1988

EQB EX. 10

STATE OF MINNESOTA
ENVIRONMENTAL QUALITY BOARD

In the Matter of the Proposed Amendments to the Rules Governing the Environmental Review Program, Minn. Rules Parts 4410.0200 to 4410.7800

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

This document explains the need for and reasonableness of proposed amendments to the EQB rules governing the Minnesota environmental review program, sometimes referred to as the Environmental Impact Statement (EIS) program. The amendments are proposed to improve the effectiveness and the efficiency of the environmental review process.

The proposed amendments would revise the rules in effect since October, 1986, at which time minor amendments were made to rules in effect since September, 1982. For most purposes, the proposed amendments can be considered as revisions to the 1982 edition of the rules. The environmental review program dates to 1974, when the first edition of rules governing the program were adopted. The rules were also extensively amended in 1977.

The Board is directed by Minnesota Rules, part 4410.0400 to monitor the effectiveness of the environmental review program and to take appropriate action to improve the process. As part of its ongoing administrative and technical assistance functions, the EQB staff keeps track of problem areas in the rules -- provisions which are ambiguous, misleading, difficult to interpret or apply, unduly restrictive or lax, misdirected, ineffective for their intended purpose, or otherwise in need of revision. This information is the source of many of the proposed changes.

A second source of proposed changes is outside opinion, expressed in response to a solicitation of information and opinion noticed in the State Register on March 9, 1987. EQB also mailed a notice of this opportunity to suggest revisions to virtually every city and county government in the state, and published notice in the EQB Monitor bulletin on March 9 and March 23, 1987. Comments were accepted through May 29, 1987.

The EQB considered each comment received at its June 1987 meeting and selected those sections of the rules which it believed should be amended. Since that time, staff has been working on the amendments now proposed. A number of the proposed amendments which relate to review of residential and commercial projects, especially in rapidly growing areas such as certain Twin Cities suburbs are based on the report of a special advisory work group, the EQB Urbanizing Areas Work Group, composed of city planners, developers, environmentalists, and review agency staff; the EQB accepted the recomendations of the work group in April 1988.

II. STATEMENT OF BOARD'S STATUTORY AUTHORITY

The EQB is given statutory authority under Minnesota Statutes, sections 116D.04 and 116D.045 to adopt rules to implement this program. Under these statutes the Board has the necessary authority to adopt the proposed amendments.

Amendments to section 116D.045 were made in the 1988 legislative session (Laws of Minnesota 1988, chapter 501). Amendments proposed to parts 4410.6000 to 4410.6500 are for the purpose of implementing those statutory changes, which deal with the assessment of a project proposer for the costs of preparing and distributing an EIS.

III. STATEMENT OF NEED AND REASONABLENESS

Minn. Stat. ch. 14 (1986) requires the Board to make an affirmative presentation of facts establishing the need for and reasonableness of the rule amendments as proposed. In general terms, this means that the Board must set forth the reasons for its proposals, and the reasons must not be arbitrary or capricious. To the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the proposed solution is appropriate. The need for and reasonableness of each proposed rule amendment are discussed for each amendment in this document. The amendments are presented in their order in the present rule and each independent amendment is given a reference number to aid in its identification.

In cases where a number of consecutive subparts, items, or paragraphs are proposed for amendment, the text of the statement of need and reasonableness may be interspersed with the rule texts in order to present the reasons for the various amendments in proximity to the rule text itself.

As an aid to the reader, the proposed text of the amendments to the rules is also presented, and is printed in **bold-face type** with an indented left-hand margin for greater ease in distinguishing the text of the proposed amenments from the text of the statement of need and reasonableness. Because of the use of bold-face type to distinguish the rule text, the captions to rule parts and subparts are presented in CAPITAL LETTERS instead of the customary bold-face type as used by the Office of the Revisor of Statutes.

4410.0200. Definitions.

1. "Capacity" [of a solid waste resource recovery facility -- all new material]

Subp. 6a. CAPACITY. "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.

This proposed definition would apply only to resource recovery facilities for solid waste. A definition is needed because there is no generally-accepted meaning for capacity at such facilities, and in at least one case, a serious misunderstanding occurred about the size of a facility relative to the mandatory thresholds because of confusion over what "capacity" meant. The proposed definition was developed by an ad hoc work group composed of representatives of the solid waste industry, the PCA, the Metropolitan Council, and EQB staff. The group determined that this definition best indicated the size of a facility for the purposes of estimating its potential for environmental impacts.

1a. "Compost facility" [All new material

Subp. 9a. COMPOST FACILITY. "Compost facility" means a facility used to compost or co-compost solid waste, including;

A. all structures and processing equipment used to control drainage, collect and treat leachate; and

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

This definition is needed because the term "compost facility" would be introduced into the rules at parts 4410.4300, subp. 17, and part 4410.4400, subp. 13. The definition is adapted from the solid waste rules of the PCA.

1b. "Connected action". [All new material]

Subp. 9a. CONNECTED ACTION. Two projects are "connected actions" if a RGU determines they are related in any of the following ways:

A. one project would directly induce the other;

B. one project is a prerequisite for the other; or

C. neither project is justified by itself.

A new defined term, "connected action" is proposed to be added to the rules as part of an attempt to make the rules more logical in their treatment of projects or parts of projects which should be considered as part of a single whole for purposes of environmental review. Other aspects of this effort include amendment of the definition of "phased action," the deletion of the term "related action" and the addition of new subparts at parts 4410.1000 and 4410.2000 regarding the treatment of connected and phased actions when determining the need for review and in conducting review.

"Connected actions" is a term borrowed from the Federal Council on Environmental Quality regulations for implementing NEPA (at 40CFR section 1508.25) which refers to multiple projects which are related in any of the three ways included in the definition. When any of the three relationships holds, then the multiple projects are to be considered as one project for purposes of environmental review. It should be noted that condition A is now in the rules as one of the conditions under which projects are "related actions." It is proposed to cover this relationship under the new definition of connected actions, in order to parallel the Federal regulations. The other two relationships (of items B and C) are not presently recognized in the rules. Although the occurrence of projects related in this way would be very infrequent, the rules should be revised to assure that comprehensive review would occur under the appropriate circumstances.

