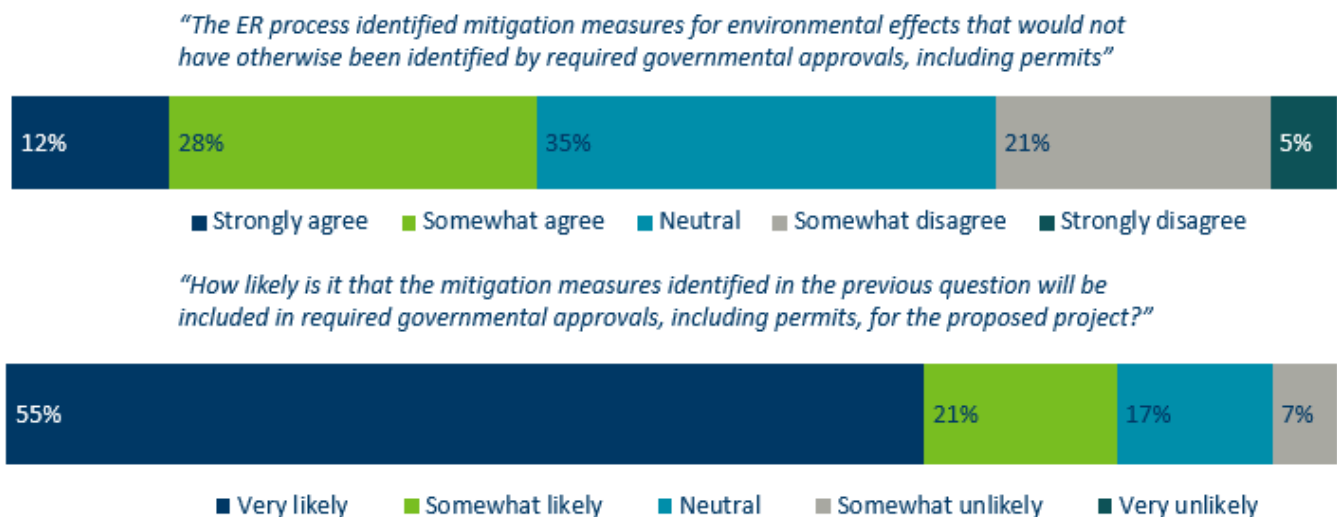


Figure 18

**RGUs were also split on whether the ER process identified mitigation measures for environmental effects that would not have otherwise been identified by required governmental approvals.** They leaned slightly towards agreement with the statement (40%, n=43; Figure 19), about one-third (35%) responded as neutral, and about one-quarter (26%) disagreed. **By contrast, RGUs were relatively clear on whether the mitigation measures identified would be included in required governmental approvals, including permits, for the proposed project. Over three-quarters (76%, n=43; Figure 19) reported it was very or somewhat likely the mitigation measures would be included in approvals.** The remainder leaned towards neutral (17%), with few disagreeing (7%).



**Most project proposers indicated they were agreeable towards implementing mitigation measures.** Over half of project proposers (62%, n=21; Figure 20) agreed that they would voluntarily implement the mitigation measures identified through the ER process that aren't required by permits. About one-third (29%) were neutral or didn't know, and the remainder (10%) disagreed. **Over half of project proposers (57%, n=21; Figure 20) also agreed that if implemented the mitigation measures identified would reduce potential negative environmental effects of the proposed project.** Again, about one-third (29%) were neutral, and the remainder (15%) disagreed. **Project proposers were split on whether the ER process identified useful mitigation measures for potential environmental effects resulting from the proposed project,** with equal numbers agreeing (38%, n=21; Figure 20) and disagreeing (38%). The remainder (24%) responded as neutral.

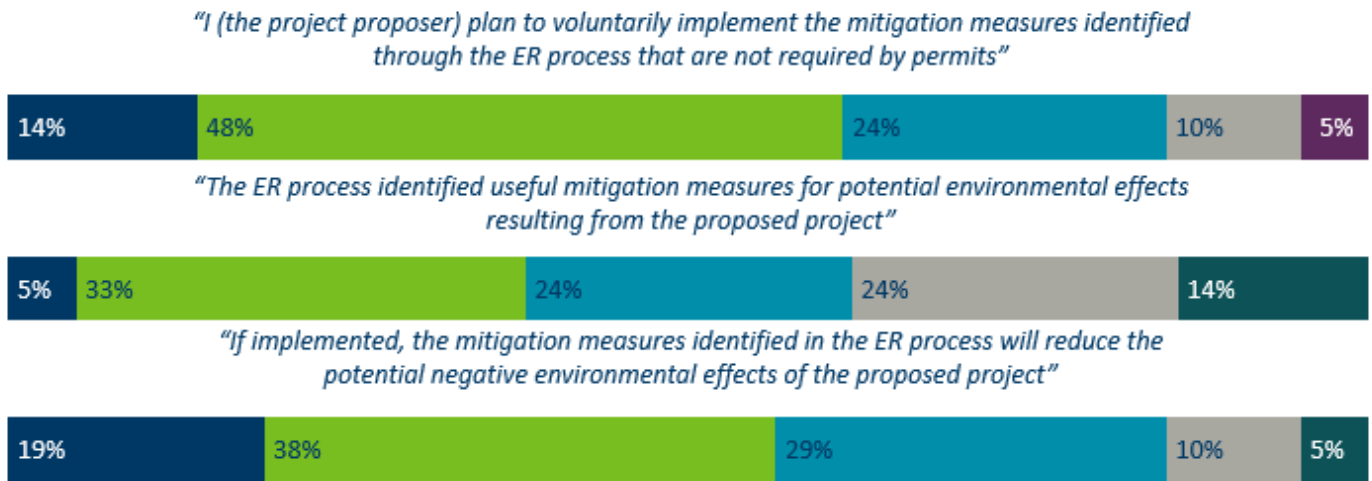


Figure 20

Most project proposers reported the ER process changed the design of the project. Just over half of respondents indicated the project design changed either significantly or somewhat (5% and 48%, respectively, n=21; Figure 21). One-third (33%) reported the project design did not change and the remainder (14%) did not know.

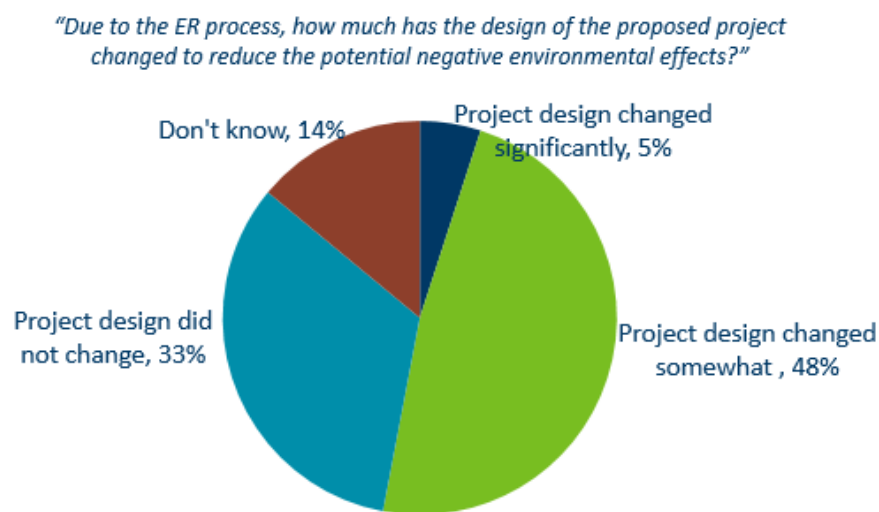


Figure 21

## VI. Perceptions of Environmental Review Outcomes

Finally, the intent of the last section was to collect data on how well the EQB is providing technical assistance to RGUs and project proposers, as well as identify opportunities for future outreach and assistance. This will help EQB Staff understand areas for potential improvement in our current technical assistance resources, and provide guidance on which resources we could provide in the future to benefit RGUs.

First, RGUs and project proposers were asked about their level of satisfaction with EQB resources. **The majority of RGU respondents report being satisfied with EQB resources (>50% on all items, n=30-41; Figure 22).** Project proposer respondents reported slightly lower levels of satisfaction across resources (35-56%, n=16-23; Figure 23).

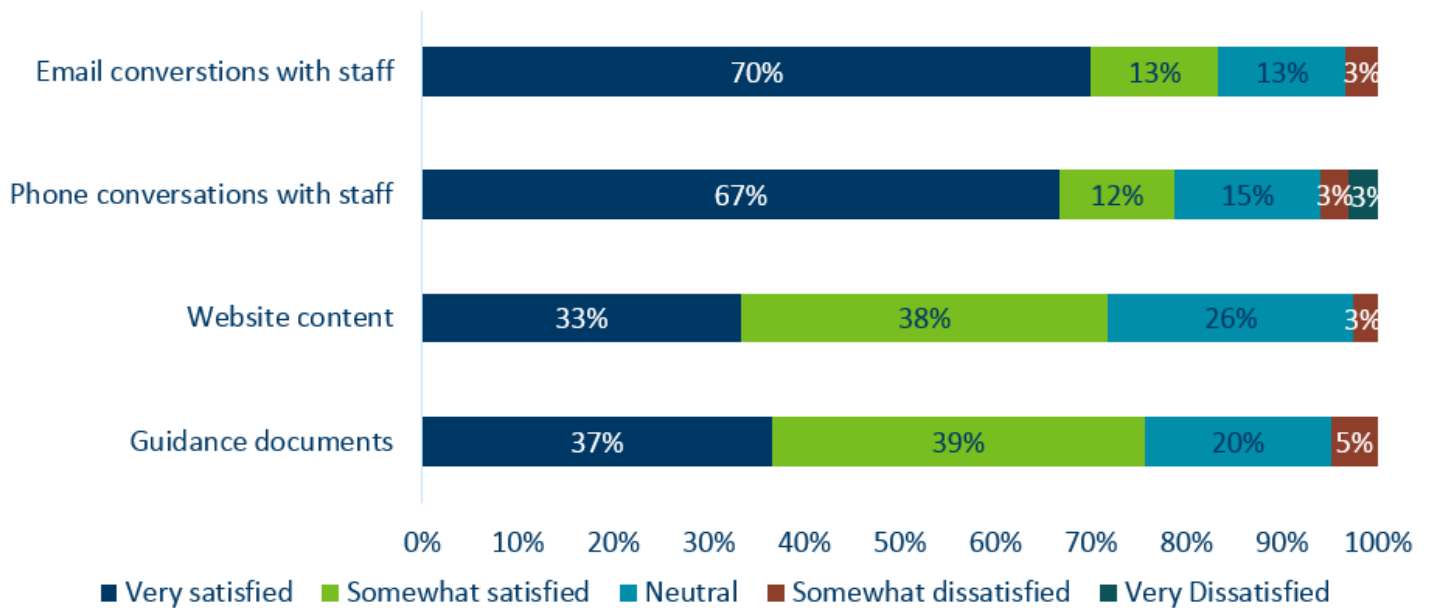


Figure 22

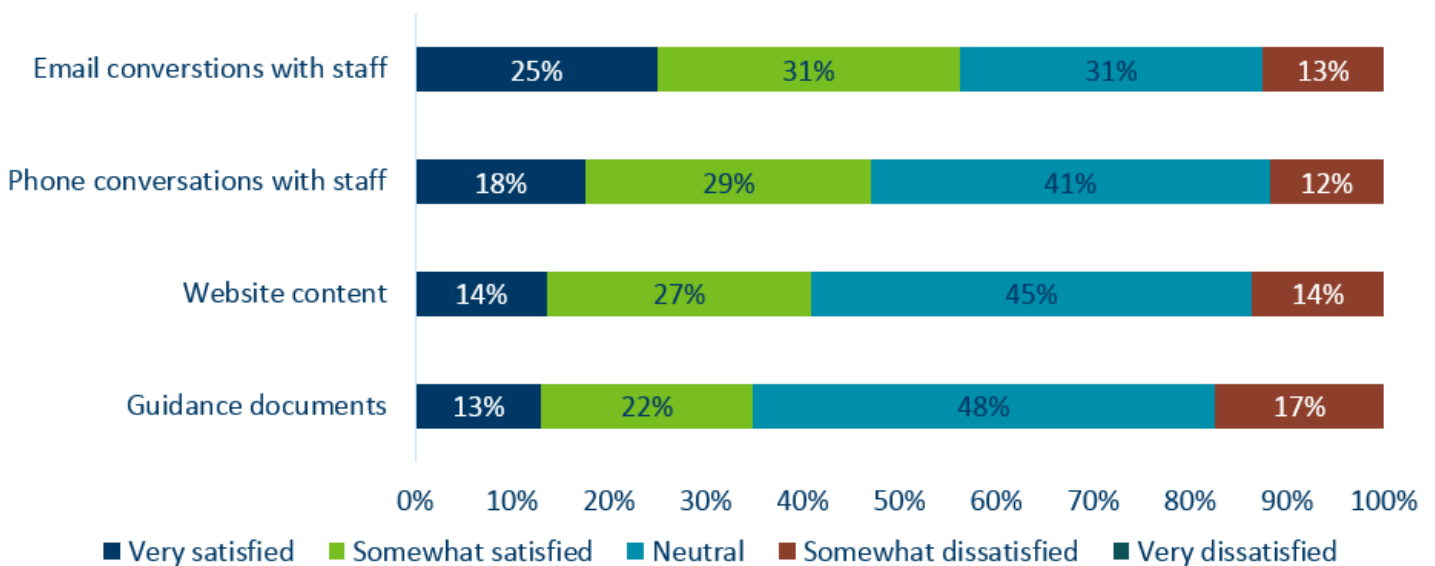


Figure 23

Only RGUs were asked about their interest in different EQB resources. **Most RGUs were interested in updated Environmental Review guidance (82%, n=43; Figure 24) and EQB Staff presentations at conferences (74%).** This interest is consistent with last year's results (80% and 72%, respectively). Video guidance (40%) and in-person training (44%) received the least interest. Again, these results are consistent with 2016 responses (50% for each).

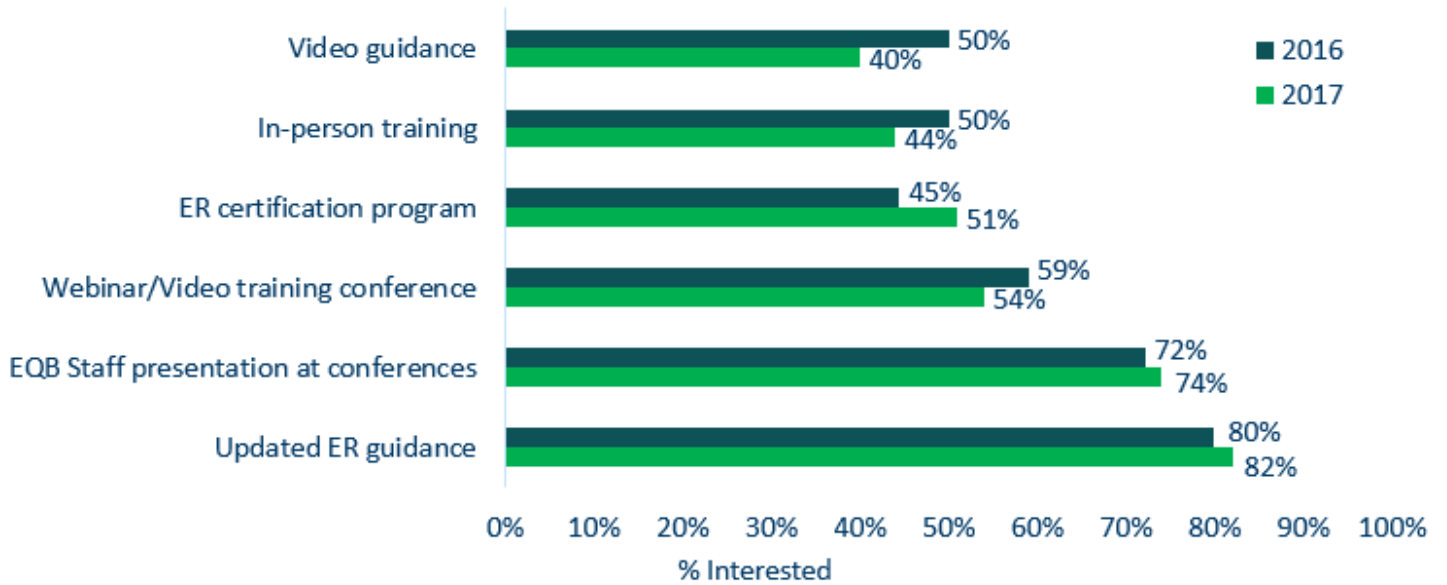


Figure 24



**From:** [Scott Slocum](#)  
**To:** [Frantz, Kate \(MPCA\)](#)  
**Subject:** Fwd: Minnesota Environmental Quality Board Silica Sand Rulemaking - Request for Comments  
**Date:** Monday, July 22, 2013 11:38:25 AM

---

7/22/2013

To: Kate Frantz  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155

From: Scott Slocum  
1416 Birchcrest Drive  
White Bear Lake, MN 55110

Re: comment on "possible amendments to rules governing the Environmental Review Program..."

Hello Ms. Frantz,

Thanks for sending this request for comments.

I suppose there might already be another type of regulation that covers this, but it looks to me as though there's a need for mandatory EAW and EIS categories for projects that could predictably affect the quality of groundwater or surface water.

--Scott Slocum

----- Forwarded message -----

From: **Minnesota Environmental Quality Board** <[MNEQB@public.govdelivery.com](mailto:MNEQB@public.govdelivery.com)>  
Date: Mon, Jul 22, 2013 at 9:30 AM  
Subject: Minnesota Environmental Quality Board Silica Sand Rulemaking - Request for Comments  
To: [scotts002@gmail.com](mailto:scotts002@gmail.com)

[MN Environmental Quality Board](#)



**REQUEST FOR COMMENTS on Possible Amendments to Rules Governing the Environmental Review Program, Minnesota Rules Chapter, 4410; Revisor's ID Number R-04196**

Silica Sand Rulemaking

The Minnesota Environmental Quality Board (EQB) published the above notice in the July 22, 2013 *State Register*. The State Register can be accessed by visiting <http://www.comm.media.state.mn.us/bookstore/mnbookstore.asp?page=register> The public comment

period for this notice closes at 4:30 P.M. on August 23, 2013. The notice is available by visiting <http://www.eqb.state.mn.us/>

Information about this rulemaking is available in the EQB Public Rulemaking Docket (Docket). Copies of the Docket may be obtained by contacting Beth Tegdesch at [651-757-2100](tel:651-757-2100) or [elizabeth.tegdesch@state.mn.us](mailto:elizabeth.tegdesch@state.mn.us)

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This email was sent to [scotts002@gmail.com](mailto:scotts002@gmail.com) using GovDelivery, on behalf of: Minnesota Environmental Quality Board · 408 St. Peter Street, Suite 600 · Saint Paul, MN 55102



**From:** Jody McIlrath [<mailto:jodymcilrath@embarqmail.com>]

**Sent:** Tuesday, July 23, 2013 1:29 PM

**To:** Smyser, Jeff (MPCA)

**Cc:** [save-the-bluffs@googlegroups.com](mailto:save-the-bluffs@googlegroups.com); David Williams; 'Jim Gurley'; joe; Mike Blair; Susie Eisenmenger; Tom Gnotke

**Subject:** Environmental Rule Review Comments

Dear Jeff,

I am representing Florence Township and Save-The-Bluffs Citizen's group in Goodhue County. I have reviewed the Environmental Review Rules on the EQB website and have attached my comments by categories listed in your review document. I have requested the following:

1. The RGU's to be State Agencies at all times regarding any frac sand project, regardless of size, EAW or EIS , in concert with Local Government units.
2. Reduction of acreage triggering a study. i.e. EAW= 20 acres vs. 40 acres, and EIS= 80 acres vs. 160 acres.
3. Inclusion of the term Frac Sand into areas where Peat and Coal have been listed as well as included in the water, air , and other categories for your consideration, as Frac Sand is a comparable high volume/high impact commodity in the area of the State.

These comments are not all inclusive, and there may be other submissions of comments from citizens from my area. I look forward to seeing you at the August 2<sup>nd</sup> meeting in Red Wing.

Sincerely,

Jody McIlrath

07/23/13

EQB EAW Amendments

Review of EAW Requirements by Florence Township and Save The Bluffs Citizen's Group

	Local Govt as RGU		
Subp. 12. Non-Metallic Minerals	4410.4300 MANDATORY EAW CATEGORY.	Recommend 20 acre trigger on frac sand mining/processing for EAW.	Recommend DNR is RGU for EAW
Subp.9. Non-Metallic Minerals	4410.4400 MANDATORY EIS CATEGORY.	Recommend 80 acre trigger on frac sand mining/processing for EIS	Recommend DNR is RGU for the EIS
Subp. 14. Industrial, Commercial and Institutional Facilities	4410.4300 MANDATORY EAW CATEGORY.		Recommend DNR is RGU for any frac sand facility Question: Where is a township considered in these classifications?
Subp.11. Industrial, Commercial and Institutional Facilities	4410.4400 MANDATORY EIS CATEGORY.		Recommend DNR is RGU for frac sand projects
Subp. 26. Stream diversion	4410.4300 MANDATORY EAW CATEGORY.		Recommend DNR is RGU for any frac sand project
	4410.4400 MANDATORY EIS CATEGORY		
Subp. 27. Wetlands and public waters.	4410.4300 MANDATORY EIS CATEGORY		Recommend DNR is RGU for any frac sand project
Subp. 20. Wetlands and public waters.	4410.4400 MANDATORY EIS CATEGORY		Recommend DNR is RGU for any frac sand project
Subp. 30. Natural areas.	4410.4300 MANDATORY EAW CATEGORY		Recommend DNR is RGU for any frac sand project
	Mandatory Categories: MnDOT as RGU		Recommend MnDOT is RGU for any frac sand project
Subp. 31. Historical places.	4410.4300 MANDATORY EAW CATEGORY.		
Subp. 32. Mixed residential and industrial-commercial projects	4410.4300		
Subp. 21. Mixed residential and	4410.4400 MANDATORY EIS CATEGORY.		Recommend MnDOT and Port Authority are RGU

industrial-commercial projects			for any frac sand project
Subp. 36. Land use conversion, including golf courses	4410.4300 MANDATORY EAW CATEGORY.		Recommend DNR and EQB for all frac sand projects
Subp. 36a. Land conversions in shoreland.	4410.4300 MANDATORY EIS CATEGORY.		Recommend DNR is RGU for all frac sand projects
Subp.27. Land conversions in shoreland.	4410.4400 MANDATORY EIS CATEGORY		Recommend DNR is RGU for all frac sand projects
MnDOT as RGU			
Subp. 23 Barge Fleeting	4410.4300 MANDATORY EAW CATEGORY.		Recommend MnDOT and Port Authority are RGU for any frac sand project
Subp. 17. Barge Fleeting Facilities	4410.4400 MANDATORY EIS CATEGORY.		Recommend MnDOT and Port Authority are RGU for any frac sand project
Subp. 7. Pipelines.	4410.4300 MANDATORY EAW CATEGORY.		Recommend EQB as RGU
Subp. 24. Pipelines.	4410.4400		Recommend EQB as RGU
Subp. 11. Metallic mineral mining and processing.	4410.4300 Metallic mineral mining and processing		Recommend DNR as RGU
subp. 11 B B. For expansion of a stockpile, tailings basin, or mine by 160 or more acres, the DNR shall be the RGU.			
Nonmetallic mineral mining subp. 12A	4410.4300		Recommend for areas of 80 acres or more DNR is RGU
Water appropriation and impoundments subp. 24 A	4410.4300		Recommend DNR is RGU for all frac sand water usage
Water appropriation and impoundments subp. 24 B	4410.4300		Recommend DNR is RGU for acreage of 80 acres or more
Transfer Facilities subp. 8	4410.4300-	Construction of a facility designed for or capable of	This area needs to be expanded to include frac

		<p>transferring 300 tons or more of frac sand per hour or with an annual throughput of 500,000 tons of frac sand from one mode of transportation to a similar or different mode of transportation; or the expansion of an existing facility by these respective amounts,</p> <p>B. Construction of a new facility or the expansion by 50 percent or more of an existing facility for the bulk transfer of hazardous materials with the capacity of 10,000 or more gallons per transfer, if the facility is located in a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers district, Minnesota River Project Riverbend area, or the Mississippi headwaters area,</p>	sand
subp 10	4410.4300	A. Construction of a 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, -	
Air Pollution. Subp. 15	4410.4300	For construction of a stationary source facility that generates 250 tons or more per year or modification of a stationary source facility that increases generation by 250 tons or more per year of any single air pollutant, other than those air pollutants described in item after installation of	Recommend the MPCA is the RGU for all frac sand projects

		air pollution control equipment, the PCA shall be the RGU.	
Hazardous Waste subp. 16	4410.4300	<p>A. Construction or expansion of a hazardous waste disposal facility</p> <p>B. Construction of a hazardous waste processing facility with a capacity of 1,000 or more kilograms per month</p> <p>C. Expansion of a hazardous waste processing facility that increases its capacity by ten percent or more</p> <p>D. Construction or expansion of a facility that sells hazardous waste storage services to generators other than the owner and operator of the facility or construction of a facility at which a generator's own hazardous wastes will be stored for a time period in excess of 90 days, if the facility is located in a water-related land use management district, or in an area characterized by soluble bedrock</p>	Recommend the MPCA is the RGU for all frac sand projects
Hazardous Waste subp. 12	4410.4400	<p>A. Construction or expansion of a hazardous waste disposal facility for 1,000 or more kilograms per month</p> <p>B. 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</p> <p>C. Construction or expansion of a hazardous waste processing facility if</p>	Recommend MPCA is GU for all frac sand projects

		the facility is located in a water-related land use	
Solid Waste subp. 17	4410.4300		Recommend MPCA as RGU for all frac sand projects
Wastewater Systems subp. 18	4410.4300		Recommend MPCA as RGU for all frac sand projects

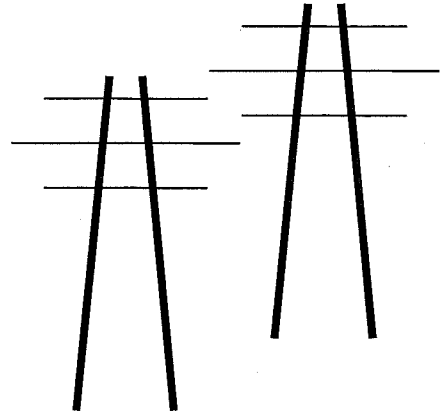


# Legalelectric, Inc.

Carol Overland Attorney at Law, MN #254617  
Energy Consultant—Transmission, Power Plants, Nuclear Waste  
overland@legalelectric.org

1110 West Avenue  
Red Wing, Minnesota 55066  
612.227.8638

P.O. Box 69  
Port Penn, Delaware 19731  
302.834.3466



August 2, 2013

## HAND DELIVERED

Jeff Smyser  
Bob Patton  
Kate Frantz  
EQB Staff/MPCA

Dave Frederickson, Chair  
Environmental Quality Board

John Linc Stine  
MPCA Commissioner

Tom Landwehr  
DNR Commissioner

Jim Kelly  
MDH Environmental Health Manager

Charles Zelle  
MnDOT Commissioner

RE: EQB Standards and Criteria, Minn. Stat. §116C.99; Minn. Stat. §116C.991.  
MPCA Silica Sand Rulemaking, Minn. R. Ch. 7001, 7007, 7009, 7011, 7050  
DNR Rulemaking, reclamation and other issues; Revisor's ID R-04198  
EQB Silica Sand Rulemaking, Ch. 4410; Revisor's ID R-04196  
EQB Mandatory Categories Rulemaking, Ch. 4410, Revisor's ID R-04157

Dear Mr. Smyser, Mr. Patton, and Ms. Frantz, Commissioner Stine, Commissioner Landwehr, Commissioner Zelle and Manager Kelly:

Attached please find a spreadsheet with suggested language for EQB Standards and Criteria for consideration by the Environmental Quality Board as a starting point for discussion. To be clear, these suggestions are not all inclusive, nor do they signal acquiescence to permitting silica sand mining in Minnesota. Our position is that the state should enact a ban on silica sand mining immediately.

I am filing this Comment on behalf of Winona County Citizens Concerned About Silica Mining (CASM). We ask to be added to the email list of notifications for all future meetings, notifications, drafts of Standards and Criteria and rulemaking, and other communications regarding these matters. We also ask to be included at the table at all future meetings regarding the Standards and Criteria and in the rulemaking proceedings.

At this time, we request that a Rulemaking Advisory Committee be appointed for all of the rulemakings, after open, public, and noticed solicitation for Advisory Committee members, specifically that Rulemaking Advisory Committees be established for the MPCA Silica Sand Rulemaking, the DNR Rulemaking, and the EQB Silica Sand and Mandatory Categories Rulemakings.

The notice for the EQB "Silica Sand Rulemaking" and Minn. Stat. §116C.99 asks for consideration of "whether the requirements of Minnesota Statutes, section 116C.991, should remain part of the environmental review requirements for silica sand." Minn. Stat. 116C.991 is as follows:

**§116C.991 ENVIRONMENTAL REVIEW; SILICA SAND PROJECTS.**

(a) Until two years after the effective date of this section, an environmental assessment worksheet must be prepared for any silica sand project that meets or exceeds the following thresholds, unless the project meets or exceeds the thresholds for an environmental impact statement under rules of the Environmental Quality Board and an environmental impact statement must be prepared:

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

(2) is designed to store or is capable of storing more than 7,500 tons of silica sand or has an annual throughput of more than 200,000 tons of silica sand and is not required to receive a permit from the Pollution Control Agency. The Pollution Control Agency is the responsible governmental unit.

(b) In addition to the contents required under statute and rule, an environmental assessment worksheet completed according to this section must include:

(1) a hydrogeologic investigation assessing potential groundwater and surface water effects and geologic conditions that could create an increased risk of potentially significant effects on groundwater and surface water;

(2) for a project with the potential to require a groundwater appropriation permit from the commissioner of natural resources, an assessment of the water resources available for appropriation;

(3) an air quality impact assessment that includes an assessment of the potential effects from airborne particulates and dust;

(4) a traffic impact analysis, including documentation of existing transportation systems, analysis of the potential effects of the project on transportation, and mitigation measures to eliminate or minimize adverse impacts;

(5) an assessment of compatibility of the project with other existing uses; and

(6) mitigation measures that could eliminate or minimize any adverse environmental effects for the project.

Minn. Stat. §116C.991 establishes the lower bound of environmental review for two years, perhaps intended to be in place during rulemaking. However, the requirements of Minn. Stat. §116C.991 must extend beyond two years through incorporation into the EQB Standards and Criteria, the EQB, DNR and MPCA rules, and the MDH value. No silica sand permitting should go forward until these rulemakings are completed and environmental review requirements and standards and criteria are established.

The notice for the EQB "Silica Sand Rulemaking" and Minn. Stat. §116C.99 asks for consideration of "whether the requirements should be different for different geographic areas of the state." We note that the requirements are based on potential impacts, and on characterization of physical, geological and hydrological properties, and not geographic location. The standards and criteria should be based on these characteristics, applicable where those features are present, without regard to geography.

If you have any questions or require anything further, please let me know.

Very truly yours,



Carol A. Overland  
Attorney at Law

cc: Winona County Citizens Concerned About Silica Mining (CASM).

# Minn. Stat. 116C.99

Standards & Criteria (from statute)	Proposed language	Support for language
<b>(1) Setbacks or buffers</b>		
(i) Residence or residential zoning district boundary	1/2 mile from residence, use of berms/swales to divert flooding.	Public comments; see e.g., Goodhue Wind Ordinance; see also citations below in Groundwater and Air Emissions and Noise sections.
(ii) Property line or right-of-way line of any existing or proposed street or highway	1,000 foot setback from property line or right-of-way line, in addition to 1/2 mile from residence.	See citations below in Groundwater and Air Emissions and Noise sections.
(iii) Ordinary high water levels of public waters	1 mile from high water levels and containment pond and berm sufficient to prevent spill in normal operating conditions, high water, and heavy rain.	See citations below in Groundwater section.
(iv) Bluffs	1 mile from top of bluff (see karst section below).	See bluff protection ordinances (visual, land-use and geological protections).
(v) Designated trout streams, Class 2A water, flowing tributary of either	1 mile from designated trout streams, Class 2A water, flowing tributary of either, with berm/swale sufficient to prevent spill in normal operating conditions, high water, and heavy rain.	Minn. Stat. 103G.217; see also citations below in Groundwater section.
(vi) Calcareous fens	1 mile from calcareous fens and berm/swale sufficient to prevent spill in normal operating conditions, high water, and heavy rain. Some calcareous fens in SNA areas, which are already avoidance criteria.	Minn. Stat. 103G.223; DNR Calcareous fen list: <a href="http://files.dnr.state.mn.us/publications/waters/calcareous_fen_list_nov_2009.pdf">http://files.dnr.state.mn.us/publications/waters/calcareous_fen_list_nov_2009.pdf</a>
(vii) Wellhead protection areas defined 103I.005	1 mile from MGS karst sinkhole and one mile from bedrock joints; diversion with berms and swales; monitoring of wells during term of mining activity and 20 years after cessation of mining. State must develop standard regarding karst due to prevalence of Karst in Minnesota and relation of Karst to location of silica sand and aquifer recharge areas.	Minn. Stat. 103G.217, Letter 2/6/2013, Ehlinger MDH to Winona County; Hydrological Processes in Karst Terranes ( <a href="https://itia.ntua.gr/hsj/redbooks/207/hysi_207_01_0000.pdf#page=15">https://itia.ntua.gr/hsj/redbooks/207/hysi_207_01_0000.pdf#page=15</a> )
	Develop sinkhole sealing plan.	
(ix) Natural resource easement paid wholly or in part by public funds	Karst protocol, i.e., stop excavation where sinkhole develops; notify permitting authority of location; divert water/runoff from sinkhole with berms/swales, employ sinkhole sealing plan.	
(viii) Critical natural habitat acquired by DNR 84.944	1 mile from critical natural habitat.	DNR Rulemaking regarding silica sand mining
(ix) Natural resource easement paid wholly or in part by public funds	2 miles from natural resource easements (natural resource easements are established to protect resource)	DNR Rulemaking regarding silica sand mining
<b>(2) Standards for hours of operation</b>		
(county 6a - 10p 6 days a week)	Mining - 8 a.m. to 5 p.m. weekdays	
	Blasting - (narrower) (impulsive dBA over ___ not more than ___ per hour/day ???), vibration limit of	
	Processing - 8 a.m. to 5 p.m. week days	
	Transportation - limited times, number of daily trips and haul routes	MnDOT Design Capacity, Road Agreements,

# Minn. Stat. 116C.99

<p>(3) Groundwater and surface water quality and quantity monitoring and mitigation plan requirements</p>	<p>(language of Standard and Criteria must include "protection" of groundwater and surface water quality)</p>	
	<p>Baseline testing on site for ph, nitrate and bacteria, Diesel Range and Gasoline Range Organics (aqueous and non-aqueous phase liquid) and identified and other potential contaminants; baseline and monitoring of ph, nitrate and bacteria, DRO and GRO, and identified and other contaminants in private wells within 1 mile. Identify on map and protect all recharge areas associated with mine production appropriation and wastewater discharge.</p>	<p>Feb. 6, 2013 Letter, MDH to Winona County; Public comments and responses of Winona County; Dustman, Summit EnviroSolutions for Goodhue County, EQB Final Report, p. 28: <a href="http://www.eqb.state.mn.us/documents/23.%20March%20Final%20Silica%20Sand%20report.pdf">http://www.eqb.state.mn.us/documents/23.%20March%20Final%20Silica%20Sand%20report.pdf</a>.</p>
	<p>Consultation of impaired waters list -- no mining within 1 mile of body of water on impaired water list.</p>	<p>Feb. 6, 2013 Letter, MDH to Winona County; Public comments and responses of Winona County; Dustman, Summit EnviroSolutions for Goodhue County.</p>
	<p>Volume disclosure expressed in ratio of aquifer capacity, and consideration of cumulative impacts of process water and treatment.</p>	<p>Minn. Stat. 103G.265, Subd. 2; Minn. Stat. 116D.04, Subd. 16; Feb. 6, 2013 Letter, MDH to Winona County; Public comments and responses of Winona County; Dustman, Summit EnviroSolutions for Goodhue County.</p>
	<p>Protocol for monitoring, testing for flocculant and other contaminatin, and documentation of haul back material to prevent contamination. Groundwater surrounding mines and processing plants tested at least monthly, controlled by state and project assessed for costs.</p>	<p>Feb. 6, 2013 Letter, MDH to Winona County; Public comments and responses of Winona County; see Dustman, Summit EnviroSolutions p. 34-53.</p>
<p>(i) applicable groundwater and surface water appropriation permit requirements</p>	<p>Groundwater appropriation permit - assessment of water resources available for appropriation to be provided by DNR, and identification of sustainable rate of appropriation, with safety factor, required.</p>	<p>Minn. Stat. 103G.265, Subd. 2; Minn. Stat. 116D.04, Subd. 16; Feb. 6, 2013 Letter, MDH to Winona County; Public comments and responses of Winona County; Dustman, Summit EnviroSolutions for Goodhue County; State draining water supplies as nature can't keep up with demand, Feb. 28, 2013 (<a href="http://m.startribune.com/news/?id=192783461">http://m.startribune.com/news/?id=192783461</a>)</p>
	<p>Zero liquid discharge (ZLD); treatment and reuse; discharge. No injection wells or injection of waste allowed.</p>	
	<p>Update well location maps; comply with well sealing protocol</p>	<p>Feb. 6, 2013 Letter, MDH to Winona County; Public comments and responses of Winona County</p>
<p>(ii) well sealing requirements</p>	<p>After baseline levels, periodic testing, well data is to be submitted annually in an accessible format, such as Excel or WORD, and promptly posted on agency and county website.</p>	<p>Feb. 6, 2013 Letter, MDH to Winona County; Public comments and responses of Winona County</p>

# Minn. Stat. 116C.99

<p>(iii) annual submission of monitoring well data</p>	<p>Groundwater surrounding mines and processing plants tested at least monthly, controlled by state and project assessed for costs. Results shall be tracked through public posting and monthly review by independent consultant, costs to be assessed to project.</p>	<p>Feb. 6, 2013 Letter, MDH to Winona County; Public comments and responses of Winona County; Dustman, Summit Envirosolutions for Goodhue County.</p>
<p>(iv) storm water runoff rate limits not to exceed two-, ten-, and 100-year storm events</p>	<p>Application of ambient air quality standards for silica dust to mines, processing, and haul routes. Conduct Air Emissions Risk Analysis (part of MPCA's analysis in air permit review) and begin Community Air Improvement Project for affected communities. There is to be no measurable deterioration of air quality and no increases in ambient levels of silica dust or diesel exhaust.</p>	<p>Health Concerns with Frac Sand Mining - Minnesota Dept. of Health:  <a href="http://www.mehaonline.org/sites/default/files/meha/docs/Health%20Concerns%20with%20Frac%20Sand%20Mining_0.pdf">http://www.mehaonline.org/sites/default/files/meha/docs/Health%20Concerns%20with%20Frac%20Sand%20Mining_0.pdf</a>; Students measure city (Winona) air quality, Winona Post:  <a href="http://www.winonapost.com/stock/functions/VDG_Pub/detail.php?choice=51648&amp;home_page=&amp;archives=">http://www.winonapost.com/stock/functions/VDG_Pub/detail.php?choice=51648&amp;home_page=&amp;archives=</a>; Environmental committee calls for diesel exhaust, silica dust air monitoring -- now, Winona Post:  <a href="http://www.winonapost.com/stock/functions/VDG_Pub/detail.php?choice=54542&amp;home_page=1&amp;PHPSESSID=c489d7fd22d68f83554355d2e58161">http://www.winonapost.com/stock/functions/VDG_Pub/detail.php?choice=54542&amp;home_page=1&amp;PHPSESSID=c489d7fd22d68f83554355d2e58161</a>; MPCA Community Air Improvement Project:  <a href="http://www.pca.state.mn.us/index.php/air/air-monitoring-and-reporting/air-emissions-modeling-and-monitoring/community-air-improvement-project-caip.html">http://www.pca.state.mn.us/index.php/air/air-monitoring-and-reporting/air-emissions-modeling-and-monitoring/community-air-improvement-project-caip.html</a></p>
<p><b>(4) Air Monitoring and data submission requirements</b></p>	<p>General Health Concerns</p>	<p>Health Concerns with Frac Sand Mining - Minnesota Dept. of Health:  <a href="http://www.mehaonline.org/sites/default/files/meha/docs/Health%20Concerns%20with%20Frac%20Sand%20Mining_0.pdf">http://www.mehaonline.org/sites/default/files/meha/docs/Health%20Concerns%20with%20Frac%20Sand%20Mining_0.pdf</a>; Students measure city (Winona) air quality, Winona Post:  <a href="http://www.winonapost.com/stock/functions/VDG_Pub/detail.php?choice=51648&amp;home_page=&amp;archives=">http://www.winonapost.com/stock/functions/VDG_Pub/detail.php?choice=51648&amp;home_page=&amp;archives=</a>; Environmental committee calls for diesel exhaust, silica dust air monitoring -- now, Winona Post:  <a href="http://www.winonapost.com/stock/functions/VDG_Pub/detail.php?choice=54542&amp;home_page=1&amp;PHPSESSID=c489d7fd22d68f83554355d2e58161">http://www.winonapost.com/stock/functions/VDG_Pub/detail.php?choice=54542&amp;home_page=1&amp;PHPSESSID=c489d7fd22d68f83554355d2e58161</a>; MPCA Community Air Improvement Project:  <a href="http://www.pca.state.mn.us/index.php/air/air-monitoring-and-reporting/air-emissions-modeling-and-monitoring/community-air-improvement-project-caip.html">http://www.pca.state.mn.us/index.php/air/air-monitoring-and-reporting/air-emissions-modeling-and-monitoring/community-air-improvement-project-caip.html</a></p>
<p>Minnesota Department of Health</p>	<p>Dept of Health to adopt an air quality health-based value for silica sand (Minn. Stat. 116C.991); The MPCA has requested that MDH develop a short-term exposure limit for respirable crystalline silica in air. (p. 21, EQB Report)</p>	<p>Minn. Stat. 116C.991; EQB Final Silica Sand Report, March 23, 2013:  <a href="http://www.eqb.state.mn.us/documents/23.%20March%20Final%20Silica%20Sand%20report.pdf">http://www.eqb.state.mn.us/documents/23.%20March%20Final%20Silica%20Sand%20report.pdf</a></p>
<p>Air monitoring - silica dust</p>	<p>Air monitoring at mine, processing and transfer sites, property lines, along haul routes every 2 miles in rural areas, and ever 1/4 mile in residential areas -- silica sand is carcinogenic. There is to be no measurable deterioration of air quality and no increases in ambient levels of silica dust.</p>	<p>WHO-IARC, Volume 68 Silica  <a href="http://monographs.iarc.fr/ENG/Monographs/vol68/volume68.pdf">http://monographs.iarc.fr/ENG/Monographs/vol68/volume68.pdf</a>; Health Consequences of Energy Choices: Risks from Frac Sand Mining for Oil and Gas Extraction ( ); Lidar characterization of crystalline silica generation and transport from a sand and gravel plant (Trzepla-Nabaglo 2006) (<a href="http://www.ncbi.nlm.nih.gov/pubmed/16442218">http://www.ncbi.nlm.nih.gov/pubmed/16442218</a>).</p>

