

October 11, 2002

The Honorable Kathleen A. Sheehy
Administrative Law Judge
Office of Administrative Hearings
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

Re: Amendment of Environmental Quality Board Power Plant Siting Rules
Minnesota Rules chapter 4400

OAH Docket No. 58-2901-15002-1

Dear Judge Sheehy:

The administrative record in the above-entitled rulemaking matter is open for receipt of written comments until October 15, 2002. Attached are the comments of the Environmental Quality Board. We have suggested several amendments to the language as proposed. The amendments are to the following parts of the rule:

1. 4400.1350 NOTICE OF PROJECT
2. 4400.1700 PREPARATION OF EIS
4400.2750 PREPARATION OF ENVIRONMENTAL ASSESSMENT
3. 4400.0650 EXCEPTIONS TO PERMITTING REQUIREMENT FOR
CERTAIN EXISTING FACILITIES
4. 4400.3050 STANDARDS AND CRITERIA
5. 4400.5000 LOCAL REVIEW OF PROPOSED FACILITIES

The EQB staff believes that the changes we have suggested for these parts of the rules are reasonable and appropriate. We have included with our comments an explanation for each of the changes we have suggested.

We also intend to respond to any written comments that are filed before the deadline on October 15. Reply comments are due on October 21, 2002.

Judge Kathleen A. Sheehy

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You should have received an e-mail from me with this letter and our comments attached so you will have an electronic version of our comments. I also sent the same e-mail to a number of interested persons for whom I have e-mail addresses available.

Thank you very much.

Sincerely,

Alan R. Mitchell
Manager
Power Plant Siting

**EQB STAFF SUGGESTED CHANGES
TO MINNESOTA RULES CHAPTER 4400
OCTOBER 11, 2002**

4400.1350. NOTICE OF PROJECT

Subpart 1. **Notification lists.** [No changes.]

Subp. 2. Notification to persons on general list, to local officials, and to property owners. Within 15 days after submission of an application, the applicant shall mail send written notice of the submission ~~and a description of the proposed project to the~~ following people:

A. ~~†~~Those persons whose names are on the general list maintained by the EQB for this purpose. The notice must also advise those persons where a copy of the application may be reviewed and how a copy may be obtained, and that persons who want to continue to receive future notices regarding the matter must notify the EQB of such intent and request that their names be placed on the project contact list.

B. Each regional development commission, county, incorporated municipality, and township in which any part of the site or route or any alternative is proposed to be located.

C. Each owner whose property is adjacent to any of the proposed sites for a large electric power generating plant or within any of the proposed routes for a high voltage transmission line. For purposes of giving notice under this item, owners are those persons shown on the records of the county auditor or, in any county where tax statements are mailed by the county treasurer, on the records of the county treasurer, or any other list of owners approved by the chair.

Subp. 3. Content of notice. The notice mailed under subpart 2 shall contain the following information:

A. A description of the proposed project, including a map showing the general area of the proposed site or proposed route and each alternative.

B. A statement that a permit application has been submitted to the EQB and the name of the permit applicant and information regarding how a copy of the application may be obtained.

C. A statement that the permit application will be considered by the EQB under the provisions of these rules and the Power Plant Siting Act and describing the time periods for the EQB to act.

D. A statement that the EQB will hold a public meeting within sixty days and the date of the meeting if it is known at the time of the mailing.

E. The manner in which the EQB will conduct environmental review of the proposed project, including the holding of a scoping meeting at which additional alternatives to the project may be proposed.

F. The name of the EQB staff member who has been appointed by the chair to serve as the public advisor, if known, or otherwise, a general contact at the EQB.

G. The manner in which a person may register his or her name with the EQB on the project contact list.

H. A statement that a public hearing will be conducted after the EIS is prepared.

I. A statement indicating whether a certificate of need or other authorization from the Minnesota Public Utilities Commission is required for the project and the status of the matter if such authorization is required.

J. A statement indicating whether the applicant may exercise the power of eminent domain to acquire the land necessary for the project and the basis for such authority.