It is not intended that this definition be interpreted to require that an EIS for public infrastructural projects (e.g., a highway or interceptor sewer) attempt to review specific future developments which may be served by the public project. This would only be appropriate if the primary purpose of the public project was to serve a specific individual project, rather than to support general development. This does not relieve the RGU for the public project from its responsibility to consider in the EIS induced development in a generic way.

1d. "Energy recovery facility" [All new material]

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

This definition is needed because the term "energy recovery facility" would be introduced into the rules at parts 4410.4300, subp. 17, and 4410.4400, subp. 13. The definition is adapted from the solid waste rules of the PCA. Facilities which produce, but do not burn, refuse-derived fuel are excluded from the definition in order that a separate threshold for EAWs and EISs may be established for such facilities.

2. "Hazardous waste".

Subp. 37. HAZARDOUS WASTE. "Hazardous waste" has the meaning given in ~~Minnesota Statutes, section 116.06, subdivision 13~~ parts 7045.0129 to 7045.0141.

The Pollution Control Agency suggested this change to assure that the EQB rules for hazardous waste mandatory EAW and EIS categories had the same scope as the hazardous waste management rules of the PCA.

3. "Incinerator. [All new material.]

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

This term is added because of revisions to parts 4410.4300, subpart 17 and 4410.4400, subpart 13, solid waste EAW and EIS categories, respectively, which establish new thresholds for incineration of mixed municipal solid waste or refuse-derived fuel. The definition is adapted from that of the U.S. Environmental Protection Agency.

4. "Light industrial facility". [All new material]

Subp. 42a. LIGHT INDUSTRIAL FACILITY. "Light industrial facility" means a subcategory of industrial land use with a primary function other than manufacturing and less than 500 employees.

A definition of this term is proposed because of a proposed subdivision of the existing mandatory categories for industrial-commercial development into subcategories for light industrial and warehousing facilities and all other industrial-commercial facilities. The main distinction between these categories in terms of environmental impacts is traffic generation, and the relationship of the thresholds is based on comparative data on trip generation taken from the handbook of the Institute of Transportation Engineers. In that handbook, ITE defines light industrial facilities as those of less than 500 employees and whose emphasis is other than manufacturing.

5. "Phased action".

Subp. 60. PHASED ACTION. "Phased action" means two or more projects to be undertaken by the same proposer that a RGU determines:
A. will have environmental effects on the same geographic area; and
B. are substantially certain to be undertaken sequentially over a limited period of time; ~~and~~
~~C. collectively have the potential to have significant environmental effects~~

This amendment is part of an effort to rationalize treatment of interrelated projects, as explained at the section on "connected action." The reason for the proposed deletion of condition C is that it does not bear on the nature of the relationship between two projects, but rather on the significance of their cumulative impact on the environment. It is proposed that two projects by a single proposer be considered as "phased actions" if they affect the same area and have a certain relationship over time, irrespective of their impacts. This would make "phased actions" and "connected actions" parallel in form, and dependent only on the nature of the interconnections between the projects.

6. "Project estimated cost."

~~Subp. 65. PROJECT ESTIMATED COST. "Project estimated cost" means the total of all allowable expenditures of the proposer anticipated to be necessary for the implementation of a proposed project.~~

It is proposed to delete this definition because this term is no longer used in the rules. It formerly was used in computing the amount of money an RGU could charge a proposer for an EIS, but following statutory changes made in the 1988 Legislative session (Laws of Minnesota 1988, chapter 501), the allowable EIS cost assessment for a project is no longer computed by reference to the cost of the project. RGUs may now assess the proposer for its "reasonable costs of preparing and distributing the EIS." The reader is directed to the section on parts 4410.6000 to 4410.6400 for further discussion of these changes.

7. "Proposer."

Subp. 68. PROPOSER. "Proposer means the private person or governmental unit that proposes to undertake or direct others to undertake a project.

This change is proposed because there are some public bodies which may conduct physical development projects but which are not "governmental units" as defined in these rules. Examples include school districts, regional development commissions, and public, non-profit corporations. Without this change, such bodies would technically not have to comply with the requirements of the rules applying to "proposers," including supplying data on their projects and paying for the costs of an EIS prepared by another unit of government.

8. "PUC".

Subp. 70a. PUC. "PUC" means Minnesota Public Utilities Commission.

The Public Utilities Commission inherited responsibilities for conducting certain reviews from the Department of Energy and Economic Development when that department was reorganized. The explanation of the acronym "PUC" therefore needs to be added to the rules. (The acronym "DEPD" has already been deleted from the rules.)

9. "Refuse-derived fuel". [All new material.]

Subp. 71a. 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.

This definition is proposed to be added because of new EAW and EIS categories at parts 4410.4300, subpart 17 and 4410.4400, subpart 13 dealing with the incineration of refuse-derived fuel prepared from solid waste. The definition is adapted from that of the PCA solid waste rules.

10. "Related action".

~~Subp. 72. RELATED ACTION. "Related action" means two or more projects that will affect the same geographic area that a RGU determines are planned to occur or will occur at the same time, or are of a nature that one of the projects will induce the other project.~~

The deletion of this term is part of the attempt to rationalize the treatment of interrelated projects in the rules, as generally described at the definition of "connected actions." The term "related actions" covered two relationships between projects: (1) where one would induce the other; and (2) where the projects affected the same area and had a common timing. Comparison with analogous Federal rules indicates that inducement is properly one of three conditions under which projects are "connected actions." Consequently, that aspect of "related actions" is proposed to be transferred to that term.

The other aspect, similar geography and timing, would remain in the rules but not as part of a defined term. When an RGU is making an EIS need decision it will continue to be required to consider the "cumulative potential effects of related or anticipated future projects" (part 4410.1700, subp. 7, item B). In addition, a new subpart 5 is proposed at part 4410.2000 to explicitly allow a RGU to combine together projects having an impact on the same geographic area provided that the combination of projects into one review does not unreasonably delay review of any of the projects. This has always been a problem with the attempt to use the current "related actions" definition: unless two projects were proposed at almost exactly the same time, RGU's were very reluctant to view them as part of one whole under this definition.