# Minn. Stat. 116C.99

<p>Air monitoring - diesel exhaust</p>	<p>Air monitoring of diesel exhaust at mine, processing and transfer sites, property lines, along haul routes every 2 miles in rural areas, and every 1/4 mile in residential areas, property lines, along haul routes -- diesel exhaust is carcinogenic. There is to be no measurable deterioration of air quality and no increases in ambient levels diesel exhaust.</p>	<p>IARC Press Release - Diesel exhaust Group 1 Carcinogen: <a href="http://www.iarc.fr/en/media-centre/pr/2012/pdfs/pr213_E.pdf">http://www.iarc.fr/en/media-centre/pr/2012/pdfs/pr213_E.pdf</a>; Carcinogenic Effects of Exposure to Diesel Exhaust, CDC: <a href="http://www.cdc.gov/niosh/docs/88-116/">http://www.cdc.gov/niosh/docs/88-116/</a>; EPA Integrated Risk Information System, Diesel engine exhaust: <a href="http://www.epa.gov/iris/subst/0642.htm#woe">http://www.epa.gov/iris/subst/0642.htm#woe</a></p>
	<p>Cumulative impacts; cumulative potential effects</p>	<p>Minn. R. 4410.1200, 4410.2300, item H, and 4410.3610, subpart 4; see also Minn. R. 4410.4400, Subp. 1.</p>
	<p>Offsite ambient air standard to be developed for general public. Pending establishment of offsite air standard by the State of Minnesota, the lowest standard established in any United States or other jurisdiction shall be the applicable standard. If standard is lowered elsewhere, the Minnesota standard shall be lowered accordingly.</p>	<p>MPCA Rulemaking related to silica sand projects, Minn. R. 7001, 7007, 7009, 7011, 7017, 7050, et seq.</p>
	<p>MPCA Air Permit -- agency requires funding to monitor and enforce.</p>	<p>MPCA Rulemaking related to silica sand projects, Minn. R. 7001, 7007, 7009, 7011, 7017, 7050, et seq.</p>
	<p>Ambient air monitoring shall be continuous, performed and controlled by the MPCA and project shall be assessed for cost of monitoring. Air monitoring shall be performed at the property boundary with at least four monitors positioned at the four highest velocity wind locations based on the area windrose. Results shall be tracked through public posting and monthly review by independent consultant, costs to be assessed to project.</p>	<p>MPCA Rulemaking related to silica sand projects, Minn. R. 7001, 7007, 7009, 7011, 7017, 7050, et seq.</p>
	<p>Continuous ambient air monitoring shall be performed for silica dust -- PM2.5 concentrations generally and for crystalline silica concentrations specifically. A sufficient number of air monitoring sites shall be established on the boundaries of the mining and/or processing property that a monitor is effectively "downwind" of dust generation activities at all times. Mining and processing operations shall only be carried out while "downwind" continuous air monitors are operational.</p>	<p>MPCA Rulemaking related to silica sand projects, Minn. R. 7001, 7007, 7009, 7011, 7017, 7050, et seq. ' see above.</p>
	<p>Output of continuous air monitoring equipment shall be made available to the public in real time via the internet. Concentrations reported to the public, the media, and for regulatory purposes shall be the highest concentrations detected, not "averages" of multiple monitoring sites.</p>	<p>See above.</p>

# Minn. Stat. 116C.99

	<p>Pending establishment of a health-based ambient air concentration standard by the State of Minnesota, the lowest standard established in any United States or other jurisdiction shall be the applicable standard. If standard is lowered elsewhere, the Minnesota standard shall be lowered accordingly.</p>	<p>See above.</p>
	<p>Exposure guidance and limits for various types of exposure, i.e., workers, neighbors, organic and other farms, livestock..</p>	<p>OSHA, MSHA; see also MPCA Rulemaking related to silica sand projects, Minn. R. 7001, 7007, 7009, 7011, 7017, 7050, et seq.; see above</p>
<p><b>(5) Dust control requirements</b></p>	<p>Conduct Air Emissions Risk Analysis (part of MPCA's analysis in air permit review) and begin Community Air Improvement Project for affected communities.</p>	<p>WHO-IARC, Volume 68 Silica  <a href="http://monographs.iarc.fr/ENG/Monographs/vol68/volume68.pdf">http://monographs.iarc.fr/ENG/Monographs/vol68/volume68.pdf</a>; Health Concerns with Frac Sand Mining - Minnesota Dept. of Health:  <a href="http://www.mehaonline.org/sites/default/files/meha/docs/Health%20Concerns%20with%20Frac%20Sand%20Mining_0.pdf">http://www.mehaonline.org/sites/default/files/meha/docs/Health%20Concerns%20with%20Frac%20Sand%20Mining_0.pdf</a>; Students measure city (Winona) air quality, Winona Post:  <a href="http://www.winonapost.com/stock/functions/VDG_Pub/detail.php?choice=51648&amp;home_page=&amp;archives=">http://www.winonapost.com/stock/functions/VDG_Pub/detail.php?choice=51648&amp;home_page=&amp;archives=</a>;            Environmental committee calls for diesel exhaust, silica dust air monitoring -- now, Winona Post:  <a href="http://www.winonapost.com/stock/functions/VDG_Pub/detail.php?choice=54542&amp;home_page=1&amp;PHPSESSID=c489d7fdc22dc68f8355435d2e58161">http://www.winonapost.com/stock/functions/VDG_Pub/detail.php?choice=54542&amp;home_page=1&amp;PHPSESSID=c489d7fdc22dc68f8355435d2e58161</a>; MPCA Community Air Improvement Project:  <a href="http://www.pca.state.mn.us/index.php/air/air-monitoring-and-reporting/air-emissions-modeling-and-monitoring/community-air-improvement-project-caip.html">http://www.pca.state.mn.us/index.php/air/air-monitoring-and-reporting/air-emissions-modeling-and-monitoring/community-air-improvement-project-caip.html</a></p>
<p>Fugitive emissions</p>	<p>Fugitive emissions</p>	<p>See Laws 2013, Chapter 114, Article 4, Section 107, regarding fugitive emissions, Minn. R. 7005.0100, Subp. 35a.</p>
<p>Ambient off-site air standard shall be developed. Pending establishment of a health-based ambient air concentration standard by the State of Minnesota, the lowest standard established in any United States or other jurisdiction shall be the applicable standard. If standard is lowered elsewhere, the Minnesota standard shall be lowered accordingly.</p>	<p>Ambient off-site air standard shall be developed. Pending establishment of a health-based ambient air concentration standard by the State of Minnesota, the lowest standard established in any United States or other jurisdiction shall be the applicable standard. If standard is lowered elsewhere, the Minnesota standard shall be lowered accordingly.</p>	<p>MPCA Rulemaking related to silica sand projects, Minn. R. 7001, 7007, 7009, 7011, 7017, 7050, et seq.; but see Laws 2013, Chapter 114, Article 4, Section 107, regarding fugitive emissions, Minn. R. 7005.0100, Subp. 35a.</p>

# Minn. Stat. 116C.99

	Covering of trucks, railcars and barges required; covering of process functions such as loading; blasting dust control with water, chemicals (other means?).	County road agreement; MPCA Rulemaking related to silica sand projects, Minn. R. 7001, 7007, 7009, 7011, 7017, 7050, et seq.; but see Laws 2013, Chapter 114, Article 4, Section 107, regarding fugitive emissions, Minn. R. 7005.0100, Subp. 35a.
	Permitting shall require modeling that demonstrates compliance with air quality standards; baseline levels to be determined and no increase from baseline is permitted.	County road agreement; MPCA Rulemaking related to silica sand projects, Minn. R. 7001, 7007, 7009, 7011, 7017, 7050, et seq.; but see Laws 2013, Chapter 114, Article 4, Section 107, regarding fugitive emissions, Minn. R. 7005.0100, Subp. 35a.
	Watering, chemical treatment of roads, sufficient to keep dust at safe level at mining and processing property boundary and on haul routes. Pending establishment of this dust standard by the State of Minnesota, the lowest standard established in any United States or other jurisdiction shall be the applicable standard. If standard is lowered elsewhere, the Minnesota standard shall be lowered accordingly.	County road agreement; MPCA Rulemaking related to silica sand projects, Minn. R. 7001, 7007, 7009, 7011, 7017, 7050, et seq.; but see Laws 2013, Chapter 114, Article 4, Section 107, regarding fugitive emissions, Minn. R. 7005.0100, Subp. 35a.
	Mine shall be surrounded by berms at least 10 feet tall, and conifer trees at least 8 feet tall and sufficiently close to form continuous solid barrier to contain dust. Project responsible for maintaining berm and live trees.	County road agreement; MPCA Rulemaking related to silica sand projects, Minn. R. 7001, 7007, 7009, 7011, 7017, 7050, et seq.; but see Laws 2013, Chapter 114, Article 4, Section 107, regarding fugitive emissions, Minn. R. 7005.0100, Subp. 35a.
	Mine loading areas and processing unloading, processing, and loading areas shall be covered and utilize water and chemical treatment to minimize dust.	County road agreement; MPCA Rulemaking related to silica sand projects, Minn. R. 7001, 7007, 7009, 7011, 7017, 7050, et seq.; but see Laws 2013, Chapter 114, Article 4, Section 107, regarding fugitive emissions, Minn. R. 7005.0100, Subp. 35a.
	Mitigation plan for mining, processing and transportation dust.	County road agreement; MPCA Rulemaking related to silica sand projects, Minn. R. 7001, 7007, 7009, 7011, 7017, 7050, et seq.; but see Laws 2013, Chapter 114, Article 4, Section 107, regarding fugitive emissions, Minn. R. 7005.0100, Subp. 35a.
<b>(6) Noise testing and mitigation plan requirements</b>		
	Mining and processing activities shall be conducted within the MPCA's noise limits. Blasting (impulsive) noise shall at all times be lower than 50 dBA at the property boundary.	Minn. R. 6112.2900; Minn. R. 7030.0030 NOISE CONTROL REQUIREMENT; 7030.0040 NOISE STANDARDS; see also Dustman, Summit EnviroSolutions p. 27-28
	Berm and trees, as above, for noise mitigation as well as dust mitigation.	



# Minn. Stat. 116C.99

	<p>Mitigation plan -- see e.g. Dustman, p. 28 • Taking into consideration local receptors during preliminary and final design of the mine plan (because the excavation of sand and the creation of high walls can greatly reduce noise behind the wall, but may amplify noise in the opposite direction);</p> <ul style="list-style-type: none"> <li>• Leaving existing trees at the property boundary;</li> <li>• Building berms between noise sources and receptors;</li> <li>• Using strobe signals rather than audible systems for back-up alarms on heavy machinery (when permitted by the federal Mine Safety and Health Administration);</li> <li>• Enclosing generators and other mobile equipment;</li> <li>• Notifying nearby residents 48 hours prior to blast events;</li> <li>• Using vibration monitors with sensors capable of measuring three mutually perpendicular peak particle velocities, with the peak particle velocity being the largest of these measurements; and</li> <li>• Installing continuous noise monitors that meet the specifications in American National Standards Institute S1.4-1983.</li> </ul>	<p>Dustman, Summit Enviroolutions p. 28</p>
<p><b>(7) Blast monitoring plan requirements</b></p>	<p>Blast Monitoring Plan shall include project specific requirements requested by permitting agency, and shall include: 1) Describe the anticipated blast process;</p> <p>2) Discuss industry standards and establish standards in terms of acceptable limits of ground vibrations and air blasts established to provide protection to infrastructure and structures;</p> <p>3) Establish a monitoring program for the project that will provide the framework for documentation of the existing condition of adjacent structures, set forth blasting standards protective of structures and infrastructure adjacent to the site, establish monitoring as a means to collect ground vibration and air blast data, establish a schedule for submission of independent experts analysis and their expert opinions on the process that can be submitted to the County and the RGU for review; develop contingency actions to be followed in the event a blasting standard is not achieved, including but not limited to revocation of the permit.</p>	<p>Minn. R. 6112.2900; see Scott County Blast Monitoring Plan:  <a href="http://www.co.scott.mn.us/ParksLibraryEnv/Environment/EnvReview/greatplainsminingaw/Documents/GPS%20Draft%20Blast%20Monitoring%20Plan.pdf">http://www.co.scott.mn.us/ParksLibraryEnv/Environment/EnvReview/greatplainsminingaw/Documents/GPS%20Draft%20Blast%20Monitoring%20Plan.pdf</a>; see also Dustman, Summit Enviroolutions, p. 27-28.</p>
<p><b>(8) Lighting requirements</b></p>	<p>Lighting shall be downward lighting, and mine, processing and transfer facilities shall not operate after dusk. Permit Application shall provide lighting plan with application for approval by permitting agency.</p>	<p>Local permitting, EIS Minn. Stat. Ch. 116D (MEPA).</p>

# Minn. Stat. 116C.99

<b>(9) inspection requirements</b>	In sync with state and federal agencies, MSHA, OSHA	Assure permittee is in compliance with permitting conditions, with active enforcement, and if non-compliant, project to be assessed fines and costs of enforcement.	See permit for conditions
	Full funding for inspection agencies and local governments		
<b>(10) Containment requirements for silica sand in temporary storage to protect air and water quality</b>			NIOSH on silica sand hazards: <a href="http://www.cdc.gov/niosh/docs/2004-108/pdfs/2004-108.pdf">http://www.cdc.gov/niosh/docs/2004-108/pdfs/2004-108.pdf</a>
<b>(11) containment requirements for chemicals used in processing</b>	Identification/disclosure of chemicals to be used and their degradation products -- the range of chemicals expected would include:	Hydrochloric Acid, Ammonium Chloride, Isopropanol/formic acid, Polyacrylamide, Polydadmac, Methanol and/or Ethylene Glycol, Guar Gum, Petroleum distillate, Biocide (eliminates bacteria in the water that produces corrosive by-products, Corrosion inhibitor/winter stabilizer, Friction reducer, Gelling agents	Depends on sand resource: p. 9, Frac Sand Mining & Use, Green & Brown: <a href="http://wvwrpc.org/Frac_Sand/Gen_Info_Comp_Reports/fracsand-green-brown-uwex.pdf">http://wvwrpc.org/Frac_Sand/Gen_Info_Comp_Reports/fracsand-green-brown-uwex.pdf</a>
	Containment Plan		
<b>(12) Financial assurance requirements</b>	Preliminary projection of costs for reclamation and decontamination to be included with any permit application.	Individual liability, no limited liability	Pollution worries abound in frac sand waste streams, Strib: <a href="http://m.startribune.com/news/?id=215335701&amp;c=y">http://m.startribune.com/news/?id=215335701&amp;c=y</a>
	Post bond sufficient to cover all damages and costs associated with any possible calamity or disaster.		County development agreement; permit condition; Pollution worries abound in frac sand waste streams, Strib: <a href="http://m.startribune.com/news/?id=215335701&amp;c=y">http://m.startribune.com/news/?id=215335701&amp;c=y</a>
	Decommissioning fund with County		County development agreement; permit condition; Pollution worries abound in frac sand waste streams, Strib: <a href="http://m.startribune.com/news/?id=215335701&amp;c=y">http://m.startribune.com/news/?id=215335701&amp;c=y</a>

# Minn. Stat. 116C.99

<b>(13) Road and bridge impacts and requirements</b>		Not to exceed design capacity of roads (average daily trips as established by MnDOT), observe seasonal weight limits, local road usage fees. Development agreement between permittee and DOT and/or local government with jurisdiction over roads designating haul routes, daily trip limits.	MnDOT design capacity
			See e.g., Goodhue County road agreement for wind projects
<b>(14) Reclamation plan requirements as required under the rules adopted by DNR</b>		Ongoing reclamation, replacing overburden with haul back material as active mine site moves. Protocol for monitoring, testing for flocculant and other contamination, and documentation of haul back material to prevent contamination.	Feb. 6, 2013 Letter, MDH to Winona County; Public comments and responses of Winona County; see Dustman, Summit Envirosolutions p. 34-53.
		Financial assurance for reclamation, and reclamation shall restore to condition at least equivalent to previous use.	
		See DNR rules in development... no mining operation shall be permitted until DNR rules promulgated.	Minn. Stat. 116C.99

**From:** [MaryBeth Garrigan](#)  
**To:** [Smyser, Jeff \(MPCA\)](#); [Patton, Bob \(MDA\)](#); [Frantz, Kate \(MPCA\)](#); [dave.fredrickson@state.mn.us](mailto:dave.fredrickson@state.mn.us)  
**Subject:** "EQB Standards & Criteria, Minn. Stat. 116C.99"  
**Date:** Friday, August 16, 2013 1:18:06 PM

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To All Concerned.

I am requesting that a Rulemaking Advisory Committee be formed for the MPCA, DNR and EQB rulemakings, again, to have input BEFORE the draft rules are issued for comment. I'm also requesting that NO permitting be allowed until Standards and Criteria and Rulemaking is complete.

Please use the Minn. Stat. §116C.99 with suggested language for EQB Standards and Criteria for consideration by the Environmental Quality Board as a starting point for discussion. To be clear, these suggestions are not all inclusive, nor do they signal acquiescence to permitting silica sand mining in Minnesota. My position is that the state should enact a ban on silica sand mining immediately. Minn. Stat. §116C.991 establishes the lower bound of environmental review for two years, perhaps intended to be in place during rulemaking. However, the requirements of Minn. Stat. §116C.991 must extend beyond two years through incorporation into the EQB Standards and Criteria, the EQB, DNR and MPCA rules, and the MDH value. No silica sand permitting should go forward until these rulemakings are completed and environmental review requirements and standards and criteria are established.

Sincerely

MaryBeth Garrigan  
735 Wabasha MN 55981

**From:** [Nick Landherr](#)  
**To:** [Frantz, Kate \(MPCA\)](#)  
**Cc:** [Smyser, Jeff \(MPCA\)](#)  
**Subject:** thoughts  
**Date:** Tuesday, August 20, 2013 6:28:21 PM

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Some reasons why I think the Fracking is a bad idea and why I am asking everyone to help stop it. Energy, People and Climate Change are by far the biggest problem we face today. The Keystone pipeline would be supplied by fracking wells, which means pumping Mercury, Lead and other ingredients so secret that no part of the government knows what kinds of poison this secret process contains. Mercury is so dangerous the United States Government does not allow citizens to own it. Fracking was done and is continuing in the United States which has polluted countless wells making the water unfit for mammals and even any plant. In my opinion it is way too risky to allow this uncontrolled practice to be used over the largest and most important aquifer in North America if not the World. The people on Earth right now do not have the right to use or waste all of the Earths fossil fuels. It took billions of years to make them and at the rate we are going it will be gone in two centuries or less. Most of these new wells also vent natural gas and Methane gas into the air or is considered a nuisance and burned off into the air. We need to make an honest effort at the energy problem or there will not be a human brain to map. IT IS LIKE PUTTING A LITTLE POISON IN EVERY BREATH AND EVERY GLASS OF WATER AND EVERY BITE OF FOOD. Maybe medical research money would be better utilized on clean energy. No poison-No cancer.

We need leaders with enough guts and common sense to make some hard choices, and enough brain power and honesty to realize the damage we are doing to the environment. We will all need to sacrifice and the most important part of the whole energy problem is we need to make a commitment like we did to win the wars or to put a man on the moon. I am not sure that there are any people left with that kind of commitment capabilities. This is way more important than any problem man has ever faced. We scatter poison on the land in the name of food production and energy generation. Now you actually want to inject poison into the ground "where our water comes from" and expect us to believe that doing so is a good thing!

By building a pipe from central Canada to the Gulf of Mexico it would increase the amount of oil on the World Market thereby keeping prices low and contributing to more fossil fuel being burned every year. China and India have an appetite that will continue to grow at an unsustainable pace. The pipeline is spurred by greed both corporate and personal. If we expect to have a planet in which future generations can live we need to change much of our thinking and the way we do things. Manufacture, buy and use things locally as much as possible. We need to stop manufacturing junk. Appliances used to last for 30 years and were easily recycled. Coal fired power plants distribute thousands of tons of mercury over the Earth every year, a byproduct of burning coal. Corn Ethanol uses almost as much fossil fuel to make as it saves.

The most inefficient engine in service today is on the back of every jet aircraft. Jet planes kill in two ways so should have been banned after 911 or at least controlled like they want to do with guns. At least a gun is as safe as the person holding it. The Governments in Europe in the last century put people who had guns on a list and then a little later on the Gestapo went and confiscated them. Every time a Government does that countless defenseless people are murdered. To me it seems so simple: The right to protect my family and the right to clean air we breathe. Of the 400 odd fools running this country there is not a handful of them that agree with me on those two most important issues! I just can't understand it seems so simple to me. God given right to

protect myself and have safe food. What a great example our rich out of touch politicians are! When campaigning they will fly back and forth past one place that is on the way to where they are going and then back again like a dodo bird or some strange organism with no sense of decency and no logical direction, or is it just being rich and taking your piece of pie from the middle? Try to imagine the carbon footprint made just by the last campaign. Try to imagine the size of the hole in the Earth that just the gasoline we burn in our cars every day makes.

We can do better than this with renewables and for the good of all of us you jokers in charge need to address the real issues, the things that matter. I am so ashamed of my government and the corporations and banks that run things on this Earth that I wish I could move to a different galaxy or be dictator of the earth. I can tell you that there would be different people in jail than there are now including most politicians and the Supreme Court. These few people took an oath to do the best for the people. Instead for my entire lifetime the politicians in charge have allowed this great country to be destroyed. Sent our manufacturing away, over farming and destroying the land in every way imaginable. They argue for months on end over many meaningless issues while neglecting the things that matter most.

PLEASE FOR ONCE USE YOUR INTELIGENCE, STUDY THE SITUATION YOURSELF AND DO THE RIGHT THING. Put those lobbyists in jail too, they are not your best advisers!! IT IS REALITY, FACE IT



Aug. 9, 2013



Kate Frantz  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155

Ms. Frantz:

The MN Solid Waste Administrators Association (SWAA) Executive Board wish to provide the following comments on the Environmental Quality Board proposed review and possible revisions to current mandatory Environmental Review Categories. As you may be aware, SWAA members are charged with the responsibility for the planning and implementing of Solid Waste Program. These programs include implementation of the State waste hierarchy of which landfills are one component. All comments are made to address the current Solid Waste categories 4410.4300 subpart 17 and 4410.4400 subpart 13.

We understand that the current environmental review does not of itself make decisions; rather it provides necessary information to governmental units which they can utilize to make environmental sensitive decisions in the best interest of the public.

SWAA is also committed to protection of human health and the environment while providing waste management services. Promulgation of the 1982 environmental review rules and 1988 solid waste management rules resulted in significant improvements in environmental protection for solid waste. Engineering and operation controls have worked to reduce or eliminate groundwater, air and surface water contamination. With this in mind, the following is offered:

1. We agree with current mandatory categories for landfills and stress that these revisions need to meet the requirements of the following rules:
  - Chapter 4410.0300, Subp. 4(E): process is designed to eliminate duplication.
  - Chapter 4410.1000, Subp. 4: Multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when determining the need for an EAW, preparing the EAW, and determining the need for an EIS.

- Chapter 4410.4300, Subp. 1 Threshold Test: Multiple stages of a single project that are connected or phased actions must be considered in total. We should stress that the Environmental Review should look at the long term development proposed by the applicant and not be tied to a permit period. Our stakeholders deserve full disclosure of the entire project being proposed, and the associated evaluation of the potential impacts to human health and the environment.
- 2. Need better definition of waste fill volumes to allow consistent interpretation by RGU and regulated parties. We agree that a mandatory EIS is applicable for landfills which have 100,000 cy/year of in place solid waste. However, this value needs more definition. Since the rule says "waste fill," the value should not include daily, intermediate, or final cover soils and material; and, engineering systems such as landfill gas collectors or leachate recirculation laterals. The applicant would provide this calculation for RGU review.
- 3. Maintain the existing environmental review triggers currently in rule. That is, a new EAW is required for a new expansion of 25% beyond the previously reviewed capacity for landfills receiving less than 100,000 cy/year. For landfills receiving more than 100,000 cy/year, an EAW is required by a new expansion of 10 to 25% of the previously reviewed capacity, and an EIS is required for a new expansion greater than 25% of the previously reviewed capacity.
- 4. Additional areas where mandatory environmental review should be considered are Type III Demolition and Industrial Landfills. These types of landfills didn't exist when the 1982 rules were adapted.

Thank you for the opportunity to provide our comments. Please feel free to contact us if further clarification is needed.

Sincerely,



Troy Freihammer  
President  
Minnesota Solid Waste Administrators Association

County of Stearns  
Environmental Services  
705 Courthouse Square Rm 343  
St. Cloud, Mn 56303  
1-800-450-0852  
(320) 656-6293  
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**Land Services Department**

Mark B. Liedl.....Land Services Director

**Environmental Services**

Christopher Pence.....Land Services Supervisor

Douglas R. Morris.....Solid Waste Coordinator

Paul Herkenhoff, PLS.....Survey Coordinator

**Property Valuation and Classification**

Gary Griffin.....Land Services Supervisor

**Public Land Management**

Kirk Titus.....Land Services Supervisor

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AUG 26 2013

BY:-----



Office of Environmental Services  
15728 State Highway 210  
Brainerd, MN 56401

Telephone (218) 824-1290  
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Doug.Morris@crowwing.us

**CROW WING COUNTY**

BRAINERD, MINNESOTA 56401

August 22, 2013

Kate Frantz  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, Minnesota 55155

RE: Comments on Possible Amendments to Rules Governing the Environmental Review Program, Minnesota rules Chapter 4410, Revisor's ID Number R-04157

Dear Ms. Frantz:

Crow Wing County is committed to the State's waste hierarchy of landfill abatement, during 2012, our recycling rate was 46%. Nonetheless, our landfill is the foundation of our program, and is critical for disposal of residential, commercial, and industrial waste for our residents and businesses. Our Landfill is also a significant, long-term investment. **We want to make sure that any rule change maintains the financial viability of our Landfill, affordability to our customers, and competitive fairness between landfills.**

We are also committed to protection of human health and the environment while providing waste management services. Promulgation of the 1982 environmental review rules and 1988 solid waste management rules resulted in significant improvements in environmental protection. Engineering and operation controls have eliminated groundwater and surface water contamination, and controlled landfill gas migration. Environmental monitoring provides an early detection if the potential for environmental impacts exist. Landfills with this design have been in place for over 20 years. Disposal bans for hazardous waste, appliances, batteries and CRTs, along with household hazardous waste and electronic waste diversion programs, have dramatically reduced the toxicity of leachate. A sanitary landfill in 2013 looks nothing like the "dump" of 1982. **The current environmental review rules for solid waste have been implemented successfully and there is no evidence that indicates that they need a major revision to increase environmental review.**

Other regulatory tools are available to address any changes in design, technology, land use, rule, human health standards including the solid waste permit, the storm water permit, local conditional use permitting, and the solid waste management plan. These tools also provide the opportunity for public comment. As stated in the standard language of the negative declaration for the need of an Environmental Impact Statement (EIS):

- "...ongoing public regulatory authority will address any significant potential environmental effect that were identified as reasonably expected to occur,

- There are no elements of the Project that pose the potential for significant environmental effects that cannot be addressed in the Project design and permit development processes, or by regional and local plans, and
- ..the MPCA finds that the environmental effects of the Project that are reasonably expected to occur can be anticipated and controlled.”

With this background, Crow Wing County provides the following comments and recommendations regarding the solid waste category:

1. We agree with current mandatory categories for landfills and stress that these revisions need to meet the requirements of the following rules:
  - Chapter 4410.0300, Subp. 4(E): process is designed to eliminate duplication.
  - Chapter 4410.1000, Subp. 4: Multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when determining the need for an EAW, preparing the EAW, and determining the need for an EIS.
  - Chapter 4410.4300, Subp. 1 Threshold Test: Multiple stages of a single project that are connected or phased actions must be considered in total.

We should stress that the Environmental Review should look at the long term development proposed by the applicant and not be tied to a permit period. Our stakeholders deserve full disclosure of the entire project being proposed, and the associated evaluation of the potential impacts to human health and the environment. Note that 13 of the 21 municipal solid waste landfills in Minnesota already have lifetime review.

2. The County does recommend that the rules provide better definition of waste fill volumes to allow consistent interpretation by RGU and regulated parties. We agree that a mandatory EIS is applicable for landfills which have 100,000 cy/year of in place solid waste. However, this value needs more definition. Since the rule says “waste fill,” the value should not include daily, intermediate, or final cover soils and material; or, engineering systems such as landfill gas collectors or leachate recirculation laterals. The applicant would provide this calculation for RGU review.
3. Maintain the existing environmental review triggers currently in rule. That is, a new EAW is required for a new expansion of 25% beyond the previously reviewed capacity for landfills receiving less than 100,000 cy/year. For landfills receiving more than 100,000 cy/year, an EAW is required by a new expansion of 10 to 25% of the previously reviewed capacity, and an EIS is required for a new expansion greater than 25% of the previously reviewed capacity.

4. Additional areas where mandatory environmental review should be considered are Type III Demolition and Industrial Landfills. These types of landfills didn't exist when the 1982 rules were adapted.

For information, we have developed a list of talking points on the topic of environmental review for MSW landfills. This list is attached. Thank you for the opportunity to provide our comments. We look forward to actively participating as these rules changes are considered.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Morris", with a stylized flourish at the end.

Doug Morris  
Solid Waste Coordinator

**ENVIRONMENTAL DEPARTMENT**  
**LYON COUNTY PUBLIC WORKS**

504 FAIRGROUNDS ROAD, MARSHALL, MN 56258

PHONE 507-532-8210 FAX 507-532-8217

August 22, 2013

Kate Frantz  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155

Ms. Frantz:

The Minnesota Landfill Operators Group (MN LOG) wish to provide the following comments on the Environmental Quality Board proposed review and possible revisions to current mandatory Environmental Review Categories. MN LOG is made up of facility managers of existing county (publicly owned) sanitary landfills. All comments are made to address the current Solid Waste categories 4410.4300 subpart 17 and 4410.4400 subpart 13.

We understand that the current environmental review does not of itself make decisions; rather it provides necessary information to governmental units which they can utilize to make environmental sensitive decisions in the best interest of the public.

MN LOG members are also committed to protection of human health and the environment while providing waste management services. Promulgation of the 1982 environmental review rules and 1988 solid waste management rules resulted in significant improvements in environmental protection for solid waste. Engineering and operation controls have worked to reduce or eliminate groundwater, air and surface water contamination. With this in mind, the following is offered:

1. We agree with current mandatory categories for landfills and stress that these revisions need to meet the requirements of the following rules:
  - Chapter 4410.0300, Subp. 4(E): process is designed to eliminate duplication.

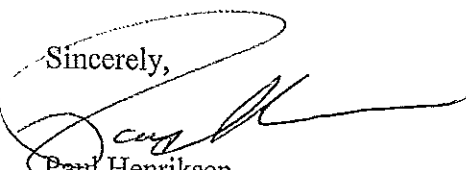
- Chapter 4410.1000, Subp. 4: Multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when determining the need for an EAW, preparing the EAW, and determining the need for an EIS.
- Chapter 4410.4300, Subp. 1 Threshold Test: Multiple stages of a single project that are connected or phased actions must be considered in total.

We should stress that the Environmental Review should look at the long term development proposed by the applicant and not be tied to a permit period. Our stakeholders deserve full disclosure of the entire project being proposed, and the associated evaluation of the potential impacts to human health and the environment.

2. Need better definition of waste fill volumes to allow consistent interpretation by RGU and regulated parties. We agree that a mandatory EIS is applicable for landfills which have 100,000 cy/year of in place solid waste. However, this value needs more definition. Since the rule says "waste fill," the value should not include daily, intermediate, or final cover soils and material; and, engineering systems such as landfill gas collectors or leachate recirculation laterals. The applicant would provide this calculation for RGU review.
3. Maintain the existing environmental review triggers currently in rule. That is, a new EAW is required for a new expansion of 25% beyond the previously reviewed capacity for landfills receiving less than 100,000 cy/year. For landfills receiving more than 100,000 cy/year, an EAW is required by a new expansion of 10 to 25% of the previously reviewed capacity, and an EIS is required for a new expansion greater than 25% of the previously reviewed capacity.
4. Additional areas where mandatory environmental review should be considered are Type III Demolition and Industrial Landfills. These types of landfills didn't exist when the 1982 rules were adapted and may present environmental and local impacts which should be considered.

Thank you for the opportunity to provide our comments. Please feel free to contact us if further clarification is needed.

Sincerely,



Paul Henriksen  
President  
MN LOG



August 23, 2013

Ms. Kate Frantz  
Environmental Quality Board  
520 Lafayette Road  
P.O. Box 64620  
St. Paul, MN 55164-0620

**VIA E-MAIL**

**RE: Public Comment Regarding Mandatory Categories Rulemaking to the Environmental Review Program, Minnesota Rules Chapter 4410**

Dear Ms Frantz:

This letter is submitted on behalf of the Builders Association of the Twin Cities (BATC), a not-for-profit, voluntary trade association established to represent the interests of building contractors, land developers, manufacturers, suppliers, and related business enterprises throughout the Minneapolis-St. Paul metropolitan region. BATC respectfully submits this letter in response to the Environmental Quality Board's (EQB) request for comment on the possible Mandatory Categories Rulemaking to the Environmental Review Program, *Minnesota Rules*, chapter 4410. Changes to the Mandatory Requirements for the Environmental Review Program could have a significant effect on BATC member's ability to deliver housing in a timely and affordable manner.

The following comments are general in nature. BATC will provide further comment to address the proposal's specific language when it is provided by the EQB.

**Mandatory Categories for the Environmental Review Program**

The current mandatory categories for residential developments provide a regulatory structure for environmental review that adequately protects our natural resources. BATC does not believe that an adjustment to the mandatory category thresholds for residential developments is necessary. Should the EQB consider an adjustment to the mandatory category thresholds for residential developments, it must be supported by sound, scientific conclusions that necessitate any changes to the existing rules.

As part of any rulemaking process contemplating an adjustment to the mandatory requirements of the Environmental Review program, the EQB must consider the substantial advancement of the environmental regulatory structure over the past decade. Examples include the 2013 update to National Pollutant Discharge Elimination System's (NPDES) Construction Stormwater Permit, as well as the enhanced oversight from watershed districts and local governments. The current mandatory categories, coupled with the parallel regulations provide strong and adequate natural resource protections.

### **The EQB Must Consider the Homebuilding Industry's Overall Regulatory Structure**

As the EQB considers changes to the mandatory categories for its Environmental Review Program, the overall regulatory burden must be a central component to the consideration of any rule changes. Over the past decade the regulatory landscape for homebuilders has increased substantially. According to a recent study by the National Association of Home Builders (NAHB), 25% of the final price point of a home is attributable to regulations. This figure is believed to be even higher in the Twin Cities metropolitan region. Today, developers and home builders navigate an array of regulatory reviewing agencies throughout the entirety of the homebuilding process. In some projects there are as many as 10 primary reviewing agencies and over 20 approvals and/or permits throughout the process. Additionally, the comprehensive planning process in the 7-county metro ensures a coordinated review of local comprehensive land use and environmental documents and plans.

### **Current Regulatory Rulemaking Processes**

Potential rule changes to the mandatory categories in the near future would join three major regulatory update processes in various stages of rulemaking today. These include the Department of Labor and Industry's proposed changes to the state building code (Ch 1309), the state energy code (Ch 1322), and the Pollution Control Agency's update to the stormwater permit (NPDES). These regulatory changes will add, at minimum, thousands of dollars to each new home built in the future. Many of these regulations are necessary and have the full support of BATC, but we carefully guard against those that are unneeded, unfair or too costly. Any adjustment considered to the mandatory categories for the Environmental Review Program must review the current rulemaking processes to ensure that the proposed changes are necessary, non-duplicative, and integrate into the home building process efficiently.

### **Rulemaking Process Must Ensure Efficiency**

The recent emphasis on increasing efficiency in Minnesota's Environmental Review Program is a welcome and important step towards a better regulatory structure in Minnesota. Timely responses on permits, utilization of electronic submittals, and other efficiency measures have a positive effect on housing affordability at all levels. While there are costs incurred as part of an environmental review, the time delays and uncertainty are oftentimes a greater concern. This concern is heightened by Minnesota's shortened building season. Any change in the mandatory categories must advance, and not detract, from the Administration's effort to bring greater efficiency to the environmental review process.

Sincerely,



James Vagle  
Public Policy Director



August 23, 2013

*Via Email*

Dave Frederickson, Chair  
Minnesota Environmental Quality Board

c/o Kate Frantz  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155

*Re: Request for Comments on Possible Amendments to Rules Governing the  
Environmental Review Program, Minnesota Rules Chapter, 4410;  
Revisor's ID No. R-04157*

Dear Chair Frederickson and Ms. Frantz:

The Center for Earth, Energy and Democracy (CEED), a non-profit organization located in Minneapolis, submits the following comments concerning the “Possible Amendments to Rules Governing the Environmental Review Program, Minnesota Rules Chapter 4410,” Revisor’s ID No. R-04157. CEED is encouraged by the potential revision of current Rules governing the Environmental Assessment Worksheets (EAW) and the Environmental Impact Statements (EIS), in addition to other environmental review documents, that could positively include and impact Environmental Justice communities in Minnesota.

We urge the Environmental Quality Board (EQB) to take ground breaking steps and address in the Rules governing the Environmental Review Program set forth in Chapter 4410 (the “Rules”) persistent and existing disparities of environmental burdens disproportionately affecting the health and welfare of communities of color, indigenous peoples and low-income persons, and to ensure that these aforementioned groups equitably share in environmental benefits, which all Minnesotans deserve.



## BACKGROUND

The Minnesota Environmental Policy Act's purpose is to encourage productive and enjoyable harmony between human beings and their environment; to engage efforts that "eliminate damage to the environment and biosphere and stimulate the health and welfare of human beings;" and to promote a collective understanding of our ecological systems and natural resources for the state and nation.<sup>1</sup> As a regulatory body with Rule-making authority carrying out this stated policy, EQB's process in revising the Rules consistent with legislated policy should incite particularized inclusion, analysis and decision-making to address overburdened communities of color, indigenous peoples, and low-income persons who disproportionately suffer from environmental harms affecting their health and welfare.

Deficiencies exist within the Rules that, if left unaddressed, will likely permit the widening of disparities in environmental degradation, environmental health and the meaningful involvement of communities of color, indigenous peoples and low-income persons in administrative actions. The recognition of and the process for addressing environmental harms in Minnesota must broaden to adequately include an Environmental Justice framework; one that meaningfully includes and responds to communities of color, indigenous peoples, and low-income communities experiencing environmental degradation, that provides inclusive and informed involvement of actions affecting these overburdened communities, and is based on the most recent scientific and policy findings and data.

Any Environmental Justice framework, "must provide a conceptual basis from which to develop outcomes and benchmarks to address problems of inequality. Inequalities include: (1) unequal application and enforcement of environmental, civil rights, and public health laws; (2) differential exposure of some populations to pollution, harmful chemicals, pesticides and other toxins in the home, school, neighborhood, and workplace; (3) faulty assumptions and methodologies in calculating, assessing and managing risks and impacts, (4) discriminatory zoning and land use practices; and (5) exclusionary practices that prevent some individuals and groups from participation in decision making or limit the extent of their participation."<sup>2</sup>

Amendments to the Rules should account for specified actions and analysis that will expand Minnesota's Environmental Review to equitably respond to *all* citizens, specifically including communities of color, indigenous peoples, and low-income communities; these are the environmental justice communities disproportionately overburdened by environmental harms, and whose environmental needs have been historically marginalized. As the EQB contemplates amending the Rules for the preparation and analysis of EIS, EAW, and other review documents, consideration for environmental disparities overburdening Environmental Justice communities must be brought to the forefront.

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<sup>1</sup> Minn. Stat. §116D.01 (2012).

<sup>2</sup> C. Martinez, et. al., *A Preliminary Assessment of RE-AMP and Equity Implications for Midwest Climate and Energy Policy*, p. 4 (July, 2013) (internal citations omitted).

## RECOMMENDATIONS

### 1. **Integrate A Robust Environmental Justice Analysis Procedure by Incorporating the EPA’s Draft “Technical Guidance For Assessing Environmental Justice In Regulatory Analysis”**

The Rules governing the Environmental Review Program should include analytical tools responsive to Minnesota’s environmental justice communities experiencing environmental harms and environmental health disparities. Rule amendments should be informed by, and, at a minimum, elucidate analytical frames identified in the EPA’s “Draft Technical Guidance For Assessing Environmental Justice in Regulatory Analysis,” (“EJTG”) and which are calculated to engage and address environmental justice concerns.<sup>3</sup>

The EPA’s recently issued notice provided that the EJTG serves to help analysts assess environmental justice concerns associated with EPA rules.<sup>4</sup> The EJTG “addresses the issue of how to do so in an analytical fashion.”<sup>5</sup> Any proposed revisions to the environmental review process should assess the recommendations of the EPA’s EJTG document and work to apply substantive aspects to Minnesota.

The EQB should also consider the distribution of environmental benefits or goods, which may lead to injustice. Benefits include, but are not limited to, access to green space, access to transportation, emergency response times, monitoring and enforcement of air toxics standards, and other environmental enforcement activities.

### 2. **Develop a Meaningful Process for Environmental Justice Communities’ Engagement in Rule-making and the Environmental Review Process**

Under the Environmental Justice framework, the EPA offers that “meaningful involvement” should occur for “all people, regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies.”<sup>6</sup> However, this framework is incomplete, lacking concrete measures necessary to engage Environmental Justice communities. Minimally, the EQB should seek input from and ensure that Environmental Justice communities are meaningfully engaged during the Rule-making process and throughout the Environmental Review process in the preparation of EIS, EAW and other environmental review documents.<sup>7</sup>

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<sup>3</sup> U.S. Environmental Protection Agency (EPA), *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*, Docket ID No. EPA-HQ-OA-2013-0320-0320, p. 1, available at: <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OA-2013-0320-0002>.

<sup>4</sup> See, <http://www.epa.gov/compliance/ej/plan-ej/rulemaking.html>.

<sup>5</sup> *Id.*

<sup>6</sup> See EPA definition of “Environmental Justice” at: <http://www.epa.gov/environmentaljustice/>. This definition was created without any input, meaningful or otherwise, from Environmental Justice communities the EPA sought to address. For this reason, the definition is inadequate. Moreover, without meaningful input and development from environmental justice communities, use of this definitional framework may aggravate existing disparities.

<sup>7</sup> See, *Model Guidelines for Public Participation*, National Environmental Justice Advisory Committee (NEJAC), January 2013, available at: <http://www.epa.gov/compliance/ej/resources/publications/nejac/recommendations-model-guide-pp-2013.pdf>.