K. Any other information requested by the chair to be included in the notice.

Subp. ~~34~~. **Publication of notice.** Within 15 days after submission of an application, the applicant shall publish notice in a legal newspaper of general circulation in each county in which a site, route, or any alternative is proposed to be located that an application has been submitted and a description of the proposed project. The notice must also state where a copy of the application may be reviewed.

~~Subp. 4. **Notification of local officials.** Within 15 days after submission of an application, the applicant shall send a copy of the application by certified mail to each regional development commission, county, incorporated municipality, and township in which any part of the site or route or any alternative is proposed to be located.~~

~~Subp. 5. **Notification of property owners.** Within 15 days after submission of an application, the applicant shall send written notice of the submission and a description of the proposed project to each owner whose property is adjacent to any of the proposed sites for a large electric power generating plant or within any of the proposed routes for a high voltage transmission line. The notice must also advise the owners where a copy of the application may be reviewed and how a copy may be obtained. For purposes of giving notice under this subpart, owners are those persons shown on the records of the county auditor or, in any county where tax statements are mailed by the county treasurer, on the records of the county treasurer, or any other list of owners approved by the chair.~~

Subp. ~~56~~. **Confirmation of notice.** Within 30 days after providing the requisite notice, the applicant shall submit to the EQB documentation that all notices required under this part have been given. The applicant shall document the giving of the notice by providing the EQB with affidavits of publication or mailing and copies of the notice provided.

Subp. ~~67~~. **Failure to give notice.** The failure of the applicant to give the requisite notice does not invalidate any ongoing permit proceedings provided the applicant has

made a bona fide attempt to comply, although the chair may extend the time for the public to participate if the failure has interfered with the public's right to be informed about the project.

EXPLANATION OF PROPOSED CHANGES TO PART 4400.1350

Part 4400.1350 is the provision that requires a permit applicant to provide notice to the public and local governmental officials that a permit application has been submitted to the EQB for a proposed power plant or transmission line. This is the first official notice that the public will receive that a permit application has been submitted.

Several persons have encouraged the EQB to require more information in this notice than is presently required under the proposed rule. Laura and John Reinhardt are particularly concerned about the notice that is sent to landowners who own land near a proposed site or route. *See Exhibit 17.* The Sierra Club and the Minnesota Center for Environmental Advocacy would like to see more information in the notice regardless of who is receiving it. The changes proposed here are intended to address these concerns.

For clarity, the EQB staff suggests that part 1350 be reorganized to have one subpart identify who is to get the notice, and a second subpart require what information has to be included in the notice. It makes sense to require the same information in the notice regardless of who is receiving it and to list in one place what must be included in the notice. Under the proposal recommended here, subpart 2 would establish who is to get the notice, and subpart 3 would establish what has to be in the notice.

The following discussion addresses each subpart of the rule.

Subpart 1. Notification lists. No changes are being proposed for this subpart.

Subpart 2. Notification to persons on general list, local officials, and property owners.

This language is a compilation of what was in the old subparts 2, 4, and 5. The list of persons who must be sent the notice is the same as what was proposed. The word “mail” is used rather than “sent,” because “mail” is defined to include both the U.S.

Postal Service and e-mail, and the EQB wants to recognize that e-mail is an acceptable manner to use to provide notice when a person has provided an e-mail address.

Subpart 3. Content of notice. This is the language that specifies what must be included in the notice.

A. Project description. This was required under the proposed rules.

B. Permit applicant. This was also intended to be included in the notice. The information about how to obtain a copy of the application may reference the EQB webpage, because the agency intends to require an applicant to submit an electronic version of the application that can be placed on the web, but the manner in which a hard copy can be obtained should be included also because not everybody has access to the web and a printer.

C. EQB consideration of application. This requirement is simply a citation to Minn. Rules chapter 4400 and Minn. Stat. §§ 116C.52 to 116C.69.

D. Public meeting. The proposed rules recognized that this notice could serve the dual purpose of providing notice of the application and of the scoping meeting (see part 4400.1550, subp. 2) but this language makes that clear. Since the notice must go out within 15 days of the submission of the application (a statutory requirement, Minn. Stat. § 116C.57, subd. 2b), the date of the public meeting may not always be known, but if the date has been set by the chair at the time this notice goes out, it is the intent to include in the notice the specifics of the upcoming public meeting.