11. "Resource recovery facility".

~~Subp. 74. RESOURCE RECOVERY FACILITY. "Resource recovery facility" has the meaning given in Minnesota Statutes, section 115A.03, subdivision 28.~~

It is proposed to delete the definition of this term from these rules because revisions of parts 4410.4300, subpart 17 and 4410.4400, subpart 13, where this term presently is used, would no longer reference "resource recovery facility." (Instead, subcategories of resource recovery facilities such as compost facilities, energy recovery facilities, incinerators, and refuse-derived fuel production plants, would be referenced.)

12. "Sewer system".

Subp. 80. ~~SEWER~~ SEWAGE COLLECTION SYSTEM. "~~Sewer~~ Sewage collection system" means a piping or conveyance system that conveys wastewater to a wastewater treatment plant.

The term "sewer system" has sometimes been misinterpreted to include wastewater treatment facilities. The proposed term will eliminate this type of misinterpretation.

12a. Sports or entertainment facilities. [All new material.]

Subp. 84a. SPORTS OR ENTERTAINMENT FACILITY. "Sports or entertainment facility" means a facility intended for the presentation of sports events and various forms of entertainment or amusement. Examples include sports stadiums or arenas, race tracks, concert halls or amphitheaters, theaters, facilities for pageants or festivals, fairgrounds, amusement parks, and zoological gardens.

This term is proposed to be added to the rules because of new mandatory EAW and EIS categories to cover these types of facilities. These new categories are intended to define more appropriate thresholds for a subclass of commercial-institutional projects which is characterized by the attendance of large numbers of spectators or audience members for purposes primarily of entertainment or amusement. The examples included in the definition are types of facilities which have been reviewed through the program over the years which share this characteristic.

13. "Warehousing facility". [All new material]

Subp. 89a. WAREHOUSING FACILITY. "Warehousing facility" means a subcategory of industrial-commercial land use that has as its primary function the storage of goods or materials. Warehousing facilities may include other uses, such as office space or sales, in minor amounts.

This definition is proposed for the same reason and with the same rationale as for the term "light industrial facility."

14. "Water-related land use management district". [All new material]

Subp. 92a. WATER-RELATED LAND USE MANAGEMENT DISTRICT. "Water-related land use management district" includes

A. shoreland areas;

B. floodplains;

C. wild and scenic rivers districts;

D. areas subject to the comprehensive land use plan of the Project Riverbend Board under Laws of Minnesota 1982, chapter 627; and

E. areas subject to the comprehensive land use plan of the Mississsippi River Headwaters Board under Minnesota Statutes, chapter 114B.

This term, and the following one, is proposed as a way of reducing the number of words in several mandatory categories which tie thresholds to the proximity of the project site to water bodies. (These categories include part 4410.4300, subp. 14 and 19 and part 4410.4400, subp. 11, 13, and 14.) Experience has shown that these categories are very confusing to understand, in part because of the number of different types of water-related management districts listed. By coining a new general term to cover all these districts it is hoped that the reader will better be able to understand the structure and meaning of the categories. The proposed new term is defined simply as all the types of districts now listed out in the rules.

15. "Water-related land use management district ordinance or plan, approved". [All new material]

Subp. 92b. WATER-RELATED LAND USE MANAGEMENT DISTRICT ORDINANCE OR PLAN, APPROVED. "Water-related land use management district ordinance or plan, approved" means:

A. a state-approved shoreland ordinance;
B. a state-approved floodplain ordinance;
C. a state-approved wild and scenic rivers district ordinance;
D. the comprehensive land use plan of the Project Riverbend Board under Laws of Minnesota 1982, chapter 627; or
E. the comprehensive land use plan of the Mississippi River Headwaters Board under Minnesota Statutes, chapter 114B.

This proposed new term is proposed for the same reason as its companion described immediately preceding, "water-related land use management district."

16. "Waters of the state". [All new material]

Subp. 92c. WATERS OF THE STATE. "Waters of the state" has the meaning given in Minnesota Statutes, section 105.37, subdivision 7. [which is "any waters, surface or underground, except those surface waters which are not confined but are spread and diffused over the land. Waters of the state includes all boundary and inland waters."]

This term is needed as part of a new mandatory category for interstate water diversions. The definition will be identical to that used in the statute empowering DNR regulation of water uses.

17. 4410.0400. General responsibilities [information]

Subp. 3. GOVERNMENTAL UNITS, PRIVATE INDIVIDUALS, CITIZEN GROUPS, AND BUSINESS CONCERNS; TRADE SECRET INFORMATION. When environmental review documents are required on a project, the proposer of the project and any other person shall supply any data reasonably requested by the RGU which the proposer has in his or her possession or to which the proposer has reasonable access.

Information submitted to the RGU which qualifies as trade secret information under Minnesota Statutes, section 13.37, subdivision 1, paragraph (b), must be treated as nonpublic data in accordance with Minnesota Statutes, chapter 13.

The current EQB rules do not address how confidential business information should be treated in an EAW or EIS. The proposed language would clarify that information which meets the definition of "trade secret information" under the Government Data Practices Act must be handled in accordance with the standards for such information set forth in Minn. Stat., chapter 13. This addition would simply assure that trade secret information is treated in accordance with state law in an EAW or EIS context.

18. 4410.1000, Projects requiring an EAW.

[All new material]
Subp. 4. CONNECTED ACTIONS AND PHASED ACTIONS. 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.

In connected actions and phased actions where it is not possible to adequately address all the project components or stages at the time of the initial EAW, a new EAW must be completed prior to approval and construction of each subsequent project component or stage. Each EAW must briefly describe the past and future stages or components to which the subject of the present EAW is related.

For proposed project such as highways, streets, pipelines, utility lines, or systems where the proposed project is related to a large existing or planned network, for which a governmental unit has determined environmental review is needed, the RGU shall treat the present proposal as the total proposal or select only some of the future elements for present consideration in the threshold determination and EAW. These selections must be logical in relation to the design of the total system or network and must not be made merely to divide a large system into exempted segments.

When review of the total of a project is separated under this subpart, the components or stages addressed in each EAW must include at least all components or stages for which permits or approvals are being sought from the RGU or other governmental units.