Under its Rule-making authority, the EQB should meaningfully increase and ensure involvement of communities of color, indigenous peoples and low-income persons by engaging a robust plan to reach out to these communities during the actual development of Rules, including those imparting analytical tools. The Rules should also provide that government bodies must seek input from and have meaningful participation from Environmental Justice communities throughout the preparation of EIS, EAW and other environmental review documents. This engagement should continue throughout the entire Rule-making process, implementation and enforcement. Moreover, the Rules should provide that Environmental Justice communities must have access to resources, and other material support for meaningful participation and involvement as part of any analytical review.

Additionally, given the “unique legal relationship with federally recognized Tribal Nations, as affirmed by the Constitution of the United States, treaties, statutes, and case law,” and where Governor Mark Dayton recently memorialized this recognition in Executive Order 13-10, ordering (amongst other things):

2. By March 10, 2014, the following Cabinet-level Executive Branch agencies (hereinafter “Cabinet Agency” and “Cabinet Agencies”) shall, in consultation with the Minnesota Tribal Nations, develop and implement tribal consultation policies to guide their work and interaction with the Minnesota Tribal Nations: the Department of Corrections, Department of Education, Department of Health, Housing Finance Agency, Department of Human Rights, Department of Human Services, Department of Natural Resources, Pollution Control Agency, Department of Public Safety, Department of Transportation, and Department of Veterans Affairs. All other Cabinet-level Executive Branch agencies shall coordinate, as needed, with the tribal liaison in the Governor’s Office to consult with the Minnesota Tribal Nations. Prior to February 1 of each year, each Cabinet Agency shall consult with each of the Minnesota Tribal Nations to identify priority issues for consultation.

3. As appropriate, and at the earliest opportunity, Cabinet Agencies shall consult with the Minnesota Tribal Nations prior to undertaking actions or policies related to the list of priority issues identified in Paragraph 2. Cabinet Agencies shall consider the input generated from tribal consultation into their decision-making processes, with the goal of achieving mutually beneficial solutions.<sup>8</sup>

Absent any conflict of applicable laws, rules, or other legal requirements and obligations, Governor Dayton directed specified consultation with Tribal Nations in the State of Minnesota.<sup>9</sup> The EQB should review and consider EO 13-10 in light of possible Amendments to the Rule, and should also consider recommendations of the National Environmental Justice Advisory Committee (“NEJAC”) on indigenous peoples and tribal Nations entitled “Recommendations for

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<sup>8</sup> See Exec. Order No. 13-10, Governor Mark Dayton, August 8, 2013, available at: <http://mn.gov/governor/newsroom/pressreleasedetail.jsp?id=102-72208>.

<sup>9</sup> *Id.*

Fostering Environmental Justice for Tribes and Indigenous Peoples” concerning consultation and meaningful involvement.<sup>10</sup>

The EQB should also expand and enhance its outreach efforts where the announcement and invitation to comment appears to be limited to the EQB’s website, other electronic modes, and in English language only. There is insufficient data to show that people of color, indigenous peoples and low-income people in Minnesota have equal access to the internet similar to their white counterparts or more affluent persons, whether in their home or in another location. In some instances, urban and rural trends show a digital divide remains between those who have *and* know how to use the internet versus those that do not.

For the above reasons, and others not mentioned here, the EQB should expand its efforts to *meaningfully* engage Environmental Justice communities, using languages other than English, and to do so in alternative, non-electronic modes to local governments, Tribal Nation governments, community newspapers and other media fora familiar to Environmental Justice communities.

### **3. Rule Amendments Must Benefit from the Most Recent Scientific and Policy Findings and Data Available**

In order to address existing inequities of environmental harms and benefits, it is critical that government bodies are directed to use the most recent scientific and policy data and analysis available. With meaningful input from Minnesota’s Environmental Justice Communities, the EQB should review and integrate recommendations made by the National Environmental Justice Advisory Council (“NEJAC”) on recent analytical scientific and policy data to the EPA concerning rule-making and environmental justice.<sup>11</sup>

### **4. Rule Amendments Must Acknowledge the Climate is Changing and provide pollution thresholds and other permitting decision-points integrate up to date Scientific and Policy Findings and Data**

In Minnesota, government actions will impact existing disparities as the State continues to address the most critical environmental harm of our time - Climate Change. Future regulatory actions connected to climate change mitigation and adaptation are critical Environmental Justice concerns. Recent scientific and policy data and analysis addressing climate change recognize the most vulnerable populations include people of color, indigenous peoples and those living near, at, or below the poverty line, and will be disproportionately affected by climate change.<sup>12</sup> Rules

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<sup>10</sup> See *Recommendations for Fostering Environmental Justice for Tribes and Indigenous Peoples*, NEJAC, January 2013, available at: <http://www.epa.gov/compliance/ej/resources/publications/nejac/recommendations-tribes-2013.pdf>.

<sup>11</sup> See generally, NEJAC recommendations to EPA available at: <http://www.epa.gov/compliance/environmentaljustice/nejac/recommendations.html#recommendations>.

<sup>12</sup> The State’s Inter-Agency Climate Adaptation Team has recognized that more research is needed on vulnerable communities and disparity gaps existing within Minnesota populations to address adaption to climate change. E.g. the Team found that “vulnerabilities of specific populations to public health impacts of climate change” were present and the Team needed to “develop adaptation strategies to resolve the issues.” See, *Adapting to Climate Change in Minnesota: Preliminary Report of the*

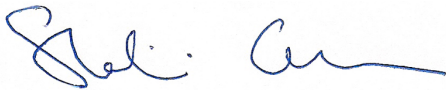
that effectively respond to concerns from communities of color, indigenous peoples, and low-income persons will require application of the most recent scientific and policy frameworks to inform administrative actions. The Rules must be poised to integrate the most recent scientific and policy analytical data and frameworks, and respond to the realities of overburdened environmental justice communities.

## CONCLUSION

In closing, CEED applauds Minnesotans demand for clean air, clean water, toxic free homes, schools, neighborhoods and communities, where they live, work, play, worship, and express their reverence for our Mother Earth and the celestial environment. In that light, the Environmental Review Rules protecting all Minnesotans must be just, informed and tailored to address overburdened people of color, indigenous peoples, and low-income persons, who have persistently and overwhelmingly suffered disproportionately from environmental harms.

Thank you for the opportunity to comment on the possible Amendments to the Rules Governing the Environmental Review Program. We are encouraged by the possibility that Amendments to the Rules will integrate the recognition of and equitably address Environmental Justice needs.

Sincerely,



Shalini Gupta  
Executive Director/ Director of Policy

# MN4WDA

*MN FOUR WHEEL DRIVE ASSOCIATION*

AUGUST 23<sup>RD</sup>, 2013

CHAIRMAN DAVE FREDRICKSON AND MEMBERS OF THE MN ENVIRONMENTAL QUALITY BOARD  
520 LAFAYETTE ROAD NORTH  
SAINT PAUL, MN 55155

Chair Fredrickson and Members:

The Minnesota Four-Wheel Drive Association provides the following comments as possible amendments to rules – particularly as they pertain to the mandatory EAW thresholds for Natural Areas (Minnesota Rules part 4410.4300, subpart 30), and Recreational Trails (Minnesota Rules part 4410.4300, subpart 37, items B and C).

It is our understanding that conversion of any existing road open to highway licensed vehicles to a designated OHV trail triggers a mandatory EAW. We believe this standard is far too stringent since the road would have been constructed to highway licensed vehicle standards and its intended use would have been for that purpose.

***We urge the commission to drop the mandatory EAW requirement on roads for highway licensed vehicles that are being converted to OHV trail purposes.***

We also understand an EAW is mandatory in the event a trail will contain segments of newly constructed trail and segments that will follow an existing trail but be designated for a new motorized use and that the sum of the quotients obtained by dividing the length of the new construction by ten miles and the length of the existing but newly designated trail by 25 miles, equals or exceeds one.

For Off-Road Vehicle purposes, we believe environmental review should be triggered by the surface area impacted rather than a lineal mileage standard. Off-Road Vehicle activity has a narrow environmental footprint. The current standard for triggering environmental review provides no incentive to try and continue to minimize environmental impact.

***We urge the commission to drop the lineal mileage standard and move to one that gauges impact to surface area.***

Thank you for your consideration of these comments.

Sincerely,

Rick Langness, President  
MN Four-Wheel Drive Assn.

August 23, 2013

Ms. Kate Frantz  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155

Dear Ms. Frantz:

Thank you for allowing the Minnesota Chamber of Commerce to comment on the possible amendments to Rules Governing the Environmental Review program regarding mandatory categories for environmental review worksheets and environmental impact statements (Mandatory Categories Rulemaking). The Minnesota Chamber has been actively involved in identifying efficiencies and duplication in the environmental review and permitting process in Minnesota. Our members are greatly concerned about the cost, timeframes and uncertainty in the current process.

The environmental review and permitting process was established over 40 years ago and has had very little review and change in the subsequent years. Thresholds for projects, technological improvements and increased expertise among state agencies and project proposers are just a few of the reasons to modernize and analyze the current system. One example to modernize the current system would be to allow as a pilot project "low risk" proposals to bypass environmental review, or at a minimum, for the review to be abbreviated. This example was highlighted in the Office of Legislative Auditor's evaluation report on Environmental Review and Permitting.

Increased efficiencies and coordination among state agencies should be a top priority. Duplication on any level, whether it is federal, state or local, should be eliminated. Assuring that information requested is not already covered by other regulations, ordinances, statutes or rules should also be a priority. Serious consideration should be given to only requiring environmental review for those categories where environmental permitting is not adequate to consider and address the potential environmental effects of the development. Documents should be modernized, frequently updated, standardized and available electronically.

Public comments periods should also be addressed. There are many opportunities to review this process and identify areas where time can be condensed in the process. Coordination among all regulatory entities should also be explored.

A world class environmental review and permitting system in Minnesota should be the ultimate objective of regulatory agencies. A project proposer should be given clear direction on the requirements and guidelines that a proposal should meet, state agencies should be efficient, avoid duplication and assure public involvement in the goal of protecting the environment and natural resources of the state. This process should have clear timeliness, be cost efficient and ultimately reach a definitive conclusion on the proposed project.

Thank you for allowing me to comment on the possible amendments to the environmental review and permitting categories.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tony Kwilas', with a long horizontal line above it.

Tony Kwilas

Director, Environmental Policy



# Minnesota Department of Natural Resources

500 Lafayette Road • St. Paul, MN • 55155-40\_\_



August 23, 2013

Kate Frantz, Environmental Quality Board  
520 Lafayette Road North  
St. Paul, Minnesota 55155  
Kate.frantz@state.mn.us

**RE:** Revisor Number R-04157 Mandatory Categories Rulemaking

Ms. Frantz:

The Minnesota Environmental Quality Board (EQB) is considering revising the existing rules governing the Environmental Review Program. The rulemaking may include revisions to mandatory categories for environmental assessment worksheets and environmental impact statements located under *Minnesota Rules* (MR) parts 4410.4300 and 4410.4400, respectively. Rulemaking may also include revision that may come up as a result of public comments and further review of Chapter 4410. The Minnesota Department of Natural Resources (MDNR) has comments pertaining to Chapter 4410. Initial suggestions are provided below, but as an EQB member agency the MDNR would like to work with EQB staff in further development of these suggestions:

Publication and Distribution of an EAW, part 4410.1500 B

- The MDNR recommends that RGUs be required to post EAW documents on their website on the same day as they are noticed in the EQB Monitor. The link to the posting should be provided to EQB along with the RGUs notification to the EQB staff to publish the notice of availability of the EAW. This recommendation should be considered in coordination with clarifying new posting requirements.

Mandatory categories for environmental assessment worksheets located under part 4410.4300:

- Subp. 28a. Forestry – “For harvesting of timber for commercial purpose on public lands...” The MDNR recommends that “commercial purposes” be further defined. Definition language could be resemble for example, “*Commercial purposes does not include timber harvesting activities undertaken by the managing agency for the primary purpose of maintaining or restoring natural plant communities*”. The MDNR regularly conducts management efforts for the purposes of removing non-native tree species or tree thinning and/or removal of species for the purpose of restoring and enhancing native plant communities. These activities are often included in master or management plans, but long-term plans do not often include specific project activities or details. As a fiduciary responsibility, timber removed as a result of these activities often is sold which is interpreted as a commercial purpose.
- Subp. 30. Natural Areas – The EQB report recommended removing state trails from this category. The MDNR supports this recommendation. The MDNR also recommends adding a definition for “permanent physical encroachment”. An example of definition language to work from is “*permanent physical encroachment means a change in use that impairs the ability to convert the land back to its prior capacity*”. For clarification of this category, the MDNR suggests that this subpart not be applied when the managing agency proposes a change in recreational use or facility development that requires an amendment to the unit management plan.
- Subp. 37. Recreational Trails – The MDNR is interested in considering revisions to this mandatory category based on how MDNR has interpreted the category. This topic is under further development within the MDNR. Specific areas of consideration include:



- Determining the need for EAW preparation when adding new motorized uses to trails that are already designated for other motorized uses. In some cases the MDNR adds motorized uses that results in no additional trail widening and minimal environmental effects and this should be taken into account when determining the need for an EAW.
- Provide credits to mileage calculations for the undesignation of existing motorized use trails when considering the need for an EAW for projects that have both new trail segments and designating existing trail segments for a new motorized use. The MDNR is considering the balance of environmental effects when considering the need for an EAW. It may also be worth considering the definition of a “new” trail.

Exemption categories located under part 4410.4600:

- Subp. 27. Recreational Trails. The MDNR recommends two new exemptions for trails located on abandoned railroad grades.
  - *Paving a trail located on an abandoned railroad grade.*
  - *Adding a new motorized use to an existing motorized trail or trail segment where the trail is located only an abandoned railroad grade.*
- Other categories: The MDNR is considering proposing a RGU designation revision to a revision to subp. 20. This discussion is under development within MDNR.

Other comments:

- MR part 4410.0200 subparts 48 and 92b – Minnesota River Project Riverbend area - Minnesota Statutes, Chapter 103F was amended by Laws 2005, chapter 47 to eliminate the Project Riverbend Board. The MDNR recommends revising the definitions. The MDNR suggests applying the following language: “...subject to the comprehensive plan known as “Project Riverbend Fifth Draft, June 1981” and to remove references to the former Project Riverbend Board.

The MDNR will coordinate with EQB regarding the outstanding items mentioned above. Please feel free to contact me with questions or comments at 651.259.5082 or by email at [melissa.doperalski@state.mn.us](mailto:melissa.doperalski@state.mn.us).

Sincerely,



Melissa Doperalski  
Environmental Review Planning Director

**From:** [John Lenczewski](#)  
**To:** [Frantz, Kate \(MPCA\)](#); [Smyser, Jeff \(MPCA\)](#)  
**Subject:** RE: Silica Sand and ER categories  
**Date:** Friday, August 23, 2013 4:30:33 PM

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Dear Mr. Smyser and Ms. Franz:

Please forgive the informality of the following comments, but I understand that this is just the beginning of a longer process during which I will have the opportunity to expand upon my brief comments here.

My comments are concerned both with environmental review and rulemaking concerning silica sand mining and other non-metallic mineral mining in the area of the southeast Minnesota known as the Paleozoic Plateau. Please consider these comments as being made in response to both requests for comments.

Given the unique and fragile coldwater surface and groundwater resources found in the Paleozoic Plateau, it is important that extensive environmental review and investigation be performed on all non-metallic mineral mining and processing operations in this area. In this region, whenever non-metallic mineral mining or processing activities are proposed to occur within 25 feet of the static water level (as measured at the project site) an EIS should be required to be prepared, regardless of the acreage of the site. Additionally, whenever silica sand mining or processing activities are proposed to occur within one mile of any spring, class 2A water, trout stream, designated trout stream or perennial tributary of class 2A water, trout stream, or designated trout stream, an EIS should be required to be prepared, regardless of the acreage of the site. Additionally, whenever non-metallic mineral mining or processing activities are proposed to occur within one mile of any spring, class 2A water, trout stream, designated trout stream or perennial tributary of class 2A water, trout stream, or designated trout stream, an EAW should be required to be prepared, regardless of the acreage of the site.

The requirements of 116C.991 should continue to apply indefinitely.

Thank you for your consideration.

John

John P. Lenczewski  
Executive Director  
Minnesota Trout Unlimited  
P.O. Box 845  
Chanhassen, MN 55317  
612-670-1629  
[jlenczewski@comcast.net](mailto:jlenczewski@comcast.net)



Aug. 16, 2013

Kate Frantz  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155

Ms. Frantz:

The Minnesota Association of County Planning and Zoning Administrators (MACPZA) Board of Directors wish to provide the following comments on the Environmental Quality Board proposed review and possible revisions to current mandatory Environmental Review Categories. As you are aware, counties are in a unique position of being both the project proposer and also frequently charged with the responsibility of the regulating government unit (RGU) for many projects. The comments offered in this letter will relate to the planning and zoning and RGU aspects of county involvement in the Environmental Review process.

- Currently, Subpart 19 (Residential Development) and Subpart 19a (Residential development in shoreland outside of the seven-county Twin Cities metropolitan area) of the current Rule are complex and difficult to interpret. MACPZA would like to encourage simplification of these portions of the rule.
- MACPZA membership encourages revision of the existing general worksheet or developing supplemental worksheets for various category types (ie. Shoreland, mining). This concept would make the various development worksheets similar to the existing feedlot worksheet.
- While nonmetallic mineral mining is not a category that has been listed as part of this process, MACPZA membership would like to encourage the EQB to offer some training or additional guidance to counties on interpretation and implementation of this category area.

Thank you for the opportunity to provide comment. Please feel free to contact Annalee Garletz, Association of MN Counties (AMC) Policy Analyst, at 651-789-4322 or me if further clarification is needed.

Sincerely,

Jean Christoffels  
MACPZA President

*p.p. Annalee Garletz, AMC Policy Analyst*



**MINNESOTA BIO-FUELS ASSOCIATION, INC.**

**3033 Excelsior Blvd., Suite 208  
Minneapolis, MN 55416  
MnBiofuels.org / 612.888.9138**

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TO: Ms. Courtney Ahlers-Nelson  
Minnesota Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155  
E-mail: [courtney.ahlers@state.mn.us](mailto:courtney.ahlers@state.mn.us)

FROM: Minnesota Bio-Fuels Association

DATE: 31 December 2015

RE: Comments on Possible Amendments to Rules Governing the  
Environmental Review Program, Minnesota Rules Chapter, 4410

We offer these comments as a starting point in the Environmental Quality Board (EQB) consideration of feedback which will be used to inform the EQB about the ideas described in the Subject Rules (Minn Rules Chapter, 4410).

**Mandatory Categories for environmental assessment worksheets**

1. Subp. 5. Fuel conversion facilities.

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

A.

For construction of a facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to *utilize* 25,000 dry tons or more per year of input, the PCA shall be the RGU.

B.

For construction or expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by 5,000,000 or more gallons per year of alcohol produced, the PCA shall be the RGU.

## Issues for consideration

- a. Biomass from relatively young plant material, versus fossil fuel material, and other agricultural products is renewable and should not be in the same class of materials such as peat and coal.
  - i. To pave the way for the use of more renewable plant material which can be used to produce liquid fuels and reduce greenhouse gas (GHG) emissions on an expedited basis, the EQB should consider removing "biomass" as one of the elements that triggers an EAW.
  - ii. In the alternative, raise the tonnage threshold so as to reflect the scope and scale in which production facilities will actually operate in 2016 and for the foreseeable future.
  - iii. The Minnesota Bio-Fuels Association (MBA) can provide additional details should these matters go to a rulemaking process.
- b. The gallon capacity increase trigger does not reflect the scope of incremental increase which is feasible at ethanol production facilities already operating within the State of Minnesota. Biofuel producers are already operating under various permits including those issued and administered by the Minnesota Pollution Control Agency. So biofuel producers can timely respond to environmental rules and provide low carbon renewable fuels, they need the ability to readily adapt to many factors in a dynamic market and regulatory situation. Thus, an incremental increase in their production capacity should not trigger the need for an EAW. Either strike the 5 million gallon trigger or increase the gallon number to appropriately reflect the typical production capacity increase made by an ethanol production plant.

## 2. Subp. 10. Storage facilities.

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

A.

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

B.

For construction of a facility on a single site designed for or capable of storing 1,000,000 gallons or more of hazardous materials, the PCA shall be the RGU.

C.

For construction of a facility designed for or capable of storing on a single site 100,000 gallons or more of liquefied natural gas, synthetic gas, or anhydrous ammonia, the PCA shall be the RGU.

Issues for consideration

- a. Part B should make the distinction between renewable biofuels, such as ethanol, versus other hazardous materials. That distinction should avoid triggering an EAW for biofuels.
- b. In the alternative, increase the total number of gallon stored to reflect the current state of the biofuel industry in Minnesota with respect to already approved and operating storage tanks as well as in light of future trends.

3. Subp. 15. Air pollution.

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

A.

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

B.

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

a. Issues for consideration

- i. Where, or if, the 250 ton provision might impact a biofuel production facility, it should be struck. Air emission issues are addressed under State and Federal rules are therefore be redundant.

- ii. Where, or if, the 100,000 ton provision might impact a biofuel production facility, it should be struck. Air emissions, including GHG factors, are already addressed under State and Federal permits and/or US EPA pathways for Renewable Identification Number valuation and calculations.

4. Subp. 18. Wastewater systems.

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

C.

For expansion or reconstruction of an existing industrial process wastewater treatment facility which increases its design flow capacity by 50 percent or more and by at least 200,000 gallons per day or more, or construction of a new industrial process wastewater treatment facility with a design flow capacity of 200,000 gallons per day or more, 5,000,000 gallons per month or more, or 20,000,000 gallons per year or more, the PCA shall be the RGU. This category does not apply to industrial process wastewater treatment facilities that discharge to a publicly-owned treatment works or to a tailings basin reviewed pursuant to subpart 11, item B.

Issues for consideration

- a. Where, or if, this provision is applicable to a biofuel producer, the flow capacities should take into consideration the way in which biofuel plants actually operate and use and reuse water. Most ethanol plants in Minnesota reuse water and therefore do not discharge industrial wastewater; however, this provision should not trigger an EAW for a biofuel producer.
- b. MBA is available for consultation on this matter.

5. Subp. 24. Water appropriation and impoundments.

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

A.

For a new appropriation for commercial or industrial purposes of either surface water or ground water averaging 30,000,000 gallons per month; or a new appropriation of either ground water or surface water for irrigation of 540 acres or more in one continuous parcel from one source of water, the DNR shall be the RGU.

B.



For a new permanent impoundment of water creating additional water surface of 160 or more acres or for an additional permanent impoundment of water creating additional water surface of 160 or more acres, the DNR shall be the RGU.

C.

For construction of a dam with an upstream drainage area of 50 square miles or more, the DNR shall be the RGU.

Issues for consideration

- a. Minnesota biofuel producers continually explore processes and technologies by which they might be able to further reduce inputs, such as water, and/or otherwise reuse water. Some biofuel plants use, or have the potential to use, stormwater and/or municipal wastewater. These types of innovations by biofuel producers can serve to further reduce environmental demands while making more renewable biofuels available to displace finite fossil fuels.
- b. Consider whether the total number of gallons impounded and or acres involved reflect the current reality in the biofuel industry. Once again, MBA can provide additional details should these matters go to a rulemaking process.

**Mandatory Categories for environmental impact statements**

1. Subp. 5. Fuel conversion facilities.

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

A.

For construction of a facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 250,000 dry tons or more per year of input, the PCA shall be the RGU.

B.

For construction or expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by 50,000,000 or more gallons per year of alcohol produced if the facility will be in the seven-county Twin Cities metropolitan area or by 125,000,000 or more gallons per year of alcohol produced if the facility will be outside the seven-county Twin Cities metropolitan area, the PCA shall be the RGU.

Issues for consideration

- a. Biomass from relatively young plant material and other agricultural products is

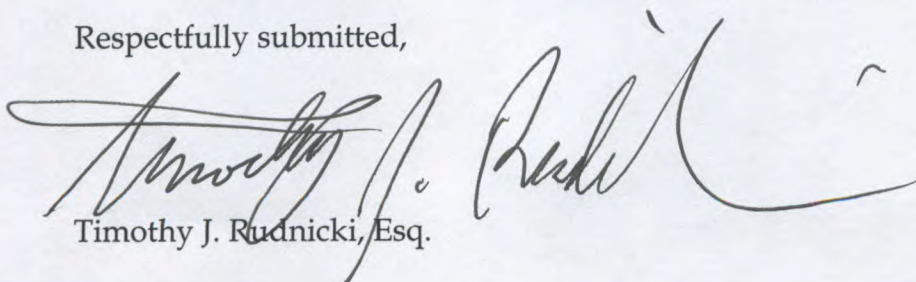
renewable and should not be in the same class of materials such as peat, coal and other finite, carbon intensive fossil fuels.

- i. To pave the way for the use of more renewable plant material which can be used to produce liquid fuels and reduce greenhouse gas (GHG) emissions on an expedited basis, the EQB should consider removing "biomass" as one of the elements that triggers an EIS.
  - ii. In the alternative, raise the tonnage threshold so as to reflect the scope and scale in which production facilities will actually operate in 2016 and for the foreseeable future.
  - iii. The Minnesota Bio-Fuels Association (MBA) can provide additional details should these matters go to a rulemaking process.
- b. The gallon capacity triggers do not reflect the scope of ethanol production facilities already operating, or having the potential to operate, within the State of Minnesota. Biofuel producers are already operating under various permits including those issued and administered by the Minnesota Pollution Control Agency. So biofuel producers can timely respond to environmental rules and the growing need for low carbon renewable fuels, they need the ability to readily adapt to many factors in a dynamic market and regulatory situation. Thus, the gallon capacity numbers should not trigger the need for an EIS. Either strike the gallon trigger or increase the gallon number to appropriately reflect the typical expanded production capacity or the capacity for any new ethanol production plant.

Thank you for considering these ideas and feedback should a rulemaking process be initiated by the EQB.

You can reach me at 612.888.9138, Ext. 101 or by email at [trudnicki@mnbiofuels.org](mailto:trudnicki@mnbiofuels.org)

Respectfully submitted,



Timothy J. Rudnicki, Esq.

December 30, 2015

Courtney Ahlers-Nelson  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155

**Subject: Possible Amendments to Rules Governing the Environmental Review Program**

Dear Ms. Ahlers-Nelson:

The Minnesota Chamber of Commerce (Chamber) has members across the state, many of whom have had or will have projects that are subject to requirements under Minnesota's Environmental Review Program. Chamber members have a strong interest in providing constructive input to improve the rules governing the Environmental Review Program so that environmental reviews are conducted only when necessary; are completed in an efficient and effective manner; and are not redundant with requirements contained in other regulatory programs. A number of categories for mandatory environmental assessment worksheets under part 4410.4300 were listed for potential rulemaking. However, the notice also states that "this rulemaking may also include revisions that may come up as a result of public comments..." The following mandatory EAW categories and suggested revisions provided below should be considered for rulemaking.

1. Environmental Assessment Worksheets (EAW) and Air Quality Modeling Requirements

The Chamber is concerned with the increasing reliance on air quality dispersion modeling in the context of EAW decisions and requests a meeting to discuss related Environmental Quality Board (EOB) policy and guidance.

While there is no mention of the need to conduct air dispersion modeling in existing Minn. R. 4410 Environmental Review rules, the Minnesota Pollution Control Agency (MPCA) and other agencies have taken the position through policy/guidance that they (or project proposers) need to conduct modeling for certain projects subject to EAW to answer the "significant environmental effects" question.

Conducting modeling at the EAW stage is inconsistent with the purpose and objectives of Minnesota's Environmental Review Program.

- Minn. R. 44100.1000, subp. 1. 'Purpose of an EAW' states, "The EAW *is a brief document prepared in worksheet format which is designed to rapidly assess the environmental effects* which may be associated with a proposed project." (emphasis added).
- Minn. R. 4410.0300, subp.1. 'Objectives' states, "The process created by parts 4410.0200 to 4410.6500 is designed to:

- A. provide usable information to the project proposer, governmental decision makers and the public concerning the primary environmental effects of a proposed project;
- B. provide the public with systematic access to decision makers, which will help to maintain public awareness of environmental concerns and encourage accountability in public and private decision making;
- C. delegate authority and responsibility for environmental review to the governmental unit most closely involved in the project;
- D. reduce delay and uncertainty in the environmental review process; and
- E. eliminate duplication.”

The last two elements are especially important given the delay and duplication inherent to air quality modeling under the provisions of Environmental Review (EAW/EIS) while also undergoing air quality modeling for permit applications under Minn. R. 7007, Permits and Offsets. This issue has come up for Chamber members on projects with “duplicative” modeling requirements (both permit and EAW) and has caused delay in both the environmental review and air permitting processes.

Conducting modeling is a complex, lengthy, and expensive task that may not be appropriate at the EAW level and is inconsistent with the “Purpose of an EAW” to rapidly assess environmental effects. Compliance and permitting in accordance with existing, rigorous federal Clean Air Act and Minnesota air quality rules should demonstrate that a project is protective of human health and the environment, and modeling at the EAW stage is redundant and unnecessary. Current Minnesota air quality rules already have different screening thresholds that dictate which type of permit or permit amendment is appropriate and these screening criteria already take into account the relative degree to which a project would be expected to have significant environmental effects.

The Chamber would like to further discuss these issues with EQB, with a goal to meet the EAW requirements for provision of timely, usable information to decision makers.

## 2. 100,000 ton per year (tpy) Greenhouse Gas (GHG) Mandatory EAW threshold

The Chamber requests that the EQB delete Minn. R. 4410.4300, subp. 15 Item B and modify Item A to exclude GHG emissions from the 250 tpy single pollutant criteria for a mandatory EAW in order to remain consistent with air permitting requirements and to coincide with the U.S. Supreme Court Decision rescinding portions of the federal ‘Tailoring Rule’ where PSD permitting for projects cannot be triggered due solely to GHG emissions.

Minnesota’s Mandatory GHG EAW threshold was developed in 2011 to directly coincide with Clean Air Act GHG permitting levels that have since been set aside by the U.S. Supreme Court. The recent Tailoring Rule decision does not automatically change the threshold for GHGs in Minn. R. 4410.4300, subp. 15 that triggers a Mandatory EAW.

Minnesota revised Minn. R. §4410.4300, subp. 15 to set EAW thresholds for GHGs that were consistent with EPA's Tailoring Rule. *See In the Matter of the Proposed Amendments to Rules Governing the Environmental Review Program, Minn. R. Ch. 4410, Establishing a Mandatory EAW Threshold for Greenhouse Gas Emissions at Minn. Rules, Part 4410.4300, Subpart 15* Report of Administrative Law Judge (May 9, 2011).

- ***"The rule amendment was prompted by significant changes in the interpretation of the Clean Air Act and federal and state permitting levels. Because GHG emissions are now to be treated as "air pollutants" under the Clean Air Act and the EPA and the MPCA have adopted permitting levels for GHG emissions that are much higher than those applied to other types of air pollutants, the Board has shown that it is needed and reasonable to amend its existing rule to provide for a separate, higher threshold for preparation of a mandatory EAW for GHG emissions. The Board's selection of a threshold that coincides with the Clean Air Act permitting levels is consistent with its interpretation of the Minnesota Environmental Policy Act and the existing EQB rules adopted under that Act, as well as the Board's past practice. The Board has explained its reliance on the EPA and MPCA permitting levels and has shown a rational relationship between that information and the approach it has chosen to take in the proposed rules."***

To conform with the Tailoring Rule thresholds, EQB added a provision under which an EAW is triggered by "construction of a stationary source facility that generates a combined 100,000 tons or more per year or modification of a stationary source facility that increases generation by a combined 100,000 tons or more per year of greenhouse gas emissions, after installation of air pollution control equipment, expressed as carbon dioxide equivalents ...."

Since the Board's decision, the United States Supreme Court held in *UARG v. EPA*, 134 S.Ct. 2427 (2014) that GHG emissions alone could not trigger prevention of significant deterioration ("PSD") and Title V permitting requirements. However, GHGs could be regulated under PSD if they are emitted from a source that is already subject to PSD regulation because of other pollutant emissions (so-called "anyway" sources). The Supreme Court remanded the case to the D.C. Circuit to work out the details.

The Supreme Court's decision and subsequent EPA guidance documents only address PSD and Title V permitting, it does not directly affect the EQB threshold for GHGs. Minnesota has not yet published information regarding how or whether the Supreme Court's decision will change the State's GHG permitting and EAW requirements. Until they do, Minnesota's GHG permitting and EAW rules remain intact.<sup>[1]</sup> However, an EAW prepared for the University of Minnesota in October 2014 (after the Supreme Court's decision) identifies Minn. R §4410.4300, subp. 15 as the reason for

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<sup>[1]</sup> See Minnesota's Archive of Rules Implementing Federal Air Permitting Thresholds for Greenhouse Gases, available at <http://www.pca.state.mn.us/index.php/air/air-permits-and-rules/air-rulemaking/air-quality-rules-permanent-rules-implementing-federal-air-permit-thresholds-for-greenhouse-gases.html>. See also, Minnesota's most recent revision to the air permitting regulations, issued September 10, 2014, where the biogenic deferral GHG language is removed from Minn. R. §7007.0325 because the biomass deferral rule expired on July 21, 2014. This revision makes no mention of the need to revise other GHG permitting requirements after the Supreme Court's decision in *UARG*. Available at <http://www.pca.state.mn.us/index.php/view-document.html?gid=21600>.

the mandatory EAW. That notice also states that the project is not subject to PSD permitting despite a 100,000 tpy CO<sub>2</sub>e increase because it is not an “anyway” source.<sup>[2]</sup> This indicates that MPCA is still enforcing the EAW CO<sub>2</sub>e threshold, even though it is not enforcing PSD permitting for “non-anyway” sources. In addition to the rule language change suggested above and to remain consistent with federal permitting thresholds, EQB should suspend its mandatory EAW trigger for GHGs because GHGs cannot by themselves trigger a federal permitting obligation. This is further supported by the fact that Minnesota is authorized to issue construction permits using the federal PSD rules (i.e., “runs a delegated program”) and PSD permitting cannot be triggered for projects within the state based solely on GHGs. At this time, the Chamber requests a policy memorandum be distributed to affected agencies that details this issue and suspends the mandatory EAW requirement for projects/sources based solely on emissions above the GHG threshold.

### 3. 4410.4300 Subp. 11 Metallic mineral mining and processing

Action requested: Review and eliminate the mandatory category for Subp. 11 because it is duplicative of other regulations.

Section B provides the threshold that triggers preparation of an EAW as expanding a stockpile, tailings basin, or mine by 320 or more acres, and indicates that the DNR shall be the Responsible Government Unit (RGU). Any such expansion likewise requires a substantial change to a facility Permit to Mine from the DNR. This permit revision process is a lengthy, detail-oriented analysis that includes public review and comment. The DNR is also the Wetland Conservation Act RGU for mining projects and issues water appropriation permits. Therefore, environmental impacts are thoroughly analyzed and specific permit conditions written as warranted regardless of whether an EAW is prepared or not. To set a mandatory threshold for an EAW related to significant expansions of mining-related areas with the DNR as the RGU is duplicative and therefore a waste of time and resources for both the Agency and the permittee.

Minnesota Rule section 4410.1000 Subpart 1 indicates that an “EAW is a *brief* document prepared in worksheet format which is designed to rapidly assess the environmental effects which may be associated with a proposed project.” (Emphasis added.) In practice, an EAW is a time- and resource-intensive process that results in a high level review of potential environmental effects. In recent history EAWs for two separate mine extensions have taken years to complete, resulting in negative declarations which were then litigated. More detailed analyses were completed during the permitting processes, which again were subject to public comment. While the EAW processes were completed due to the mandatory category requirement, they were unnecessary because they did not produce any additional information related to environmental impacts that was not already being considered during permitting.

### 4. 4410.4300 Subp. 26 Stream diversion and Subp. 27 Wetlands and Public Waters

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<sup>[2]</sup> See Notice of Availability of an Environmental Assessment Worksheet, The University of Minnesota, Twin Cities – Combined Heat and Power (CHP) Project (Oct. 27, 2014), <http://www.pca.state.mn.us/index.php/view-document.html?gid=21799>.

Action requested: Review the mandatory category for Subp. 26 and revise to say “unless exempted by part 4410.4600, subpart 14, item E or 17, **or are being conducted as part of a state or federal permit...**” Review the mandatory category for Subp. 27 and revise to say “except for those to be drained without a permit pursuant to Minnesota Statutes, chapter 103G, **or is being conducted as a requirement of a state or federal permit...**”

In recent years, state and federal wetland permitting programs have identified streams as features requiring mitigation. Inherent to the permitting process is the selection of an appropriate mitigation site and review and approval of enhancement or restoration design prior to construction. Post-construction monitoring to ensure proper environmental performance is also required and reviewed. Requiring an EAW on top of the already rigorous permitting review process is duplicative and unnecessary. This also places an unnecessary burden on the Counties, which are specified as the RGUs in these cases as per subparts 26 and 27.

#### 5. **4410.4300 Subp. 27 Wetlands and public waters**

Action requested: Review and revise item B of Subp. 27 for clarity and readability.

Item B provides the threshold that triggers preparation of an EAW for wetlands that are not public waters wetlands. The current description should be clarified and simplified to avoid confusion. The following revision is proposed:

*For wetlands that are not public waters wetlands, an EAW is mandatory if both of the following conditions apply: the project will change or diminish the course, current, or cross-section of 40 percent or more OR five or more acres of a wetland (types 3 through 8) that are 2.5 acres or more AND a part of the wetland is within a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area. The local government unit shall be the RGU.*

The Chamber appreciates EOB's consideration of these comments to improve Minnesota's Environmental Review program.

Sincerely,



Tony Kwilas

Minnesota Chamber of Commerce

**From:** [Seuffert, Will \(MPCA\)](#)  
**To:** [Ahlers-Nelson, Courtney \(MPCA\)](#)  
**Subject:** FW: Mandatory category suggestion  
**Date:** Monday, November 16, 2015 9:32:41 AM  
**Attachments:** [image001.jpg](#)

---

Have they decided on how to proceed with this?

---

**From:** Kwilas, Tony [mailto:tkwilas@mnchamber.com]  
**Sent:** Wednesday, November 04, 2015 4:09 PM  
**To:** Seuffert, Will (MPCA)  
**Subject:** Mandatory category suggestion

Will,

Look at Minnesota Rules 4410.4300 sub 15 b. The threshold of 100,000 has been struck down by the Supreme Court leaving no justifiable basis for that level to continue to be on a stand-alone basis on which to require environmental review.

Check with the PCA and Jeff Smith but my guess is that they will be ok with the removal.

Let me know if you have any questions. I think a few more suggestions will be coming.

TK

Subp. 15.

**Air pollution.**

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

**§**

A.

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

**§**

**B.**

**For construction of a stationary source facility that generates a combined 100,000 tons or more per year or modification of a stationary source facility that increases generation by a combined 100,000 tons or more per year of greenhouse gas emissions, after installation of air pollution control equipment, expressed as carbon dioxide equivalents, the PCA shall be the RGU. For purposes of this subpart, "greenhouse gases" include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride, and their combined carbon dioxide equivalents shall be computed by multiplying**



**the mass amount of emissions for each of the six greenhouse gases in the pollutant GHGs by the gas's associated global warming potential published in Table A-1 to subpart A of Code of Federal Regulations, title 40, part 98, Global Warming Potentials, as amended, and summing the resultant value for each.**

**TONY KWILAS**

*Director, Environmental Policy*

Minnesota Chamber of Commerce

400 Robert Street North

Suite 1500

St. Paul, MN 55101

P: 651.292.4668

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[tkwilas@mnchamber.com](mailto:tkwilas@mnchamber.com)

[www.mnchamber.com](http://www.mnchamber.com)

*If you print this email, please recycle it. Only a few other materials are as renewable, sustainable and recyclable as paper.*  
*womaninbusiness*



**From:** [Williams, Josh \(CI-StPaul\)](#)  
**To:** [Ahlers-Nelson, Courtney \(MPCA\)](#)  
**Cc:** [Riegel, Mark \(MPCA\)](#); [Sarah Beimers \(sarah.beimers@mnhs.org\)](#); [Michael Koop \(Michael.Koop@mnhs.org\)](#); [Spong, Amy \(CI-StPaul\)](#); [Kelly Gragg-Johnson \(kelly.graggjohnson@mnhs.org\)](#)  
**Subject:** Comments on possible EQB rule amendments  
**Date:** Wednesday, December 30, 2015 12:46:39 PM  
**Attachments:** [image001.jpg](#)  
[image002.jpg](#)  
[image003.jpg](#)  
[image004.jpg](#)  
[image005.jpg](#)

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Courtney,

This email comes pursuant to the EQB's Request for Comments on possible amendments to Rules governing the environmental review program, Minnesota Rules Chapter, 4410, and is intended to provide comments on behalf of the City of Saint Paul. These comments are informed by recent discussions with EQB and State Historic Preservation Office (SHPO) staff, including you, but are not necessarily intended to reflect your views of those of the other individuals or their respective institutions.

#### MN Rule 4410.4300 Subp. 31 – Historical Places

MN Rule 4410.4300 Subp. 31 requires that an EAW be completed prior to “the destruction, in whole or in part, or the moving of a property that is listed on the National Register of Historic Places or State Register of Historic Places” and identifies the permitting unit of government as the RGU. The subpart provides exceptions where other provisions for review exist in law. It also exempts properties determined to be “noncontributing”.

While the Subp. 31 is important to protect historic resources where other protections are not in place, it in some cases burdensome for individual property owners. In Saint the National and State Historic Hill Districts include some 1,800 properties (the majority of which are single family homes) which are not in the locally-designated Historic Hill District, where projects are reviewed by the Saint Paul Heritage Preservation Commission (HPC). As a result, any proposed full or partial destruction of these individual properties, even if it is to accommodate historically-appropriate rehabilitation or construction, requires an EAW. Unfortunately, an EAW can be a daunting task for a private homeowner, and based on limited past experience, the City as the RGU needs to step in to ensure the environmental review process is completed.

The process is further complicated by several other issues. First, the National and State Historic Hill Districts predate the “contributing/noncontributing” designations referenced in the Rule. As a result, an evaluation of a structure must be undertaken and a designation recommended and approved by SHPO before any EAW can be conducted. While the information from the evaluation is a big part of what goes into the EAW, it still makes the process longer and more complicated. Second, there are a number of areas where further clarification of how the Rule should be applied would be very helpful. Examples include a clear definition of what constitutes partial destruction, and clarification regarding how accessory structures, such as garages, and changes which only affect rear elevations not generally visible to the public, should be treated.

As noted above, City of Saint Paul staff recently meet with you and other EQB and SHPO staff, and

the discussion was helpful and encouraging. In addition, Saint Paul is considering changes to local ordinances which would grant the HPC authority to review partial and full demolitions within the National and State Historic Hill Districts. Saint Paul, with our partner Historic Saint Paul, is also pursuing a grant to survey the districts to bring information regarding the status of individual properties up to date.

As we continue to work on these efforts and on clarifying some of the questions I outline above, I would ask that the potential for minor changes to Subp. 31 be kept open. Based on discussions to date, it is not clear what the best approaches for streamlining the way the EAW process unfolds for this type of project may be, and the potential for using the Rule as a means to provide additional direction to RGUs and project proposers is something that should be taken advantage of if it is found to be an effective and appropriate option.