E. Environmental review. The EQB must prepare an environmental impact statement on the project. Advising the public of such requirement will be helpful.

F. Public advisor. The statute (Minn. Stat. §116C.59, subd. 3) requires the EQB to appoint a staff member as the public advisor. It makes sense to identify this person in the public notice if the chair has appointed one at the time the notice goes out.

G. Registration on project contact list. Including a statement regarding how to get one's name on the project contact list is a good idea because this list will be used in the future to keep people advised of progress and events related to the project in the future. Registration is simply a matter of contacting the EQB.

H. Public Hearing. A contested case hearing pursuant to the rules of the Office of Administrative Hearings is required under the statute. Minn. Stat. § 116C.57, subd. 2d. The notice is an appropriate place to notify the public that a hearing will be held after

the draft EIS is available. Persons who want to be kept advised of the hearing will have several months to place their names on the project contact list.

I. Certificate of need. It will be helpful for the public and local officials and the EQB to know whether a certificate of need or other authorization from the Public Utilities Commission is required for the project and whether the PUC has already made a decision on need. If the matter is still pending before the PUC, that will also be helpful information.

J. Eminent domain authority. This requirement will advise the public whether the applicant has eminent domain authority and whether the applicant may exercise such authority to acquire the property necessary to build the project.

K. Other information. This is simply a catchall so that in appropriate circumstances, the EQB can request the applicant to include certain information in the notice. One piece of information that would fit under this category is whether or not the EQB chair intends to appoint a citizen advisory task force, if such intent is known at the time of the notice. In many cases no task force will be appointed. Other information may be a reference to a related project, such as the fact that a proposed transmission line is part of a project to connect a new small power plant (under 50 MW) that does not require a permit from the EQB to the transmission grid. In any event, this language can be relied on in appropriate circumstances to convey important information to the public.

The requirements in part 4400.1350 for giving public notice will also apply to the smaller projects that qualify for review under the alternative review process because part 4400.2300 incorporates the requirements of part 1350. It makes sense to do that so the same information is provided the public regardless of the size or type of the project proposed.

The EQB staff has prepared a draft public notice that satisfies the above requirements. The draft public notice is attached to these comments. The information can be presented in no more than two pages. The draft is written in the alternative to cover both large projects under the full process and smaller ones under the alternative process. Having a draft notice will be helpful to the applicants who must prepare the notice for a specific project. The EQB staff will always be available to review draft notices before the utility sends it out.

Subp. 4. Publication of notice. This is the old subpart 3, and no changes are proposed. It is not appropriate to expect that all the information that is contained in the mailed notice be included in a newspaper display. The purpose of the newspaper announcement is to broadcast broadly the fact that a project has been proposed and to advise people how they can get more information, not provide all the specifics that landowners and local officials and people who register their names for notification expect. Persons who hear about the matter through the newspaper notice will have an opportunity at the public meeting to learn additional information about the project and how the person can continue to be involved. The holding of the public meeting will be included in a newspaper notice, either the notice required under this subpart or the newspaper notice required under part 4400.1550, subp. 2.

Subp. 5. Confirmation of notice. Simply renumbered.

Subp. 6. Failure to give notice. Simply renumbered.

DRAFT

**Notice of Application to
Minnesota Environmental Quality Board
For Permit for
[Proposed Large Electric Power Generating Plant]
[Proposed High Voltage Transmission Line Routing]**

Please take notice that [Name of Applicant] has applied to the Minnesota Environmental Quality Board (EQB) for a [Site Permit] [Route Permit] to construct a [--- MW power plant or a --- kilovolt transmission line] to be located in ----- counties. The application was submitted to the EQB on [date] [and accepted by the chair on date .] This notice is being provided to persons who have requested notice of pending energy projects, to local units of government in the area of the proposed project, and to persons who own property adjacent to a proposed site [or within any of the proposed routes].