The first paragraph of subpart 4 would add a comprehensive and explicit directive to RGUs about the correct application of the rules to projects which are part of a larger whole (i.e., projects which fit the definitions of connected or phased actions). At present the rules contain or imply parts of this directive, but nowhere is this issue dealt with in a comprehensive manner. This has frequently led to confusion, and in some cases projects have not been properly reviewed because the RGU failed to realize the need to view the project as part of a larger whole.

The second and third paragraphs are substantially the same as paragraphs appearing currently at part 4410.1700, subpart 9 dealing with the treatment of phased actions in EISs. These paragraphs are proposed to be moved to here (and also to part 4410.2000, subpart 4 dealing with the analogous situation for EISs) because the directive given in these paragraphs should be applied to EAWs as well as EISs and because this new subpart appears to be a more logical place to locate this information. The wording has been modified to replace "EIS" with "EAW," to add the term "connected actions," and to replace the word "phases" with the phrase "components or stages."

The final paragraph is proposed as further guidance to an RGU on how to view projects which may be parts of a larger whole. This language states that at a minimum review must cover whatever is proposed to be permitted or otherwise approved. This is essential because the purpose of the review is to inform decisions. This principle is implicit in the existing rules but needs a more definitive declaration.

[All new material.] Subp. 5. CHANGE IN THE PROPOSED PROJECT; NEW EAW. If after a negative declaration has been issued but before the proposed project has received all approvals or been implemented, the RGU determines that a substantial change has been made in the proposed project that may affect the potential for significant adverse environmental effects, a new EAW is required.

This subpart is proposed to be added to the rules because the present rules fail to address what is to happen if a project reviewed through the EAW process is changed before it is implemented. EQB receives many of requests each year for guidance on how to deal with these situations. The proposed language is based on EQB staff's historic response to inquiries of this nature, which in turn have been based on the criteria for ordering a supplemental EIS. It is reasonable to base the need for additional review on whether or not the change is substantial and whether or not it may lead to greater environmental effects than were considered in the existing EAW.

Rather than create a new form of review document -- a supplemental EAW -- it was deemed preferable to simply require a new EAW because the EAW form is already extremely brief (4 pages).

19. 4410.1100. Petition process.

[All new material:]

Subp. 9. DURATION OF EFFECT OF PETITION. If an RGU cannot act on a petition because no permit application has been filed, the application has been withdrawn, or the application has been denied, the petition remains in effect for no more than one year from the date on which it was filed with the EQB. While the petition remains in effect, part 4410.3100, subparts 1 and 2, applies to any proposed project for which the nature and location are substantially similar to the project identified in the petition.

Situations occasionally arise in which the RGU assigned for a petition cannot act on the petition when the petition is filed. This may be because no formal application for the project has yet been made, the application has been temporarily withdrawn, or the application has been denied in one form but is anticipated to be resubmitted in revised form. Under the present rules, no provision is made for the fate of a petition in these circumstances. Presumably the petition remains valid and "on file" until such time as an application is before the RGU. Since this may not occur for several years after the petition is filed, there is a good chance that the RGU may have lost track of the petition in the meantime. The proposed change would reduce the possibility of problems arising from a forgotten, but still valid petition, by setting a maximum period for the validity of petitions at one year from the date of filing.

20. 4410.1300. EAW form.

The EQB chair shall develop an EAW form to be used by the RGU. The EQB chair may approve the use of an alternative EAW form if an RGU demonstrates the alternative form will better accomodate the RGU's function or better address a particular type of project and the alternative form will provide more complete, more accurate, or more relevant information.

The EAW form shall be assessed by the EQB chair periodically and may be altered by the EQB chair to improve the effectiveness of the document.

This change would transfer authority for approving the standard EAW form and use of alternative forms from the EQB to its chair. It is believed that the content of an EAW is a technical question and not one of policy which requires consideration by the EQB itself. This change is also reasonable because it would expedite approval of an alternative review form, since the Board meets normally once per month.

4410.1700. Decision on the need for an EIS.

Four changes are proposed to this part, which will be dealt with here subpart by subpart.

21. Subp. 2. DECISION-MAKING PROCESS. The decision on the need for an EIS shall be made in compliance with one of the following time schedules:

A. If the decision is to be made by a board, council, or other body which meets only on a periodic basis, the decision shall be made ~~at the body's first meeting more than ten days after the close of the review period or at a special meeting but, in either case, no later than~~ between 3 and 30 days after the close of the review period; or

B. For all other RGU's the decision shall be made no later than 15 days after the close of the 30-day review period. This 15-day period shall be extended by the EQB ~~chairperson~~ chair by no more than 15 additional days upon request of the RGU.

The change to item A is to eliminate the 10 working day waiting period between the end of the 30 day comment period and the date on which the RGU decides on the need for an EIS. The proposed change would reduce the mandatory waiting period to three working days but also allow the RGU discretion to delay action to a future meeting as long as that meeting will occur within 30 days of the end of the comment period. These changes will minimize delays to proposers for the majority of cases where the RGU is ready to make a decision shortly after the end of the comment period. (Since the EAW comment period ends on a Wednesday, three working days would give the RGU staff until the following week to prepare materials for the EIS decision.)

Under the present rules, RGUs routinely ignore the 10 day waiting period when honoring it would mean that action could not take place at the first regular meeting after the comment period. The only logical reason for the waiting period is to provide the RGU adequate time to prepare for a decision. It is believed the proposed changes would provide adequate time while avoiding unnecessary delays.

22. [All new material.] Subp. 2a. INSUFFICIENT INFORMATION. If the RGU determines that information necessary to a reasoned decision about the potential for, or significance of, one or more possible environmental impacts is lacking, but could be reasonably obtained, the RGU shall either:

A. make a positive declaration and include within the scope of the EIS appropriate studies to obtain the lacking information; or

B. postpone the decision on the need for an EIS, for a period of not more than 30 days, in order to obtain the lacking information. If the RGU postpones the decision, it shall provide written notice of its action, including a brief description of the lacking information, within 5 days to the project proposer, the EQB staff, and any person who submitted substantive comments on the EAW.