With thanks,

Josh

[Click Me](#) **Josh Williams**  
*Senior Planner*  
Planning and Economic Development  
25 W. Fourth Street  
Saint Paul, MN 55102  
P: 651.266.6659  
[josh.williams@ci.stpaul.mn.us](mailto:josh.williams@ci.stpaul.mn.us)



Making Saint Paul the Most Livable City in America

**From:** [Williams, Josh \(CI-StPaul\)](#)  
**To:** [Ahlers-Nelson, Courtney \(MPCA\)](#)  
**Subject:** Comments on possible EQB rule amendments (2 of 2)  
**Date:** Wednesday, December 30, 2015 1:23:57 PM  
**Attachments:** [image001.jpg](#)  
[image002.jpg](#)  
[image003.jpg](#)  
[image004.jpg](#)  
[image005.jpg](#)

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Courtney,

This email comes pursuant to the EQB's Request for Comments on possible amendments to Rules governing the environmental review program, Minnesota Rules Chapter, 4410, and is intended to provide comments on behalf of the City of Saint Paul. This letter covers subparts other than 4410.4300 Subp. 31, which was the subject of a separate email.

MN Rules 4410.4300 Subp. 14 and 4410.4400 Subp. 11 – Industrial, commercial, and institutional facilities

The City of Saint Paul generally finds the current thresholds to be reasonable. However, context, in terms of physical environment and in terms of existing RGU reviews, is important. For example, most large commercial or industrial projects in Saint Paul are redevelopments. If a 400,000 foot office and retail project is built on the site of a former industrial facility of a similar size, the net impact on resources is much different than the impact of a similar project when constructed on a greenfield site or a site that was previously low-density residential. This is particularly true in regard to infrastructure issues, where most of the infrastructure is likely already in place in redevelopment situations. In addition, in cities such as Saint Paul, substantial planning work always precedes such developments, and impacts on resources have likely already been carefully considered through open, public processes. I would be happy to discuss with you some more specific examples, and to discuss potential rule amendments.

MN Rules 4410.4300 Subp. 19 and 4410.4400 Subp. 14 – Residential development

Similar to commercial projects, most large residential developments in Saint Paul are actually redevelopments, so many of the considerations outlined above apply. In addition, the EAW threshold for attached residential in first class cities in the Twin Cities may be too low. One or two large buildings can trigger an EAW. Buildings of that scale are only allowed in limited areas of the City, and those areas have the infrastructure capacity to adequately serve them. Moreover, the areas designated for such development have been designated through careful, public planning processes.

Thanks, Courtney, and apologies that these comments were somewhat hastily written and provide less useful suggestions than I would otherwise like to have provided.

Josh

Click Me



## Josh Williams

### *Senior Planner*

Planning and Economic Development

25 W. Fourth Street

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[josh.williams@ci.stpaul.mn.us](mailto:josh.williams@ci.stpaul.mn.us)



Making Saint Paul the Most Livable City in America

**From:** [Karla Bloem](#)  
**To:** [Ahlers-Nelson, Courtney \(MPCA\)](#)  
**Cc:** [\\*OAH RuleComments.OAH](#); [Dahl, Erik \(MPCA\)](#)  
**Subject:** Comments on proposed rule change regarding motorized trails  
**Date:** Thursday, November 19, 2015 10:46:03 AM

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19 November 2015

Re: REQUEST FOR COMMENTS on Possible Amendments to Rules Governing the Environmental Review Program, Minnesota Rules Chapter, 4410; Revisor's ID Number R-04157

To the Minnesota Environmental Quality Board:

I am alarmed about the proposed change to the rules governing motorized trail environmental review that remove the requirement for an Environmental Assessment Worksheet for motorized trails in forested areas that are less than 25 miles long, so I am commenting on 1) q. subp. 37, items B. and C., recreational trails.

I live just outside of Houston, MN where a proposed OHV/OHM/ATV grant-in-aid trail project is beginning to move forward. The site for the proposed trails is a steep bluff in the Root River Valley that is almost completely forested, and the soil is very highly erodible (loess soil over sandstone). Local DNR resource staff (forestry, non-game wildlife, trails) have very grave concerns related to erosion potential for motorized trails on this site as do local county soil and water conservation staff. These concerns have been brushed aside by Parks and Trails staff in the St. Paul DNR office in charge of ushering the development of motorized trails.

I served as the Director/Naturalist of the Houston Nature Center from its inception in 2000 until February 2015. I used the proposed motorize trail site annually for bird hikes, owl prowls, and hikes to a unique rock formation at the top of the bluff. I am familiar with the soils, plants, and wildlife there, and have grave concerns about the potential for erosion if motorized trails are developed there, especially since they are planned to be *constructed and maintained by volunteers*.

There are currently horse trails on the proposed site which receive minimal use. Despite the minimal use, there is one location where the trail has eroded down three feet into the sand at the crest of a hill. I also worked with an Eagle Scout and DNR trails staff to develop a hiking trail in the park about 10 years ago. Horses were to be prevented from using the trails due to the high erosion potential, but one horse ventured onto the trail shortly after development. The horse's hooves left tracks that were several inches deep and damaged the trail. This site also historically had erosion issues when pastured decades ago. Erosion is the primary concern on this site.

A Federal Environmental Assessment was prepared for the National Park Service for a portion of the proposed Houston motorized trail site to request a change of use to allow motorized vehicle use since the parcel was purchased with Land and Water Conservation Fund dollars. The EA concluded there would be no impact at all from the change in use since no trails were yet proposed. The study never even considered what would happen if a tire touched the soil on the site, which is what everyone, including DNR staff, expected the EA to assess. It was simply a review of the site as it is now. The Park Service *accepted* the review and allowed the

change of use.

If legislative rules further remove the requirement for a mandatory EAW for trails of 25 miles or less on forested sites, the trail proposed in Houston will likely never receive a proper environmental review without resorting to a citizen petition for a review. While other legislation protects wetlands from impacts despite trails being short or on existing logging trails, as far as I am aware there is no other legislation that would step in to protect the bluff in Houston from the potential erosion that a motorized trail could cause.

Please note that the DNR is not one cohesive agency with shared opinions. Field staff with extensive training and experience may disagree with staff making decisions in the central office, which is what is happening with the proposed Houston trail. Field staff cannot publicly disagree with central office staff without fear of reprimand or losing their jobs. Decisions about trails are made in St. Paul, not in the field, and if St. Paul staff chose to disregard or downplay the warnings of field staff, then projects will go through that have the potential to cause significant environmental damage, WITHOUT PROPER ENVIRONMENTAL REVIEW.

Please CONTINUE TO REQUIRE MANDATORY EAWs for all proposed motorized trails since their potential for environmental damage is present even in the exceptions that are being proposed.

Karla Bloem  
19268 Perkins Valley Dr  
Houston, MN 55943  
507-896-3436  
[karlaowl@acegroup.cc](mailto:karlaowl@acegroup.cc)



December 21, 2015

Courtney Ahlers-Nelson  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, Minnesota 55155

**Re: Mandatory Categories Rulemaking for Minnesota's Environmental Review Program**

Dear Ms. Ahlers-Nelson:

These comments are submitted to the Environmental Quality Board ("EQB") on behalf of the Builders Association of the Twin Cities ("BATC") in response to a request posted in the *Minnesota Register* on Monday, November 9, 2015. Specifically, the notice solicits comments concerning the EQB's current rules governing Environmental Assessment Worksheets ("EAW") and Environmental Impact Statements ("EIS"), including whether the thresholds for mandatory review are appropriate for certain industry types.

By way of background, BATC represents over 1,100 member firms engaged in all phases of the home building, land development and remodeling industries in the Twin Cities area, including contractors, sub-contractors and suppliers. BATC is dedicated to providing a diverse selection of quality and affordably-priced homes in our region.

BATC strongly supports updating the thresholds for mandatory review of proposed residential developments, whether by EAW or EIS, as contained in Minnesota Rules 4410.4300, subp. 19 and 4410.4400, subp. 14, respectively. As referenced at page A-7 of the January 2013 report on Mandatory Environmental Review Categories, creation of the applicable rules and thresholds dates back to the 1980s and reflects an era in which modern environmental regulatory practices of local units of government were still developing. This condition no longer exists. Now, virtually all cities and counties are under strong state and federal requirements to regulate environmental impacts of development and have access to sophisticated professional resources to assist with the review of projects in their respective jurisdictions, typically paid for by project proposers. In addition, these jurisdictions routinely require the preparation of comprehensive studies to confirm the existence of any adverse impacts as a pre-condition to acting on a project application.

Moreover, state and federal law has created a patchwork of redundant jurisdictions with environmental review authority often resulting in a confusing, time-consuming and expensive "belts and suspenders" effect. For example, it is not unusual for a conventional housing subdivision of any size to undergo



review for environmental compliance by a local jurisdiction, along with watershed district, Department of Natural Resources, Pollution Control Agency, U.S. Army of Corps of Engineers, etc.

Taken together, the capacity of local units of government to self-manage environmental review of potential project impacts and the redundancy of regulatory oversight, substantially reduces if not eliminates the need for mandatory category review by EAW and especially by EIS except under the most unusual circumstances. Notwithstanding the legitimate basis to pare back substantially the need for mandatory category review of residential developments, local jurisdictions still possess the ability to initiate unilaterally environmental review by EAW and EIS whenever local questions or concerns exist that warrant such action (see Minn. Rule 4410.4600).

Finally, apart from the capacity of local governments to effectively manage environmental review, there is a significant lack of parity amongst the various industrial categories that are subject to environmental review. It makes no sense to subject relatively small residential developments (whether sewered or on private septic systems) to mandatory levels of review when other large-scale projects do not fall under any mandatory category notwithstanding their land disturbance impacts. At a minimum, the unfairness and disproportionality of this expensive obligation should be corrected.

Thank you for the opportunity to provide written comments regarding the adequacy of existing rules relating to mandatory review of residential developments. BATC and its member companies look forward to participating in any stakeholder process to advance this important discussion.

Sincerely,

A handwritten signature in black ink, appearing to read "David Siegel". The signature is fluid and cursive, with a large loop at the end.

David Siegel  
Executive Director

**From:** [SHARON NATZEL](#)  
**To:** [Ahlers-Nelson, Courtney \(MPCA\)](#)  
**Cc:** [sorgww@aol.com](mailto:sorgww@aol.com)  
**Subject:** Comments for possible amendments to rules for Mandatory categories EAW and EIS  
**Date:** Thursday, December 31, 2015 3:38:04 PM

---

Dear Courtney Ahlers-Nelson,

Here are my comments on the possible amendments to Mandatory categories EAW and EIS for rulemaking below. Please let me know if you have questions or need clarification. Thank you.

Sincerely, Sharon Natzel, 13623 County 20, Park Rapids, MN 56470

1) Mandatory categories for environmental assessment worksheets located under part 4410.4300

d. subp.8. Transfer facilities B. For construction of a new facility or the expansion by 50 % ..... should not be limited to the areas listed currently, but should be for anywhere in the state of MN and the PCA shall continue to be the RGU Also the definition of a transfer facility should be made clear and it should include petroleum staging areas like those in Clearbrook and those being considered to be built near Clearbrook. It should also include pump station additions to existing pipelines. I would also suggest that this item be moved to the EIS mandatory category like Subp.5. Fuel conversion facilities.

2) Mandatory categories for EIS 4410.4400.

A new rule in the Mandatory EIS category should be added for pipeline abandonment as is being proposed by a Canadian company now for northern MN pipeline. Canada requires pipelines to be removed and so should MN. We can learn from Canada and not recreate the wheel.

Subp.24. The Pipeline RGU should be the PCA and not the PUC in DOC as that is a conflict of interest.

Subp 23 Water diversions. Water should not be allowed to be sold by appropriators for fracking.

December 23, 2015

Courtney Ahlers-Nelson  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, Minnesota 55155

Re: Environmental Review Program: Mandatory Categories Rulemaking

Dear Ms. Ahlers-Nelson:

These comments are submitted to the Environmental Quality Board (“EQB”) on behalf of Westwood Professional Services, Inc. (“Westwood”) in response to a request posted in the *Minnesota Register* on Monday, November 9, 2015. The notice invites comments regarding whether the thresholds associated within Mandatory Environmental Review Categories are appropriate.

Westwood is an award winning, multi-disciplined surveying and engineering firm providing services for commercial and residential development, wind and solar energy, electric transmission, and oil and gas pipeline development. Westwood was established in 1972 in Minneapolis and has grown to serve clients across the nation from multiple U.S. offices.

Westwood fully supports updating the thresholds for mandatory review of proposed residential, commercial, and mixed-use developments, whether by EAW or EIS. We acknowledge that the rules governing environmental review in Minnesota were implemented some 35 years ago prior to many of the existing regulatory programs in place today. Unlike early development projects of the 1970’s and 80’s, today’s projects are often subject to redundant review from multiple regulatory jurisdictions including cities, watershed districts, state and federal agencies.

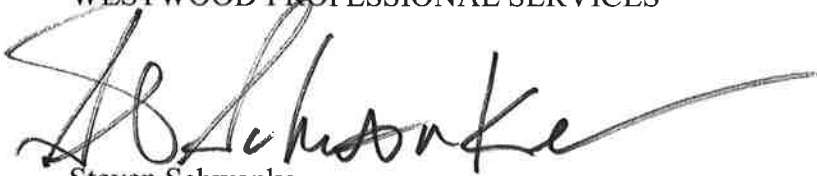
In addition, Cities and counties within the seven-county metropolitan area are now required by the Metropolitan Council to adopt Comprehensive Plan documents that are periodically reviewed and updated. These documents address many of the same issues covered by the environmental review process including wastewater, traffic, and stormwater, among others, often creating redundant and unnecessary reviews.

Municipalities also have access to technical expertise at the local, state, and federal levels that simply was not available 30 or 35 years ago when the original rules and mandatory thresholds were implemented. The ability for many cities within the greater metropolitan area to manage environmental review internally reduces the need for mandatory category review by EAW and EIS.

For these reasons, mandatory category review by EAW, and especially by EIS, should be curtailed except for the most unusual circumstances. Existing provisions in the rules allow communities to complete discretionary reviews, and for citizens to petition environmental reviews, when warranted. Thank you for the opportunity to provide written comments regarding the adequacy of existing rules relating to mandatory review of residential, commercial and mixed-use development projects. Westwood Professional Services looks forward to participating in future stakeholder processes and discussions on this topic, and ask that we please be kept informed of future meetings and opportunities to comment.

Sincerely,

WESTWOOD PROFESSIONAL SERVICES

A handwritten signature in black ink, appearing to read "S. Schwanke", with a long horizontal flourish extending to the right.

Steven Schwanke

Commercial Market Leader

**From:** [Germundson, Travis \(BWSR\)](#)  
**To:** [Ahlers-Nelson, Courtney \(MPCA\)](#)  
**Cc:** [Seuffert, Will \(MPCA\)](#); [Weirens, David \(BWSR\)](#); [Lemm, Les P \(BWSR\)](#)  
**Subject:** FW: Mandatory Environmental Review Categories for Wetlands  
**Date:** Friday, December 04, 2015 8:52:15 AM

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Courtney,

Below are some suggested comments/changes to EQB's proposed 4410 Mandatory Category Rulemaking that Les and I talked about with you back on October 1<sup>st</sup>. As discussed at our recent Technical Representatives meeting, please include the category of Wetlands and Protected Waters (4410.4300, Subpart 27 B.) as a possible amendment to the rules.

Thank you,

Travis Germundson  
Water Management Coordinator  
Board of Water and Soil Resources  
520 Lafayette Road N  
St. Paul, MN 55155

-----COMMENTS-----

As discussed, here are some [preliminary conceptual ideas](#) for changes to the mandatory environmental review category of Wetlands and Protected Waters (4410.4300 Subp. 27 B). Changes are needed for simplification reasons and to create consistency between alterations/impacts to WCA wetlands and DNR public water wetlands.

- Eliminate references to “type” of wetland (the requirement should apply to all types of WCA and Public Water Wetlands).
- Expand the area of jurisdiction for non-PWWs beyond the shoreland, floodplain, and wild and scenic. It should apply to all areas regardless of the environmental overlay districts.
- Eliminate the reference to percent of impact and list an area amount. (2.5 ac?)
- Incorporate a reference to “impact or delineated wetland boundary” in addition to the current language of course, current, or cross-section.
- Specify that this mandatory category does not apply to projects with the primary purpose of enhancing wetland function and values (i.e. creation of wetland banks, RIM, or other easement/enhancement/habitat projects). Those projects would be “exempt.”
- Exemption categories should include projects that qualify for a WCA emptions or no-loss and public road projects consisting of repair or safety improvements to existing serviceable roads.
- Specify that the threshold is on a per project basis and cumulative.

Specific language could be as simple as:

- For projects that impact, change, or diminish the course, current, cross-section, or boundary of one acre or more of any wetland, public waters wetland, or public water, except for those that do not require a permit or replacement plan pursuant to Minnesota Statutes, chapter 103G, the local government unit shall be the RGU.

Or we could look at different amounts:

- 1 acre within shoreland, 3 acres outside of shoreland.
- X acres of public waters, Y acres of wetland or PWW.

We're just throwing out some ideas for discussion, but in general we think 1) simplification will help compliance, and that 2) all wetlands should be treated the same.

Les Lemm  
Wetland Conservation Act Coordinator  
Minnesota Board of Water and Soil Resources  
520 Lafayette Road North  
St. Paul, MN 55155  
651-296-6057 (office)  
651-341-4208 (cell)

December 24, 2015

Ms. Courtney Ahlers-Nelson  
Environmental Quality Board  
520 Lafayette Road  
Saint Paul, MN 55155

RECEIVED  
DEC 30 2015

BY:.....

**RE:** Environmental Quality Board Rule Revision Update Process

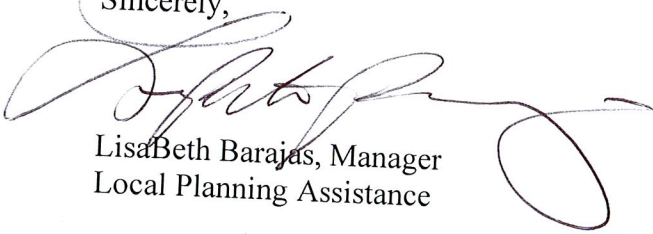
Dear Ms. Ahlers-Nelson:

The Metropolitan Council (Council) previously commented on the *2012 Mandatory Environmental Review Categories Report* (Report) and the on-going environmental review update process in a letter dated August 31, 2015 addressed to you. During the November 10, 2015 WebEx meeting to address process updates, the request was made of meeting participants to give thought to the need for creation of new mandatory categories. The following comments are offered in this regard.

Considerable advancements have been made in the field of environmental protection since the establishment of the Minnesota Environmental Policy Act in 1973. Of particular note are the Wetland Conservation Act put into effect in the early 1990s and more recently the continuing integration of innovative methods and best practices for managing stormwater runoff to promote groundwater recharge through infiltration and minimization of its degrading effects on surface waters. We have observed a number of extensive projects to either install infrastructure to manage stormwater runoff on a regional scale, or to provide maintenance to facilities which have been subjected to the degrading effects of its detention and treatment. Some have not undergone formal public environmental review, and others have prepared formal documents voluntarily. Council staff suggests that consideration be given by the agencies that more closely oversee stormwater management to determine if there is a need for and value in establishing mandatory environmental protection categories in this area.

If you have any questions or need further information, please contact me at 651-602-1895.

Sincerely,



LisaBeth Barajas, Manager  
Local Planning Assistance

CC: Jim Larsen, Senior Planner  
Raya Esmaeili, Reviews Coordinator

N:\CommDev\LPA\Agencies\EQB\Letters\EQB 2015 Rule Revision Update Process.doc



# Minnesota County Engineers Association



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## AFFILIATED WITH



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Proudly Serving Counties Since 1909.

July 20, 2016

Environmental Quality Board

Attn: Mandatory Category Rulemaking

520 Lafayette Road North

St. Paul, MN 55155

### Subject: EQB Mandatory Categories Rulemaking: Preliminary Rules Language

Thank you for the opportunity provided by the Environmental Quality Board (EQB) to allow stakeholders and the public the opportunity to comment on this rulemaking process. I am submitting this comment letter on the Preliminary Rule Language changes for Minnesota Rule 4410 on behalf of the Minnesota County Engineers Association (MCEA). In addition to providing the opportunity to comment we appreciate the chance for MCEA representatives to be involved early in the rule making process.

It's our understanding that the EQB has released preliminary proposed rule changes pertaining to Minnesota Rule Chapter 4410, consistent with a 2015 legislative charge to support environmental review efficiency. We recognize that establishing thresholds for preparation of Mandatory EAW and EIS documents is not a simple exercise. The Environmental Review Process, specifically through the use of EAW and EIS documents, has been critical in providing governmental units with the information necessary to make environmentally sensitive decisions in the best interests of the public. At the same time, it is incumbent on all levels of government to ensure that government resources are used wisely, and that we seek ways to improve our efficiency in the delivery of products and services to the public.

The MCEA is supportive of the following proposed changes:

#### **Mn Rule Chapter 4410.0200 Definitions**

The MCEA supports the proposed changes to the definitions, including the addition of a definition for "Auxiliary Lane" to support the proposed changes in the Mandatory EAW Categories.

#### **Mn Rule Chapter 4410.4300 Mandatory EAW Categories**

Subpart 22, Item B: An EAW is required "For construction of additional through lanes or passing lanes on an existing road for a length of two or more miles". This is a change from the current rule of one mile.

#### **Mn Rule Chapter 4410.4600 Exemptions**

Subpart 14, Item C: "Modernization of an existing roadway or bridge by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders or adding auxiliary lanes that may involve the acquisition of minimal amounts of right-of-way is exempt." This rule has been changed by adding "reconstruction, adding shoulders or adding auxiliary lanes".



The MCEA strongly supports these language changes as a way to improve environmental review efficiency. The primary purpose of an EAW is to lay out the basic facts and potential impacts of a project as necessary to determine if an EIS is required for a proposed project. It has been a very rare occurrence when a county highway project of any type, regardless of length, has required completion of an EIS. In many cases, county highway construction projects of such a significant scope include federal funding, and would already be following the federal environmental review process. Resurfacing, restoration, rehabilitation, reconstruction, shoulders or auxiliary lane projects with minimal amounts of right-of-way along an existing road rarely have any substantive impacts. These changes are seen as being beneficial in ensuring public resources are spent wisely in the delivery of transportation projects by avoiding the administrative work to prepare unnecessary environmental documentation.

The MCEA is also pleased to see that the preliminary rules published for comment June 17, 2016 make no revisions to the mandatory EAW thresholds for impacts to public waters, public water wetlands and wetlands as set out in 4410.4300 Supb. 27. Again, impacts in these areas are subject to regulation by multiple agencies and any project related impacts are thoroughly addressed through the project development process and existing permitting requirements.

It is recognized that some stakeholders may feel that additional environmental review process based on thresholds would further reduce impacts or help to make the public aware of public projects. It is important to recognize that counties are diligent in trying to avoid and minimize impacts associated with highway construction projects. The projects are developed in coordination with regulatory agencies, stakeholders, and the public through engagement during the project development process. It is important to understand that county highway projects are still subject to all of the requirements of applicable federal, state, regional and local laws and rules pertaining potential impacts and mitigation, regardless of the environmental review path taken. Further, all County Engineers are also responsible to their Board of elected officials to ensure that public interests are being met.

Thank you for your consideration of our comments on the preliminary rule language changes to Mn Rule 4410. The MCEA would be happy to discuss these comments with you. Also, please let us know if the MCEA can be of assistance in any manner with this rulemaking effort.

Sincerely,



Mark J. Krebsbach, P.E.  
President, Minnesota County Engineers Association  
Dakota County Engineer

Cc: Mitch Rasmussen, Mn/DOT State Aid Engineer  
Julie Ring, Executive Director, Association of Minnesota Counties  
Emily Pugh, Transportation and Energy Policy Analyst, Association of Minnesota Counties

**From:** [Langan, Matthew A](#)  
**To:** [Ahlers-Nelson, Courtney \(MPCA\)](#)  
**Cc:** [Rosvold, Richard A](#); [Rogers, Timothy G](#); [Edman, Timothy J](#)  
**Subject:** Mandatory Categories Rulemaking  
**Date:** Wednesday, July 20, 2016 2:08:04 PM

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Courtney – Thanks for taking the time to speak with me last month about the Minnesota Environmental Quality Board’s proposed rule amendments. As we discussed on the phone, the only (minor) comments we would like to submit are on 4410.4300, Subp. 3B, Electric Generating Facilities (lines 44-47):

*B. For construction of an electric power generating plants and associated facilities designed for and capable of operating at a capacity of 25 megawatts or more and less than 50 megawatts and for which an air permit from the MPCA is not required or more, the PUC shall be the RGU. Environmental review shall be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.*

We agree it makes sense to change the RGU from MEQB to MPUC for projects that meet this profile. As you know, MPUC and the Department of Commerce have been responsible for environmental review of electric generating facilities since 2005, and have the expertise and capacity to act as RGU for an EAW.

Also, it’s important to clarify MPUC would carry-out the EAW preparation and review process according to MR Chp. 4410, not MR Chps. 7849 and 7850. In our phone conversation you identified that the last sentence in the subpart was left in in error (from the pre-amendment, existing rule language,) and we agree eliminating that last sentence removes the confusion, properly aligning the rule subpart with the correct environmental review process. So the subpart would read:

*B. For construction of an electric power generating plants and associated facilities designed for and capable of operating at a capacity of 25 megawatts or more and less than 50 megawatts and for which an air permit from the MPCA is not required or more, the PUC shall be the RGU.*

We hope you find these comments helpful. Please let us know if you have any questions.

-Matt

**Matt Langan**  
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# 4410.4300 MANDATORY EAW CATEGORIES.

## Subpart 1. Threshold test.

An EAW must be prepared for projects that meet or exceed the threshold of any of subparts 2 to 37, unless the project meets or exceeds any thresholds of part 4410.4400, in which case an EIS must be prepared.

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.

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.

## 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, the EQB shall be 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 shall be the RGU.

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

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

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

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

## Subp. 3. Electric generating facilities.

For construction of an electric power generating plant and associated facilities designed for or capable of operating at a capacity of between 25 megawatts and 50 megawatts, the EQB shall be the RGU. For electric power generating plants and associated facilities designed for and capable of operating at a capacity of 50 megawatts or more, environmental review shall be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.

## Subp. 4. Petroleum refineries.

For expansion of an existing petroleum refinery facility that increases its capacity by 10,000 or more barrels per day, the PCA shall be 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 facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 25,000 dry tons or more per year of input, the PCA shall be the RGU.

- 49 B. For construction or expansion of a facility for the production of alcohol fuels which would have or would increase  
50 its capacity by 5,000,000 or more gallons per year of alcohol produced, the PCA shall be the RGU.  
51

### 52 **Subp. 6. Transmission lines.**

53 For construction of a transmission line at a new location with a nominal capacity of between 70 kilovolts and 100  
54 kilovolts with 20 or more miles of its length in Minnesota, the EQB shall be the RGU. For transmission lines and  
55 associated facilities designed for and capable of operating at a nominal voltage of 100 kilovolts or more, environmental  
56 review shall be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.  
57

### 58 **Subp. 7. Pipelines.**

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

- 60
- 61 A. For routing of a pipeline, greater than six inches in diameter and having more than 0.75 miles of its length in  
62 Minnesota, used for the transportation of coal, crude petroleum fuels, or oil or their derivatives, the EQB shall be  
63 the RGU.  
64
- 65 B. For the construction of a pipeline for distribution of natural or synthetic gas under a license, permit, right, or  
66 franchise that has been granted by the municipality under authority of Minnesota Statutes, section 216B.36,  
67 designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than:  
68
- 69 (1) five miles if the pipeline will occupy streets, highways, and other public property; or  
70 (2) 0.75 miles if the pipeline will occupy private property; the EQB or the municipality is the RGU.  
71
- 72 C. For construction of a pipeline to transport natural or synthetic gas subject to regulation under the federal Natural  
73 Gas Act, United States Code, title 15, section 717, et. seq., designed to operate at pressures in excess of 275  
74 pounds per square inch (gauge) with a length greater than:  
75
- 76 (1) five miles if the pipeline will be constructed and operated within an existing right-of-way; or  
77 (2) 0.75 miles if construction or operation will require new temporary or permanent right-of-way;  
78
- 79 the EQB is the RGU. This item shall not apply to the extent that the application is expressly preempted by federal law,  
80 or under specific circumstances when an actual conflict exists with applicable federal law.  
81  
82
- 83 D. For construction of a pipeline to convey natural or synthetic gas that is not subject to regulation under the federal  
84 Natural Gas Act, United States Code, title 15, section 717, et seq.; or to a license, permit, right, or franchise that  
85 has been granted by a municipality under authority of Minnesota Statutes, section 216B.36; designed to operate at  
86 pressures in excess of 275 pounds per square inch (gauge) with a length greater than 0.75 miles, the EQB is the  
87 RGU.  
88

89 Items A to D do not apply to repair or replacement of an existing pipeline within an existing right-of-way or to a pipeline  
90 located entirely within a refining, storage, or manufacturing facility.  
91

### 92 **Subp. 8. Transfer facilities.**

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

- 94
- 95 A. For construction of a facility designed for or capable of transferring 300 tons or more of coal per hour or with an  
96 annual throughput of 500,000 tons of coal from one mode of transportation to a similar or different mode of  
97 transportation; or the expansion of an existing facility by these respective amounts, the PCA shall be the RGU.  
98
- 99 B. For construction of a new facility or the expansion by 50 percent or more of an existing facility for the bulk  
100 transfer of hazardous materials with the capacity of 10,000 or more gallons per transfer, if the facility is located in  
101 a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers district Minnesota  
102 River Project Riverbend area, or the Mississippi headwaters area, the PCA shall be the RGU.

103

104 **Subp. 9. Underground storage.**

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

- 106
- 107 A. For expansion of an underground storage facility for gases or liquids that requires a permit, pursuant to Minnesota
- 108 Statutes, section 103I.681, subdivision 1, paragraph (a), the DNR shall be the RGU.
- 109
- 110 B. For expansion of an underground storage facility for gases or liquids, using naturally occurring rock materials,
- 111 that requires a permit pursuant to Minnesota Statutes, section 103I.681, subdivision 1, paragraph (b), the DNR
- 112 shall be the RGU.
- 113

114 **Subp. 10. Storage facilities.**

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

- 116
- 117 A. For construction of a facility designed for or capable of storing more than 7,500 tons of coal or with an annual
- 118 throughput of more than 125,000 tons of coal; or the expansion of an existing facility by these respective
- 119 amounts, the PCA shall be the RGU.
- 120
- 121 B. For construction of a facility on a single site designed for or capable of storing 1,000,000 gallons or more of
- 122 hazardous materials, the PCA shall be the RGU.
- 123
- 124 C. For construction of a facility designed for or capable of storing on a single site 100,000 gallons or more of
- 125 liquefied natural gas, synthetic gas, or anhydrous ammonia, the PCA shall be the RGU.
- 126

127 **Subp. 11. Metallic mineral mining and processing.**

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

- 129
- 130 A. For mineral deposit evaluation of metallic mineral deposits other than natural iron ore and taconite, the DNR shall
- 131 be the RGU.
- 132
- 133 B. For expansion of a stockpile, tailings basin, or mine by 320 or more acres, the DNR shall] be the RGU.
- 134
- 135 C. For expansion of a metallic mineral plant processing facility that is capable of increasing production by 25 percent
- 136 per year or more, provided that increase is in excess of 1,000,000 tons per year in the case of facilities for
- 137 processing natural iron ore or taconite, the DNR shall be the RGU.
- 138

139 **Subp. 12. Nonmetallic mineral mining.**

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

- 141
- 142 A. For development of a facility for the extraction or mining of peat which will result in the excavation of 160 or
- 143 more acres of land during its existence, the DNR shall be the RGU.
- 144
- 145 B. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals,
- 146 other than peat, which will excavate 40 or more acres of land to a mean depth of ten feet or more during its
- 147 existence, the local government unit shall be the RGU.
- 148
- 149
- 150 C. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals,
- 151 other than peat, which will excavate 20 or more acres of forested or other naturally vegetated land in a sensitive
- 152 shoreland area or 40 acres of forested or other naturally vegetated land in a nonsensitive shoreland area, the local
- 153 governmental unit shall be the RGU.
- 154

155 **Subp. 13. Paper or pulp processing mills.**

156 For expansion of an existing paper or pulp processing facility that will increase its production capacity by 50 percent or  
157 more, the PCA shall be the RGU.  
158

159 **Subp. 14. Industrial, commercial, and institutional facilities.** [DW1]

160 Items A and B designate the RGU for the type of project listed, except as provided in items C and D:  
161

- 162 A. For construction of a new or expansion of an existing warehousing or light industrial facility equal to or in excess  
163 of the following thresholds, expressed as gross floor space, the local governmental unit shall be the RGU:  
164
- 165 (1) unincorporated area, 150,000;
  - 166 (2) third or fourth class city, 300,000;
  - 167 (3) second class city, 450,000;
  - 168 (4) first class city, 600,000.
- 169
- 170 B. For construction of a new or expansion of an existing industrial, commercial, or institutional facility, other than a  
171 warehousing or light industrial facility, equal to or in excess of the following thresholds, expressed as gross floor  
172 space, the local government unit shall be the RGU:  
173
- 174 (1) unincorporated area, 100,000 square feet;
  - 175 (2) third or fourth class city, 200,000 square feet;
  - 176 (3) second class city, 300,000 square feet;
  - 177 (4) first class city, 400,000 square feet.
- 178
- 179 C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if  
180 there are mandatory categories specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400,  
181 subparts 2 to 10, 12, 13, 15, or 17, for two or more of the components, regardless of whether the project in  
182 question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be  
183 compared to the thresholds specified in items A and B to determine the need for an EAW. If the project meets or  
184 exceeds the thresholds specified in any other subpart as well as that of item A or B, the RGU must be determined  
185 as provided in part 4410.0500, subpart 1.  
186
- 187 D. This subpart does not apply to projects for which there is a single mandatory category specified in subparts 2 to  
188 13, 16, 17, 20, 23, 25, 29, or 34, or part 4410.4400, subparts 2 to 10, 12, 13, 17, or 22, regardless of whether the  
189 project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an  
190 EAW must be determined by comparison of the project to the threshold specified in the applicable subpart, and  
191 the RGU must be the governmental unit assigned by that subpart.  
192

193 **Subp. 15. Air pollution.**

194 Items A and B designate the RGU for the type of project listed.  
195

- 196 A. For construction of a stationary source facility that generates 250 tons or more per year or modification of a  
197 stationary source facility that increases generation by 250 tons or more per year of any single air pollutant, other  
198 than those air pollutants described in item B, after installation of air pollution control equipment, the PCA shall be  
199 the RGU.  
200
- 201 B. For construction of a stationary source facility that generates a combined 100,000 tons or more per year or  
202 modification of a stationary source facility that increases generation by a combined 100,000 tons or more per year  
203 of greenhouse gas emissions, after installation of air pollution control equipment, expressed as carbon dioxide  
204 equivalents, the PCA shall be the RGU. For purposes of this subpart, "greenhouse gases" include carbon dioxide,  
205 methane, nitrous oxide, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride, and their  
206 combined carbon dioxide equivalents shall be computed by multiplying the mass amount of emissions for each of  
207 the six greenhouse gases in the pollutant GHGs by the gas's associated global warming potential published in

208 Table A-1 to subpart A of Code of Federal Regulations, title 40, part 98, Global Warming Potentials, as amended,  
209 and summing the resultant value for each.  
210

211 **Subp. 16. Hazardous waste.**

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

- 213 A. For construction or expansion of a hazardous waste disposal facility, the PCA shall be the RGU.
- 214 B. For construction of a hazardous waste processing facility with a capacity of 1,000 or more kilograms per month,  
215 the PCA shall be the RGU.
- 216 C. For expansion of a hazardous waste processing facility that increases its capacity by ten percent or more, the PCA  
217 shall be the RGU.
- 218 D. For construction or expansion of a facility that sells hazardous waste storage services to generators other than the  
219 owner and operator of the facility or construction of a facility at which a generator's own hazardous wastes will be  
220 stored for a time period in excess of 90 days, if the facility is located in a water-related land use management  
221 district, or in an area characterized by soluble bedrock, the PCA shall be the RGU.

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228 **Subp. 17. Solid waste.**

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

- 230 A. For construction of a mixed municipal solid waste disposal facility for up to 100,000 cubic yards of waste fill per  
231 year, the PCA is the RGU.
- 232 B. For expansion by 25 percent or more of previous capacity of a mixed municipal solid waste disposal facility for  
233 up to 100,000 cubic yards of waste fill per year, the PCA is the RGU.
- 234 C. For construction or expansion of a mixed municipal solid waste transfer station for 300,000 or more cubic yards  
235 per year, the PCA is the RGU.
- 236 D. For construction or expansion of a mixed municipal solid waste energy recovery facility or incinerator, or the  
237 utilization of an existing facility for the combustion of mixed municipal solid waste or refuse-derived fuel, with a  
238 capacity of 30 or more tons per day of input, the PCA is the RGU.
- 239 E. For construction or expansion of a mixed municipal solid waste compost facility or a refuse-derived fuel  
240 production facility with a capacity of 50 or more tons per day of input, the PCA is the RGU.
- 241 F. For expansion by at least ten percent but less than 25 percent of previous capacity of a mixed municipal solid  
242 waste disposal facility for 100,000 cubic yards or more of waste fill per year, the PCA is the RGU.
- 243 G. For construction or expansion of a mixed municipal solid waste energy recovery facility ash landfill receiving ash  
244 from an incinerator that burns refuse-derived fuel or mixed municipal solid waste, the PCA is the RGU.

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254 **Subp. 18. Wastewater systems.**

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

- 256 A. For expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in  
257 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  
258 wastewater treatment facility with a capacity less than 20,000,000 gallons per day or for expansion, modification,  
259 or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of  
260

any part of that system by 2,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with the capacity of 20,000,000 gallons or greater, the PCA shall be the RGU.

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

**Subp. 19. Residential development.** [DW2]

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 sewerered unincorporated area;
- B. 100 unattached units or 150 attached units in a city that does not meet the conditions of item D;
- C. 100 unattached units or 150 attached units in a city meeting the conditions of item D if the project is not consistent with the adopted comprehensive plan; or
- D. 250 unattached units or 375 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;



- 316  
317 (3) a sewage collection system policy plan describing, designating, and scheduling the areas to be served  
318 by the public system, the existing and planned capacities of the public system, and the standards and  
319 conditions under which the installation of private sewage treatment systems will be permitted;  
320  
321 (4) a capital improvements plan for public facilities; and  
322  
323  
324 (5) an implementation plan describing public programs, fiscal devices, and other actions to be undertaken  
325 to implement the comprehensive plan, and a description of official controls addressing the matters of  
326 zoning, subdivision, private sewage systems, and a schedule for the implementation of those controls.  
327 The EQB chair may specify the form to be used for making a certification under this item.

328 **Subp. 19a. Residential development in shoreland outside of the seven-county Twin Cities**  
329 **metropolitan area.**  
330

- 331 A. The local governmental unit is the RGU for construction of a permanent or potentially permanent residential  
332 development located wholly or partially in shoreland outside the seven-county Twin Cities metropolitan area of a  
333 type listed in items B to E. For purposes of this subpart, "riparian unit" means a unit in a development that abuts a  
334 public water or, in the case of a development where units are not allowed to abut the public water, is located in the  
335 first tier of the development as provided under part 6120.3800, subpart 4, item A. If a project is located partially  
336 in a sensitive shoreland area and partially in nonsensitive shoreland areas, an EAW must be prepared if the sum of  
337 the quotient obtained by dividing the number of units in the sensitive shoreland area by the applicable sensitive  
338 shoreland area threshold, plus the quotient obtained by dividing the number of units in nonsensitive shoreland  
339 areas by the applicable nonsensitive shoreland area threshold, equals or exceeds one. If a project is located  
340 partially in shoreland and partially not in shoreland, an EAW must be prepared if the sum of the quotients  
341 obtained by dividing the number of units in each type of area by the applicable threshold for each area equals or  
342 exceeds one.  
343  
344 B. A development containing 15 or more unattached or attached units for a sensitive shoreland area or 25 or more  
345 unattached or attached units for a nonsensitive shoreland area, if any of the following conditions is present:  
346  
347 (1) less than 50 percent of the area in shoreland is common open space;  
348  
349 (2) the number of riparian units exceeds by at least 15 percent the number of riparian lots that would be  
350 allowable calculated according to the applicable lot area and width standards for riparian unsewered  
351 single lots under part 6120.3300, subparts 2a and 2b; or  
352  
353 (3) if any portion of the project is in an unincorporated area, the number of nonriparian units in shoreland  
354 exceeds by at least 15 percent the number of lots that would be allowable on the parcel calculated  
355 according to the applicable lot area standards for nonriparian unsewered single lots under part  
356 6120.3300, subparts 2a and 2b.  
357  
358 C. A development containing 25 or more unattached or attached units for a sensitive shoreland area or 50 or more  
359 unattached or attached units for a nonsensitive shoreland area, if none of the conditions listed in item B is present.  
360  
361 D. A development in a sensitive shoreland area that provides permanent mooring space for at least one nonriparian  
362 unattached or attached unit.  
363  
364  
365 E. A development containing at least one unattached or attached unit created by the conversion of a resort, motel,  
366 hotel, recreational vehicle park, or campground, if either of the following conditions is present:  
367  
368

- 369 (1) the number of nonriparian units in shoreland exceeds by at least 15 percent the number of lots that  
370 would be allowable on the parcel calculated according to the applicable lot area standards for  
371 nonriparian unsewered single lots under part 6120.3300, subparts 2a and 2b; or  
372  
373 (2) the number of riparian units exceeds by at least 15 percent the number of riparian lots that would be  
374 allowable calculated according to the applicable lot area and width standards for riparian unsewered  
375 single lots under part 6120.3300, subparts 2a and 2b.  
376

377 F. An EAW is required for residential development if the total number of units that may ultimately be developed on  
378 all contiguous land owned or under an option to purchase by the proposer, except land identified by an applicable  
379 comprehensive plan, ordinance, resolution, or agreement of a local governmental unit for a future use other than  
380 residential development, equals or exceeds a threshold of this subpart. In counting the total number of ultimate  
381 units, the RGU shall include the number of units in any plans of the proposer. For land for which the proposer has  
382 not yet prepared plans, the RGU shall use as the number of units the number of acres multiplied by the maximum  
383 number of units per acre allowable under the applicable zoning ordinance or, if the maximum number of units  
384 allowable per acre is not specified in an applicable zoning ordinance, by the overall average number of units per  
385 acre indicated in the plan of the proposer for those lands for which plans exist.  
386

### 387 **Subp. 20. Campgrounds and RV parks.**

388 For construction of a seasonal or permanent recreational development, accessible by vehicle, consisting of 50 or more  
389 sites, or the expansion of such a facility by 50 or more sites, the local government unit shall be the RGU.  
390

### 391 **Subp. 20a. Resorts, campgrounds, and RV parks in shorelands.**

392 The local government unit is the RGU for construction or expansion of a resort or other seasonal or permanent  
393 recreational development located wholly or partially in shoreland, accessible by vehicle, of a type listed in item A or B:  
394

- 395 A. construction or addition of 25 or more units or sites in a sensitive shoreland area or 50 units or sites in a  
396 nonsensitive shoreland area if at least 50 percent of the area in shoreland is common open space; or  
397  
398 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  
399 nonsensitive shoreland area, if less than 50 percent of the area in shoreland is common open space.  
400

401 If a project is located partially in a sensitive shoreland area and partially in nonsensitive shoreland areas, an EAW must be  
402 prepared if the sum of the quotient obtained by dividing the number of units in the sensitive shoreland area by the  
403 applicable sensitive shoreland area threshold, plus the quotient obtained by dividing the number of units in nonsensitive  
404 shoreland areas by the applicable nonsensitive shoreland area threshold, equals or exceeds one. If a project is located  
405 partially in shoreland and partially not in shoreland, an EAW must be prepared if the sum of the quotients obtained by  
406 dividing the number of units in each type of area by the applicable threshold for each area equals or exceeds one.  
407

### 408 **Subp. 21. Airport projects.**

409 Items A and B designate the RGU for the type of project listed:  
410

- 411 A. For construction of a paved, new airport runway, the DOT, local governmental unit, or the Metropolitan Airports  
412 Commission shall be the RGU.  
413  
414 B. For construction of a runway extension that would upgrade an existing airport runway to permit usage by aircraft  
415 over 12,500 pounds that are at least three decibels louder than aircraft currently using the runway, the DOT, local  
416 government unit, or the Metropolitan Airports Commission shall be the RGU. The RGU shall be selected  
417 according to part 4410.0500, subpart 5.  
418

### 419 **Subp. 22. Highway projects.**

420 Items A to C designate the RGU for the type of project listed:  
421

- 422 A. For construction of a road on a new location over one mile in length that will function as a collector roadway, the  
423 DOT or local government unit shall be the RGU.  
424  
425 B. For construction of additional travel lanes on an existing road for a length of one or more miles, the DOT or local  
426 government unit shall be the RGU.  
427  
428 C. For the addition of one or more new interchanges to a completed limited access highway, the DOT or local  
429 government unit shall be the RGU.  
430

431 **Subp. 23. Barge fleetings.**

432 For construction of a new or expansion of an existing barge fleetings facility, the DOT or port authority shall be the RGU.