Description of Project. [Include a short description of the project.] [Attach a map.] [Identify any alternatives to the project that are proposed]

Permit Application. A copy of the complete application may be found on the EQB webpage: <http://www.mnplan.state.mn.us/eqb/EnergyFacilities/index.html>

A copy may also be obtained by contacting: [name of contact person at applicant]

EQB Requirements. The permit application will be considered by the EQB under the provisions of the Power Plant Siting Act (Minn. Stat. § 116C.51 – 69) and the EQB rules in Minn. Rules chapter 4400. The EQB has [one year] [six months] from the day the application was accepted to complete its review of the project.

Public Meeting. A public meeting will be held on [date] at [such and such a place and time]. The meeting is open to the public, and representatives of the applicant and the EQB will be present to respond to questions. The meeting will provide an overview of both the project and the applicable procedures to be followed. A copy of the project application and maps showing the proposed project will be available for review.

Environmental Review. The EQB will prepare an [environmental impact statement] [environmental assessment] on the project. The public will have an opportunity at the public meeting and in writing after the meeting to suggest alternatives that should be considered. The chair will determine the alternatives to be considered in the document after the public meeting.

Public Advisor. The EQB chair has appointed [name], a member of the EQB staff, to serve as public advisor in this matter. The public advisor can assist the public in understanding the process that will be followed in this proceeding. The public advisor is not authorized to give legal advice. [Name of public advisor] can be contacted at [address and phone number].

Contact List. Persons who want to have their names included on a project contact list to receive future notices about the project can do so at the public meeting or by contacting the public advisor.

Public Hearing. The EQB will hold a public hearing on this matter after the [draft EIS] [or environmental assessment] is prepared. Contact the public advisor to request notice of this hearing if you are interested.

Certificate of Need. A certificate of need from the Minnesota Public Utilities Commission is [or is not] required under state law. A certificate of need for this project was applied for on [date] and issued on [date] or [is pending].

Eminent Domain Authority. The applicant has [or does not have] the power to acquire property by the exercise of eminent domain authority under Minnesota Statutes § _____. If the EQB issues a permit for a [site or route], the applicant may rely on its authority to acquire property through condemnation if necessary.

Questions: Questions may be directed to the EQB public advisor or the applicant's representative: [Name and address and phone number and e-mail]

Dated: _____

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4400.1700 PREPARATION OF EIS

Subp. 3. **Alternative sites or routes.** During the scoping process, a person may suggest alternative sites or routes to evaluate in the environmental impact statement. A person desiring that a particular site or route be evaluated shall submit to the EQB, during the scoping process, an explanation of why the site or route should be included in the environmental impact statement and any other supporting information the person wants the chair to consider. The chair shall provide the applicant with an opportunity to respond to each request that an alternative be included in the environmental impact statement. The chair shall include the suggested site or route in the scope of the environmental assessment only if the chair determines that evaluation of the proposed site or route will assist in the board's decision on the permit application.

4400.2750 PREPARATION OF ENVIRONMENTAL ASSESSMENT

Subp. 2. Scoping Process.

B. The chair shall include in the scope of the environmental assessment any alternative sites or routes proposed by the citizen advisory task force or by any member agency of the EQB prior to the close of the scoping period. During the scoping process, any person may suggest an alternative site or route to evaluate in the environmental assessment. A person desiring that a particular site or route be evaluated shall submit to the chair, during the scoping process, an explanation of why the site or route should be included in the environmental assessment and all supporting information the person wants the chair to consider. The chair shall provide the applicant with an opportunity to respond to each request that an alternative be included in the environmental assessment. The chair shall include the suggested site or route in the scope of the environmental assessment only if the chair determines ~~person has established~~ that evaluation of the proposed site or route will assist in the board's ~~ultimate~~ decision on the permit application.

Any person may also suggest specific human or environmental impacts that should be included in the environmental assessment.

EXPLANATION OF PROPOSED CHANGES TO PARTS 4400.1700 AND 4400.2750

Several commenters objected that the proposed language placed too harsh a burden on the public to establish that a particular alternative should be evaluated as part of the environmental review. The language was not intended to place a difficult burden on the public, but only to emphasize that it would not be enough to merely suggest that an alternative (or impact) be included in the EIS or the environmental assessment and expect that it would be included.