Subpart 3 would add new guidance in the rules about how an RGU should act if it determines that critical information is lacking relative to a decision about whether the project has the potential for significant environmental effects. The present rules do not provide for this eventuality, although commenters frequently claim that additional information should be obtained prior to making the decision. The proposed language would direct the RGU to either order an EIS and obtain the lacking information as part of that process or delay the decision for up to 30 days to obtain the lacking information. This delay would be justifiable only if the information appears critical to the decision and is reasonably obtainable.

23. **Subp. 4 5. RECORD OF FINDINGS SUPPORTING DECISION. The RGU shall maintain a record, including specific findings of fact, supporting its decision. The record must include specific responses to all substantive and timely comments on the EAW. This record shall either be a separately prepared document or be contained within the records of the governmental unit.**

Subp. 5 6. DISTRIBUTION OF DECISION. The RGU's decision shall be provided, within five days, to all persons on the EAW distribution list pursuant to part 4410.1500, to all persons that commented in writing during the 30-day comment period, and to any person upon written request. All persons who submitted timely and substantive comments on the EAW shall be sent a copy of the RGU's response to those comments prepared pursuant to subpart 5. Upon notification, the EQB staff shall publish the RGU's decision in the EQB Monitor. If the decision is a positive declaration the RGU shall also indicate in the decision the date, time, and place of the scoping review meeting.

The proposed changes in these subparts would add a new explicit requirement that the RGU make a specific response to each legitimate comment made on an EAW and make that response known to the commenter. A response to comments is implicit in the present rules, and is the general practice among RGUs, so this proposal will have little practical impact in most cases. However, it will assure that all RGUs give consideration to comments received and also assure that the commenters find out in what way their comments have been disposed of.

Subp. 6 and 7. [Renumber as 7 and 8, respectively.]

24. ~~Subp. 8. RELATED ACTIONS. When two or more projects are related actions, their cumulative potential effect on the environment shall be considered in determining whether an EIS is required.~~

Subp. 9. CONNECTED ACTIONS AND PHASED ACTIONS. Connected actions and phased actions shall be considered a single project for purposes of the determination of the need for an EIS.

~~In phased actions where it is not possible to adequately address all the phases at the time of the initial EIS, a supplemental EIS shall be completed prior to approval and construction of each subsequent phase. The supplemental EIS shall address the impacts associated with the particular phase that were not addressed in the initial EIS.~~

~~For proposed projects such as highways, streets, pipelines, utility lines, or systems where the proposed project is related to a large existing or planned network, for which a governmental unit has determined environmental review is needed, the RGU shall treat the present proposal as the total proposal or select only some of the future elements for present consideration in the threshold determination and EIS. These selections shall be logical in relation to the design of the total system or network. They shall not be made merely to divide a large system into exempted segments.~~

Subpart 8 is proposed to be deleted because the term "related actions" is being eliminated from the rules. The reasons for this are discussed in part 4410.0200 at the definitions of "connected actions" and "related action." The requirement to consider closely related actions having cumulative impacts will picked up in subpart 9.

In the first paragraph of subpart 9 it is proposed to add that "connected actions" must be considered in determining the need for an EIS in the same manner as "phased actions" are considered. This is part of the effort to rationalize the rules' treatment of projects which are legitimately parts of a larger whole.

The two paragraphs indicated for deletion are proposed to be moved to two more logical places in the rules: part 4410.1000, subpart 4 and part 4410.2000, subpart 4. The reader should refer to those sections for a discussion of the rationale for this change.

25. 4410.2000. Projects requiring an EIS.
[All new material]
Subp. 4. CONNECTED ACTIONS AND PHASED ACTIONS. Multiple projects and multiple stages of a single project which are connected actions pursuant to part 4410.0200, subpart or phased actions pursuant to part 4410.0200, subpart 60 shall be considered in total when determining the need for an EIS and in preparing the EIS.

In connected actions and phased actions where it is not possible to adequately address all the project components or stages at the time of the initial EIS, a supplemental EIS shall be completed prior to approval and construction of each subsequent project component or stage. The supplemental EIS shall address the impacts associated with the particular project component or stage that were not addressed in the initial EIS.

For proposed project such as highways, streets, pipelines, utility lines, or systems where the proposed project is related to a large existing or planned network, for which a governmental unit has determined environmental review is needed, the RGU shall treat the present proposal as the total proposal or select only some of the future elements for present consideration in the threshold determination and EIS. These selections shall be logical in relation to the design of the total system or network. They shall not be made merely to divide a large system into exempted segments.

When review of the total of a project is separated under this subpart, the components or stages addressed in each EIS or supplement must include at least all components or stages for which permits or approvals are being sought from the RGU or other governmental units.

This proposed new subpart is analogous to the new part 4410.1000, subpart 4, except that this subpart deals with EISs. The reasons for the addition of this subpart are the same as for part 4410.1000, subpart 4.

[All new material.] Subp. 5. RELATED ACTIONS EIS. An RGU may prepare a single EIS for independent projects with potential cumulative environmental impacts on the same geographic area if the RGU determines that review can be accomplished in a more effective or efficient manner through a related actions EIS. A project shall not be included in a related actions EIS if its inclusion would unreasonably delay review of the project compared to review of the project through an independent EIS.

This subpart is intended as further guidance to RGUs about how to treat multiple projects for purposes of preparing an EIS. In this case, the projects dealt with would be projects in geographic proximity, each of which requires an EIS, but which are independent projects (i.e., not either connected actions or phased actions). In some cases, it may be preferable from an efficiency standpoint to cover all the projects in one EIS. This subpart would specifically authorize the RGU to do this. However, the language would preclude making any project subject to combined review if doing so would unreasonably delay the review of the project when compared to the anticipated length of time review would otherwise have taken.

It should be noted that the caption for this subpart, "related actions EIS," uses the term "related actions," which is proposed for deletion as a defined term under these rules (see part 4410.0200). However, "related actions EIS" is a term which has historically been used for EISs covering geographically-related projects, and it seems appropriate to continue its use for this concept, rather than coining a new and unfamiliar term.