433 **Subp. 24. Water appropriation and impoundments.**

434 Items A to C designate the RGU for the type of project listed:  
435

- 436 A. For a new appropriation for commercial or industrial purposes of either surface water or ground water averaging  
437 30,000,000 gallons per month; or a new appropriation of either ground water or surface water for irrigation of 540  
438 acres or more in one continuous parcel from one source of water, the DNR shall be the RGU.  
439  
440 B. For a new permanent impoundment of water creating additional water surface of 160 or more acres or for an  
441 additional permanent impoundment of water creating additional water surface of 160 or more acres, the DNR  
442 shall be the RGU.  
443  
444 C. For construction of a dam with an upstream drainage area of 50 square miles or more, the DNR shall be the RGU.

445 **Subp. 25. Marinas.**

446 For construction or expansion of a marina or harbor that results in a 20,000 or more square foot total or a 20,000 or more  
447 square foot increase of water surface area used temporarily or permanently for docks, docking, or maneuvering of  
448 watercraft, the local government unit shall be the RGU.

449 **Subp. 26. Stream diversion.** [DW3]

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

453 **Subp. 27. Wetlands and public waters.** [DW4]

454 Items A and B designate the RGU for the type of project listed:  
455

- 456 A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public  
457 water or public waters wetland except for those to be drained without a permit pursuant to Minnesota Statutes,  
458 chapter 103G, the local government unit shall be the RGU. [DW5]  
459  
460 B. For projects that will change or diminish the course, current, or cross-section of 40 percent or more or five or  
461 more acres of types 3 through 8 wetland of 2.5 acres or more [DW6], excluding public waters wetlands, if any part  
462 of the wetland is within a shoreland area, delineated flood plain, a state or federally designated wild and scenic  
463 rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local  
464 government unit shall be the RGU. [DW7]

465 **Subp. 28. Forestry.**

466 Items A and B designate the RGU for the type of project listed:  
467

- 468 A. For harvesting of timber for commercial purposes on public lands within a state park, historical area, wilderness  
469 area, scientific and natural area, wild and scenic rivers district, the Minnesota River Project Riverbend area, the  
470 Mississippi headwaters area, or critical area that does not have an approved plan under Minnesota Statutes,  
471 section 86A.09 or 116G.07, the DNR shall be the RGU.  
472

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

475 **Subp. 29. Animal feedlots.**

476 The PCA is the RGU for the types of projects listed in items A and B unless the county will issue the feedlot permit, in  
477 which case the county is the RGU. However, the county is not the RGU prior to January 1, 2001.

- 478
- 479 A. For the construction of an animal feedlot facility with a capacity of 1,000 animal units or more or the expansion of  
480 an existing facility by 1,000 animal units or more if the facility is not in an area listed in item B.
- 481
- 482 B. For the construction of an animal feedlot facility of more than 500 animal units or expansion of an existing animal  
483 feedlot facility by more than 500 animal units if the facility is located wholly or partially in any of the following  
484 sensitive locations: shoreland; a delineated flood plain, except that in the flood plain of the Red River of the North  
485 the sensitive area includes only land within 1,000 feet of the ordinary high water mark; a state or federally  
486 designated wild and scenic river district; the Minnesota River Project Riverbend area; the Mississippi headwaters  
487 area; or an area within a drinking water supply management area delineated under chapter 4720 where the aquifer  
488 is identified in the wellhead protection plan as vulnerable to contamination; or within 1,000 feet of a known  
489 sinkhole, cave, resurgent spring, disappearing spring, Karst window, blind valley, or dry valley.

490

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

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

495 **Subp. 30. Natural areas.**

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

500 **Subp. 31. Historical places.**

501 For the destruction, in whole or part, or the moving of a property that is listed on the National Register of Historic Places  
502 or State Register of Historic Places, the permitting state agency or local unit of government shall be the RGU, except this  
503 does not apply to projects reviewed under section 106 of the National Historic Preservation Act of 1966, United States  
504 Code, title 16, section 470, or the federal policy on lands, wildlife and waterfowl refuges, and historic sites pursuant to  
505 United States Code, title 49, section 303, or projects reviewed by a local heritage preservation commission certified by the  
506 State Historic Preservation Office pursuant to Code of Federal Regulations, title 36, sections 61.5 and 1.7. This subpart  
507 does not apply to a property located within a designated historic district if the property is listed as "noncontributing" in the  
508 official district designation or if the State Historic Preservation Office issues a determination that the property is  
509 noncontributing.

510

511 **Subp. 32. Mixed residential and industrial-commercial projects.** [DW8]

512 If a project includes both residential and industrial-commercial components, the project must have an EAW prepared if  
513 the sum of the quotient obtained by dividing the number of residential units by the applicable residential threshold of  
514 subpart 19, plus the quotient obtained by dividing the amount of industrial-commercial gross floor space by the applicable  
515 industrial-commercial threshold of subpart 14, equals or exceeds one. The local governmental unit is the RGU.

516 **Subp. 33. Communications towers.**

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

520 **Subp. 34. Sports or entertainment facilities.**

521 For construction of a new sports or entertainment facility designed for or expected to accommodate a peak attendance of  
522 5,000 or more persons, or the expansion of an existing sports or entertainment facility by this amount, the local  
523 governmental unit is the RGU.

524 **Subp. 35. Release of genetically engineered organisms.**

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

528 **Subp. 36. Land use conversion, including golf courses.** [DW9][DW10]

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

- 530
- 531 A. For ~~golf courses, residential development~~ [DW11] ~~where the lot size is less than five acres, and other~~ projects  
532 resulting in the permanent conversion of ~~80-160~~ or more acres of ~~agricultural~~ [DW12]-native prairie, forest, or  
533 ~~naturally vegetated land~~ [DW13], the local government unit shall be the RGU, ~~except that this subpart does not~~  
534 ~~apply to agricultural land inside the boundary of the Metropolitan Urban Service Area established by the~~  
535 ~~Metropolitan Council.~~
- 536
- 537 B. For projects resulting in the conversion of 640 or more acres of forest or naturally vegetated land to a ~~different~~  
538 ~~open space land use~~ [DW14], the local government unit shall be the RGU.

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

- 540
- 541 A. For a project that alters 800 feet or more of the shoreline in a sensitive shoreland area or 1,320 feet or more of  
542 shoreline in a nonsensitive shoreland area, the local governmental unit is the RGU.
- 543
- 544 B. For a project that alters more than 50 percent of the shore impact zone if the alteration measures at least 5,000  
545 square feet, the local governmental unit is the RGU.
- 546
- 547 C. For a project that permanently converts 20 or more acres of forested or other naturally vegetated land in a  
548 sensitive shoreland area or 40 or more acres of forested or other naturally vegetated land in a nonsensitive  
549 shoreland area, the local governmental unit is the RGU.
- 550

551 **Subp. 37. Recreational trails.**

552

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

558

- 559 A. Constructing a trail at least ten miles long on ~~forested or other naturally vegetated land~~ [DW15] for a recreational use  
560 other than snowmobiling or cross-country skiing, unless exempted by part 4410.4600, subpart 14, item D, or  
561 constructing a trail at least 20 miles long on forested or other naturally vegetated land exclusively for  
562 snowmobiling or cross-country skiing.
- 563
- 564 B. Designating at least 25 miles of an existing trail for a new motorized recreational use other than snowmobiling. In  
565 applying items A and B, if a proposed trail will contain segments of newly constructed trail and segments that will  
566 follow an existing trail but be designated for a new motorized use, an EAW must be prepared if the sum of the  
567 quotients obtained by dividing the length of the new construction by ten miles and the length of the existing but  
568 newly designated trail by 25 miles, equals or exceeds one.
- 569
- 570 C. Paving ten or more miles of an existing unpaved trail, unless exempted by part 4410.4600, subpart 27, item B or  
571 F. Paving an unpaved trail means to create a hard surface on the trail with a material impervious to water.
- 572
- 573 D. Constructing an off-highway vehicle recreation area of 80 or more acres, or expanding an off-highway vehicle  
574 recreation area by 80 or more acres, on agricultural land or forested or other naturally vegetated land.
- 575

- 576 E. Constructing an off-highway vehicle recreation area of 640 or more acres, or expanding an off-highway vehicle  
577 recreation area by 640 or more acres, if the land on which the construction or expansion is carried out is not  
578 agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human  
579 activities such as mineral mining.  
580
- 581 F. Some recreation areas for off-highway vehicles may be constructed partially on agricultural naturally vegetated  
582 land and partially on land that is not agricultural, is not forested or otherwise naturally vegetated, or has been  
583 significantly disturbed by past human activities. In that case, an EAW must be prepared if the sum of the quotients  
584 obtained by dividing the number of acres of agricultural or naturally vegetated land by 80 and the number of acres  
585 of land that is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed  
586 by past human activities by 640, equals or exceeds one.  
587

588 **Statutory Authority:** *MS s 116C.94; 116D.04; 116D.045; L 1998 c 401 s 54*

589 **History:** *11 SR 714; 13 SR 1437; 13 SR 2046; 17 SR 139; 21 SR 1458; 24 SR 517; 28 SR 951; 30*  
591 *SR 319; 31 SR 539; 34 SR 721; 36 SR 567*

592 **Published Electronically:** *September 5, 2013*

June 29, 2016

Mr. Erik Dahl and Ms. Courtney Ahlers  
Minnesota Environmental Quality Board Staff  
520 Lafayette Road North  
St. Paul, MN 55155

Re: Mandatory Categories Rulemaking

Dear Mr. Dahl and Ms. Ahlers,

WSB provides the following comments per the current open comment period regarding potential rule changes to the MEPA. These comments reflect our experience are based on WSB's 20 years of experience working for various Responsible Government Units (RGUs), mainly in the greater Twin Cities metro area.

**4410.4300, Subp. 14 and 4410.4400 Subp. 11 Industrial, commercial, and institutional facilities**

The proposed revisions to remove city classification thresholds appear to clarify and streamline the process. We are in support of these changes.

**4410.4300, Subp. 19. Residential Development**

As part of this EAW category, Part D includes language that the RGUs outside the metro area have to file with the EQB Chair confirming that they have an adopted Comprehensive Plan to be eligible under this EAW trigger. We recommend removing this as a filing requirement. The filing requirement is difficult to track and, as more and more cities adopt Comprehensive Plans, this requirement becomes obsolete and unnecessary. We suggest the following language:

*Subp. 19. D. 250 unattached units or 375 attached units in a city within the seven-county Twin Cities metropolitan area or in a city not located within the seven-county Twin Cities metropolitan area that has an adopted Comprehensive Plan and the project is consistent with the Comprehensive Plan.*

**4410.4300, Subp. 22. Highway Projects**

We support the proposed change that increases the EAW trigger from one mile to two or more miles of through lanes or passing lanes.

**4410.4300, Subp 27. Wetland and Public Waters**

Subp 27 Part B: The language in this subpart is confusing and difficult to decipher. It is our opinion that this trigger is no longer necessary for impacts to non-DNR wetlands. The Wetland Conservation Act (MR 8420) and US Corps of Engineers Section 404 permitting process are extremely robust, with requirements for alternatives analysis, avoidance and minimization, and finally mitigation. This permitting process is essentially more extensive of an environmental review process than the EAW process, and the EAW becomes redundant. We suggest removing Subpart 27. B.

*Subp. 27.B: For projects that will change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more, excluding public waters wetlands, if any part of the wetland is within a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local government unit shall be the RGU.*

**4410.4300, Subp. 36. Land Use Conversion, Including Golf Courses**

This environmental review trigger has come up in conversation with numerous RGU's. I estimate only a few EAW's have been triggered by this category for our clients. At times, the trigger does not seem to meet the intent of the environmental review process for projects that are outside the MUSA and in an agricultural area where the proposed use would result in less impact than an agriculture use. For example, we have reviewed a few concept plans for parks including green space, natural areas, park, and play areas on agricultural land and RGU discussion ensued on the need for an EAW. The park use would have been less of an environmental impact than the intense agricultural use in terms of runoff and habitat and traffic would have been negligible. The use was also planned in the local Comprehensive Plan. In cases where land use conversion on agricultural land lead to a more sustainable use, an EAW seems onerous to the project proposer and RGU.

However, we do recognize recent projects that have brought the prime farmland designation into the headlines. Therefore, if the "agricultural" trigger is not to be removed, we suggest the following revisions to the language:

*Subp. 36 Part A: "Golf courses, residential developments where the lot size is less than five acres, and other projects resulting in the permanent conversion of 80 or more acres of prime farmland agricultural, native prairie, forest, or naturally vegetated land, except that this subpart does not apply to agricultural land inside the boundary of the Metropolitan Urban Service Area.."*

This concludes our comments on the MEPA environmental review triggers. Thank you for the opportunity to comment. If we hear of other comments or suggestions from our RGU clients, we will pass those on to the EQB Staff. If you have questions, please feel free to call me at 763-287-7196.

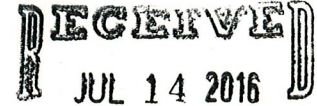
Sincerely,

**WSB & Associates, Inc.**

Andrea Moffatt  
Principal, Environmental Manager

ef





July 12, 2016

BY: .....

Office of the  
County Board

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**Mandatory Category Rulemaking: Preliminary Rule Language**

Mr. Dahl:

I am submitting this comment letter on the Preliminary Rule Language changes for Minnesota Rule 4410 on behalf of the Dakota County Board of Commissioners. We appreciate the willingness of the Environmental Quality Board (EQB) to provide all stakeholders and the public the opportunity to participate in this rulemaking process.

It's our understanding that the EQB has released preliminary proposed rule changes pertaining to Minnesota Rule Chapter 4410, consistent with a 2015 legislative charge to support environmental review efficiency. Specifically, the preliminary changes pertain to:

- |                           |                          |
|---------------------------|--------------------------|
| Mn Rule Chapter 4410.0200 | Definitions              |
| Mn Rule Chapter 4410.4300 | Mandatory EAW Categories |
| Mn Rule Chapter 4410.4400 | Mandatory EIS Categories |
| Mn Rule Chapter 4410.4600 | Exemptions               |

We acknowledge that establishing thresholds for EAW and EIS documents is not a simple exercise. The Environmental Review Process, specifically through the use of EAW and EIS documents, has been critical in providing governmental units with the information necessary to make environmentally sensitive decisions in the best interests of the public. At the same time, it is incumbent on all government officials to ensure that government resources are spent wisely. With this in mind, we have the following comments:

**Mn Rule Chapter 4410.0200 Definitions**

Dakota County supports the proposed changes to the definitions, including the addition of a definition for "Auxiliary Lane" to support the proposed changes in the Mandatory EAW Categories, and the addition of "soil and water conservation districts and watershed management organizations" to reflect their ability to serve as local governmental units.

**Mn Rule Chapter 4410.4300 Mandatory EAW Categories**

Subpart 22, Item B: An EAW is required "For construction of additional through lanes or passing lanes on an existing road for a length of two or more miles". This is a change from the current rule of one mile.

Dakota County fully supports both of these language changes because the purpose of an EAW is to **lay out the basic facts of a project necessary to determine if an EIS is required for a proposed project. Projects less than two miles in length, along an existing road, are not the type of projects that typically require the additional environmental review necessary for an EIS. Staff is not aware of any Dakota County highway projects in the past of this type that have been required to complete an EIS. This change therefore is beneficial in ensuring public resources are spent wisely in the delivery** of transportation projects. We do realize that there may be potential stakeholders that feel the Environmental Review Process helps to make the public aware of public projects. Dakota County is committed to not only creating awareness for projects and their potential impacts, but effectively engaging the public in identifying issues and developing solutions through the project development process. We do this for all projects that add lanes, regardless of the length of the project. We would be happy to add any agency or other stakeholder to our standard distribution list for all of our projects, which would allow them to get information directly from us, and would allow for project development to be both efficient and responsible.

Subpart 12, Item B: It would be appropriate for nonmetallic mineral mining to have expansion requirements similar to the language included in Subpart 17 for solid waste facilities.

Subpart 12, Item C: It would be appropriate for nonmetallic mineral mining to include other sensitive water areas such as drinking water supply areas, wellhead protection areas, or other designated sensitive water features.

#### **Mn Rule Chapter 4410.4400 Mandatory EIS Categories**

Subpart 9, Item C: We would support a language change that would also include other sensitive water areas such as drinking water supply areas, wellhead protection areas, or other designated sensitive water features.

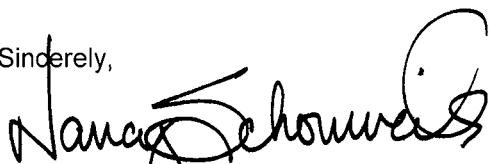
Subpart 13, Item A: It's our understanding the elimination of a mandatory EIS for landfills of over 100,000 cubic yards was an error, and this requirement will be reinstated. Dakota County agrees with the EQB on reinstating this requirement.

#### **Mn Rule Chapter 4410.4600 Exemptions**

Subpart 14, Item C: *"Modernization of an existing roadway or bridge by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders or adding auxiliary lanes that may involve the acquisition of minimal amounts of right-of-way is exempt."* This rule has been changed by adding "reconstruction, adding shoulders or adding auxiliary lanes". Dakota County supports this change for the same reasons discussed above for 4410.4300 Subpart 22. These types of projects rarely, if ever, result in the need for an EIS. This change would allow local governmental units to continue to deliver projects in an environmentally responsible way, while being more effective with limited public resources available.

Thank you for your consideration of our comments on the preliminary rule language changes to Mn Rule 4410. We appreciate your attention to these comments and actions that address the concerns of Dakota County.

Sincerely,



Nancy Schouweiler, Chair  
Dakota County Board of Commissioners

cc: Dakota County Board of Commissioners  
Matt Smith, County Manager  
Steve Mielke, Physical Development Director  
Georg Fischer, Environmental Resource Director



## Hennepin County

Public Works

Transportation Department  
James N. Grube P.E., County Engineer  
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612-596-0305, Phone

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July 5, 2016

Tara Carson  
Minnesota Department of Transportation  
Office of Environmental Stewardship (OES)  
Mailstop 620  
395 John Ireland Blvd  
Saint Paul, MN 55155

RE: MnDOT Proposed Rule 4410 Rule Changes

Dear Ms. Carson:

The purpose of this letter is to comment on proposed language changes to Minnesota Rule 4410 (dated 4/6/2016), as it pertains to clarifying a number of definitions and raising the mandatory Environmental Assessment Worksheet (EAW) threshold from one to two miles for highway projects.

County staff support the changes proposed, including adding a definition for "Auxiliary lane"; and more particularly, increasing the mandatory EAW threshold from one to two miles of "through" lanes (previously called "travel" lanes), and excluding the newly defined "auxiliary lanes".

As director of Hennepin County's highway engineering group for the last 20 years, I can assure you that this expansion of the EAW threshold requirement will undoubtedly reduce the upfront time and cost of those smaller projects without jeopardizing the environment or the open review process.

The only modification I support that is different from what you have proposed is to include "passing lanes" in your definition of "auxiliary lanes". I believe adding "passing lanes" fits within the intent of the definition proposed, and would eliminate the need for the "or passing lanes" clause added to the EAW threshold. I feel this would make your proposed changes cleaner and easier to interpret and implement.

Thank you for the opportunity to comment on the proposed rule changes before they are publicly noticed, and offer staff to answer any questions you might have. Please contact Dave Jaeger at 612-348-5714 with for any desired follow-up.

Sincerely,

James N. Grube, P.E.  
County Highway Engineer



# LYON COUNTY ENVIRONMENTAL

504 Fairgrounds Road  
Marshall, MN 56258  
Office: (507) 532-8210

**OUR MISSION:** Connecting residents to outdoor recreation, and encouraging participation in waste conservation practices to inspire our communities toward greater care of natural resources.

July 18, 2016

RECEIVED  
JUL 22 2016  
BY:.....

Environmental Quality Board  
Attn: Mandatory Category Rulemaking  
520 Lafayette Road North  
St. Paul, MN 55155-4194

Re: Mandatory Category Rulemaking: Preliminary Rule Language

To Whom It May Concern:

Minnesota Landfill Operator’s Group (LOG) is providing this letter to provide comments regarding the preliminary amendments to Minnesota Rules 4410.4300 and 4410.4400 proposed by the Minnesota Environmental Quality Board (EQB). We appreciate the opportunity to provide comments and opinions on these important issues on behalf of our constituents.

Over the past nine years, we have provided correspondence to the Minnesota Pollution Control Agency (MPCA) Environmental Review Unit and the MPCA Solid Waste Permitting Unit expressing our concerns with previous policy changes in the implementation of the EQB Environmental Review Program for municipal solid waste (MSW) landfills by the MPCA as the Responsible Governmental Unit (RGU). We feel the current policies the MPCA is applying places a significant undue economic burden on small and rural publicly owned MSW disposal facilities. The proposed preliminary amendments to Minnesota Rules 4410.4300 and 4410.440 appear to further enhance the economic burden placed on small MSW disposal facilities that provide necessary and environmentally sound waste disposal services to residents of greater Minnesota. This conclusion is drawn based on the following discussion items relative to the proposed preliminary language.

### Minnesota Rule Chapter 4410.4300 Mandatory EAW Categories

Minnesota Rule 4410.4300 Subpart 17 Solid Waste proposed preliminary language includes as a Mandatory Environmental Assessment Worksheet (EAW) Category, as indicated in italics below:

*(A) For construction or expansion of a mixed MSW disposal facility (as defined by Minnesota Rules 7035.0300, subpart 6) for up to 100,000 cubic yards of air space per year, the PCA is the RGU.*

<b>Parks, Trails, &amp; Fairgrounds</b> Brooke Wyffels (507) 532-8214	<b>Recycling Education</b> Sharon Root (507) 532-1307	<b>Hazardous Waste Program Manager</b> Darron Grahn (507) 532-8211	<b>Accounts Payable Office Manager</b> Linnea Lasnetski (507) 532-1305	<b>Regional Landfill</b> 2025 – 200 <sup>th</sup> Ave. Lynd, Gene Rasmussen (507) 865-4615	<b>Administrator</b> 504 Fairgrounds Road Roger Schroeder (507) 532-1306
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The inclusion of the term “or expansion” in this category indicates that any expansion of a mixed MSW disposal facility for up to 100,000 cubic yards of air space per year would necessitate an EAW review, which is in direct contradiction with Item B, which requires an EAW review, “For expansion by 25% or more of previous permitted capacity of a mixed MSW disposal facility for up to 100,000 cubic yards of air space per year”. We suggest removing the “or expansion” specification in Item A.

We do not agree with the replacement of the 100,000 cubic yard volume threshold specification from “waste fill” to “air space”. In order to measure the volume of air space a disposal facility utilizes over the year, a topographic survey is compiled and the survey is compared from year to year. The measured “air space” includes the volume utilized by the waste deposited in the facility in addition to all daily, intermediate and final soil cover (which may account for up to 25% of the airspace consumed), piping and associated trench fill for leachate and landfill gas management, landfill access road remnants, stormwater management structures and several other components necessary for responsible solid waste disposal operations. The 1982 Statement of Need and Reasonableness (SONAR) identified solid waste as a mandatory category because of the potential for significant impacts relating to ground and surface water contamination through the migration of leachate. The non-waste elements included in the air space analysis do not contribute to the potential for these identified environmental impacts and should not be included in the 100,000 cubic yard volume analysis threshold for environmental review determination. The use of the term “air space” in the proposed changes offers too broad of a volume threshold analysis than what the intention of the SONAR states. Therefore, we request maintaining the current specification of “waste fill” as the 100,000 cubic yard per year volume measurement.

*(B) For expansion by 25 percent or more of previous permitted capacity of a mixed MSW disposal facility for up to 100,000 cubic yards of air space per year, the PCA is the RGU.*

We request the term “previous design capacity” be used instead of “previous permitted capacity”. Minn. Rules 7035.0300 Subpart 32 defines “design capacity” as, “the total volume of compacted solid waste, topsoil, intermittent, intermediate, and final cover specified in the facility permit, as calculated from final contour and cross-sectional plan sheets that define the areal and vertical extent of the fill area.” The term “permit capacity” is not defined in either Chapter 4410 or Chapter 7035, whereas “design capacity” is, and more strongly correlates with the definition of “capacity” used in Minn. Rules 4410.0200 subp. 6a: “Capacity as used in parts 4410.4300, subpart 17 and 4410.4400, subpart 13, means the maximum daily operational input volume a facility is designed to process on a continuing basis”. The definition of “permit capacity” is found in the individual solid waste operating permit and is not the same definition for each site. “Permitted capacity” is typically based on the Certificate of Need (CON) that is determined in a county Solid Waste Management Plan and only justifies residential waste. Existing solid waste permits address air space that consists of residential waste, industrial waste, construction and demolition waste (if applicable) and cover material. Using an ambiguous term with no clarification defined in rules and no consistency from site to site will provide a conflicting and unpredictable setting for the environmental review process for MSW disposal facilities.

We also have concern with the economic implications of specifying “permit capacity” as the threshold for expansion. Recent policy revisions implemented by the MPCA for environmental review of MSW disposal facilities restrict the environmental review project scope to encompass development based on the 10-year CON analysis. Solid waste facilities in Minnesota that were granted permit capacity after 1991 (the implementation of Subtitle D federal Resource Conservation and Recovery Act standards) followed current state and federal regulations in the preparation of their respective county SWMP and facility permit applications. As a result, these facilities were granted permit capacity based on the calculated CON. However, facilities in Minnesota that prepared permit applications prior to the promulgation of current state and federal standards were granted permit capacity based on the ultimate footprint design of the facility. Therefore, there currently exists an enormous disparity of permit capacity volumes for MSW disposal facilities across Minnesota. Using a percentage based expansion threshold of permitted capacity places facilities with capacities granted prior to 1991 at a significant economic advantage (since they currently hold a much larger permit capacity) to facilities that were granted permit capacities in compliance with current regulatory standards. A facility with permit capacity granted after 1991 would likely need to perform several environmental assessments, at a significant cost, in order to gain the permit capacity that one facility may be granted with one environmental assessment, when the environmental impacts of receiving that same volume of waste will be essentially identical.

In this item, we again request to maintain the current specification of “waste fill” rather than “air space” as the 100,000 cubic yard per year volume threshold.

*(F) For expansion by at least ten percent of previous permitted capacity of a mixed MSW disposal facility for 100,000 cubic yards or more of air space per year, the PCA is the RGU.*

In this item, we again request to use “design” capacity rather than “permitted” capacity with the rationale detailed previously. We also request to maintain the current specification of “waste fill” rather than “air space” as the 100,000 cubic yard per year volume threshold to maintain the intent of the SONAR.

### **Minnesota Rule Chapter 4410.4400 Mandatory EIS Categories**

Minnesota Rule 4410.4400 Subpart 13 Solid Waste proposed preliminary language includes as a Mandatory Environmental Impact Statement (EIS) Category, as indicated in italics below:

*Removal of Item (A) For construction of a mixed MSW disposal facility for 100,000 cubic yards or more of waste fill per year, the PCA is the RGU.*

The removal of this mandatory EIS category means that there are no environmental review requirements (EAW or EIS) for the construction of a mixed MSW disposal facility for 100,000 cubic yards or more of waste fill per year located outside of a water-related land use management district or outside an area characterized by soluble bedrock. Based on the discussion at the EQB’s Workshop on June 28, 2016, we understand the removal of Item (A) is an error and it is not the EQB’s intention to remove all environmental review requirements for constructing such a facility.

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

While we agree with removing the EIS requirement for expansion of a “larger” MSW disposal facility, removal of this EIS requirement will provide an even greater economic inequality for MSW disposal facilities in Minnesota. For a large disposal facility with a permit capacity that encompasses the ultimate development of the site, changing the environmental review requirement from and EIS to an EAW allows that facility to attain additional airspace at a much lower cost compared to a smaller facility with a permit capacity that was limited based on current regulatory standards. In the solid waste industry where airspace is the primary revenue source, this further enhances the already enormous economic disparity among facilities.

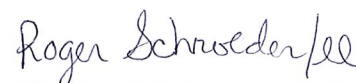
In order to alleviate this regulatory-based economic imbalance and comply with the intent of the environmental review SONAR for MSW landfills, we request:

- Environmental review project scopes for solid waste disposal facilities recognize the importance of future phased actions for the sites and encompass the entire planned ultimate development of the disposal facility rather than limiting the scope to a 10-year timeframe.
- Reference “design capacity” rather than the proposed “permitted capacity” as the expansion threshold.
- Continue to use the term “waste fill” rather than the proposed “airspace” at the 100,000 cubic yard volume measurement.
- Include EIS requirement for the construction of a mixed MSW solid waste disposal facility for 100,000 cubic yards or more of waste fill per year.

Thank you for the opportunity to provide comments on the preliminary environmental review language. We appreciate the EQB’s efforts to include public opinion on this important matter and are open to future discussion on how we may pursue an environmental review process for MSW landfills so that our solid waste facilities may continue to provide cost-efficient and environmentally responsible waste management services to the residents of Minnesota.

If you have questions or concerns, please contact Roger Schroeder 507-532-8210.

Cordially,

  
MN Landfill Operator’s Group  
Roger Schroeder, President

August 3, 2016

Courtney Ahlers-Nelson  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155

Re: Environmental Review Mandatory Categories Rulemaking Comments

Dear Ms. Ahlers-Nelson:

The Minnesota Chamber of Commerce (Chamber ) has members across the state, many of whom have had or will have projects that are subject to requirements under Minnesota's Environmental Review Program. Chamber members have a strong interest in providing constructive input to improve the rules governing the Environmental Review Program so that environmental reviews are conducted only when necessary; are completed in an efficient and effective manner; and are not redundant with requirements contained in other regulatory programs.

The Chamber previously submitted comments to EQB on December 20, 2015 regarding suggested revisions to the mandatory EAW triggers. EQB released its preliminary rule language on June 20<sup>th</sup> and initiated an additional public comment period. The Chamber appreciates EQB's on-going review of the Environmental Review rules and welcomes the opportunity to submit additional comments.

The Chamber requests that EQB amend Minn. R. 4410.4300 Subp. 15 to exempt certain air emission facilities from the stand-alone Mandatory EAW category trigger of 250 tpy air emission increase if those facilities are already listed in other mandatory environmental review categories. Suggested revisions are included below:

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

~~§ A.~~ For construction of a stationary source facility that is not listed in Subps. 3, 4, 5, 11, 13, or 17D and generates 250 tons or more per year of any single air pollutant or modification of a stationary source facility that is not listed in Subps. 3, 4, 5, 11, 13, or 17D and increases generation by 250 tons or more per year of any single air pollutant, other than those air pollutants described in item B, after installation of air pollution control equipment, the PCA shall be the RGU.

This exemption would only apply to facilities that are already subject to Part 70 air permit requirements and are already adequately listed in other mandatory environmental review categories. These are:

- Electric Generating Facilities (25 Megawatts and over) – subpart 3;
- Petroleum Refineries – subpart 4;
- Fuel Conversion Facilities (mainly ethanol plants) – subpart 5;
- Metallic Mineral Mining and Processing – subpart 11;
- Paper or Pulp Processing Mills – subpart 13; and



- Solid Waste (Incineration) – subpart 17D.

The proposed changes are consistent with the legislative goal to improve environmental review efficiency (2015 Special Session Law, Chapter 4, Article 3, Section 2), and with Chamber’s previously stated objectives to improve the Environmental Review process so that reviews are conducted only when necessary, are efficient and effective, and are not redundant with other requirements.

While contemplating whether to raise the Mandatory EAW air emission threshold from 100 tpy to 250 tpy in 2006, EQB and MPCA acknowledged multiple deficiencies in the justification for using stand-alone air emission thresholds as an EAW trigger, see Appendix 1 - 2006 SONAR for revisions to the Environmental Review Program Rules, starting on pg. 33. The main considerations raised in the 2006 SONAR were related to the extensiveness of the air emission permit programs at the MPCA; presence of other environmental review categories covering air emissions; the weak relationship between air emissions and other environmental review concerns; and the ability for the public to petition for an EAW. EQB re-iterated these same considerations in its 2012 Mandatory Environmental Review Categories Report, see Appendix 2. Specifically, the following considerations were acknowledged by EQB and MPCA:

- Part 70 Public Notice and Review - There are already public notice requirements for Part 70 permits as well as EPA review.
- Existing Modeling and Risk Analysis Requirements - These facilities often have to conduct air dispersion modeling, undergo an air emission risk analysis, and PSD review (which includes BACT).
- Adequacy of MPCA Air Program - MPCA staff believes that the air emissions permitting program addresses all major and minor concerns regarding air pollutants from new or expanding facilities.
- Redundant EAW Categories - Certain air emission facilities of concern to the MPCA and the general public are already captured in other mandatory environmental review categories (EGUs > 25 MW; Petroleum Refineries; Fuel Conversion Facilities; Metallic Mineral Mining and Processing; Paper or Pulp Processing Mills; and Solid Waste Incinerators).
- Air Emission Triggered EAW Showed Little Value - MPCA reviewed 14 EAWs that were triggered under the Air Pollution category and found:
  - The amount of air emissions from these projects has little or no relationship to the impact of other environmental issues.
  - The few public comments that came in were related to air emission issues and were addressed in the air emissions permit.
  - Therefore, the environmental review threshold provides a rather “hit-or-miss” approach for examining other issues

While these considerations were used to justify raising the air emission trigger threshold from 100 tpy to 250 tpy in 2006, these points are also valid for creating a Mandatory EAW air emission increase exemption for facilities that hold Part 70 air permits and are already listed in other mandatory environmental review categories. In fact, these arguments are even more valid now due to many new and revised air regulations that have been enacted since 2006. It is redundant and time-consuming to

conduct an EAW for air emission purposes when a project is already subject to myriad (and more stringent) state and federal air permitting and regulatory requirements which are already protective of human health and the environment (NAAQS, PSD, NESHAPs, Regional Haze/BART, etc.). The Chamber appreciates EQB's consideration of these comments to improve Minnesota's Environmental Review program.

Sincerely,

Tony Kwilas

Director, Environmental Policy



**MINNESOTA BIO-FUELS ASSOCIATION, INC.**

**3033 Excelsior Blvd., Suite 208  
Minneapolis, MN 55416  
MnBiofuels.org / 612.888.9138**

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**TO:** Ms. Courtney Ahlers-Nelson  
Minnesota Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155  
E-mail: [courtney.ahlers@state.mn.us](mailto:courtney.ahlers@state.mn.us)

**FROM:** Minnesota Bio-Fuels Association, Inc.

**DATE:** 5 August 2016

**RE:** Comments on Proposed Preliminary Amendments to Rules  
Governing the Environmental Review Program, Minnesota Rules  
Chapter, 4410.4300 and 4410.4400

We offer these comments for consideration by the Environmental Quality Board (EQB) during its review of preliminary proposed revisions to the mandatory EAW and EIS categories. Our comments consist of (1) initial concepts submitted to the EQB in December 2015 and (2) this initial response to the preliminary draft amendments. The initial comments are included here because the preliminary draft does not appear to address the entire set of issues that were open during the last round of comments.

**Part I - Initial Concepts**  
**Mandatory Categories for environmental assessment worksheets**

1. Subp. 5. Fuel conversion facilities.

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

A.

For construction of a facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 25,000 dry tons or more per year of input, the PCA shall be the RGU.

B.

For construction or expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by 5,000,000 or more gallons per year of alcohol produced, the PCA shall be the RGU.

Issues for consideration

- a. Biomass from relatively young plant material, versus fossil fuel material, and other agricultural products is renewable and should not be in the same class of materials such as peat and coal.
  - i. To pave the way for the use of more renewable plant material which can be used to produce liquid fuels and reduce greenhouse gas (GHG) emissions on an expedited basis, the EQB should consider removing "biomass" as one of the elements that triggers an EAW.
  - ii. In the alternative, raise the tonnage threshold so as to reflect the scope and scale in which production facilities will actually operate in 2016 and for the foreseeable future.
  - iii. The Minnesota Bio-Fuels Association (MBA) can provide additional details should these matters go to a rulemaking process.
- b. The gallon capacity increase trigger does not reflect the scope of incremental increase which is feasible at ethanol production facilities already operating within the State of Minnesota. Biofuel producers are already operating under various permits including those issued and administered by the Minnesota Pollution Control Agency. So biofuel producers can timely respond to environmental rules and provide low carbon renewable fuels, they need the ability to readily adapt to many factors in a dynamic market and regulatory situation. Thus, an incremental increase in their production capacity should not trigger the need for an EAW. Either strike the 5 million gallon trigger or increase the gallon number to appropriately reflect the typical production capacity increase made by an ethanol production plant.

2. Subp. 10. Storage facilities.

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

A.

For construction of a facility designed for or capable of storing more than 7,500 tons of coal or with an annual throughput of more than 125,000 tons of coal; or the expansion of

an existing facility by these respective amounts, the PCA shall be the RGU.

B.

For construction of a facility on a single site designed for or capable of storing 1,000,000 gallons or more of hazardous materials, the PCA shall be the RGU.

C.

For construction of a facility designed for or capable of storing on a single site 100,000 gallons or more of liquefied natural gas, synthetic gas, or anhydrous ammonia, the PCA shall be the RGU.

Issues for consideration

- a. Part B should make the distinction between renewable biofuels, such as ethanol, versus other hazardous materials. That distinction should avoid triggering an EAW for biofuels.
- b. In the alternative, increase the total number of gallon stored to reflect the current state of the biofuel industry in Minnesota with respect to already approved and operating storage tanks as well as in light of future trends.

3. Subp. 15. Air pollution.

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

A.

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

B.

For construction of a stationary source facility that generates a combined 100,000 tons or more per year or modification of a stationary source facility that increases generation by a combined 100,000 tons or more per year of greenhouse gas emissions, after installation of air pollution control equipment, expressed as carbon dioxide equivalents, the PCA shall be the RGU. For purposes of this subpart, "greenhouse gases" include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride, and their combined carbon dioxide equivalents shall be computed by multiplying the mass amount of emissions for each of the six greenhouse gases in the pollutant GHGs by the gas's associated global warming potential published

in Table A-1 to subpart A of Code of Federal Regulations, title 40, part 98, Global Warming Potentials, as amended, and summing the resultant value for each.

a. Issues for consideration

- i. Where, or if, the 250 ton provision might impact a biofuel production facility, it should be struck. Air emission issues are addressed under State and Federal rules are therefore be redundant.
- ii. Where, or if, the 100,000 ton provision might impact a biofuel production facility, it should be struck. Air emissions, including GHG factors, are already addressed under State and Federal permits and/or US EPA pathways for Renewable Identification Number valuation and calculations.

4. Subp. 18. Wastewater systems.

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

C.

For expansion or reconstruction of an existing industrial process wastewater treatment facility which increases its design flow capacity by 50 percent or more and by at least 200,000 gallons per day or more, or construction of a new industrial process wastewater treatment facility with a design flow capacity of 200,000 gallons per day or more, 5,000,000 gallons per month or more, or 20,000,000 gallons per year or more, the PCA shall be the RGU. This category does not apply to industrial process wastewater treatment facilities that discharge to a publicly-owned treatment works or to a tailings basin reviewed pursuant to subpart 11, item B.

Issues for consideration

- a. Where, or if, this provision is applicable to a biofuel producer, the flow capacities should take into consideration the way in which biofuel plants actually operate and use and reuse water. Most ethanol plants in Minnesota reuse water and therefore do not discharge industrial wastewater; however, this provision should not trigger an EAW for a biofuel producer.
- b. MBA is available for consultation on this matter.

5. Subp. 24. Water appropriation and impoundments.

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

A.

For a new appropriation for commercial or industrial purposes of either surface water or ground water averaging 30,000,000 gallons per month; or a new appropriation of either ground water or surface water for irrigation of 540 acres or more in one continuous parcel from one source of water, the DNR shall be the RGU.

B.

For a new permanent impoundment of water creating additional water surface of 160 or more acres or for an additional permanent impoundment of water creating additional water surface of 160 or more acres, the DNR shall be the RGU.

C.

For construction of a dam with an upstream drainage area of 50 square miles or more, the DNR shall be the RGU.

#### Issues for consideration

- a. Minnesota biofuel producers continually explore processes and technologies by which they might be able to further reduce inputs, such as water, and/or otherwise reuse water. Some biofuel plants use, or have the potential to use, stormwater and/or municipal wastewater. These types of innovations by biofuel producers can serve to further reduce environmental demands while making more renewable biofuels available to displace finite fossil fuels.
- b. Consider whether the total number of gallons impounded and or acres involved reflect the current reality in the biofuel industry. Once again, MBA can provide additional details should these matters go to a rulemaking process.

#### **Mandatory Categories for environmental impact statements**

1. Subp. 5. Fuel conversion facilities.

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

A.

For construction of a facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 250,000 dry tons or more per year of input, the PCA shall be the RGU.

B.

For construction or expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by 50,000,000 or more gallons per year of

alcohol produced if the facility will be in the seven-county Twin Cities metropolitan area or by 125,000,000 or more gallons per year of alcohol produced if the facility will be outside the seven-county Twin Cities metropolitan area, the PCA shall be the RGU.