The new language clarifies that the chair can rely on information from any source to determine whether a particular alternative or impact should be included in the scope of the EIS or environmental assessment. A member of the public could suggest an alternative and not provide a great deal of information about the alternative, but if the chair should determine on the basis of other information that it would be appropriate to include the alternative in environmental review, the chair could elect to do so.

The test, however, for deciding whether to include an alternative remains the same -- that consideration of the alternative would assist the board in reaching a final decision on whether to issue a permit and for which site or route evaluated. The chair could reject suggested alternatives that were not feasible or were beyond the authority of the EQB to authorize, for example.

The EQB staff is also working on amendments to the special rules of the EQB for environmental review of large energy facilities at the certificate of need stage before the Minnesota Public Utilities Commission. Minn. Rules parts 4410.7000 to 4410.7500. The same kind of language being proposed here has been drafted for the rules that would

apply to environmental review when the PUC makes a need decision on a proposed project.

Another reason for suggesting this change is to make the language consistent in both rules.

4400.0650 EXCEPTIONS TO PERMITTING REQUIREMENT FOR CERTAIN EXISTING FACILITIES.

Subpart 1. **No permit required.** The following projects are not considered construction of a large electric power generating plant or high voltage transmission line and may be constructed without a permit from the board:

C. large electric power generating plants:

(2) modification of a large electric power generating plant to increase efficiency as long as the capacity of the plant is not increased more than ten percent or more than 100 megawatts, whichever is greater, and the modification does not require expansion of the plant beyond the developed portion of the site. If a subsequent modification results in a total of more than 100 megawatts of additional capacity, this provision does not apply.

An increase in efficiency is a reduction in the amount of BTUs [British Thermal Units] required to produce a kilowatt hour of electricity at the facility;

EXPLANATION OF PROPOSED CHANGES TO PART 4400.0650

Part 4400.0650 is the part of the rules that exempts certain changes in existing facilities from the requirement to get a permit from the EQB. The Sierra Club and the Minnesota Center for Environmental Advocacy and others are concerned that under the proposed language, a utility or other person could make significant changes in an existing facility that would not undergo environmental review and permitting by the EQB. As explained in the Statement of Need and Reasonableness, the EQB believes that the modifications authorized in this part without a permit are not the kind of changes that the Legislature intended the EQB to site or route. Since this part only applies to existing facilities, the siting or routing decision has already been made. Other agencies, particularly the Pollution Control Agency, can evaluate the impact of any increased emissions and whether the modification should be permitted.

David Zoll of the Minnesota Center for Environmental Advocacy commented that subpart 1.C.(2), which exempts certain increases in efficiency in existing power plants, does not define what an increase in efficiency is. The EQB staff agrees that it would be appropriate to define what an increase in efficiency is, and the staff suggests that the language shown above be added to the rule. An increase in efficiency is a change in an existing facility that results in more electricity being generated for a certain amount of heat input. This definition is certainly simple and straightforward. Engineers can easily determine whether a modification to an existing power plant is intended to generate electricity more efficiently.

Mr. Zoll suggested that an increase in efficiency should be one that reduces the amount of air pollutants emitted by the plant. Because the capacity of the plant may be expanded by up to 10% or 100 megawatts, he is concerned that the amount of air pollutants emitted may increase. While an increase in efficiency will reduce the amount of air pollutants emitted per kilowatt hour generated, it is possible that more air pollution may result from the increase in capacity. However, as explained in the SONAR at pages 21-22, this is a matter for the Pollution Control Agency to address. Given the fact that the Legislature has exempted these kind of efficiency improvements from the certificate of need requirements and the fact that the EQB rule also applies only if the efficiency modification can occur without expansion of the developed portion of the site, it seems reasonable to exempt such improvements from a siting decision.

4400.3050 STANDARDS AND CRITERIA

No site permit or route permit shall be issued in violation of the site selection standards and criteria established in Minnesota Statutes, sections 116C.57 and 116C.575, and in rules adopted by the board. The board shall issue a permit for a proposed facility when the board finds that the facility is consistent with the requirements of Minnesota Statutes chapter 116D and Minnesota Statutes chapter 116B and state goals to conserve resources, minimize environmental impacts, and minimize human settlement and other land use conflicts and ensures the state's electric energy security through efficient, cost-effective power supply and electric transmission infrastructure.