4410.2100. EIS SCOPING

26. Subp. 2. EAW AS SCOPING DOCUMENT; DRAFT SCOPING DECISION DOCUMENT. All projects requiring an EIS must have an EAW filed with the RGU. The EAW shall be the basis for the scoping process.

For projects which fall within a mandatory EIS category or if a voluntary EIS is planned, the EAW will be used solely as a scoping document. For such projects the RGU shall prepare and circulate with the EAW a draft scoping decision document that addresses the contents specified by subpart 6 to the extent that information is already available. The purpose of the draft scoping decision document is to facilitate the delineation of issues and analyses to be contained in the EIS. The information in a draft scoping decision document shall be considered as preliminary and subject to revision based on the entire record of the scoping process.

If the need for an EIS has not been determined the EAW will have two functions:
A. to identify the need for preparing an EIS pursuant to part 4410.1700; and
B. to intiate discussion concerning the scope of the EIS if an EIS is ordered pursuant to part 4410.1700.

The new language in paragraph two would make mandatory a practice which is optional under the present rules: providing a draft scoping decision document along with the scoping EAW. RGUs which have used draft scoping decisions generally agree that its use can improve the effectiveness of scoping, and therefore it seems appropriate to make its use mandatory for all EISs. The draft scoping decision helps primarily in focusing discussion about the issues to be addressed in the EIS and the nature of the studies proposed to be used. Such information is not necessarily well-disclosed by use of the scoping EAW document alone, because that document is primarily intended for use in determining if an EIS is needed, not how it is to be done.

The second and third sentences are included to make it as clear as possible that the material in the draft document is preliminary and that should an RGU change the proposed scope in a way that opponents of the project do not like, the mere fact that the draft document contained certain information cannot be used as justification of why it should be in the final.

27. [All new material] Subp. 11. MODIFICATION OF PROJECT; TERMINATION OF EIS PROCESS. After initiation of scoping for an EIS, if the proposed project is modified so that an EIS is no longer mandatory, or the reasons for ordering an EIS no longer apply, the RGU may terminate the EIS process through the procedures of this subpart.

The RGU shall send written notice of its intent to terminate the EIS to all persons who submitted comments on the EIS scope and to all persons on the EAW distribution list under part 4410.1500. The notice shall summarize the reasons for the intended termination of the EIS, identify a contact person to whom comments may be sent, and announce the end of the comment period. The EQB staff shall publish notice in the EQB Monitor, and a press release shall be supplied by the RGU to at least one newspaper of general circulation in the area of the project.

A period of not less than 30 days from the date of publication of the notice in the EQB Monitor shall be provided for interested persons to comment on the need for an EIS on the modified project. The RGU shall determine the need for an EIS on the modified project in accordance with part 4410.1700.

This new subpart has been proposed at the request of MnDOT which has experienced a number of situations where it would apply. The purpose of the subpart is to prescribe a standard procedure for abandoning an EIS process after it has started if the project should be downscaled to the point that an EIS is no longer required. The process would basically consist of notice to the EAW distribution list that the EIS would be terminated, a 30-day period to receive any comments, and a decision on the need for an EIS via the same process as would normally be used for an EAW.

4410.2800. Final EIS adequacy determinations.

28. [All new material] Subp. 1a. DECISION BY EQB; INFORMATION NEEDS. If the EQB will be determining the adequacy of the EIS, the RGU shall submit to the EQB the following information within five days of the filing of the final EIS:
A. evidence of compliance with distribution requirements for the scoping EAW, draft EIS, and final EIS;
B. copies of press releases giving notice of EIS scoping, the EIS preparation notice, the draft EIS, and the final EIS, and evidence of submission of each in accordance with the applicable requirements of the rules;
C. copies of all written comments received during the scoping period;
D. a transcript, minutes, or summary of the public scoping meeting;
E. a copy of the scoping decision document;
F. a transcript, minutes, or summary of the public meeting on the draft EIS; and
G. copies of any comments the RGU has received on the final EIS that have not also been supplied to the EQB.

This proposed new subpart would establish by rule the information which the EQB must receive from an RGU in order to determine the adequacy of an EIS. The content is the same as the EQB has required for several years, but which heretofore was not part of the rules.

29. Subp. ~~2~~3. WRITTEN COMMENTS. Interested persons may submit written comments on the adequacy of the final EIS to the RGU or EQB, if applicable, ~~at any time prior to the final determination of adequacy~~ for a period of not less than ten days following publication in the EQB Monitor of the notice of availability of the final EIS. The notice of availability of the final EIS must indicate when the comment period expires.

This change is needed to avoid conflicts with the operating rules of certain units of government which require comments on matters to be received a certain period of time in advance of the meeting at which action will be taken (e.g., the EQB operating rules require all written materials to be filed 7 calendar days in advance of a Board meeting). Under this change, the public would retain the right to review and submit comments for at least ten working days; however, the RGU or EQB could terminate the review period at the required number of days in advance of the date of decision to comply with its own operating rules.

30. 4410.3000 ~~SUPPLEMENTAL~~ SUPPLEMENTING AN EIS

It is proposed to overhaul the entire treatment of supplements to an EIS. Rather surprisingly, until about two years ago, little attention had ever been paid to this section of the rules. However, since that time a number of examples have demonstrated that the existing rules are deficient in this area. These amendments are proposed to correct the noted problems.

Subparts 1 to 4. [Delete entirely.]

[All new material]
Subpart 1. APPLICABILITY. An RGU shall supplement an EIS by preparing a supplemental EIS document in accordance with this part.

Subp. 2. EIS ADDENDUM. An RGU may make minor revisions to a final EIS by use of an EIS addendum. An EIS addendum may not be used to make revisions required under subpart 3. The addendum shall be distributed to the EQB, to any person who received the final EIS document, and to any other person upon written request. The EQB shall publish notice of the availability of the addendum in the EQB Monitor.

It is proposed that a new type of EIS-revising document be recognized: the EIS addendum. It would be used to make minor, non-controversial, non-issue oriented changes in the final EIS. Examples would be corrections to data, additions of missing figures, clarifications of confusing language etc. The procedure would be to simply mail copies to interested persons, and to place a notice of availability in the EQB Monitor.