#### Issues for consideration

- a. Biomass from relatively young plant material and other agricultural products is renewable and should not be in the same class of materials such as peat, coal and other finite, carbon intensive fossil fuels.
  - i. To pave the way for the use of more renewable plant material which can be used to produce liquid fuels and reduce greenhouse gas (GHG) emissions on an expedited basis, the EQB should consider removing "biomass" as one of the elements that triggers an EIS.
  - ii. In the alternative, raise the tonnage threshold so as to reflect the scope and scale in which production facilities will actually operate in 2016 and for the foreseeable future.
  - iii. The Minnesota Bio-Fuels Association (MBA) can provide additional details should these matters go to a rulemaking process.
- b. The gallon capacity triggers do not reflect the scope of ethanol production facilities already operating, or having the potential to operate, within the State of Minnesota. Biofuel producers are already operating under various permits including those issued and administered by the Minnesota Pollution Control Agency. So biofuel producers can timely respond to environmental rules and the growing need for low carbon renewable fuels, they need the ability to readily adapt to many factors in a dynamic market and regulatory situation. Thus, the gallon capacity numbers should not trigger the need for an EIS. Either strike the gallon trigger or increase the gallon number to appropriately reflect the typical expanded production capacity or the capacity for any new ethanol production plant.

#### **Part II - Comments on the preliminary draft**

EAW

1. Line 64: The tonnage threshold does not reflect the operation of a modern biofuel plant. Given Minnesota policy and law with respect to renewables, this provision could be corrected and narrowly tailored. Alternatively, exclude biofuel facilities from the definition of a fuel conversion facility.
2. Line 68 sets a 5,000,000 gallon threshold. Based on the current inventory of biofuel



plants in Minnesota and their operating capacities, the threshold should be raised to, for example, 50 million gallons.

3. Lines 74 - 76: This condition could negate the intent expressed in lines 71 through 74. Eliminate ambiguity by striking the condition starting in line 74.
4. Line 162: what substances are actually intended with this citation?

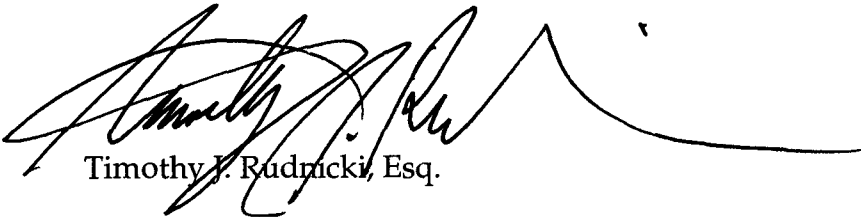
EIS

1. Lines 37 - 38: terms are undefined and the use of the word "cellulosic" could be limiting whereas the word "biomass" is inclusive of a broader array of renewable material. Further, the provision should not be limited to chemical products but instead include biofuels.
2. The exception provided in lines 37 - 38, with the inclusion of biomass and biofuels, should also be extended to relevant section applicable to the EAW.

Thank you for considering these comments on the EQB preliminary drafts.

You can reach me at 612.888.9138, Ext. 101 or by email at [trudnicki@mnbiofuels.org](mailto:trudnicki@mnbiofuels.org)

Respectfully submitted,



Timothy J. Rudnicki, Esq.

**From:** [Ray Bohn](#)  
**To:** [Ahlers-Nelson, Courtney \(MPCA\)](#)  
**Cc:** [George RadKe](#); [Karen Umphress](#); [Tom Umphress](#)  
**Subject:** EQB Rules Comments  
**Date:** Friday, August 05, 2016 4:07:07 PM

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TO: EQB

FROM: Ray Bohn

REPRESENTING: All-Terrain Vehicle Association of Mn & Amateur Riders Motorcycles Assn.

RE: Proposed EQB Rules

Please find below our comments on your proposed rules for Part 4110.4300 – Mandatory EAW Categories

Sections A & B: This proposed language does not conform to the recent legislative action on this rule because it treats existing trail as though it has the same potential for impact as new trails. That is obviously not what the legislature intended.

We suggest language similar to: “an EAW must be prepared if the combination of new construction and segments designated for a new use equals or exceeds 25 miles.” Also, item C and D provisions should be included in this paragraph – not listed as separate “categories”. They should not be stand alone provisions, since it is not a project. ????

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 of the segments equals or exceeds 25 miles. Trail segments do not count toward the EAW thresholds when: 1) designating an established corridor in current legal use as a recreational trail (see definition of “existing trail”); 2) designating an existing, legally constructed route for motorized recreational use, and 3) when adding a new motorized use to an existing motorized trail where the treadway width is not expanded as a result of the added use.

According to your proposed rule the way this is written, there are situations where an EAW would be mandatory for a new trail that is less than 25 miles long if it is combined with existing trail where the treadway is expanded.

Thank you.



John P. Lenczewski, Executive Director  
Minnesota Trout Unlimited  
PO Box 845  
Chanhassen, MN 55317  
612.670.1629  
[john.lenczewski@mntu.org](mailto:john.lenczewski@mntu.org)

August 5, 2016

Ms. Courtney Ahlers  
Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155  
[Courtney.Ahlers@state.mn.us](mailto:Courtney.Ahlers@state.mn.us)

Via electronic mail

Re: Mandatory Category Rulemaking: Preliminary Rule Language

Dear Ms. Ahlers:

I am writing on behalf of Minnesota Trout Unlimited to express our strong support for environmental review, while raising concerns about the growing tendency of some agency staff to give very strained interpretations to mandatory EAW categories and needlessly delay restoration projects aimed at undoing past environmental abuses to our streams and rivers. These staff are suddenly proposing novel interpretations which they claim are based upon the plain language of the rules. We strongly disagree. In the interest of saving taxpayer hundreds of thousands of dollars and speeding the restoration of aquatic ecosystems we propose that changes be made to several mandatory EAW categories.

We are very strong supporters of Minnesota's environmental review statutes and rules and support their purpose of ensuring that permitting authorities have good information necessary to make informed decisions. A primary objective of the EAW rules, beyond determining whether an EIS is warranted, is to provide usable information to the governmental decision makers (permitting authorities). See Minnesota Rules 4410.0300, Subp. 4 A. No one has suggested that any of the trout habitat projects will ever rise to the level of needing an EIS. In the case of stream habitat restoration and enhancement projects, the primary permit required is a DNR Protected Waters permit. Experienced DNR hydrologists have repeatedly indicated that that permitting process they require (which includes a geomorphic survey of the stream, Phase 1 archeological investigation and SHPO review, Natural Heritage review, wetland delineation, USACE review and approval, and DNR Fisheries Section and Ecological and Water Resources Division involvement throughout the design process) already provides all the relevant information they could want or use. They insist that an EAW could not supply more useful information.

Until recently the misinterpreted of the stream diversion category, Minn. Rules 4410.4300, subpart 27, was our most common headache. Attached is one example of the type of letter we have been forced to draft to avoid the absurd outcomes which some DNR staff have pressed for. Until now we have been

able to seek the “second opinion” of local government units, who are the designated RGU. They have applied more common sense and considered the intent of the category when reading the rules. In short, the local government units have acted as a safety value against the strained, erroneous interpretations proposed by some in the DNR. However, we understand that the DNR is now poised to use another poor interpretation of the rules (in this case of Minn. Rules 4410.0500) to make itself the RGU for all trout habitat projects funded with OHF funds. They have also signaled their intention to cite subparts 26, 27, 36 or 36a to require an EAW be prepared for every one of these habitat restoration projects. This unjustified expansion, far beyond the statutory purpose of environmental review and the threats the mandatory categories sought to address, can no longer be ignored.

As noted, staff in DNR’s environmental review unit have until recently limited their strained interpretation of the rules to Minn. Rules 4410.4300, subpart 27. However, there appears to be a growing tendency on the part of some DNR staff to search the EQB rules for opportunities to force unintended meanings on more mandatory EAW categories in order to capture more and more restoration projects. This leads us to conclude that the best approach is to include clear exemptions for habitat projects within the language of subparts 26, 27, 36, and 36a themselves. It simply is too hard to predict what new, strained interpretations the staff may put forth next. Since our work reversing environmental degradation is limited to trout habitat restoration and enhancement projects, we limit our suggested changes to these types of projects.

We respectfully suggest that the following language be separately included within the body of each of subparts 26, 27, 36 and 36a: “Trout stream habitat restoration and enhancement projects conducted by or in collaboration with the DNR Fisheries Section are not subject to this subpart.” There are other possible formulations, but we wish to be careful to limit the exemption only to those projects where the entire motivation and intent of the project is to improve habitat and stream function. Requiring the support of professionals in the DNR Fisheries Section ensures this.

We would like the opportunity to sit down with EQB staff to explore the best way to revise these subparts of 4410.4300 in such a way that they do not capture habitat restoration and enhancement projects which seek to undo past damage.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "John P. Lenczewski". The signature is fluid and cursive, with a prominent loop at the end.

John P. Lenczewski

Attachment

Dear Mr. Johnson:

I am writing on behalf of Minnesota Trout Unlimited to clarify the nature of the trout habitat restoration project we are proposing to undertake on Pine Creek in Hart Township and the fact that it is not the type of project which requires preparation of an EAW. Being mistakenly required to prepare an EAW when not legally required to do so will cause us to lose our narrow 2014 work season, delay the project a year, needlessly cost tax payers many thousands of dollars and force local contractors to remain idle.

We are very strong supporters of Minnesota's environmental review rules and support their purpose of ensuring that permitting authorities have good information necessary to make informed decisions. A primary objective of the rules is to provide usable information to the governmental decision makers (permitting authorities). See Minnesota Rules 4410.0300, Subp. 4 A. However, in this instance the primary permit required is a DNR Protected waters permit to be issued by the DNR Area Hydrologist Bill Huber. I have discussed this project with Mr. Huber and he confirmed that he has already received all the relevant information he could want or use and that an EAW could not supply more useful information than he already possesses. He believes this habitat restoration project is very sound and he intends to issue the permit based upon the comprehensive information already provided to him. In short, incorrectly requiring preparation of an EAW will not yield any new information useable for the permitting decision.

It has come to our attention that some individuals in the DNR's St. Paul office are misinterpreting Minnesota Rule 4410.4300 Subp. 26 and suggesting this category should have a far greater scope than was ever intended. 4410.4300 requires preparation of an EAW for:

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

The rulemaking history makes it clear that the problem this mandatory category was intended to address was that posed by flood control and drainage projects where the stream channel is straightened or diverted to speed drainage off the land. It was never intended to apply to habitat restoration projects that seek to undo such past impacts and restore the stream channel to a natural pattern for the benefit of wildlife habitat, fisheries resources, and water quality.

The historical intended purpose of this rule is found on Page 152 of the 1982 SONAR, where it states:

“This category area is proposed because the alteration of watercourses *affects flooding in downstream and adjacent areas*, wildlife habitat, fisheries resources, water quality, and area land use. *The traditional analysis of flood control and drainage projects* usually does not consider broad and long range environmental implications. Environmental review will facilitate a more comprehensive analysis. The qualitative measure applied to the EAW category is restricted to trout streams and natural watercourses because they have significant habitat, recreational, and resource values. *Alteration of these*

*watercourses may significantly impact natural drainage. A ten square mile quantitative threshold is applied to make the category administratively feasible and because minor diversion of headwaters watercourses is likely to have minimal flooding and habitat impacts. A ten square mile drainage area corresponds to approximately 6,400 acres.”*  
(*emphasis added*)

While people sometimes loosely use the term “realignment” in several ways, the rulemaking history indicates that the rule was intended to apply in the context of drainage efforts where “realignment” is used euphemistically to mean straightening:

*“Realignment” is added as an activity that will require an EAW. Realignment often means straightening, which has a serious effect on water flows and stream habitat. The 500-foot minimum length was added so that the category would no longer apply to minor stream alterations; this minimum threshold does not apply to trout streams. Experience has shown that stream diversions of less than this length generally have minimal environmental impacts and do not warrant a mandatory EAW requirement.*

1997 SONAR at page 20 (*emphasis added*)

Our habitat project is designed solely for the purpose of restoring trout habitat, stabilizing eroding stream banks, and restoring the stream channel’s access to its floodplain. We began the design process in early November 2013 and received regular input from the MNDNR, Winona County SWCD office, US Army Corps of Engineers and others. Following their informal approval we submitted the MNDNR Protected waters permit. As part of the site review and design revision process, the agencies all agreed that an unstable, eroding bend at the top of the project site had an unnaturally tight curve which needed to be corrected to stabilize the channel and banks. The correction agreed upon was to re-establish a more expected radius of curvature combined with new floodplain flats, rather than attempting hard armoring. The channel is not being straightened, but restored to a natural curved pattern. This design maintains the same amount of habitat and stream length based on thalweg distance. The only “impacts” will be beneficial.

Many local volunteers and anglers are anxiously awaiting completion of this habitat project, which will improve fish and wildlife habitat, reduce erosion and sedimentation and improve water quality. Local contractors are waiting to be a part of helping to improve our natural resources. We have been working closely with area staff in the DNR Fisheries and Ecological & Water Resources divisions on this habitat restoration design since November 2013. They already have comprehensive information and they agree this well designed project should be permitted without delay. I urge you to contact the Area Hydrologist, Bill Huber, and Area Fisheries Manager, Steve Klotz, to confirm that an EAW would yield no new useable information.

We appreciate that one or more well-intentioned, but overzealous individuals in St. Paul have suggested an interpretation of a rule which would make Winona County the RGU for an EAW. However, Winona County has the opportunity to apply common sense and respectfully point out that under a more reasonable interpretation of the rule, the Pine Creek habitat

restoration project is not subject to this mandatory EAW provision. The DNR has indicated to me that it will defer to your determination on this matter.

I am happy to provide any additional information you might need regarding this great habitat restoration project. Thank you for your consideration.

Sincerely,

John P. Lenczewski

John P. Lenczewski  
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# Minnesota Center for Environmental Advocacy

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August 5, 2016

**VIA ELECTRONIC MAIL**

Courtney Ahlers-Nelson  
Planning Director, Environmental Review  
Environmental Quality Board  
Attn: Mandatory Category Rulemaking  
520 Lafayette Road North  
St. Paul, MN 55155

**Re: Comments on the 4410 “Mandatory Categories” rulemaking**

I am writing on behalf of the Minnesota Center for Environmental Advocacy (MCEA) and the undersigned organizations to provide comments to assist you in the Mandatory Categories Rulemaking that the Environmental Quality Board (EQB) is undertaking pursuant to 2015 Minnesota Laws Special Session, Chapter 4, Article 3, Section 2.

MCEA and the undersigned organizations believe the Minnesota Environmental Policy Act (MEPA) is central to the stewardship of Minnesota’s resources and the welfare of all Minnesotans. Therefore, we are interested in and concerned with changes to MEPA’s implementing rules, and have strong input to share regarding the preliminary proposed changes to Minnesota Rules (Minn. R.) Chapter 4410 released for public comment on June 20<sup>th</sup>, 2016 by EQB<sup>1</sup>. We appreciate this opportunity to provide comments for your consideration and look forward to continued involvement as this rulemaking proceeds.

We have reviewed preliminary proposed changes to Minn. R. 4410.0200, Minn. R. 4410.4300-4400 and Minn. R. 4410.4600 and have positive feedback, broad concerns, and specific recommendations in a number of different areas. This letter details our review, and in addition to the comments provided here we have enclosed a number of attachments to aid EQB’s work going forward.

To begin with, we would like to acknowledge EQB’s efforts to make important clarifications and improvements in a number of areas. The addition of definitions and rule and statute references throughout will improve the clarity and consistency of the program and make the rules more usable to practitioners across the board. The addition of Responsible Governmental Units (RGU) to several categories that have frequently required a RGU change will make the process easier to administer, reduce lost time for project proponents, and offer a less cumbersome route for some

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<sup>1</sup> <https://www.eqb.state.mn.us/content/eqb-mandatory-categories-rulemaking>

local governments to exercise their option to defer to an alternative RGU. EQB's efforts to identify these important improvements demonstrate a flavor of "streamlining" that MCEA supports.

Although we appreciate the positive changes that have been proposed by EQB at this preliminary stage, we have identified a number of issues that we believe require further attention. We have detailed below two of the central concepts guiding EQB's approach to the rulemaking that we find troublesome. In addition, we have provided detailed feedback on a number of the specific preliminary proposed changes that we believe are problematic.

### **Two central concepts guiding EQB's approach to the rulemaking are troublesome**

There are two overarching themes present in the justification provided for the proposed changes that undermine the basic value and function of environmental review. The first is the persistent urge to align environmental review thresholds with permitting thresholds. The second is the "use it or lose it" philosophy that seems to compel EQB staff to propose the elimination of protective thresholds that are rarely breached. Both of these philosophies weaken the value of the environmental review program and jeopardize the ability of decision-makers to adequately consider environmental impacts.

#### **Environmental review ≠ permitting**

Environmental review serves a unique purpose, with underlying objectives that are distinct from those addressed by the permitting process. Because the underlying objectives are different, it is not necessary - and in many cases it does not make any sense - for permitting and environmental review thresholds to perfectly align. The basic driver behind the permitting process is to ensure that appropriate restrictions and conditions are placed on activities that have been identified to have an impact on the environment and human health above certain thresholds. Environmental review, on the other hand, is a critical thinking effort that characterizes the nature and magnitude of impacts associated with a given action, and analyzes alternatives to that action as well as opportunities to mitigate the impacts. If this critical thinking process is only applied where permitting thresholds already tell us that an impact threshold has been exceeded, we only get a fraction of the benefit that environmental review can and should provide.

Where a specific permitting threshold is exceeded, environmental review provides decision-makers with a broader scope of information than the permitting process alone would necessarily generate: an analysis of alternatives that may provide an avenue to avoid impacts across a broad suite of environmental resources, and identification of mitigation to minimize or offset these impacts. However, the benefits of environmental review extend far beyond informing the conditioning of permits. Environmental review can define impacts and thresholds that may not already be well understood or addressed in the permitting realm, explore collateral resource impacts and tradeoffs that alternatives may create, and it can and should provide a framework for considering the cumulative effects of many otherwise separate permitting decisions. In this context, environmental review is a critical planning tool in the decision-making process. Relying exclusively on permitting thresholds to determine whether environmental review is necessary eliminates an important opportunity to identify and minimize impacts on a broader planning-level basis.

The implementation of Minn. R. 4410.4300 Subpart 3 demonstrates the value of decoupled environmental review and permitting thresholds. Under Minn. R. 4410.4300 Subp. 3, preparation of an Environmental Assessment Worksheet (EAW) is required for construction of an electric power generating plant and associated facilities designed for or capable of operating at a capacity of between 25 megawatts and 50 megawatts. As established in Minn. R. 7850.1400 Subpart 1, however, a permit from the Public Utilities Commission is not required to construct a power plant of less than 50 megawatts. So, in this case the environmental review threshold has been established well below the relevant permit threshold.

As distributed generation projects have cropped up across Minnesota in the last several years, this mandatory category has been put to work several times and the result has been better informed planning. In the case of the University of Minnesota, Twin Cities Combined Heat and Power (CHP) Project<sup>2</sup>, air modeling not required by the permitting process was conducted as a part of environmental review, and provided information to support pollution control decisions. In the case of Minnesota Municipal Power Agency's Shakopee Distributed Generation Facility<sup>3</sup>, noise modeling conducted as a part of environmental review informed layout decisions and helped to identify equipment-specific mitigation measures. In the case of Flint Hills Resources CHP Cogeneration Project<sup>4</sup>, the cumulative effects analysis completed as part of environmental review identified several simultaneously proposed projects and provided information that ultimately highlighted the need for additional local traffic study<sup>5</sup>.

If the permitting threshold and environmental review threshold were aligned, in each of these cases important opportunities to understand and mitigate impacts would likely have been missed. To the extent that "aligning with permitting thresholds" has been provided as justification for any of the preliminary proposed changes to Minn. R. 4410, we request a more thoughtful evaluation of the value that may be lost in coupling environmental review thresholds with permitting thresholds.

### **Sometimes an "unused" threshold is the best kind of threshold**

Across a wide diversity of applications, thresholds serve as deterrent as much as a trigger. Speed limits, for example, set the trigger for the highway patrol to issue a ticket, but most drivers choose to stay under the threshold. While speed-limit-abiding drivers are not giving local law enforcement a chance to put the threshold to "use," the speeding ticket threshold certainly still serves an important purpose. Some thresholds are virtually never crossed, but their presence inspires restraint, and the formulation of the threshold offers a timely and effective path forward in the unlikely event that it is crossed.

Environmental review mandatory categories are no exception when it comes to the concept of threshold as deterrent. The success the mandatory category framework is as much about what does not show up in the EQB Monitor as it is about what does. It is very common for project proponents to evaluate their proposed projects relative to the environmental review requirements and determine what modifications could be made to avoid crossing the relevant thresholds. Environmental review rules are at their best and most efficient when they can

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<sup>2</sup> <https://www.pca.state.mn.us/sites/default/files/p-ear2-61a.pdf>

<sup>3</sup> <https://www.pca.state.mn.us/sites/default/files/p-ear2-93a.pdf>

<sup>4</sup> <https://www.pca.state.mn.us/sites/default/files/p-ear2-64a.pdf>

<sup>5</sup> <https://www.pca.state.mn.us/sites/default/files/p-ear2-65b.pdf>

prompt project proponents to consider impacts and alternatives and adopt plans that avoid critical impact thresholds. In this case, a threshold that does not get crossed may be providing more value than one that does. To the extent that “lack of use” has been provided as justification for the preliminary proposed changes to Minn. R. 4410, we request a more thoughtful evaluation of the value that these thresholds provide in terms of deterring impacts.

### **A number of the specific preliminary proposed changes are problematic**

In addition to the two broad philosophical shortcomings of the preliminary proposed rules discussed above, there are a number of specific proposed changes that are shortsighted and threaten the integrity of Minnesota’s environmental review program.

#### **Eliminating the greenhouse gas threshold squanders a valuable instrument for climate action**

Under Minn. R. 4410.4300 Subpart 15, “Air Pollution,” the preliminary rule proposes to eliminate Subpart 15B, which requires preparation of an EAW for construction of a stationary source facility that generates a combined 100,000 tons or more per year or modification of a stationary source facility that increases generation by a combined 100,000 tons or more per year of greenhouse gas emissions, after installation of air pollution control equipment, expressed as carbon dioxide equivalents.

The justification for eliminating this greenhouse gas threshold provided in the preliminary rule document is based on the US Supreme Court’s 2014 invalidation of EPA’s “tailoring rule” which had required a Prevention of Significant Deterioration permit for facilities with greenhouse gas emissions exceeding 100,000 tons. The tailoring rule was EPA’s effort to modify Clean Air Act permitting requirements to reflect their finding that greenhouse gas emissions are pollutants that threaten human health. Prior to the invalidation, MPCA and EQB had incorporated this 100,000 ton greenhouse gas requirement into Minnesota’s air permitting and environmental review programs.

While the 2014 invalidation of EPA’s tailoring rule has clear implications for Minnesota’s air permitting program, the ruling did nothing to modify our growing understanding of the grave environmental effects of greenhouse gas emissions, and has no bearing on what can or should be evaluated in environmental review. As discussed at length above, it is not necessary - and in many cases it does not make any sense - for permitting and environmental review thresholds to be coupled.

In this case, we have an undeniable understanding that greenhouse gas emissions impact the environment through climate change. Minnesota’s environmental review framework provides an excellent venue to assess whether emissions associated with a proposed action will cause significant impacts and identify alternatives to reduce these impacts. Requiring alignment between the permitting world (which has yet to establish appropriate greenhouse gas thresholds and restrictions) and the environmental review world (in which a clear mandate exists to inform decision-makers about greenhouse gas impacts and alternatives), creates a needless artificial information barrier that stands in the way of progress toward managing greenhouse gas emissions and climate change impacts in the state of Minnesota.

In light of the distinct gap between the treatment of greenhouse gases in permitting and their potential for significant environmental impacts, this rule update is an ideal opportunity to bring Minn. R. 4410 in line with the reality that greenhouse gas emissions have the potential for significant impacts at levels much lower than the now defunct Tailoring Rule's 100,000 ton per year threshold. Climate change is the ultimate cumulative effect. Any action that results in the release of greenhouse gases to the atmosphere contributes, at least in some way, to a cumulatively significant impact on the world's climate, ocean acidification, habitat and species loss, rising sea level, human health risks, and more. At the same time, any single project can be dismissed as having no discernable impact. Yet we also know that we cannot effectively mitigate climate change unless we investigate and seize every opportunity to lower emissions.

Rather than eliminate the threshold entirely, an action inconsistent with the state's greenhouse gas reduction goals, we recommend adopting a mandatory EAW threshold much lower than 100,000 metric tons of carbon dioxide equivalent emissions per year, based on federal guidance. We recognize that the EQB must balance the reality that any greenhouse gas emission contributes to a significant effect with the reality that the state's capacity to complete environmental review is finite. EQB might look to existing federal guidance to establish an appropriate threshold for mandatory EAW preparation. In December of 2014, the U.S. Council on Environmental Quality (CEQ) released revised draft guidance on the consideration of greenhouse gas emissions and climate change impacts.<sup>6</sup> The guidance recommends that agencies may consider 25,000 metric tons of carbon dioxide equivalent emissions on an annual basis as a reference point below which a quantitative analysis of greenhouse gas emissions is not warranted<sup>7</sup>. On August 2<sup>nd</sup>, 2016 the CEQ finalized the December, 2014 guidance<sup>8</sup>. The final guidance drops the 25,000 metric ton per year threshold, and simply recommends that agencies quantify a proposed action's direct and indirect greenhouse gas emissions, suggesting that a quantitative analysis is warranted even below the 25,000 metric ton per year threshold provided in the draft guidance. Both the draft and final guidance emphasize that agency analyses should be commensurate with projected greenhouse gas emissions and climate impacts, and should employ appropriate quantitative or qualitative analytical methods to ensure useful information is available to inform the public and the decision-making process in distinguishing between alternatives and mitigations.

Building on the CEQ's recommendations to develop an appropriate threshold and guidance in Minn. R. 4410.4300 may effectively address basic objectives that drive EAW preparation: determining whether a proposed project has the potential for significant environmental effects, and indicating how the project can be modified to lessen its environmental impacts.<sup>9</sup> Combined with effective guidance on the evaluation of alternatives and targeted mitigation strategies, a 25,000 metric ton per year mandatory EAW category, for example, could provide an effective framework to acknowledge the significant impacts of greenhouse gases on climate and

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<sup>6</sup> CEQ, 2014. Revised Draft Guidance for Greenhouse Gas Emissions and Climate Change Impacts.

<https://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/ghg-guidance>

<sup>7</sup> The 25,000 metric ton threshold also aligns with 40 CFR Part 98 Subpart C reporting requirements for stationary combustion. 25,000 metric tons per year roughly equivalent to a stationary fuel combustion units with maximum heat rated input capacity of 30 million British thermal units per hour (mmBtu/hr), combustion of 11,000 metric tons of bituminous coal or 5.6 million standard cubic feet (scf) of natural gas

<sup>8</sup> [https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/nepa\\_final\\_ghg\\_guidance.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/nepa_final_ghg_guidance.pdf)

<sup>9</sup> Minnesota Environmental Quality Board, 2010. EAW Guidelines. Preparing Environmental Assessment Worksheets. <https://www.eqb.state.mn.us/sites/default/files/documents/eawrules.pdf>

incentivize mitigation. For example, guidance could be developed<sup>10</sup> directing preparers of EAWs to provide a rigorous evaluation of measures to avoid and minimize greenhouse gas emissions (alternative designs, alternative fuels), and a negative declaration could be supported by the project proponent's mitigation of any emissions over the mandatory EAW threshold that could not be avoided<sup>11</sup>. The state of California's approach to addressing climate change and greenhouse gas under the California Environmental Quality Act (CEQA) may serve as a well-established framework for an effective process under MEPA. Several CEQA guidance documents have been included as attachments for reference.

As the state of Minnesota continues to grapple with a path forward on climate action, the information provided to decision-makers through effective environmental review of projects that will result in major emissions of greenhouse gases would be invaluable. During the EQB's presentation of the long-awaited results of the Climate Solutions and Economic Opportunities report, one of the key messages was that Minnesota has strong climate goals and a commitment to help maintain a stable climate on earth, but that Minnesota does not have policies in place to meet them. EQB staff and all of the commissioners pointed to the need to make deep changes across all sectors – the immediate need for bold action. In order for our decision-makers to target effective, efficient change, they need to be armed with information about impacts, tradeoffs, and alternatives. In the face of the challenges before Minnesota, eliminating the one critical mandatory threshold that facilitates informed decision-making about greenhouse gas emissions and climate change impacts on a systematic, project-by-project basis is unacceptable.

**The decades-old timber harvesting Generic Environmental Impact Statement (GEIS) is not a substitute for a modern project-by-project review**

Under Minn. R. 4410.4300 Subpart 28, "Forestry," the preliminary rule proposes the elimination of Subpart 28B, which requires preparation of an EAW for a clear cutting of 80 or more contiguous acres of forest, any part of which is located within a shoreland area and within 100 feet of the ordinary high water mark of the lake or river. The explanation provided in the preliminary rule indicates that "the development of the Forestry Generic Environmental Impact Statement has prevented this category from being used."

There are several critical flaws in the rationale cited for the elimination of this threshold. First, for the reasons discussed above, eliminating a threshold simply because it has never been crossed is ill-conceived and defies logic.

Second, and perhaps more important, the assertion that the preparation of a GEIS in some manner "prevents" subsequent review is at odds with Minnesota Rules and the very concept of the GEIS. Under Minn. R. 4410.3800, Subpart 1a GEIS may be used to study types of projects that are not adequately reviewed on a case-by-case basis. The 1994 GEIS on Timber Harvesting and Forest Management in Minnesota looked broadly at a host of separate timber harvesting and forest management operations across the state with the objective of developing a basic understanding of the status and sustainability of timber harvesting and related forest

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<sup>10</sup> MPCA's existing guidance on the evaluation of greenhouse gases in environmental review provides few requirements for EAWs beyond a quantitative accounting of total emissions. MPCA, 2011. Discussing greenhouse gas emissions in Environmental Review. <https://www.pca.state.mn.us/sites/default/files/p-ear1-07.pdf>

<sup>11</sup> Mitigation could be developed in the form of offsets, or payments – linked to the social cost of carbon – to be paid into a climate change action fund.

management in Minnesota, identifying and assessing environmental impacts of timber harvesting and related forest management in Minnesota, and developing strategies to mitigate existing or potential significant adverse impacts.<sup>12</sup> The benefit of the GEIS is that it provides analysis and mitigation strategies that can be relied upon on an individual project basis as long as the GEIS remains adequate at the time the specific project is subject to review. As indicated in Minn. R. 4410.3800, Subpart 8, preparation of a GEIS does not exempt proposals from project-specific environmental review. Instead, it offers a platform for subsequent project review. Project reviewers can draw on the GEIS, and adopt and build upon its conclusions and recommendations for mitigation in the assessment of the extent of review required for an individual project.

The adequacy and timeliness of the GEIS is a key factor in applying the GEIS's impact assessment and mitigation measures on a project-specific basis. In the case of the Timber Harvesting and Forestry Management GEIS, the relevance of the analysis and conclusions has faded in the 22 years since the GEIS was prepared. First, substantive changes have occurred in the last two decades in our forests and in our climate that significantly affect the potential environmental effects from the types of actions considered in the GEIS. Second, the inconsistent application of the mitigations proposed in the GEIS has undermined the project-by-project relevance of the conclusions of that work. Third, at the time of the GEIS preparation, DNR indicated that the analysis and conclusions of the GEIS would be obsolete after new forest inventory analysis (FIA) numbers were released. Since the 1994 preparation of the timber harvesting GEIS, the FIA numbers have been updated three times.

Relying on the outdated analysis and poorly implemented mitigation measures in the Timber Harvesting and Forest Management GEIS is not an appropriate approach for assessing forestry projects, and certainly not an appropriate justification for eliminating an environmental review threshold. We, therefore, request that EQB retain the protective threshold under Minn. R. 4410.4300 Subpart 28B in its entirety.

### **The proposed threshold changes for industrial, commercial and institutional facilities are arbitrary**

Under Minn. R. 4410.4300 Subpart 14, "Industrial, commercial, and institutional facilities," the preliminary rule proposes to eliminate the graduated thresholds that require preparation of an EAW for construction of large facilities, with the threshold square footage varying relative to the size of the community to be impacted by the project. Instead of considering the magnitude of these projects relative to the size of the community they will impact, the preliminary rule proposes uniform adoption of the highest threshold currently in rule. Similar changes are proposed under Minn. R. 4410.4400 Subpart 11, with the mandatory EIS threshold no longer varying based on the size of the impacted community. The explanation provided in the preliminary rule indicates that the "deletion reflects concerns with the threshold change corresponding to the size of the city."

The proposed change is untenable for two primary reasons. First, this line of reasoning fails to address the original intent of the graduated thresholds, and is not grounded in any

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<sup>12</sup> Jaakko Poyry Consulting, 1994. Final Generic Environmental Impacts Statement Study on Timber Harvesting and Forest Management in Minnesota. Prepared for Minnesota EQB.

environmentally relevant analysis. Second, the proposal to uniformly adopt the highest threshold currently in rule appears to be an arbitrary choice with no factual justification.

The original intent of the graduated thresholds in Minn. R. 4410.4300 Subpart 14 and Minn. R. 4410.4400 Subpart 11 was to reflect that the size of a facility relative to the community where it is proposed is an indicator of the potential for societal and environmental disruption. In theory, the construction of large facilities in small communities would be likely to produce relatively larger social and environmental impacts than the construction of a facility of the same size in a much larger community. The explanation for the proposed elimination of the graduated thresholds fails to identify any shortcoming in this earlier logic and is at odds with EQB's earlier analysis<sup>13</sup> that suggested that any changes to these thresholds merit "very careful analysis."

The choice to uniformly adopt the highest thresholds currently in rule jeopardizes smaller communities, eliminating a clear, structured opportunity to gain information valuable for community planning and decision-making in the communities that are least likely to have other planning resources at their disposal. Environmental review is often mistakenly viewed by local governments as a burden rather than an opportunity. EQB's sympathy for that sentiment is implicit in the threshold hike proposed in the preliminary revisions to this category. While eliminating thresholds that would otherwise bring local governments into environmental review may alleviate groans from EQB's local partners in the short term, it misses the longer term opportunity for better local planning that environmental review can facilitate. Rather than eliminating important thresholds, EQB should focus efforts on educating and assisting local governments to put environmental review to work for the benefit of their communities.

I appreciate the opportunity to share our input. We understand that this is the beginning of a multi-phase effort to update Minn. R. 4410, and look forward to working with EQB and participating through all phases of the process. Please do not hesitate to contact me if you would like to discuss any of these comments further.

Sincerely,

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<sup>13</sup> Minnesota Environmental Quality Board, 2013. Mandatory Environmental Review Categories Report. Prepared In Response to Minnesota Laws 2012 Chapter 150 – S.F. No. 1567, Article 2, Section 3.



- c. Will Seuffert, Executive Director EQB  
David Frederickson, EQB Chair, Commissioner Department of Agriculture  
Brian Napstad, EQB Vice Chair, Chair Board of Water and Soil Resources  
Shawntera Hardy, Commissioner Department of Employment and Economic Development  
John Linc Stine, Commissioner Minnesota Pollution Control Agency  
Mike Rothman, Commissioner Department of Commerce  
Charlie Zelle, Commissioner Department of Transportation  
Tom Landehr, Commissioner Department of Natural Resources  
Matt Massman, Commissioner Department of Administration  
Dr. Edward Ehlinger, Commissioner Department of Health  
Scott Strand, Executive Director MCEA

# ABOUT THE ENVIRONMENTAL REVIEW PROCESS (Also Called "the CEQA Process")

Cities and counties weigh a variety of factors when deciding whether to approve a proposed land use or other project. One such factor is what kind of effect a project would have on the environment.

The California Environmental Quality Act guides the process of gathering such information. A nickname for this law is "CEQA" (pronounced "See-Kwa"). The process is quite complex and technical. This sheet provides an overview of some basic concepts though.

The term "environment" includes natural and man-made elements of our surroundings. This includes land, air, water, minerals, plants, animals and noise. It also includes things like historic buildings.

## Determining the Level of Environmental Review

In some cases, state-level decision-makers have decided that no environmental review is necessary. Some kinds of projects are exempt from the environmental review process. There are two sources of exemptions. One source is the CEQA statute (these are known as "statutory exemptions"). The Legislature makes this decision. The other source of exemptions is the CEQA Guidelines. These are adopted by the state's Resources Agency to provide guidance on implementing CEQA. These are known as "categorical exemptions."

### The "Initial Study"

If a project is not exempt, the next step is to prepare an initial study. Such a study asks the question "are there facts that indicate that a project could have a significant effect on the environment?"

### "Negative Declarations"

If the answer is "no," then a "negative declaration" occurs. When an agency uses a negative declaration, it is saying two things. It is reaching a conclusion (or making a "declaration") that an environmental impact report is not necessary (the "negative"). An environmental impact report is a more detailed analysis of a project's effects on the environment.

There are two situations in which a "negative declaration" is used. One is when decision-makers conclude that a project will not have a significant effect on the environment. The other is when the project has potentially significant effects, but they can be reduced or avoided by imposing certain conditions on the project. This type of negative declaration is known as a "mitigated negative declaration."

## Evaluating Information in the CEQA Process

Decision-makers receive lots of information through the CEQA process. Some of this information can also be technical. Reasonable people can disagree about how much weight to give to pieces of information. Indeed even experts can disagree.

What if it is not clear whether a project will have an effect on the environment? If there is a "fair argument" that a project may have a significant effect, decision-makers will usually direct that an environmental impact report be prepared.

There can be other points in the environmental review process when reasonable people can disagree about how information should be evaluated. Recognizing this, the law gives decision-makers a fair amount of latitude in determining what information is the most persuasive.

Instead of using "mandatory categories" as like we do in MN, CA requires preparation of the equivalent of our EAW for every project, unless it is specifically exempt

# ABOUT THE ENVIRONMENTAL REVIEW PROCESS (Also Called "the CEQA Process")

## "Environmental Impact Reports"

If the initial study shows that the project may have a significant effect on the environment, the next step is to prepare the more extensive environmental impact report. Such reports are often referred to by the initials "EIR."

Such reports contain a number of items. It describes the proposed project. It identifies and analyzes each significant environmental impact expected to result from the proposed project. The report also recommends steps to avoid or minimize those impacts. These actions are called "mitigation measures." Possible alternative projects are considered too, including the option of no project.

## Impact on the Decision-Making Process

The information from the environmental review process helps decision-makers decide whether to approve a project. The report also helps them decide whether putting conditions on a project's approval helps. But the ultimate decision on whether to approve a project is up to decision-makers (after complying with CEQA).

If the project approval includes mitigation measures, the agency must adopt a reporting or monitoring program to assure those measures occur.

### Thinking Ahead When It Comes to Environmental Review

The process of evaluating environmental effects on a project-by-project basis can be both time-consuming and expensive. The California Environmental Quality Act gives decision-makers a number of options to address this.

For example, "master" and "program" environmental impact reports can consider the environmental impacts of major policy decisions (for example, the decision to adopt a general plan). When projects come along that are consistent with these policies, the need for further environmental review and analysis is reduced or eliminated.

CEQA also allows agencies to build upon prior environmental reviews. This avoids unnecessarily repeating analysis which has already occurred and is still current. This is called "tiering" off of earlier reviews. It enables the agency to focus the current environmental review on issues that were not analyzed in the earlier review.

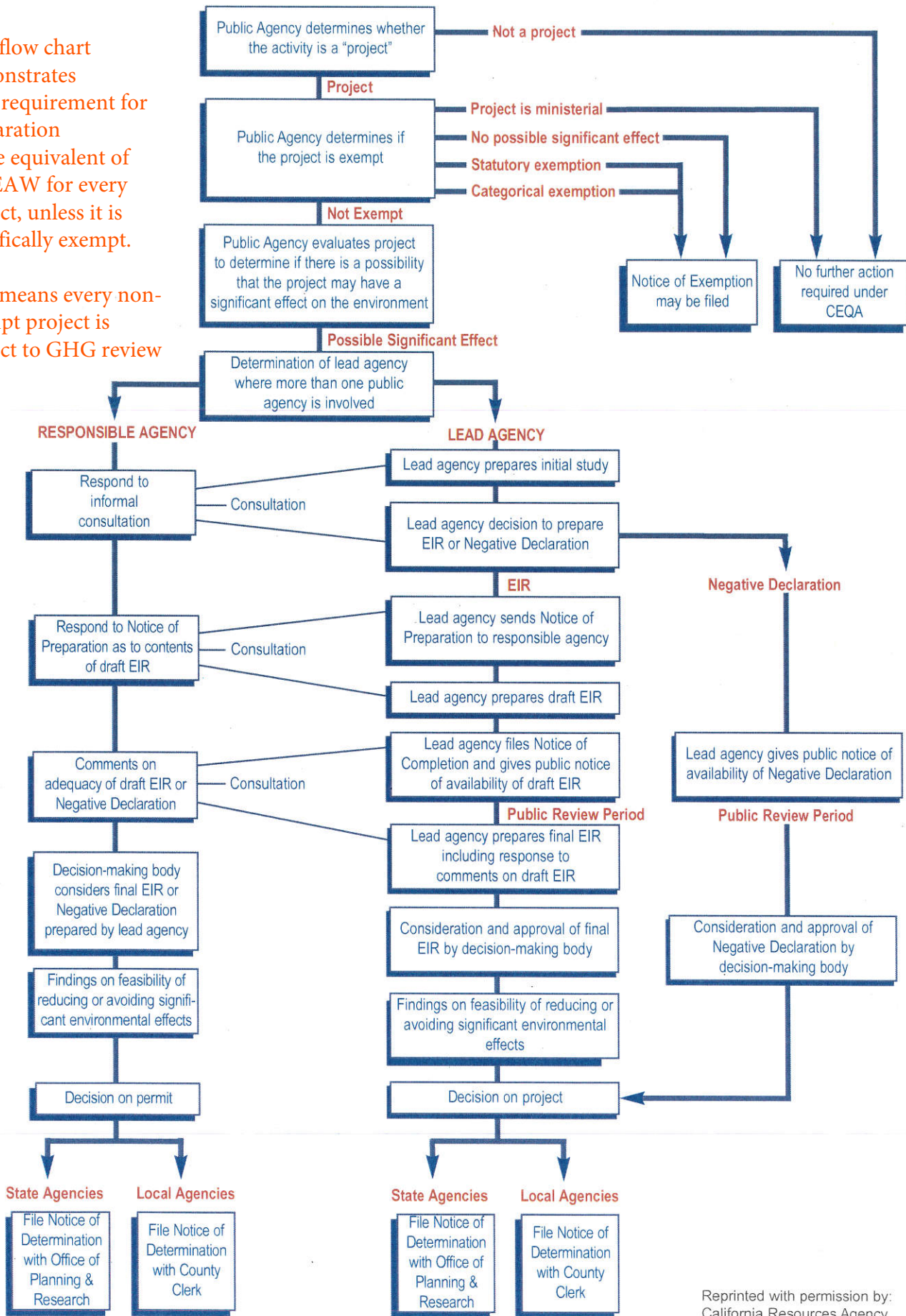
## To Learn More

- State of California website on California Environmental Quality Act:  
<http://ceres.ca.gov/ceqa/>
- *The Planning Commissioner's Handbook*, League of California Cities, 2005, Chapter 4: The Planning Framework ([www.ca-ilg.org/pch4](http://www.ca-ilg.org/pch4))
- California Public Resources Code Section 21000 and following (accessible from [www.leginfo.ca.gov/calaw](http://www.leginfo.ca.gov/calaw))
- Solano Press ([www.solano.com](http://www.solano.com)) has a number of land use-related publications, including one on the California Environmental Quality Act, available for purchase

# CEQA PROCESS FLOW CHART

This flow chart demonstrates CA's requirement for preparation of the equivalent of our EAW for every project, unless it is specifically exempt.