EXPLANATION OF PROPOSED CHANGES TO PART 4400.3050

David Zoll of the Minnesota Center for Environmental Advocacy commented at the hearing that the rules should specifically recognize that the EQB must comply with the Minnesota Environmental Policy Act (MEPA), Minn. Stat. ch. 116D, in making any decision on a site permit or a route permit. The EQB staff agrees that both MEPA and the Minnesota Environmental Rights Act (MERA), Minn. Stat. ch. 116B, apply to agency decisionmaking on large energy projects and the staff suggests that it is appropriate to cite both statutes in this rule provision. Whether or not a reference is contained in the rule, the requirements of both of those statutes will apply to any permit decision made by the EQB.

The Minnesota Supreme Court has specifically held that both MEPA and MERA apply to EQB decisionmaking. *See No Power Line, Inc. v. Minnesota Environmental Quality Council*, 262 N.W.2d 312, 327 (1977) and *People for Environmental Enlightenment and Responsibility (PEER) v. Minnesota Environmental Quality Council*, 266 N.W.2d 858 (Minn. 1978). In *PEER* the Supreme Court said:

Although the focus of each of these statutes is slightly different, together they are part of a coherent legislative policy, one of whose aims is to harmonize the need for electric power with the equally important goal of environmental protection. . . . Recently, in *No Power Line, Inc. v. Minnesota EQC*, Minn., 262 N.W.2d 312, 323 (1971), we decided that the legislature did not intend the PPSA to preempt MEPA and make it superfluous. Today we reach a similar conclusion regarding MERA. Rather than intending the PPSA to supersede MERA, the legislature passed all these statutes to ensure that administrative agencies would discharge fully their environmental responsibilities.

266 N.W.2d at 865. The Court concluded:

After carefully reviewing Minnesota's statutory scheme for protecting the environment, it is our conclusion that the principles of MERA apply to MEQC decisions made pursuant to the PPSA and that *all regulations* governing the routing of HVTLs *must be consistent with it* and other relevant environmental legislation. Implicit in the operation of MERA is the principle that environmentally damaging action cannot be taken if there is another, less damaging way to achieve the desired result. In order to protect Minnesota's noncompensable resources, whose impairment appears to harm no one directly, MERA makes a prima facie showing of environmental damage by any concerned citizen or group sufficient to shift the burden to the proponents of the action to establish that there is no prudent and feasible alternative which will be less destructive to the environment.

Id., at 873-74 (emphasis added).

The court cases make it clear that both MEPA and MERA must be taken into account by the EQB when making a decision on a site permit or a route permit.

4400.5000 LOCAL REVIEW OF PROPOSED FACILITIES

Subp. 3. ~~Notice, to EQB.~~ Within ten days of submission of an application to a local unit of government for approval of an eligible project, the applicant shall notify the chair in writing that the applicant has elected to seek local approval of the proposed project. Within the same ten day period, the applicant shall mail notice to those persons on the general notification list that a permit has been applied for from the local unit of government for the project and shall provide a description of the project and the name of a person with the local unit of government to contact for more information.

Subp. 5. **Environmental review.** A local unit of government that maintains jurisdiction over a qualifying project shall prepare an environmental assessment on the project, ~~in accordance with the requirements of part 4400.2750.~~ The local unit of government shall afford the public an opportunity to participate in the development of the scope of the environmental assessment before it is prepared. Upon completion of the environmental assessment, the local unit of government shall publish notice in the EQB Monitor that the environmental assessment is available for review, how a copy of the document may be reviewed, that the public may comment upon the document, and the procedure for submitting comments to the local unit of government. The local unit of government shall provide a copy of the environmental assessment to the EQB upon completion of the document. The local unit of government shall not make a final decision on the permit until at least ten days after the notice appears in the EQB Monitor.

If more than one local unit of government has jurisdiction over a project, and the local units of government cannot agree on which unit will prepare the environmental assessment, any local unit of government or the applicant may request the board to select the appropriate local unit of government to be the responsible governmental unit to conduct an environmental review of the project.