[All new material.] Subp. 3. Supplement to an EIS. An RGU shall prepare a supplement to an EIS under any of the following circumstances:

A. whenever after a final EIS has been determined adequate, but before the project becomes exempt pursuant to part 4410.4600, subpart 2, items B or D, the RGU determines that either:

(1) substantial changes have been made in the proposed project that affect the potential significant adverse environmental effects of the project; or

(2) there is substantial new information or new circumstances that significantly affect the potential environmental effects from the proposed project that have not been considered in the final EIS or that significantly affect the availability of prudent and feasible alternatives with lesser environmental effects;

B. whenever an EIS has been prepared for an ongoing governmental action and the RGU determines that the conditions of item A, subitem (1) or (2) are met with respect to the action; or

C. whenever an EIS has been prepared for one or more phases of a phased action or one or more components of a connected action and a later phase or another component is proposed for approval or implementation which was not evaluated in the initial EIS.

Subpart 3 identifies the conditions under which a complete supplement to an EIS would be needed. The conditions of item A are identical to those of the existing rules. Items B and C are proposed to be added to cover two circumstances which are not addressed in the existing rules: (1) when the project is actually an on-going action or program; and (2) when the project is a subpart of a larger project. The only supplemental EIS prepared in recent years was a supplement to a former EIS covering the ongoing program of the Metropolitan Mosquito Control District.

[All new material.] Subp. 4. REQUEST FOR SUPPLEMENT TO AN EIS. Any person may request preparation of a supplement to an EIS by submitting a written request to the RGU containing material evidence that a supplement is required under subpart 3. A copy of the request must be sent to the EQB. The RGU shall make a decision on the need for a supplement within 30 days of receipt of the request, and shall notify the requesting person and the EQB staff of its decision within 5 days. If the RGU denies the request, the notice must explain the basis for its decision and respond to the issues raised by the requesting person. If the RGU orders a supplement, its basis for the decision shall be incorporated into the supplement preparation notice.

Subpart 4 is proposed in order to prescribe a standard procedure by which interested parties may ask for a supplement to an EIS. The present rule is silent about such procedures. The process proposed would establish the form of such a request, a definite timeframe for the RGU responding to a request, and the form of the RGU's response and notification of interested persons.

Subpart 5 sets forth the procedural requirements for preparing a supplement to an EIS. The proposed process is essentially that of the regular EIS process with a streamlined scoping process and review periods. The supplemental EIS process thus retains the fundamental features of the EIS process, including public scrutiny, but is modified to take less time.

[All new material.] Subp. 5. PROCEDURE FOR PREPARING A SUPPLEMENT TO AN EIS. A supplement to an EIS shall be prepared, circulated, and reviewed according to the procedures in items A to E:

A. The scope of a supplement to an EIS must be limited to impacts, alternatives and mitigation measures not addressed or inadequately addressed in the final EIS. The RGU shall adopt a scope for the supplement as part of the preparation notice. The RGU may consult with any person in order to obtain information relevant to the scoping of a supplement, and may hold public meetings to obtain such information. Reasonable notice must be given of any such meetings. All meetings must be open to the public.

The major difference between the existing supplemental EIS process and the proposed process is in scoping. Although the present rules are somewhat ambiguous about the role of scoping in supplementing an EIS, the EQB staff interpretation is that a supplement must generally be prepared by use of the regular EIS process, including a 30-day scoping period and distribution of a scoping EAW document. The proposed amendment would abbreviate the scoping procedure in view of the fact that the decision to do a supplement to an EIS is inherently a scoping decsion in that it is based on specific issues requiring certain changes or additions to the analysis in the final EIS. It is logical to simply extend the decision on the need for the supplement somewhat to include the scope of the intended review, and to provide notice of the scope as an integral part of the supplement preparation notice. Item A would allow the RGU to consult with interested persons and to hold public meetings if it believes this would be advantageous in developing the scope.

[All new material.] B. The RGU shall adopt and distribute a notice of the preparation of the supplement to the EIS. The notice must contain:

(1) the title of the EIS being supplemented and its approximate date of completion;

(2) a brief description of the situation necessitating the preparation of the supplement, including a description of how the changes in the proposed project or new information may affect the potential significant environmental effects from the project or the availability of prudent and feasible alternatives;

(3) the scope of the supplement including issues to be analyzed, alternatives to be examined, and studies to be undertaken; and

(4) the proposed time schedule for the preparation of the supplement.

The preparation notice must be distributed to all persons who received the final EIS, to all persons who requested the supplement be prepared, and to all persons on the EAW distribution list under part 4410.1500. The EQB shall publish a summary of the preparation notice in the EQB Monitor.

If, within 20 days of publication of the preparation notice in the EQB Monitor, any person submits written comments to the RGU objecting to the scope of the supplement, the RGU shall give due consideration to modifying its scope based on the comments. The RGU shall include in the draft supplement document a copy of any timely comments received objecting to the scope and its response to the comments.

Item B sets forth the proposed requirements for the notice of preparation of the supplement. The contents would include identification of the original EIS which is now being supplemented, the scope of the supplemental analysis, the proposed time schedule, and an explanation of the why the supplement is necessary. This last content item is intended to serve as the written record of the decision on the need for the supplement, so that a separate document is not needed.

The preparation notice is to be sent to anyone who requested that the supplement be prepared, all persons on the EQB's EAW distribution list and also to anyone else who had received the final EIS.

The final paragraph of item B prescribes a procedure by which interested persons may challenge the scope of the supplement proposed by the RGU. This procedure allows a 20-day review period following notice of the supplement preparation in the EQB Monitor for objections to the scope to be raised. In order to minimize paperwork in the supplemental EIS process, the RGU's written response to any such objections would be included in the draft supplement document rather than as a separate document.

[All new material.] C. The RGU shall prepare a draft supplement for the purposes of receiving public comments. The draft document must conform to the requirements of parts 4410.2300, items D to J, 4410.2400, and 4410.2500. The draft supplement must be distributed and reviewed in accordance with part 4410.2600, subps. 2 to 10, except that the informational meeting must be held not less than 10 days after publication of notice in the EQB Monitor.