This means every non-exempt project is subject to GHG review



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- (4) The mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable.

**Note:** Authority cited: Sections 21083, 21083.05, Public Resources Code. Reference: Sections 21003, 21065, 21068, 21080, 21082, 21082.1, 21082.2, 21083, 21083.05, and 21100, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68; *San Joaquin Raptor/Wildlife Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal.4th 1112; and *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98.

**15064.4. DETERMINING THE SIGNIFICANCE OF IMPACTS FROM GREENHOUSE GAS EMISSIONS**

- (a) The determination of the significance of greenhouse gas emissions calls for a careful judgment by the lead agency consistent with the provisions in section 15064. A lead agency should make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. A lead agency shall have discretion to determine, in the context of a particular project, whether to:
  - (1) Use a model or methodology to quantify greenhouse gas emissions resulting from a project, and which model or methodology to use. The lead agency has discretion to select the model or methodology it considers most appropriate provided it supports its decision with substantial evidence. The lead agency should explain the limitations of the particular model or methodology selected for use; and/or
  - (2) Rely on a qualitative analysis or performance based standards.
- (b) A lead agency should consider the following factors, among others, when assessing the significance of impacts from greenhouse gas emissions on the environment:
  - (1) The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting;
  - (2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project.
  - (3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. Such requirements must be adopted by the relevant public agency through a public review process and must reduce or mitigate the project's incremental contribution of greenhouse gas emissions. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project.

**Note:** Authority cited: Sections 21083, 21083.05, Public Resources Code. Reference: Sections 21001, 21002, 21003, 21065, 21068, 21080, 21082, 21082.1, 21082.2, 21083.05, 21100, Pub. Resources Code; *Eureka Citizens for Responsible Govt. v. City of Eureka* (2007) 147 Cal.App.4th 357; *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98; *Berkeley Keep Jets Over the Bay Com. v. Board of Port Comm.* (2001) 91 Cal.App.4th 1344; and *City of Irvine v. Irvine Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868.

Here's the specific rule language that guides the determination of whether GHG impacts are significant and require mitigation to avoid EIS

The next 15 pages are CA's form that's roughly equivalent to MN's EAW form. You'll see on the next page the GHG evaluation requirement

**APPENDIX G:  
ENVIRONMENTAL CHECKLIST FORM**

NOTE: The following is a sample form and may be tailored to satisfy individual agencies' needs and project circumstances. It may be used to meet the requirements for an initial study when the criteria set forth in CEQA Guidelines have been met. Substantial evidence of potential impacts that are not listed on this form must also be considered. The sample questions in this form are intended to encourage thoughtful assessment of impacts, and do not necessarily represent thresholds of significance.

1. Project title: \_\_\_\_\_
2. Lead agency name and address:  
\_\_\_\_\_  
\_\_\_\_\_
3. Contact person and phone number: \_\_\_\_\_
4. Project location: \_\_\_\_\_
5. Project sponsor's name and address:  
\_\_\_\_\_  
\_\_\_\_\_
6. General plan designation: \_\_\_\_\_ 7. Zoning: \_\_\_\_\_
8. Description of project: (Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation. Attach additional sheets if necessary.)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
9. Surrounding land uses and setting: Briefly describe the project's surroundings:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
10. Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement.)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Aesthetics               | <input type="checkbox"/> Agriculture and Forestry Resources | <input type="checkbox"/> Air Quality                        |
| <input type="checkbox"/> Biological Resources     | <input type="checkbox"/> Cultural Resources                 | <input type="checkbox"/> Geology /Soils                     |
| <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Hazards & Hazardous Materials      | <input type="checkbox"/> Hydrology / Water Quality          |
| <input type="checkbox"/> Land Use / Planning      | <input type="checkbox"/> Mineral Resources                  | <input type="checkbox"/> Noise                              |
| <input type="checkbox"/> Population / Housing     | <input type="checkbox"/> Public Services                    | <input type="checkbox"/> Recreation                         |
| <input type="checkbox"/> Transportation/Traffic   | <input type="checkbox"/> Utilities / Service Systems        | <input type="checkbox"/> Mandatory Findings of Significance |

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## EVALUATION OF ENVIRONMENTAL IMPACTS:

- 1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).
- 2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
- 3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
- 4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from "Earlier Analyses," as described in (5) below, may be cross-referenced).
- 5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration, Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:
  - a) Earlier Analysis Used. Identify and state where they are available for review.
  - b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
  - c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
- 6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.
- 7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
- 8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.



- 9) The explanation of each issue should identify:
- a) the significance criteria or threshold, if any, used to evaluate each question; and
  - b) the mitigation measure identified, if any, to reduce the impact to less than significance

SAMPLE QUESTION

Issues:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>I. AESTHETICS.</b> Would the project:				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**II. AGRICULTURE AND FORESTRY RESOURCES.** In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Result in the loss of forest land or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>III. AIR QUALITY.</b> Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**IV. BIOLOGICAL RESOURCES:**

Would the project:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<u>V. CULTURAL RESOURCES.</u> Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>VI. GEOLOGY AND SOILS.</u> Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>VII. GREENHOUSE GAS EMISSIONS.</u></b>				
Would the project:				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>VIII. HAZARDS AND HAZARDOUS MATERIALS.</u></b>				
Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>IX. HYDROLOGY AND WATER QUALITY.</u></b>				
Would the project:				
a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j) Inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>X. LAND USE AND PLANNING.</u> Would the project:				
a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

XI. MINERAL RESOURCES. Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

XII. NOISE -- Would the project result in:

a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<u>XIII. POPULATION AND HOUSING.</u> Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>XIV. PUBLIC SERVICES.</u>				
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>XV. RECREATION.</u>				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

XVI. TRANSPORTATION/TRAFFIC. Would the project:

a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>XVII. UTILITIES AND SERVICE SYSTEMS.</b>				
Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>XVIII. MANDATORY FINDINGS OF SIGNIFICANCE.</b>				
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	<b>Potentially Significant Impact</b>	<b>Less Than Significant with Mitigation Incorporated</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Note: Authority cited: Sections 21083 and 21083.05, Public Resources Code. Reference: Section 65088.4, Gov. Code; Sections 21080(c), 21080.1, 21080.3, 21083, 21083.05, 21083.3, 21093, 21094, 21095, and 21151, Public Resources Code; *Sundstrom v. County of Mendocino*, (1988) 202 Cal.App.3d 296; *Leonoff v. Monterey Board of Supervisors*, (1990) 222 Cal.App.3d 1337; *Eureka Citizens for Responsible Govt. v. City of Eureka* (2007) 147 Cal.App.4th 357; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th at 1109; *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656.

Revised 2009



SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT

Sample threshold  
of significance  
recommendation  
Sacramento  
AQMD

Resolution No. 2014 - 028

**Recommended Greenhouse Gas Emissions Thresholds of Significance**

**WHEREAS**, Section 15064.7 of the California Environmental Quality Act (CEQA) Guidelines encourages public agencies to develop and publish thresholds of significance to use in the determination of the significance of environmental effects, and states that thresholds of significance adopted for general use as part of the agency's environmental review process must be adopted by ordinance, resolution, rule or regulation; developed through a public review process; and supported by substantial evidence; and

**WHEREAS**, the Sacramento Metropolitan Air Quality Management District utilized guidance published by the California Air Pollution Control Officers Association, *CEQA & Climate Change, Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act*, and a review of local projects in developing the recommended greenhouse gas emissions thresholds of significance; and

**WHEREAS**, the Sacramento Metropolitan Air Quality Management District held a public workshop on November 13, 2013, coordinated with local agencies, held a public hearing on October 23, 2014, and considered comments on the recommended greenhouse gas emissions thresholds of significance; and

**WHEREAS**, the Sacramento Metropolitan Air Quality Management District provided substantial evidence supporting the recommended greenhouse gas emissions thresholds of significance and mitigation levels in a document entitled *Justification for Greenhouse Gas Emissions Thresholds of Significance*; and

**WHEREAS**, the adoption of the recommended greenhouse gas emissions thresholds of significance will support compliance with CEQA and lead to contributions to greenhouse gas emission reductions goals of the Global Warming Solutions Act (AB32); and

**WHEREAS**, jurisdictions that have adopted greenhouse gas reduction plans meeting the requirements of Section 15183.5 of the CEQA Guidelines or have adopted their own greenhouse gas emissions thresholds of significance may opt not to utilize the Sacramento Metropolitan Air Quality Management District's recommended greenhouse gas emissions thresholds of significance if a project demonstrates consistency with the jurisdiction's reduction plan or threshold.

**NOW, THEREFORE, BE IT RESOLVED THAT** the Board of Directors of the Sacramento Metropolitan Air Quality Management District has determined that the development and adoption of the recommended greenhouse gas emissions thresholds of significance meets the requirements of Section 15064.7 of the CEQA Guidelines; and

**BE IT FURTHER RESOLVED THAT** the Board of Directors of the Sacramento Metropolitan Air Quality Management District adopts the following recommended greenhouse gas thresholds of significance:

- Construction phase of projects – 1,100 metric tons of CO2e per year
- Operational phase of land development projects – 1,100 metric tons of CO2e per year
- Stationary source projects – 10,000 direct metric tons of CO2e per year; and

**BE IT FURTHER RESOLVED THAT** the level of mitigation for significant projects is based on demonstrating consistency with AB32 and the California Air Resources Board's Climate Change Scoping Plan goal to reduce greenhouse gas emissions, which is currently a 21.7% reduction of emissions, and

**BE IT ORDERED THAT** the Board of Directors of the Sacramento Metropolitan Air Quality Management District authorize staff to update the mitigation percentage as changes to the Scoping Plan are made, in consultation with District Counsel, and an opportunity for public comment is provided prior to any changes being made; and

**BE IT FURTHER ORDERED THAT** the recommended thresholds of significance are effective immediately upon adoption.

**On a Motion** by Director Hansen and seconded by Director Frost, the foregoing Resolution was passed and adopted by the Board of Directors of the Sacramento Metropolitan Air Quality Management District, State of California, the 23rd day of October, 2014, by the following vote.

AYES: Directors Cohn, Crews, Fong, Frost, Hansen, MacGlashan, Nottoli.

NOES: Directors Starsky.

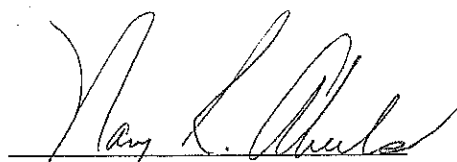
ABSENT: Directors Cooper, Peters, Serna, Terry, Warren, Yee.



Chair, Board of Directors  
Sacramento Metropolitan Air  
Quality Management District

(SEAL)

ATTEST:



Clerk of the Board  
Sacramento Metropolitan Air Quality Management District

Environmental Quality Board

Attn: Mandatory Category Rulemaking

August 3, 2016

520 Lafayette Road North  
St. Paul, MN 55155

Sent via email to [courtney.ahlersous@state.mn.us](mailto:courtney.ahlersous@state.mn.us)

Re: Mandatory Category Rulemaking: Preliminary Rule Language

MN350 submits the following comments regarding the proposed changes to the rules governing Environmental Impact Statements, MN Rules sections 4410.0200, 4410.4300, 4410.4400 and 4410.4600. The proposed rules do not address a key issue about which MN350 and other environmentalists have previously petitioned the Board. There are no proposed changes to the Responsible Governmental Unit "RGU" for pipelines. As so thoughtfully laid out by Willis Mattison and others at the December, April and May meetings of the EQB, the PUC is not the appropriate RGU for pipeline EIS studies.

While it is true that the PUC is required by statute to approve all pipeline routing issues, that designation should have no bearing on the selection of the appropriate RGU for pipeline EIS studies. The PCA and DNR are far more experienced in assessing the environmental impact of pipelines and other major facilities than the PUC and the Department of Commerce. The PUC and Department of Commerce have never conducted an EIS on a major crude oil pipeline. In contrast, the PCA has responsibility for overseeing any pipeline spills and has numerous experts on its staff to forecast, assess and clean up such spills. Similarly, DNR staff have the expertise to assess past and future impacts of pipeline construction and any spills or ruptures on fish, wildlife, forest, wetland and wild rice lake resources.

Accordingly, MN350 urges the EQB to amend MN Rule 4410.0400 as follows:

#### **Subp. 24. Pipelines.**

For routing ~~and certificate of need applications~~ of a pipeline ~~subject to the full route selection procedures under Minnesota Statutes, section 216G.02, the Public Utilities Commission- PCA and DNR jointly, are~~ is the RGU.

Finally, there is a significant gap in the regulatory protection scheme for pipelines that are abandoned without replacement. As renewable energy replaces fossil fuel, the need for hazardous liquid pipelines will decrease and abandonment will become increasingly common. The state should explicitly require an EIS or at least an EAW, in those abandonment situations involving pipelines as defined in Minn. Stat. section 216G.01, subdivision 3. We urge the EQB to propose legislation to address the risks to the environment from pipeline abandonment.

Sincerely,

Kevin Whelan  
Executive Director  
MN350





## Red River Watershed Management Board

July 5, 2016

Will Seuffert  
Executive Director  
Environmental Quality Board  
444 Lafayette Road  
St. Paul, MN

Dear Director Seuffert

RE: MN EQB ENVIRONMENTAL REVIEW EAW & EIS CATEGORY COMMENTS  
SUBMITTED BY THE RED RIVER WATERSHED MANAGEMENT BOARD  
(RRWMB)

### PREFACE

A little bit of background will be helpful in setting the context for the comments and recommendation being submitted. About 15 years ago there were considerable conflicts related to flood damage reduction projects in the Red River Valley. Moratoriums on permitting and litigation were imminent. To address the issues the state of MN and the Red River Watershed Management Board agreed to enter into facilitated mediation to provide a framework for coordination and cooperation that would result in projects that would be able to be permitted. I would refer you to and by reference attach the documents from the following web site <http://www.rrwmb.org/FDRWG.html> and the LTFS, Long Term Flood Solutions plan, prepared by the Red River Basin Commission (RRBC), Final Report to the States of Minnesota Pursuant to Session Laws (2009 Chapter 93) and North Dakota Pursuant to the 2009 North Dakota Chapter 20, House Bill 1046, section 9, [http://www.redriverbasincommission.org/Long\\_Term\\_Flood\\_Solutions/long\\_term\\_flood\\_solutions.html](http://www.redriverbasincommission.org/Long_Term_Flood_Solutions/long_term_flood_solutions.html).

In December 1998, an agreement to reduce flood damage and improve natural resources in the Minnesota portion of the Red River Basin was reached by representatives of watershed districts, state and federal agencies, local governments, various special interest organizations, and private landowners. *Please pay special attention to the membership of the Mediation Work Group and its roles and responsibilities and participation.* Based on this Agreement, the related public, private, and citizen engagement we believe that thresholds for EAW and EIS categories can justifiably be significantly raised or eliminated or as an alternative added to the “EXEMPTIONS” of the rule.

Secondly, we would encourage EQB to conduct the rule making process with an integrated approach. While addressing policy issues in one rule making process and



## Red River Watershed Management Board

then address the details in another rule making process may seem to provide for some timing and efficiency advantages, we do not feel that it best serves the purposes of the intended rule making related to the mandatory categories. Separating the policy from the detail creates uncertainty and potential confusion as to what the policy changes will actually mean. Integrating the two processes will provide more effective; transparent; certainty; and in the end a more efficient and understandable process and final rule.

### **MANDATORY EAW COMMENTS & RECOMMENDATIONS**

1. **Subp. 24 Water appropriation & impoundments:** It would seem that separating “appropriation” and “impoundments” into more separate and independent subdivisions. There really is minimal if any relationship between the two activities and it would be good to make the difference clearer by separations rather than just segmenting within the same subdivision.
  - **Subp 24 A.** No comments.
  - **Subp 24 B.** The threshold of 160 acres in the Red River of the North river basin is far too small. A more practical and reasonable threshold taking into consideration the Red River Valley Flood Damage Reduction Mediation Agreement (MWG) would be 1000 acres or to not have a threshold at all for projects that are following the Mediation Agreement. The 1000 acres is reasonable threshold when you consider that the Mediation Process already provided a major public process for distributed water retention projects and the LTFS plan of the RRBC calls for a 20% reduction in peak flood flows with allocations to all major watersheds in the RRB to secure 1,000,000 acre feet of storage. Each WD has a comprehensive strategy to achieve their respective allocation and most every project will be far greater than 160 acres. It is an antiquated threshold. See the reference to appropriate documents above. Most of these water retention/detention projects also incorporate various natural resource enhancements for the benefit of fish; wildlife; recreation; birding; etc. The Mediation process provides for extensive involvement of citizens, landowners, state and federal agencies and various diverse interest groups as you can see by the membership on the Mediation Work Group.
  - **Subp 24. C.** The threshold for the projects related to the Mediation Agreement should be eliminated or at a minimum the provision relate only to construction of a High Hazard Dam.

**Subp. 26 Stream diversion.** In the Red River Valley the threshold is really not applicable since the major river systems in the RRV have been channelized by the Federal and State Government efforts in the 50’s and 60’s. Current efforts are restoring the altered and channelized streams to more natural stream corridors and meandering of the river



## Red River Watershed Management Board

systems. These types of restorations should not be required to go through the mandatory EAW process. Another way to address this issue is to interpret these channelized rivers and streams or “altered natural watercourses” as defined in 103G to be exempt from the mandatory EAW process. **103G.005 DEFINITIONS: Subd. 3. Altered natural watercourse.** “Altered natural watercourse” means a former natural watercourse that has been affected by artificial changes to straighten, deepen, narrow, or widen the original channel. We should be encouraging the restoration of these channelized river and stream systems rather than putting unreasonable processes in place that can only make these projects more costly, but also act as a disincentive. The special reference to trout streams is fine.

### 2. Subp. 27 **Wetlands and public waters.**

- **Subp 27 A.** This provision would require an EAW for any change to the cross section of a public water watercourse. As with the discussion in Subp 26, in the RRV these thresholds may have had some relevance back in the 50’s and 60’s and prevented some of the channelization that took place by State and Federal projects of the time. However, today these thresholds make no sense at all. They only serve to create more administrative process/cost that works to inhibit the restoration of the river systems. Therefore, In the RRV and consistent with the Mediation Agreement these thresholds should not apply or be added to the exempt provisions.
- **Subp 27 B.** OK.

### 3. Subp. 36 **Land use conversion.**

- **Subp 36 A.** No problem with the golf courses or residential development of this category. However, the permanent conversion of 80 or more acres of agricultural land or natural vegetation is not reasonable or practical for projects that are implemented through and under the terms of the Mediation Agreement in the RRV. In almost all instances the water resources projects implemented through the Mediation Agreement are on agricultural land and involve more than 80 acres. There is significant public engagement and involvement with the project development and implementation. Either change this number to 1000 acres or eliminate the mandatory requirement for those projects implemented under the Mediation Agreement. In addition there should be consistency with other natural resources projects that result in conversion of 80 or more acres of agricultural lands. What about BWSR RIM Reserve program and DNR’s WMA and habitat programs that acquire agricultural lands and convert them to non agricultural land. It is also suggested that the RGU for these projects involving conversion of agricultural lands should be the MN Department of Agriculture.



## Red River Watershed Management Board

- **Subp 36 B.** The same reasoning for raising the threshold to 2000 acres or eliminating the category for all projects implemented consistent with the Mediation Agreement.

### 4. **Subp. 36a. Land conversions in shoreland.**

**Subp 36a A.** A requires a mandatory EAW for a project that impacts more than 1320 feet of a shoreline in a nonsensitive shoreland area. This does not make any practical sense when trying to restore an existing channelized public waters watercourse that is also shorelands. This provision should apply ONLY to natural unaltered shoreland watercourses and exempt altered natural watercourses. **103G.005 DEFINITIONS: Subd. 3. Altered natural watercourse.** "Altered natural watercourse" means a former natural watercourse that has been affected by artificial changes to straighten, deepen, narrow, or widen the original channel.

**Subp 36a B.** Same comments apply to this category as applies to Subp 36 A. For streams the shore impact zone is 50 feet and for stream restoration efforts for an existing channelized shoreland watercourse this mandatory category makes no practical sense and should be clarified to exempt impacts related to channelized/altered watercourses and should apply ONLY to shorelands on natural watercourses and exempt altered natural watercourses. **103G.005 DEFINITIONS: Subd. 13. Natural watercourse.** "Natural watercourse" means a natural channel that has definable beds and banks capable of conducting confined runoff from adjacent land.

**Subp 36a C.** As with Subps A and B this category is inappropriate for nonsensitive shoreland areas that are channelized watercourses. In many instances you have CRP land or in some instances RIM Reserve easement lands that would be altered with the restoration of the watercourse. In the end you will have far greater buffers and natural vegetation that exists today. Activities for nonsensitive areas in this category should be exempt for channelized shoreland watercourse areas or altered natural watercourses.

## **MANDATORY EIS COMMENTS & RECOMMENDATIONS**

1. **Subp. 18 Water appropriations and impoundments.** For a project that is implemented consistent with the Mediation Agreement it would be appropriate to eliminate this or exempt this category. The Mediation Agreement process the involvement of the regulatory agencies and local interests certainly takes the place of the purposes of the EAW. In addition the DNR's rigor when a Class 1, High Hazard Dam, is proposed. These thresholds were established many years ago and since that time DNR



## Red River Watershed Management Board

rules and regulations have significantly changes also warranting changes to the EIS provisions. Again consider separating the impoundments from the appropriations provisions as separate subdivisions.

2. **Subp. 20** Wetlands and public waters. OK.
3. **Subp. 23** Water diversions. OK.
4. **Subp. 27.** Land conversion in shorelands. This mandatory EIS category may be appropriate for sensitive shoreland areas that are lakes or public waters wetlands, however, in the RRV is has very little practical application as it relates to 80 acres or more of nonsensitive shoreland areas that are channelized rivers and streams. This type of provision can deter or be a disincentive for the restoration of altered and channelized stream and river systems back to the natural meandered and buffered conditions that enhance natural resources. These provisions should be clarified to eliminate the application to “altered natural watercourses”.

### **EXEMPTIONS COMMENTS & RECOMMENDATIONS**

1. **Subp. 15** Water impoundments: This exemption maybe redundant depending on the actions taken with respect to the mandatory categories. May also be appropriate to exempt all water impoundments, which include wetland restorations, of 1000 acres or less when done under the state and federal wetland restoration programs and those impoundment projects implemented consistent with the RRV FDR Mediation Agreement.

**Subp. 17 Ditch maintenance or repair:** This exemption deserves clarification as it has limitations and constraints that are not consistent with current provisions of 103E and there seems to be a 20 year provision that seems to be trying to reference provisions of the Wetland Conservation Act that applies only to wetlands. It would be appropriate to clarify this exemption to include all maintenance and repair drainage systems period. So the provision would read “Maintenance and repair of a public drainage system under 103E and maintenance and repair of a private drainage system with the limits of its original construction flow capacity.” *“103G.245 WORK IN PUBLIC WATERS: Subd. 2.Exceptions. A public waters work permit is not required for: (1) work in altered natural watercourses that are part of drainage systems established under chapter 103D or 103E if the work in the waters is undertaken according to chapter 103D or 103E; (2) a drainage project for a drainage system established under chapter 103E that does not substantially affect public waters; or (3) culvert restoration or replacement of the same size and elevation, if the restoration or replacement does not impact a designated trout stream.”*

- 2.



## Red River Watershed Management Board

### 3. Subp. 21 **Construction projects:**

- **Subp 21 A.** OK.
- **Subp 21 B.** OK.
- **Subp 21 C.** This provision seems to be subject to significant interpretation of when O & M can be done and what constitutes “substantial” impact. If you are doing maintenance and repair to a flood damage reduction project that requires some significant improvements to ensure the long-term sustainability of the structure, who determines if that is substantial or not? It might be more appropriate to just say “Operation, maintenance, or repair work to existing authorized projects and structures is exempt.” Many water resource projects constructed under authorized state and federal permits require that the projects be properly operated and maintained.
- **Subp 21 D.** This provision seems to be missing one element of authorization in the exemption. The provision should include “maintenance and repair” in addition to “Restoration or reconstruction”. It seems that this provision may be appropriate for historic buildings; however, the provision is clearly not appropriate to limit restoration and construction or maintenance and repair to water resources projects that have been lawfully permitted. In addition the permits require that the authorized projects be appropriately maintained.
- **Subp 21 E.** OK.

The Red River Watershed Management Board appreciates the consideration of these recommendations during the final rule making process. If you have any questions please contact Ron Harnack, 651.341.7651, [harnackcreek@hotmail.com](mailto:harnackcreek@hotmail.com), RRWMB Project Coordinator. We also ask that we be kept informed of the continuing process and the opportunity to provide testimony at formal public hearings regarding these rules. We do believe that a formal public hearing on the rules should be conducted.

Thank-you  
Ron Harnack  
Project Coordinator  
RRWMB

CC: Courtney Aylers-Nelson  
Naomi Goral, Administrator, RRWMB  
John Finney, Chair, RRWMB  
Henry Van Offelen

## Comment to Rulemaking on Mandatory Categories of Environmental Review:

Submitted by Kristen Eide-Tollefson, in consultation with Bushaway Task Force Members

### Comment regarding the following changes to the draft dated 6/17/2016

<https://www.eqb.state.mn.us/content/eqb-mandatory-categories-rulemaking>

#### Subp. 14. Highway projects. The following projects are exempt:

- A. Highway safety improvement projects are exempt.
- B. Installation of traffic control devices, individual noise barriers, bus shelters and bays, loading zones, and access and egress lanes for transit and paratransit vehicles is exempt. C.
- C. Modernization of an existing roadway or bridge by resurfacing, restoration, ~~or~~ rehabilitation, [reconstruction, adding shoulders or adding auxiliary lanes](#), that may involve the acquisition of minimal amounts of right-of-way is exempt.
- D. Roadway landscaping, construction of bicycle and pedestrian lanes, paths, and facilities within existing right-of-way are exempt.
- E. Any stream diversion, [realignment](#), or channelization within the right-of-way of an existing public roadway with bridge or culvert replacement is exempt.
- F. Reconstruction or modification of an existing bridge structure on essentially the same alignment or location that may involve the acquisition of minimal amounts of right-of-way is exempt.

#### Summary Comment Points:

- A. The addition of “reconstruction, adding shoulders, or auxiliary lanes” **broadens the potential number of exempted projects dramatically**, without regard to context;
- B. Reconstruction is significantly different in type and scope, than “restoration, resurfacing, or rehabilitation” of an existing roadway. All parties consulted commented that **reconstruction affects the FOOTPRINT of the roadway and SCOPE of the project, and therefore has the potential for significant impacts**;
- C. Unlike “restoration, resurfacing, or rehabilitation”, reconstruction can affect the character, identity, environmental and aesthetic qualities of a roadway. It can affect patterns of interaction, access, context and scale, even within right-of-way;
- D. The sole criterion of “acquisition of minimal (?) amounts of right-of-way” is a wholly insufficient consideration. There are many more potential impacts than property acquisition, even within the parameters of the established right-of-way;
- E. It is not uncommon for engineering designs to be driven by funding, historic projections, through-put planning, trends and other factors that may not adequately consider local factors and the impacts on community quality of life;

- F. State standards can and should be more restrictive than federal guidelines and requirements. Site specific environmental review is necessary to create accountability for government action; context sensitive consideration of project design alternatives; and the identification of appropriate solutions;
- G. The potential for significant impacts and the identification of socio-economic and environmental issues can only be determined with the “meaningful participation” of the potentially affected community;
- H. “Hearing all Voices”, while an excellent policy for public engagement, does not necessarily translate into “meaningful participation”;
- I. “Meaningful participation” requires transparency of information (including statistics, rationale and funding sources) and the possibility that potentially affected citizens and communities can affect design decisions. This is not the same as voting on predetermined designs at a public informational meeting.

**Environmental Review (ER) adds value and targets resources towards best outcomes:**

- J. The environmental review process provides for information transparency and consistency of formatting, coordinated review , and project accountability to site specific environmental factors and values;
- K. All agencies and interests have access to the same information, and each other’s perspectives;
- L. The procedural requirements of ER create process predictability, equitable access, a time frame and way to constructively engage controversy and opposition;
- M. Citizen and local government engagement in environmental review adds value and can improve project outcomes;
- N. Generalized planning statistics and engineering standards may drive designs and costs that are unnecessary and may even undermine existing assets and values.
- O. Site specific environmental review utilizes local knowledge to better align investments with community health and environmental values;
- P. ER targets mitigations; identifies site specific, context sensitive, values and solutions. This can lower costs, and/or better target limited resources.
- Q. ER Provides opportunity for and accountability to implementation of state policies and programs (such as Complete Streets, and CSS);
- R. Citizen input can increase the benefits and usefulness of the infrastructure improvements to the community\*. Both as a planning and communication tool, ER provides impetus for innovation and improved alignment with the Department’s stated Vision and goals. Reconstruction should not be exempted.



## **APPENDIX to PUBLIC COMMENT:**

**Vision:** “Minnesota’s multimodal transportation system maximizes the health of people, the environment and our economy” - Minnesota Department of Transportation

“The last three Federal Transportation Acts have created less of a federal presence in many transportation decisions. The diminished federal role results in more state/local authority and responsibility for these decisions. The funding flexibility and expanded project eligibility under these acts has given decision makers more options to address transportation priorities. Public involvement in transportation issues and decision making is vital because of this expanded eligibility and diversity. Federal Law requires an opportunity for early and continuous involvement in the development of the Statewide Transportation Plan and the STIP. Public involvement is also a mandatory component of the MPO planning process.” PII-2, State of Minnesota STIP 2012-2015

### **\*Lessons from the Reconstruction of Bushaway Road (2008-2016)**

- Local knowledge is an essential ingredient for successful road infrastructure improvements
- Provisions in environmental review provide qualitative and quantitative opportunities for meaningful public engagement that is not matched by any other venue.
- Engineering design is driven by statewide projections and standards which may not accurately reflect local realities or values. Persistence, challenge and independent research by the Bushaway Task Force was necessary to reconcile safety record, demographic and growth projection discrepancies. This was key to the ability of the task force to negotiate design with the county.
- Where government is the proposer and often the RGU, environmental review requirements level the playing field and create equitable access to information, meaningful engagement in project design and alternatives, with the guidance of review standards and accountability for government action.
- Public input is needed to align broad plans and engineering drivers with local concerns.
- Engineering standards may undermine community health and environmental values, and should not be accepted as the final word. Meaningful participation in alternative design considerations is crucial.
- In the case of Bushaway Road, the county prepared a ‘voluntary EAW’. Even though they did not produce it until the 11<sup>th</sup> hour of decision three years later, ER requirements were studied by the Task Force. And repeated requests for ‘concept approval’ were able to be delayed because an EAW was in play. This was the major factor (and lever) that allowed needed design alternative negotiations to continue.

- Public and local government input can increase public safety and health outcomes by identifying existing ‘traffic calming’ factors (such as natural curves, trees) that may have other socio-economic and environmental values (such as tourist attraction, scenic amenities, climate cooling, carbon, and stormwater mitigation). This was a very important element of design negotiations for the Bushaway neighborhood and task force.
- The Bushaway Task Force also studied highway policy for context sensitive design, and advocated the application of Low Impact Design principles to the environmentally sensitive Bushaway corridor. This demonstrates the importance of policy accountability and the opportunity that public participation provides for motivating its application.

In summary, the Bushaway Road experience demonstrates the role environmental review in guiding project proposers, as well as public and local governments towards alternatives that lessen impacts and costs, maximize environmental benefits and make best use of state and federal resources. It also provides a venue for negotiating shared investments in best outcomes for both the state and community. Road reconstruction, addition of shoulders and auxiliary lanes should not be added to rule exemptions.

Thank you for the opportunity to comment.

Kristen Eide-Tollefson in consultation with members of the Bushaway Task Force (and others)

## **Bushaway Road (1858-2016) – a long story shortly told:**

This is the story of the successful conclusion of a three decade long fight over the reconstruction of a small scenic segment of the state's first platted roadway -- Bushaway Road. First proposed in the mid 1980's, during an era of suburban growth, Minnetonka, the county and state planned an expansion of Bushaway Road to facilitate commuter through-put from Minnetonka to Hwy 12, in anticipation of the pending construction of Hwy 394. An elaborate cloverleaf was anticipated for the 101/McGinty (Co. 19) intersection and bridge, at 17 feet above the existing grade to accommodate the cloverleaf and the railroad's need for increased height. At the same time, a 4 acre fill was proposed in the design for the Gray's Bay bridge reconstruction, to increase access to Lake Minnetonka.

Local neighborhood opposition was predictable, organized and effective. The neighborhoods on both sides of the Gray's Bay bridge joined forces. Supported in their concerns by Congressman Ramsey and the City of Wayzata, they lobbied at the legislature to maintain local approval, and went to court to force an EIS to be completed on the project, focusing on the infill plans for Gray's Bay. Judge Tony Riley upheld the appeal, and in 1987, a settlement agreement was signed by the city of Wayzata, Minnetonka, and the County. The duration was 30 years, with automatic renewals in 10 year increments. It included a provision that any rebuild of Bushaway Road would not exceed the existing 2 lane capacity; that the parties would cooperate in an initiative to make Bushaway a scenic byway; that an EIS would be completed on the Gray's Bay infill; that truck traffic would be diverted; and other provisions necessary to settle the lawsuit between the cities.

Meanwhile, the state had produced a number of creative design options for the Bushaway bridge and roadway. All depended upon the lowering of the tracks to bring the height increase within an acceptable range. Despite promising negotiations, the railroad eventually withdrew from the plan and design negotiations ceased. In 1988, a "temporary" two-lane bridge (MnDOT Bridge No. 99140) was moved in by MnDOT to replace the old-style wooden 1931 railroad bridge (MnDOT Bridge No. 1947), which had replaced the original 1915 bridge.

Bushaway settled into a 10 year reprieve until the County returned in 1996, to propose a semaphore for the Bushaway/McGinty intersection that had, for over 125 years, been governed by nothing more than stop signs. Controversy and suspicion of expansion plans was again stirred. Finally, in 1997, the county returned seeking municipal consent from the Wayzata City Council for the transfer of County Trunk Highway (TH) 101 from MnDOT to Hennepin County; a transfer which came with the promise of funds for needed repairs and reconstruction of the roadway and bridge and a change of status to a State Aid Highway.

The city added a condition to its consent, that state aide standards would not be inappropriately applied to the scenic roadway. County officials promised to work with the city to ensure satisfaction. Just 10 years later that assurance, in a letter to the Wayzata City administrator from the county department head, was pulled from the neighborhood's archives to provide a foundation for the 'next round' of negotiations. In 2007 the county presented new design plans for the reconstruction of South 101, including the Bushaway roadway and bridge. By this time, several of the stalwart defenders of the scenic roadway were dead. And the neighborhood advocacy faction moved into a second generation.

**The 2007 design proposal:** Following the rage for rapid integration of roundabouts in road reconstruction, the new proposal for South 101 featured dramatic two lane roundabouts: one spanning the railroad bridge at 101 and McGinty at a height of 3 feet over the current bridge grade; and another topping a prominent Indian mound, replacing a hairpin curve (which avoided the mound) on the other side of Gray's Bay. In order to accommodate the roundabout at the Bushaway intersection, Co. road 19 (Eastman Road in Wayzata), was to be shifted north and elevated over the railroad right of way, providing for the possibility of yacht club parking below (which had been negotiated with the Yacht Club before public vetting of the design took place).

The county's corridor design for North 101, which traumatized the community with acres of felled trees strewn along the roadway, was anticipated to be extended to South 101. In addition to the roundabout, for the 1.5 mile Bushaway segment, a new turn lane was proposed for safety reasons, to limit turning access for residents. 'Faux' concrete pressed walls were planned to line the corridor to replace aging estate gates and stone walls and 'modernize' the corridor. A large number of trees would be felled to accommodate the lane, shoulders, curb and gutter and a new eight foot trail.

**The Bushaway Task Force:** In July of 2008, a Bushaway Task Force was appointed by Wayzata Mayor Humphrey in response to neighborhood concerns regarding the reconstruction design proposal for the city's famed historic tree lined residential boulevard and the eastern gateway to Minnetonka's 'old lake road'. Originally known as "Holdridge", it is the oldest residential section of the city; and features a number of architecturally important historic 'lake' homes – built by a coterie of Minneapolis' business magnates.

The neighborhood organized. They created a vision statement for the road and a number of supporting documents, including a comparative analysis of the county's reconstruction proposal and the city's comprehensive plan. They created a website, held meetings, celebrations and continued to inform the process through participation in the task force, which mediated

negotiations. It was the task force, supported by the city, that kept all parties at the table and successfully negotiated the resolution of a *decades long* battle over the road.

<http://bushaway.wikifoundry.com/>

As with many communities facing what they regard as a threat to identity and character, the community first turned to its history. Coincidentally, 2008 also marked the 150<sup>th</sup> anniversary of the 1858 establishment of the Dayton-Shakopee road, running directly from the Ms. River at Dayton, to the Mn. River at Shakopee. The neighborhood later raised money to commission an historic study. This helped to motivate the City's designation of Bushaway as a local, historic scenic byway, thereby fulfilling one of the conditions of a 1987 settlement agreement between the cities and county. <http://bushaway.wikifoundry.com/page/2008+Best+of+Historic+Bushaway>

Despite the long record of controversy and opposition to previous proposals for the reconstruction of Bushaway Road, the County came in with a completed design, a consultant, earmarked funding, and supporting rationale with statistics from the statewide plan. These statistics did not jibe with local safety records, demographics or growth projections. And the county was unresponsive to initial calls for "context sensitive solutions". Even with municipal consent all the balls were in the county's court. Without the rules and requirements of environmental review, neither the city nor the neighborhood could have participated "meaningfully" in affecting the design and decision criteria and conditions.

The task force met from 2008-2010 when it issued a final report, outlining the environmental and socio-economic issues associated with the road reconstruction, and recommendations for the city's municipal approval conditions. Although the neighborhood continued to advocate for resurfacing and rehabilitating of the road, plans for reconstruction went forward. **It is important to note that the reconstruction of this segment, including the roadway, bridge (on the same alignment) and causeway at Gray's Bay, could have been 'exempted' under the proposed rule change.** See the final report for details of the Task Force impacts analysis and city's negotiations. [http://users.soc.umn.edu/~rea/documents/BUSHWAY%20REPORT%20FINAL\\_10-13-10.pdf](http://users.soc.umn.edu/~rea/documents/BUSHWAY%20REPORT%20FINAL_10-13-10.pdf)

Most importantly, the rule prohibiting final government decisions until the EAW process was complete kept the information on the table until the impact, design and mitigation issues could be resolved. The City of Wayzata's Task Force continued to participate in design negotiations with the county and watershed district through 2013 when approval was granted and the county, as RGU, made a negative declaration on the EAW. <http://www.startribune.com/contentious-lake-minnetonka-road-project-moves-forward/228807991/>

The overwhelming impact issue was the roadway's famed tree canopy (see cover photo of the report) which was associated by the community with a number of environmental and comprehensive plan values, and city ordinances. Negotiations with the County were finally tree by tree. A landscape group to oversee, among other details, the renovation of the "Big Woods" remnant that frames the roadway, was subsequently appointed. They vetted design proposals and will be called back to meet when the road and bridge are essentially complete later this year.

**The Final Design:** The final redesign significantly reduced tree impacts, maintained the two lane footprint, adding shoulder, curb and gutter. The county created a special pinchpoint footprint to avoid historic gates and walls, and most significantly retained the original alignment of road and bridge (with a slight shift east). Both roundabouts were eventually abandoned (the second when they hit bones). Armed with the historic record of engineering challenges, and public support, the project manager negotiated successfully with the railroad for the lowering of the tracks.

With the help of the county's landscape and historic consultants, the final design of Bushaway Road modernizes the roadway, while maintaining its historic character. The trail, at the advice of the neighborhood, was shifted to the west side of the road, to save trees and to better align with public use and city trail plans which will soon create a complete loop through Wayzata. County and city collaborated to bury the powerlines, improving the scenic character of the road. Additional investments were needed to implement the vision of authentic stone walls, the protection of old stands of trees at the intersection, and the historic brick and iron fence line on the north side of the bridge – among other negotiated features. The redesigned causeway will create a continuous trail into Minnetonka.

The neighborhood contributed innumerable hours of meetings, research, reports, presentations made possible by generous contributions of time, local expertise and money. The task force was chaired by a succession of two council members and supported by a third, and an untold number of professional hours of the city engineer. The city and mayor held firm through 5 years of negotiations and turnover in both the task force and council, providing the hearings and resolutions that sustained and guided continued negotiations. The final negotiated design was also informed by the Minnetonka Watershed District's which worked closely with the parties throughout, and invested in a 'value engineering' review that focused on the causeway, trail, stormwater impacts and evaluated the proposed turn lanes at the intersection and bridge.

All parties deserve the commendations bestowed by the Wayzata City Council and Mayor Wilcox. And all recognize the transformative effect of the joint effort upon the project outcomes. Each appreciates the parties' investments in the process.

Respectfully submitted,

Kristen Eide-Tollefson, Bushaway Task Force member

Though this narrative accurately reflect the public record, this representation is my own





# Saint Louis County

Public Works Department • Richard H. Hansen Transportation & Public Works Complex  
4787 Midway Road, Duluth, MN 55811 • Phone: (218) 625-3830

**James T. Foldesi, P.E.**  
Public Works Director/  
Highway Engineer

July 14, 2016

Environmental Quality Board  
Attn: Mandatory Category Rulemaking  
520 Lafayette Road North  
St. Paul, MN 55155

**Subject:** St. Louis County Comments on EQB Mandatory Categories Rulemaking Preliminary Rules

The St. Louis County Public Works Department (SLC PW) respectfully submits the following comments on the preliminary rule revisions to EQB Mandatory Categories rules (Minn. R. 4410.0200, 4410.4300, 4410.4400 and 4410.4600).

As part of our responsibility for maintaining over 3,000 miles of county roads and bridges, the SLC PW complies with EQB rules along with several other environmental regulatory programs. As St. Louis County and other road authorities around the country strive to repair or replace this nation's aging infrastructure, the number of projects and associated environmental review and permitting will continue to grow, underscoring the need for, and benefit of, looking for opportunities to maximize the efficiency of the environmental review and permitting process.

The SLC PW is supportive of the following proposed changes:

**Mn Rule Chapter 4410.0200 Definitions**

Proposed changes to the definitions, including the addition of a definition for "Auxiliary Lane" to support the proposed changes in the Mandatory EAW Categories.