EXPLANATION OF PROPOSED CHANGES TO PART 4400.5000

Part 4400.5000 applies to those situations where an applicant has decided to seek a permit from the appropriate local unit or units of government for a project that qualifies for local review. While a permit from the EQB is not required in such situations, the law requires that a similar process to the one followed by EQB, including environmental review, be followed by the local unit of government. This rule is intended to describe the manner in which the local unit of government should process a permit application.

Subpart 3 is the provision that requires an applicant to give notice that a project has been proposed and that the applicant intends to seek a permit from the local unit of government. The rule as proposed only required the applicant to notify the EQB, but it has become apparent to the EQB staff from the projects that have already been administered locally, that a broader dissemination of notice is required. The staff is suggesting that a sentence be added to subpart 3 to require that the applicant give notice to those persons who have registered their names with the EQB for notice about any large energy facility proposed in the state. These are the people who want to know about proposed large power plants and high voltage transmission lines, regardless of where they are proposed to be located, and whether the applicant has sought a permit from the EQB or the local unit of government does not matter. It makes sense to rely on the EQB general notification list for the initial notice about a proposed project. Once this notice is given, interested persons can contact the local unit of government regarding their desire to be involved in future proceedings.

The language being suggested does not require the applicant to include in the notice all the information that is required under part 4400.1350, subp. 3, for a permit application for a larger project submitted to the EQB, nor all the information required to be included in the notice. Because the project is being reviewed locally, it is appropriate

to rely on the local governmental body to determine what kind of notice is appropriate within the community. In addition, a lot of the information required under the EQB rule is pertinent to the EQB and may not apply to local review. For example, references to the EQB rules and to the EQB public advisor do not apply in such situations. Local officials may very well require other information that is appropriate in the local setting.

Subpart 5 is the provision that requires the local unit of government to conduct environmental review of proposed projects. The statute requires preparation of an environmental assessment regardless of whether it is the EQB or a local unit of government that issues a permit for the project. Minn. Stat. §§ 116C.57, subd. 2c , and 116C.576, subd. 1(a).

The proposed language in subpart 5 stated that the local unit of government had to follow the procedures in part 4400.2750, which the EQB follows when preparing an environmental assessment. Upon reflection, it seems to the EQB staff that it is not necessary to impose all the state requirements on local units of government. Local units of government can establish their own procedures for conducting environmental review as long as some basic requirements are met.

One basic requirement is that the public must have an opportunity to participate in the development of the scope of the environmental assessment. The rule requires the local officials to provide citizens with that opportunity but how that is done can be determined by the local officials.

Another basic procedural step is to provide notice of the availability of the environmental assessment once it is prepared. Again, the local officials determine how to notify residents of the community. The one notice requirement imposed in the new language is a requirement to publish notice of the availability of the environmental assessment in the *EQB Monitor*. The *EQB Monitor* is a biweekly newsletter published by

the EQB containing notice of various projects undergoing environmental review. The *Monitor* is published on the EQB webpage. EQB Monitor is defined in the EQB's procedural rules. Minn. Rules part 4405.0100, subp. 6. *EQB Monitor* is defined as "the publication of the board which contains notices required under Minnesota Statutes, chapter 116C and 116D or under rules adopted by the board and of other relevant information." The public has come to expect notices of environmental review of proposed projects to appear in the *Monitor*, and it is appropriate to require it here.

The rule also requires the local unit of government to provide the EQB with a copy of the environmental assessment when it becomes available. It is perfectly acceptable for a local unit of government to provide an electronic copy of the environmental assessment, and in fact, is probably the preferred method. The EQB will then be advised of the progress on the matter and of the issues associated with the project and will be a good repository of environmental information on large energy facilities. Also, because notice of the document will be published in the *Monitor*, it is entirely likely that the EQB may receive calls about the project.

Finally, the rule states that a local unit of government may not make a final decision on a permit until at least ten days after publication of the availability of the environmental assessment appears in the *Monitor*. This ensures that the public will have at least ten days to comment on the environmental assessment. The ten day period is quite short, but it is only a minimum, and the local unit of government should have some sense by the time the project reaches this stage of review whether the public will desire more time.