**Mn Rule Chapter 4410.4300 Mandatory EAW Categories**

Subpart 22, Item B: An EAW is required "For construction of additional travel through lanes or passing lane(s) on an existing road for a length of two or more miles". This is a prudent change from the current rule of one mile.

*"An Equal Opportunity Employer"*



**Mn Rule Chapter 4410.4600 Exemptions**

Subpart 14, Item C: "Modernization of an existing roadway or bridge by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders or adding auxiliary lanes that may involve the acquisition of minimal amounts of right-of-way is exempt." This rule has been changed by adding "reconstruction, adding shoulders or adding auxiliary lanes".

The SLC PW supports these language changes as a way to improve environmental review efficiency.

In addition, SLC PW supports that EQB is not proposing mandatory category changes that would pull significantly more projects into the environmental review process than existing rules. I believe this is justified, given that our projects are developed in coordination with regulatory agencies, stakeholders, and the public through engagement during the project development process. County highway projects are still subject to all of the requirements of applicable federal, state, regional and local laws and rules pertaining potential impacts and mitigation, regardless of the environmental review path taken.

In particular I was pleased to see that the preliminary rules published for comment June 17, 2016 make no revisions to the mandatory EAW thresholds for impacts to public waters, public water wetlands and wetlands as set out in 4410.4300 Supb. 27.

I would also like to point out the following difference between how EQB rule revisions affect Counties versus their impact on MnDOT for your consideration in this and future rule revisions. Mn/DOT prepares all projects as if they are federal, so they are doing project memos, environmental assessments, EAWs and EISs as appropriate for every project according to FHWA. For local road agencies such as St. Louis County, most projects are not federal projects. EQB rule changes impacting, for example, mandatory EAW thresholds, could require us to do EAWs for non-federal projects that we were not required to do in the past, therefor having a greater impact on local road authorities than on Mn/DOT.

I would also like to express appreciation to EQB staff for reaching out to counties and other road authorities early in this rule revision process.

If you have any questions regarding our input, please do not hesitate to contact me at (218)625-3840 or e-mail [foldesij@stlouiscountymn.gov](mailto:foldesij@stlouiscountymn.gov).

Sincerely,



James T. Foldesi, P.E.

Public Works Director/Highway Engineer

Cc: Carol Andrews, P.E., Environmental Project Manager, SLC PW

**DATE:** August 3, 2016

**TO:** Courtney Ahlers-Nelson, EQB Staff  
Erik Dahl, EQB Staff

**FROM:** LisaBeth Barajas, Local Planning Assistance Manager, Metropolitan Council

**CC:** Adam Duininck, Chair, Metropolitan Council  
Wes Kooistra, Regional Administrator, Metropolitan Council  
Beth Reetz, Community Development Director, Metropolitan Council  
Amy Vennewitz, Metropolitan Transportation Services Deputy Director, Metropolitan Council  
Scott McBride, MnDOT Metro District  
Pat Bursaw, MnDOT Metro District

**SUBJECT:** Proposed Change to the Highways Threshold for EAWs – Metropolitan Council Data

After our last meeting in June, Council staff has reviewed its data on environmental reviews that met the mandatory threshold for highway expansions under Minn. Rules 4410.4300, Subp. 22. The Council started with environmental reviews in 2010 as this is when our electronic database is complete. If it is wished, the Council can review further back in our paper records.

As a baseline, in the 7-county metro area, there were 34 projects since 2010 that met the mandatory threshold of 1 mile under this section of Minn. Rules. Just over half of the proposed projects (19) were less than 2 miles in length.

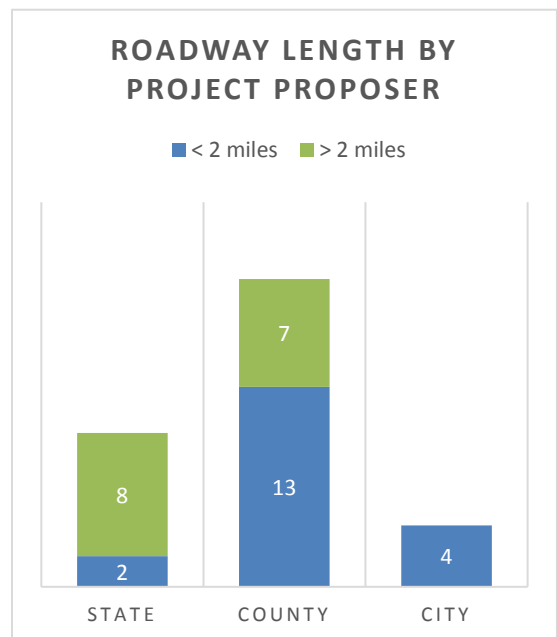
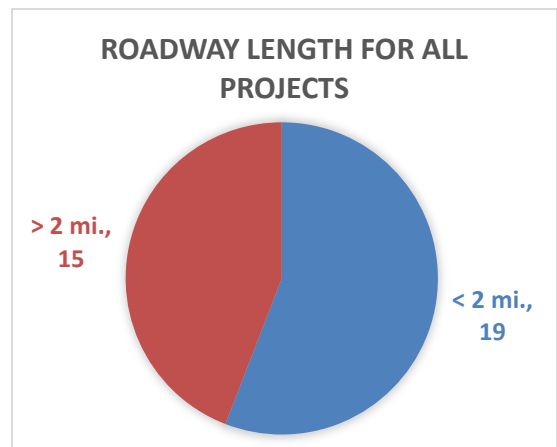
**Project Length**

Broken down by project proposer, as shown on the chart on the lower right, we find the following:

- Metro area counties proposed the most number of projects
- All of the **county projects** greater than 2 miles were environmental assessments (EAs); all those less than 2 miles were EAWs
- The **state’s projects** were largely over 2 miles in length all of which were subject to federal environmental review, with only 2 EAWs being prepared for those less than 2 miles in length
- All of the **city projects** were less than 2 miles and were EAWs

The result of increasing the highway threshold from 1 to 2 miles means that, in the last 7 years:

- the State would not have prepared 2 EAWs



- Counties would not have prepared 13 EAWs (more than half of their projects)
- Cities would not have prepared any EAWs
- 19 of the 34 projects would not have been subject to any environmental review (56%)

The change in the threshold from 1 to 2 miles, if it started in 2010, would mean that all locally funded projects would not have undergone any sort of environmental review. Only projects with federal funds would have undergone environmental review.

### Project Components

As noted in previous conversations and in correspondence, the Council is concerned about the impact of the proposed threshold change in the increasingly urban metro area. Data regarding the project characteristics for the 34 environmental reviews that were prepared under this threshold show that half of these projects are rural-to-urban section conversions. In other words, a rural 2-lane roadway section is converted to a curb and gutter urban section with the addition of anywhere from 1 to 3 lanes. A majority of the metro projects also include bicycle and/or pedestrian improvements such as sidewalks and trails. A third of the projects specifically indicate that the intent is to address stormwater issues or existing drainage issues.

#### Project Components

Components	Number of Projects	Percent of Total Projects
Rural-to-Urban Section Conversion	17	50%
Bike/Ped improvements	20	59%
Bridge work	8	24%
Stormwater / drainage	11	32%
Interchange	2	6%
Reconfiguration/reconstruction	4	12%
Intersection improvements	4	12%
MnPASS / Transit	4	12%
Lane additions	7	21%
Road extensions	2	6%

Only 7 of the metro projects included additions of lanes to an already urban roadway: this includes turn lanes, auxiliary lanes, and through lanes (as described in the text of the environmental review document). Many of these projects contained other project components, such as bridge work and drainage.

### Council Comments on Projects

At our last meeting, Council staff had preliminary data on the topic areas covered in the Council’s environmental review comments. As discussed at the meeting, the Council has further analyzed the data to categorize those comments among three categories: Design-related, Systems-related, and general Coordination. Many reviews included comments in more than one category, while only 3 reviews had no comments from the Council.

#### MC Comments\*

Type	Number of Projects	Percent of Total Projects
Design	20	59%
System	9	26%
Coordination	16	47%
No comments	3	9%

\* Many projects contain more than one type of comment (ex. Design and System)

The Council’s statutory responsibility is to guide the orderly and economic development of the region (public and private) of the metropolitan area (Minn. Stats. 473.145 and 473.851), with specific oversight over the regional systems including the wastewater, transportation (including transit and aviation), and parks and open space; and further responsibilities for water supply, and water quality, and land use. In that frame, the Council’s comments

are meant to protect the regional systems first, reduce temporary impacts to those systems (like during construction), review for consistency with regional policies (land use, housing, natural resources, water resources, transportation, climate resilience, and economic competitiveness), improve the overall project, and ensure that intergovernmental coordination takes place where applicable or appropriate.

## **Conclusion**

Given the impact demonstrated to the projects in the metropolitan area by the proposed change, the Council continues to oppose the proposed threshold change from 1 to 2 miles for projects under Minn. Rules 4410.4300, Subp. 22. As noted above, this change would have resulted in more than half of the projects avoiding any environmental review evaluation with the majority of those projects proposed by counties and cities. In addition, this change would have the effect of relying entirely on federal standards for environmental review (only federally funded projects were greater than 2 miles in length), standards over which Minnesota does not have control, are changeable, and may not always be effective for Minnesota's environmental landscape.

Because of the increasingly urban nature of the metropolitan area, and the Metropolitan Council's responsibilities to ensure the orderly and economical development of the region, it is imperative that the proposed threshold not be applied in the metropolitan area.

**From:** [pop3.arvig.net](mailto:pop3.arvig.net)  
**To:** [Seuffert, Will \(MPCA\)](#); [Ahlers-Nelson, Courtney \(MPCA\)](#)  
**Subject:** Alternative Environmental Review for Pipelines  
**Date:** Thursday, July 14, 2016 2:09:25 PM

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Will and Courtney,

My previous comments and request for RGU change for pipeline projects included my strong recommendations that the special EQB authorization for “alternative review” be withdrawn as a part of the current rule making and revision. I wish to formally reaffirm that request with this email.

This change in EQB rules would be consistent with the Appeals Court (and as affirmed by the Supreme Court) pipelines should undergo full EIS rather than alternative review.

Furthermore, citizens and agency experience with alternative review as applied to pipeline found serious shortcomings in citizen participation, peer review, responsiveness to comments, interagency (local, state and federal) totally inadequate and not in the public interest. Consistency between pipeline routing and Certificates of Need would be well served if EQB rules required a mandatory EIS. See my documentation supporting my RGU change request for details and specific short-comings of this alternative review.

This change would also avoid the temptation and/or opportunity for pipeline companies to manipulate the review process by advancing routing permits ahead of Certificate of Need review in an attempt to circumvent the full process.

Thank you for considering my comments.  
Willis



This email has been checked for viruses by Avast antivirus software.

[www.avast.com](http://www.avast.com)

**From:** [pop3.arvig.net](mailto:pop3.arvig.net)  
**To:** [Seuffert, Will \(MPCA\)](mailto:Seuffert_Will(MPCA))  
**Cc:** [Ahlens-Nelson, Courtney \(MPCA\)](mailto:Ahlens-Nelson_Courtney(MPCA))  
**Subject:** RE: EOB Rules Revision  
**Date:** Saturday, July 16, 2016 11:28:32 PM  
**Attachments:** [image001.jpg](#)

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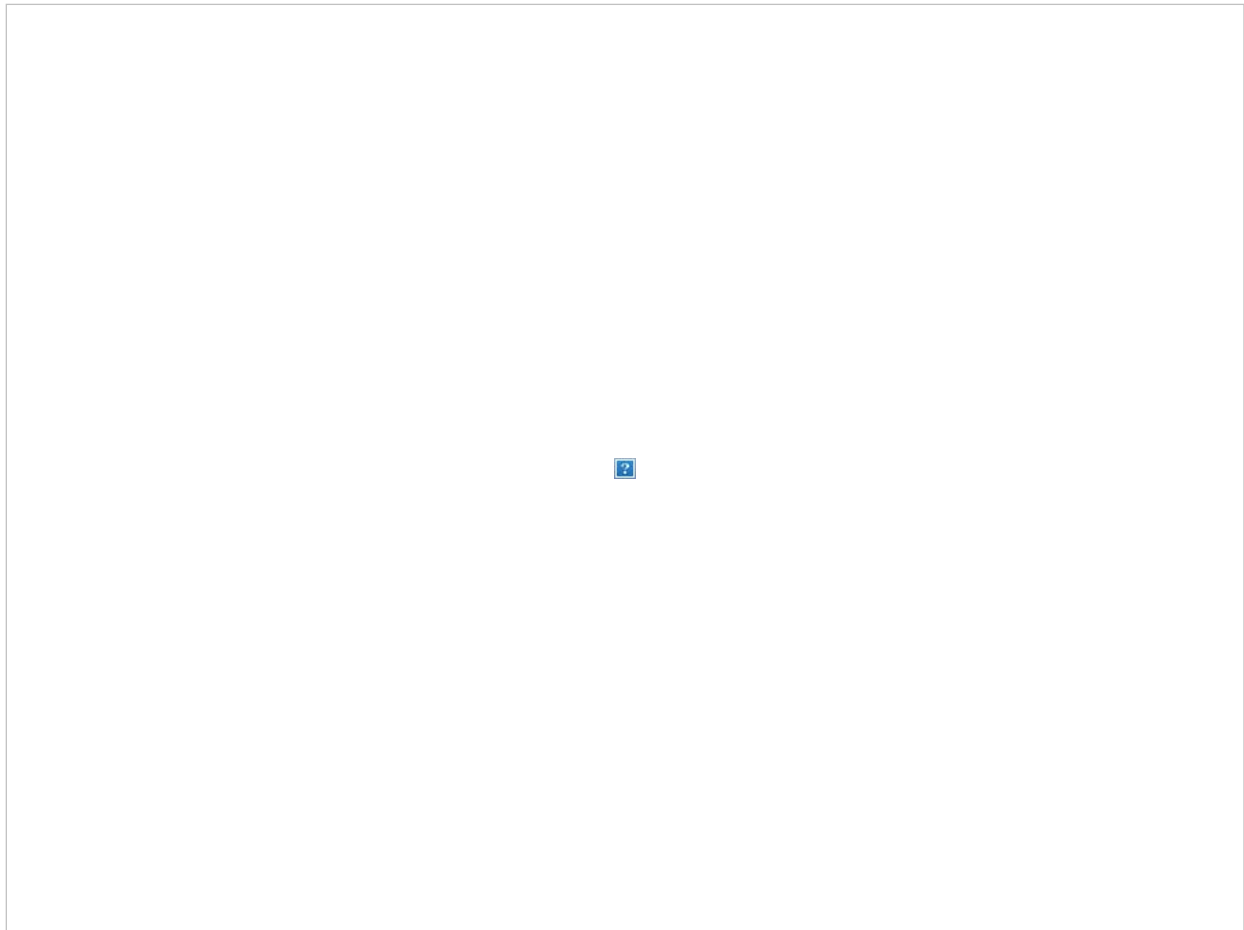
Thanks Will,

I have indeed gotten in some boat time and fishing in since we spoke last. Here is a photo of my daughter Lori and my oldest grandson Corey with some Red Lake Walleyes that we ate that evening.

I'll want to talk w/ you or Courtney sometime next week before the end of the comment period on rule changes. I would like to speak to either of you about the need to add an additional category of mandatory EIS for pipeline and other fossil fuel related facility abandonment issues.

New pipeline projects can (and hopefully will pending outcome of the current EIS scoping process) include abandonment issues in environmental review before permitting but as we emerge from the fossil fuel era, more and more pipelines will be abandoned, possibly without positive revenue flows sufficient to cover removal of the pipe and cleanup of any previously undiscovered leaks or spills. This would be quite a new twist for ER rules and MEPA since it would not be triggered by permitting. I would like to discuss the need for any legislation that might be necessary to sweep these (and any other fossil fuel related infrastructure that could face abandonment, not unlike coal mines. It could include coal fired power plants and on-site coal and coal ash storage or disposal sites.

Willis



---

**From:** Seuffert, Will (MPCA) [mailto:Will.Seuffert@state.mn.us]  
**Sent:** Friday, July 15, 2016 9:30 AM  
**To:** pop3.arvig.net; Ahlers-Nelson, Courtney (MPCA)  
**Subject:** RE: EQB Rules Revision

Hi Willis-

We received both of your emails/comments. Courtney is out today but will get back to you next week if she has any questions. Hopefully you are getting out on the water and doing a little fishing this summer.

Enjoy the weekend.

Will

---

**From:** pop3.arvig.net [mailto:mattison@arvig.net]  
**Sent:** Thursday, July 14, 2016 11:27 AM  
**To:** Seuffert, Will (MPCA); Ahlers-Nelson, Courtney (MPCA)  
**Subject:** EQB Rules Revision

Dear Will and Courtney,

Time will not allow me to reiterate my concerns and requests for RGU change with regard to crude oil pipelines in your current public comment period. However, as you may recall, I did request that my entire request for change in RGU assignment for the Sandpiper and Line 3 projects along with all supporting materials submitted with that request be entered as public comment on the current EQB rule changes.

Please consider my specific request for RGU change as my general request for change in EQB environmental review rules to the same effect for the same reasons provided.

Please confirm that you are both willing and able to consider my requests as applicable and in appropriate form for consideration in your rule revisions.

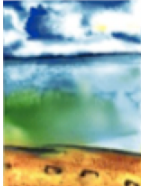
Thank you,  
Willis Mattison



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**Paula Goodman Maccabee, Esq.**

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<http://justchangelaw.com>

August 8, 2016

Courtney Ahlers-Nelson, Planning Director (courtney.ahlers@state.mn.us)  
Members of the Minnesota Environmental Review Environmental Quality Board  
520 Lafayette Road North  
St. Paul, MN 55155

**Re: Comments on the Minnesota Rule Ch. 4410 “Mandatory Categories” Rulemaking**

Dear Ms. Ahlers-Nelson, Board Members,

I’m submitting the comments below as an individual, although the perspectives of current and former clients inform my comments. For the past thirty-five years, I’ve practiced public interest law in Minnesota in a variety of capacities. During the past twenty-one years, I’ve represented state and national environmental groups, individuals, grassroots citizens’ groups, organic farms, renewable energy businesses and local governments. My work has focused on protecting environmental resources, environmental health and environmental justice.

In my experience, the disparity in resources between citizens and groups seeking to protect environmental resources, health and justice and those seeking to develop projects that could threaten these values is significant, and ever increasing. Through the course of my legal career, I’ve also seen the role of the Minnesota Pollution Control Agency (MPCA) and the Minnesota Environmental Quality Board (EQB) change.

Rather than being defenders of environmental quality, the agencies at best seem to consider themselves arbiters between the interests of the putative regulated parties and the citizens or organizations defending the environment. Environmental review and citizen accountability are in short supply. The MEQB has struggled for its very survival, and the MPCA, designed to have a citizen board independent of legislative pressure, no longer has that board. State agencies often exercise their discretion to deny environmental review or limit its scope. Citizen concerns about human health, climate change and cumulative impacts of projects are the most obvious casualties of this discretion.

This context increases my concern about the EQB’s proposed changes to Mandatory Categories for Minnesota Rules Chapter 4410 to implement environmental review under the Minnesota Environmental Policy Act (MEPA). The proposed rule amendments appear to be designed to increase convenience for responsible governmental units (RGUs), not to enhance protection of Minnesota’s natural resources, health or accountability to citizens. Proposed rules have yet to be analyzed in terms of the impacts their adoption could have on these resources and values.

**1. Analyze and document the effects of the proposed Mandatory Categories amendments on disclosure, avoidance, minimization and mitigation of environmental impacts.**

My first recommendation is that EQB engage in a comprehensive re-evaluation of the proposed Mandatory Categories rulemaking from the perspective of environmental protection under MEPA.

Based on the documents and explanations of the proposed Mandatory Categories rule amendments thus far, it seems that much of the agencies’ analysis has been in terms of the convenience to project proponents. For example, the MPCA’s March 2015 comment “Environmental Review SONAR



Justification for EQB Rule Revisions” supports eliminating environmental impact statement (EIS) requirements for certain solid waste facilities as follows: “It is not cost effective to require proposers to go through the EIS process. . . The MPCA does not believe the cost, both in time and dollars, justifies the additional review.”

Another theme used to justify the proposed rules is the scope of permits. The EQB’s proposed rule “discussion” for Minnesota Rule 4410.4300, Subp. 15 and the MPCA’s March 2016 “Justification for Deleting GHG Mandatory Category” both assume that it is appropriate to “align” environmental review with the scope of permitting. If knowledge of environmental impacts cannot result in permit denial under an existing statute, it is implicitly argued that Minnesotans are better off not knowing the harm that a proposed permit will cause to their health, resources or climate.

MEPA defines a broader purpose for disclosure and analysis of environmental effects. These purposes include “to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of human beings” and “to enrich the understanding of the ecological systems and natural resources important to the state and to the nation.” Minn. Stat. §116D.01.

Under MEPA, “Where there is potential for significant environmental effects resulting from any major governmental action, the action shall be preceded by a detailed environmental impact statement prepared by the responsible governmental unit.” That EIS “describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated.” Minn. Stat. §116.02, Subd. 2a.

The existence of a threshold for environmental review may, in itself, improve environmental decision-making. Project proponents may select appropriate alternatives in size, location or technology to avoid triggering environmental review requirements. Public engagement during the environmental review process may also result in avoidance, minimization or mitigation of adverse impacts.

Environmental review also serves to inform communities about impacts to health and natural resources and may influence both public and private decisions. Awareness of the air quality impacts of a proposed project may influence private decisions to buy or sell property nearby, particularly for families with health concerns, or may result in local changes to zoning laws. Disclosure of greenhouse gas impacts of projects may cause changes in consumer behavior or mobilize communities to seek changes in regulations or policies to support more sustainable technologies.

Metropolitan Council comments on the proposed rules argue that neither the paucity of EISs nor the low level of public input should be used to remove EAW thresholds.<sup>1</sup> Based on my experience, I would emphasize that reducing the already limited scope of environmental review could fortify a negative feedback loop, rendering citizens less informed, less empowered and less effective to avoid, minimize and mitigate adverse impacts to their health and environment. That result is inconsistent with MEPA and with the public interest.

#### **Recommended Actions:**

- Analyze and identify for each proposed rule change for what projects (size, type, location) an EAW or an EIS would no longer be required or the project would be exempted from environmental review.<sup>2</sup>

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<sup>1</sup> The May 3, 2016 Metropolitan Council comment notes, “the value of the environmental review process is not predicated on past controversy or level of public input, but rather on disclosure of potential impacts.”

<sup>2</sup> This analysis and a record of effected environmental issues should be provided even if EQB believes that a rule amendment is required under recent legislation, such as the proposed changes to Minn. R. 4410.4300, Subp. 37.

- Describe the types of environmental effects potentially resulting from the affected projects, including but not limited to effects on air, water, wetlands, wildlife, health and greenhouse gas emissions.
- Engage input from non-profit groups concerned about environmental effects, citizens who have participated in prior environmental review and local government units, such as watershed districts, that are specifically concerned with environmental quality.
- Revise proposed rules based on the above analysis and input, including in any discussion an explicit environmental protection and public interest analysis.

**2. Specific provisions of the proposed Mandatory Categories rulemaking amendments should be revised or rejected.**

**A. Retain differential threshold for EAW and EIS in smaller cities. (Minn. R. 4410.4300, Subp. 14, Minn. R. 4410.4400, Subp. 11)**

The Mandatory Categories rule amendments propose to raise both the mandatory EAW and the mandatory EIS threshold for new or expanded commercial or industrial facilities for every type of facility in every city in Minnesota that is smaller than Minneapolis, St. Paul, Duluth or Rochester and in all rural areas. Under existing rules, for cities with a population of less than 100,000, the triggers for both an EAW and an EIS depend on the scale of the project as compared with the size of the city. Under the proposed amendments, the least stringent trigger, designed to apply to large metropolitan areas, would be arbitrarily used as the threshold for environmental review of projects in small cities, towns and unincorporated areas.

My service on the St. Paul City Council and work representing citizens in rural areas, large and small cities confirms simple common sense. The impact of a new or expanding commercial, industrial or institutional facility is different in a small city or in an unincorporated rural area. Positive economic effects may be greater, natural resources may be more significantly impacted, or stresses on socioeconomic and traffic systems may be greater. Unlike a first class city, where there is ample experience with large facilities, zoning laws may not have contemplated the type or scale of the facility and may be insufficient to minimize or mitigate its impacts. Applying a 600,000 square foot EAW threshold and a 1,500,000 square foot EIS threshold in smaller communities will give citizens and neighbors less information about the planned facility and reduce the likelihood that projects will be planned and executed to minimize negative impacts and enhance positive ones.

The EQB discussion justifies the proposed change citing “concerns” with a variable threshold based on city size. However, the record is devoid of any discussion of the views of citizens or potential neighbors of such facilities for which EAWs and EISs would no longer be required. The only recent argument supporting this change is from WSB, an entity that works for RGUs (cities) “mainly in the greater Twin Cities metro area.”<sup>3</sup> No analysis of the impacts of this proposed amendment on natural resources has been provided.

**Recommendation:** EQB should retain existing differential mandatory EAW and EIS thresholds for smaller cities, towns and rural areas in Minn. R. 4410.4300, Subp. 14 and Minn. R. 4410.4400, Subp. 11.

**B. Reduce greenhouse gas emissions threshold for mandatory EAW. (Minn. R. 4410.4300, Subp. 15.)**

In 2011, when the existing threshold for an EAW related to greenhouse gas emissions was proposed, many citizens and environmental advocates argued that the limit for environmental review should be far lower than the 100,000 proposed as “consistent” with the federal proposed

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<sup>3</sup> Comment of WSB, June 29, 2016.

permit requirement.

In February 2011, I commented that the appropriate threshold for state environmental review should be based on Minnesota's policy to reduce Greenhouse Gas (GHG) Emissions in Minnesota Statutes Chapter 216H, subdivision 2. I argued that an EAW should be required for any project that would produce 10,000 tons per year level of GHG emissions. Whether or not these emissions required a permit, disclosure could result in community advocacy and negotiations to reduce or offset the carbon footprint of a project.

In 2012, the Minnesota Department of Health published a report, *Incorporating Health and Climate Change into the Minnesota Environmental Assessment Worksheet*,<sup>4</sup> supporting analysis of climate change in environmental review. The MDH suggested that a project proponent should describe "any efforts it is taking to mitigate [GHG] emissions or adapt to the potential impacts of climate change." (*Id.*, p. 24) Descriptions of GHG review in other states noted that assessments asked for an identification of sources and types of GHG emissions, whether a project generated GHG emissions that could have a significant direct or indirect impact on the environment, whether the project requires substantial energy consumption, and whether the project would conflict with an applicable plan or policy to reduce GHG emissions. (*Id.*, pp. 30-31, 36)

It is undisputed that federal regulations of air pollutants provide a floor, not a ceiling, for state authority to regulate pollution. The U.S. Supreme Court decision on the EPA's tailoring rule is inapplicable to limit any aspect of state authority. Disclosure and analysis of GHG emissions is needed to mitigate climate change impacts, alert the public about environmental choices and to support Minnesota policy enacted into statute.

**Recommendation:** Minnesota Rule 4410.4300, Subp. 15, Item B should be retained and the threshold to trigger an EAW should be reduced to 10,000 tons per year of GHG emissions.

**C. Reject change in hazardous waste EAW threshold that would allow reduced scrutiny of toxic waste storage and processing. (Minn. R. 4410.4300, Subp. 16).**

The need for an analysis of the environmental consequences of the proposed rule change is particularly acute when reduced scrutiny is proposed for generation, storage and processing of hazardous waste -- that is by definition toxic and dangerous. The "discussion" by EQB staff of endorses the change in mandatory EAW thresholds in Minn. R. 4410.4300, Subp. 16 on the basis of "clarification and consistency" without explaining the circumstances under which a hazardous waste facility that would currently require an EAW could evade environmental review.

Current rules require an EAW for a hazardous waste facility with the capacity to generate or receive 1,000 kilograms or more per month of hazardous wastes.

Should the change in EAW thresholds be enacted, only hazardous waste facilities with the *permitted* capacity of 1,000 kilograms or more per month would require an EAW. Under the proposed change, if a facility were to *actually* generate or receive 999 kilograms or less per month of toxic waste, it would not require review even if its capacity far exceeded 1,000 kilograms. In addition, that facility could also expand capacity (potentially multiple times) without any EAW, so long as each expansion was less than 10 percent.

**Recommendation:** EQB should retain existing EAW thresholds for hazardous wastes in Minn. R. 4410.4300, Subp. 16. Any changes in language must preserve or make more stringent EAW requirements for toxic waste generation, storage and processing.

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<sup>4</sup> MDH, *Incorporating Health and Climate Change into the Minnesota Environmental Assessment Worksheet*, September 2012, available at <http://www.health.state.mn.us/topics/places/docs/eawreport.pdf>.

**D. Reject changes in EAW and EIS threshold pertaining to solid waste landfills and garbage burners (Minn. R. 4410.4300, Subp. 17; 4410.4400, Subp. 13).**

The proposed rule amendments to trigger an EAW in Minn. R. 4410.4300, Subp. 17 would no longer evaluate cubic yards of “waste fill” to determine whether an EAW is required for a mixed municipal solid waste facility, but would use “air space” to set the threshold. Although the EQB discussion states that this is the “current solid waste permit technology,” there is no discussion of the effect of compaction on the quantity of potentially polluting waste that could be landfilled without EAW review under the proposed definition of landfill size.

The difference between “waste fill” and “air space” and the need to know the volume of solid waste as well as the air space it occupies becomes clear with even a cursory review of industry compaction practices to increase landfill profitability. A representative explanation:

The business of landfills is air. selling empty space to be filled with solid waste. and in this industry not all air is equal. . . It all comes down to compaction. Volume may be fixed, but density is not, and the more solid waste you can fit into a given volume, the more valuable that space is. That is why it is absolutely necessary to have an accurate and reliable way of tracking the change in the volume of solid waste before and after compaction.<sup>5</sup>

If an EAW were no longer required based on waste volume, a solid waste disposal facility could use compaction to avoid environmental review even as more and more solid waste is landfilled.

In addition to the proposed rule amendment to allow a larger volume of waste before an EAW is triggered, the EQB rule would only trigger an EAW for a solid waste landfill or garbage burner based on “permitted” capacity. As with the hazardous waste rule change proposed above, this rule amendment would allow a solid waste landfill or garbage burner to avoid an EAW for construction of a large capacity waste landfill or burner, so long as the permit when the facility opens falls below the 100,000 cubic yard threshold.

Even if an expansion could still trigger an EAW, it must be recognized that once a 100,000 cubic yard capacity waste landfill or garbage burner has been constructed there are fewer options to avoid, minimize or mitigate impacts from the facility on air quality and water quality and on human health.

The dramatic proposed changes in mandatory EIS requirements for solid waste landfills and burners in Minn. R. 4410.4400, Subp. 13 are not immediately evident, since the rule cross-references permit language and the discussion provides no explanation of the proposed changes other than to say that language is being brought “up to date.” Both the proposed rule changes and the lack of analysis provided to the public conflict with the purpose and intent of MEPA.

Under current rules, an EIS is required for construction of a solid waste landfill of 100,000 cubic yards or more and for a 25% percent expansion of such a large landfill. An EIS is also required for construction, expansion or re-use for garbage or refuse-derived-fuel (RDF) of an incinerator with a capacity of 250 tons per day of waste input. Finally, an EIS is required for a compost or RDF production facility with a capacity of 500 tons per day of waste.

The proposed rule amendment to Minn. R. 4410.4400, Subp. 13 would *eliminate the EIS requirement for construction of a solid waste landfill* unless the landfill were located in a water-related land use management district or in an area with soluble bedrock. No landfill expansions would require an EIS no matter their location.

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<sup>5</sup> Firmatek website, Compaction and Airspace: The Keys to Landfill Profitability, June 15, 2011 available at <http://firmatek.com/compaction-and-airspace-the-keys-to-landfill-profitability-2/>.

As with the EAW triggers, the EIS requirement for garbage burners, RDF burners, composting facilities and RDF production facilities would be based on permitted size, not actual capacity, allowing a facility to evade an EIS at the time of construction. However, unlike the EAW trigger, there would be no requirement for an EIS no matter how much the permitted capacity of a garbage burner were to expand. In simple terms, a proponent could build a new garbage burner with 300 or even 500 tons per day of capacity without an EIS if the permit allowed just 249 tons per day of combustion. Once the burner was built, the owner could increase the permitted capacity without ever triggering a mandatory EIS.

The potential impacts of solid waste landfills and composting on water quality, odor and air emissions and the serious adverse air quality, health and environmental justice impacts associated with garbage combustion are well-known. MEPA also specifically declares a state responsibility to “reduce wasteful practices which generate solid wastes.” and recycle materials “to conserve both materials and energy.” Minn. Stat. §116D.02, Subd. 2. The lack of environmental analysis of reduction in environmental review of landfills, RDF facilities and garbage burners that could result from the proposed rules is very troubling.

**Recommendation:** EQB should make none of the amendments for solid waste landfills and garbage burners proposed for Minn. R. 4410.4300, Subp. 17 or Minn. R. 4410.4300, Subp. 13. All changes that reduce environmental review of waste disposal and combustion should be rejected.

**E. Reject change that would allow clearcutting of forests near lakes and rivers without an EAW. (Minn. R. 4410.4300, Subp. 28).**

The proposed amendment for Minn. R. 4410.4300, Subp. 28 would eliminate the requirement for an EAW when 80 or more acres of contiguous forest are clearcut, affecting a shoreline area within 100 feet of lakes or rivers.

The rationalization provided in the discussion of this proposal is as follows: “The development of the Forestry Generic Environmental Impact Statement has prevented this category from being used.” However, no evidence supports this assertion. It is also quite possible that the mandatory EAW requirement has reduced clearcutting near the shorelines of lakes and rivers, so that this category need not be applied.

More fundamentally, the purpose and structure of a generic EIS neither prevents nor reduces the need for individualized consideration of the impacts of specific forest clearcuts affecting shorelines. Minnesota rules pertaining to a generic EIS could not be more specific:

**Subp. 8. Relationship to project-specific review.** Preparation of a generic EIS does not exempt specific activities from project-specific environmental review. Minn. R. 4410.3800.

Reference to Minnesota Forestry Generic EIS is a red herring. There is no justification for removing the mandatory EAW requirement when 80 or more acres of contiguous forest are proposed for clearcutting near the shore of a Minnesota lake or river. The potential impact of this proposed rule change must be carefully analyzed in terms of environmental impacts to forests, lakes, rivers, habitats and the property values of riparian property owners. This analysis should also take into consideration various recent proposals for forest destruction, including but not limited to those in the Pineland Sands area.

**Recommendation:** Reject change that would remove mandatory EAW for clearcutting of 80 acres or more of contiguous forest affecting shoreline areas under Minn. R. 4410.4300, Subp. 28.

**F. Reject changes that would eliminate mandatory EAW for projects encroaching on national parks, state parks, wilderness, or BWCA or destroying state trails. (Minn. R. 4410.4300, Subp. 30).**

The proposed Mandatory Categories amendment to Minn. R. 4410.4300, Subp. 30 would eliminate the requirement for an EAW when a project encroaches on national parks, state parks, wilderness, the Boundary Waters Canoe Area or scientific and natural areas (SNA) unless that land is “permanently” converted. The rule change would also remove the requirement that an EAW be prepared when state trail corridors are affected, even if they are permanently destroyed.

The rationale provided for these changes is inadequate and untenable. No justification at all is provided for eliminating environmental review for state trail corridors, even if a project permanently destroys all or part of a state trail.

The record contains no environmental analysis of the difference between “physical encroachment” and “permanent” conversion. Based on decades practicing environmental law, I’m concerned that the number of situations where it could be proved that conversion of park or wilderness resources was “permanent” are circumscribed. Even for non-ferrous mines that destroy hundreds of acres of wildlife habitats and wetlands, reclamation plans often claim that resources will eventually be restored.<sup>6</sup>

The only explanation given for deleting “physical encroachment” is that “no definition was ever developed.” This rationale is nonsense. These terms are plain English used in hundreds of Minnesota cases, ordinances and public laws, many of which pertain to compensation of private parties. Should provision of a definition of “physical encroachment” be desirable, such definition for use in environmental review could be readily derived.

In an issue area where there are so many known and obvious stakeholders (e.g. Friends of the Boundary Waters Wilderness, Voyageurs National Park Association, Northeastern Minnesotans for Wilderness, Campaign to Save the Boundary Waters, Sierra Club North Star Chapter, WaterLegacy) the lack of their engagement is particularly troubling.

**Recommendation:** Retain all existing EAW thresholds based on physical encroachment on national parks, state parks, wilderness, the BWCA, SNAs and state trails in Minn. R. 4410.4300, Subp. 30.

**G. Analyze environmental impacts of removing EAW requirements and reject exemption from environmental review for recreational trails. (Minn. R. 4410.4300, Subp. 37, Minn. R. 4410.4600, Subp. 27)**

The EQB may not have the discretion to retain a mandatory EAW for trail construction between ten and 25 miles or for adding motorized uses to existing motorized trails. The discussion justifying proposed amendments to Minn. R. 4410.4300, Subp. 37 cites a 2015 Minnesota Session law that seems to require these changes.<sup>7</sup>

However, there is no session law requiring that the rulemaking process be a fact-free environment. Even if EQB staff must propose an amendment to narrow mandatory EAWs for motorized use of trails, that does not eliminate the need for an environmental analysis of the consequences of this rule. Constructing a trail up to 24 miles long in sensitive forest or wetlands areas may have adverse environmental impacts, and converting a snowmobile trail to all-terrain-vehicle use on non-frozen

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<sup>6</sup> It is claimed, for example, that restoration of the PolyMet NorthMet copper-nickel mine site would potentially create lynx habitat, although this successional process could take decades. PolyMet Final EIS, pp. 5-433, 5-435.

<sup>7</sup> Minn. Laws 2015, Ch. 4, section 33.

ground may adversely impact wetlands, water quality, seasonal wildlife and quietude. These consequences should be explained.

More troubling, there is no statutory requirement to *exempt* any recreational trails from all environmental review, including a discretionary EAW. The EQB's proposed exemptions for paving any trail of any length located on an abandoned railroad grade and for adding a new motorized use to any trail segment of any length located on an abandoned railroad grade (Minn. R. 4410.4600, Subp. 27, Items G and H) could result in adverse impacts to wetlands, water quality, wildlife and quietude. No justification is provided for this wholesale exemption from environmental review other than to say these new exemptions are an "Insertion for greater clarity."

**Recommendation:** Provide a rigorous analysis of the environmental consequences of eliminating mandatory EAWs for recreational trails in proposed amendments to Minn. R. 4410.4300, Subp. 37. Reject exemptions from environmental review of trail paving and adding motorized use to trails proposed in amendments to Minn. R. 4410.4600, Subp. 27

#### **H. Reject deletion of mandatory EIS for radioactive deposits. (Minn. R. 4410.4400, Subp. 8)**

The EQB has proposed to remove the requirement in Minn. R., 4410.4400, Subp. 8 that there be a mandatory EIS for evaluation for extraction of 1,000 tons of more of radioactive material, such as uranium. The justification provided for deletion is that the provision has not been used "due to the lack of deposits in the state with radioactive characteristics."

Although it may be true that this provision has not been used, no evidence is provided to support the assertion that there are *no* mineral deposits in the state with radioactive characteristics. A brief search online disclosed a geology text and scientific literature contradicting the assumption that there are no uranium deposits in Minnesota for which future environmental review might provide analysis and protection from environmental harm. Two such references are excerpted below:

Pegmatites in the Lower Precambrian units of northern Minnesota could contain uranium minerals; some with abnormally high radioactivity are present in Minnesota's Northwest Angle. The metamorphic migmatite terrane west of the Vermillion Batholith in Northern Minnesota appears to be similar to, but older than, rocks in Southwest Africa that contain low-grade but large uranium deposits; some rock exposures in the Big Falls area have radioactivity levels many times greater than do the numerous quartz veins of the area.<sup>8</sup>

Exploration for unconformity-type uranium deposits in the late 1970s in east-central Minnesota led to the discovery of several uranium-bearing phosphorite occurrences in rocks of early Proterozoic age.<sup>9</sup>

It has not been established that Minnesota lacks radioactive minerals. There is a significant environmental risk in removing the requirement for an EIS in the event that uranium deposits are confirmed and their evaluation is sought. There is no risk of any kind in retaining existing rules in place, given the uncertainty of these deposits.

**Recommendation:** Reject the proposed deletion of the EIS requirement for radioactive mineral deposits in Minn. R. 4410.4400, Subp. 8.

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<sup>8</sup> Richard W. Ojakangas, *Minnesota's Geology*, Univ. of Minnesota Press, 1982, pp. 146-147 (chapter cross-references omitted).

<sup>9</sup> McSwiggen et al., "Uranium in Early Proterozoic Phosphate-Rich Metasedimentary Rocks of East-Central Minnesota," *Economic Geology*, Vol. 111, No. 6, pp. 173-183.

**I. Reject exemptions from environmental review for adding roadway lanes. (Minn. R. 4410.4600. Subp. 14).**

The EQB staff received comments from the Metropolitan Council opposing the Minnesota Department of Transportation (MnDOT) request to exempt addition of auxiliary lanes to highways from all environmental review. The Metropolitan Council stated,

[E]xcluding auxiliary lanes regardless of length from the environmental review process opens to the door to a wide variety of unexamined freeway expansions. Removing auxiliary lanes from review might simplify the process for the RGU, but it undermines the purpose of the environmental review process. As noted above, all of these projects in the metro area carry increasing complexity and potential for impacts, thereby justifying maintaining the existing threshold for this category.<sup>10</sup>

The EQB discussion provides no response to this comment and, in fact, no justification for exempting all additions of highway shoulders or auxiliary lanes from environmental review. Simplification of the process for the RGU cannot justify exemptions; if RGU convenience were the dominant concern, no environmental review would survive.

**Recommendation:** Reject amendment to Minn. R. 4410.4600, Subp. 14 to exempt addition of shoulders or auxiliary lanes to roadways or bridges from environmental review.

**Conclusion**

The EQB was designed to play an important role in safeguarding Minnesota's environment and ensuring Minnesota's progress toward a sustainable future. No doubt, this role becomes more challenging when the EQB has been under legislative attack and when the culture of state agencies favors the convenience of project proponents over environmental protection. In today's difficult circumstances, it becomes even more important for the EQB to restore the emphasis on the environmental consequences of rulemaking and to reject proposed amendments that would make avoidance, minimization and mitigation of environmental harm less likely.

My comments are motivated by concern that the proposed Mandatory Categories amendments reflect a harmful set of choices. It is my hope that these comments, along with the EQB's deliberate engagement of other groups and individuals concerned about environmental protection and public accountability, will lead to a more robust analysis and the rejection of many of the proposed amendments to Minnesota Rules Chapter 4410 that would neither protect the environment, inform the community, nor support the purposes of the Minnesota Environmental Policy Act.

Please don't hesitate to contact me at 651-646-8890 if you have questions or if there is any other way I can contribute to your analysis of environmental review rulemaking issues.

Sincerely yours,



Paula Goodman Maccabee

cc. Will Seuffert, EQB Executive Director (will.seuffert@state.mn.us)

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<sup>10</sup> Metropolitan Council comments, *supra*, fn. 1.