Item C explains the procedure for preparing and distributing for review a draft supplement document. The requirements for content and procedure would be similar to that for a draft regular EIS, but modified to better suit the circumstances of preparing a supplement to an EIS. The items of part 4410.2300 not required (i.e., A to C) are the cover sheet, summary and table of contents of an EIS. These are unnecessary in the shorter, less complex supplement document. The other modification is that 10 working days notice rather than 15 working days notice would be required for the public meeting.

[All new material.] D. The RGU shall prepare and distribute a final supplement to an EIS in accordance with part 4410.2700.

[All new material.] E. The determination of adequacy of the final supplement to an EIS must be made in accordance with part 4410.2800.

Items D and E deal with the preparation of the finalized supplement document and the determination of its adequacy. It is proposed that these actions be done in the same manner as is done for a regular EIS. It should be noticed that this includes the provision (at part 4410.2800, subpart 1) that the EQB may assume responsibility for the adequacy decision under appropriate circumstances.

[All new material.] Subp. 6. TIME LIMIT FOR SUPPLEMENT TO AN EIS. A determination of the adequacy of a supplement to an EIS must be made within 120 days of the order for preparation of the supplement, unless the time is extended by the consent of the proposer and RGU or by the governor for good cause.

It is proposed that the 120 day timeframe for preparation of a supplement to an EIS in the existing rules be maintained. This number appears to be a reasonable estimate of the timeframe for doing a supplement.

[All new material.] Subp. 7. TREATMENT OF EXPANSIONS OF A PROJECT FOR WHICH AN EIS WAS PREPARED. Subsequent expansions of, or additions to, implemented projects for which an EIS was prepared must be treated as independent projects for the determination of the need for environmental review and must be reviewed in accordance with parts 4410.1000 to 4410.2800 rather than according to this part, unless the expansion or addition is part of a phased action or connected action requiring review under subpart 3, item C. Tiering of information from the original EIS may be used to minimize duplication of paperwork, provided that the original EIS document is reasonably available for public and agency review.

Subpart 7 is intended to provide clear guidance for distinguishing when future actions related to a project for which an EIS was prepared should be reviewed through a supplement to that EIS from when the future actions should be reviewed independently of the former EIS. The distinction is based on whether the future action is related to the original project as a connented action or phased action. (Further information on the meaning of these terms can be found at the sections on parts 4410.0200 and 4410.1000.) The final sentence provides that regardless of whether reviewed independently or through a supplement, the environmental documents for the future action may "tier" (i.e., incorporate by reference) any relevant information from the prior EIS if that document is still reasonably available for public review.

31. 4410.3100. Prohibitions on approvals and construction.

Subparts 1 to 3. [Delete.]

[All new material.] **Subpart 1. PROHIBITIONS. If an EAW or EIS is required for a governmental action under parts 4410.0200 to 4410.7800, or if a petition for an EAW is filed under part 4410.1100, a project may not be started and a final governmental decision may not be made to grant a permit, approve a project, or begin a project, until:**
A. a petition for an EAW is dismissed;
B. a negative declaration on the need for an EIS is issued;
C. an EIS is determined adequate; or
D. a variance is granted under subparts 3 to 7 or the action is an emergency under subpart 8.

The purpose of this amendment is to improve the clarity of the section on prohibitions, and to introduce language into the rules which parallels that of the statutes regarding prohibitions on construction and final governmental approvals until environmental review has been completed. These is no intent to alter the meaning of the prohibitions.

The 1988 Legislature revised Minn. Stat. ch. 116D.04 which establishes the environmental review program. One of the changes was the addition of explicit language prohibiting construction and governmental approvals, which had formerly been implicit, but not explicit, in the statute. The EQB had proposed that language identical to existing rules be added, however, the Legislature adopted different language which it believed was more to the point. The proposed rule amendment would substitute the statutory wording into the rules.

[All new material.] **Subp. 2. PUBLIC PROJECTS, PROHIBITIONS. If a project subject to review under parts 4410.0200 to 4410.7800 is proposed to be carried out or sponsored by a governmental unit, the governmental unit shall not take any action with respect to the project, including the acquisition of property, if the action will prejudice the ultimate decision on the project until a petition has been dismissed, a negative declaration has been issued, or until the EIS has been determined adequate, unless the project is an emergency under subpart 8 or a variance is granted under subparts 3 to 7. An action prejudices the ultimate decision on a project if it tends to determine subsequent development or to limit alternatives or mitigative measures.**

Subps. 4 to 9. [Renumber.]

The change at subpart 2 is needed to clarify prohibited actions by public project proposers. The need for additional guidance on this matter came to light in consideration of a variance request by a public proposer to demolish houses on the site proposed for a project. In this case it became clear that the rules did not give adequate guidance about whether public proposers can acquire property needed for a project prior to completion of review.

The language proposed for addition has been adapted from regulations of the U.S. Dept. of Housing and Urban Development. As an agency which frequently funds redevelopment projects, HUD has substantial experience in the coordination of federal environmental review with development actions. The basic principle contained in this language is that the proposer cannot take any action which prejudices the ultimate decision until environmental review has been completed. This is reasonable because the purpose of the review is to inform the decisions about the project; to the extent than any prior action has prejudiced these decisions, the purpose of review has been subverted. Two ways in which an action may prejudice a decision are identified: (1) the action tends to determine that subsequent development will take place; or (2) the action tends to limit alternatives to the project or mitigation measures applicable to the project.

32. 4410.3110 (new part). Alternative Urban Areawide Review Process. [All new material.]

This amendment would add a new type of substitute review process to the rules. This process would review the environmental impacts of anticipated residential and commercial development in a particular geographic area and would substitute for EAWs or EISs which would otherwise be required for specific residential or commercial projects within that area. This process would only be applicable where the local unit of government had adopted a comprehensive plan which adequately addresses matters relevant to the environmental impacts of typical residential and commercial development.

This substitute review process was developed by a special work group formed by EQB to recommend improvements to the environmental review process for urban and suburban development. The work group strongly agreed that an areawide approach to review would be advantageous from several perspectives. Environmental review would be more comprehensive, because all of an area would be included not merely the parcels large enough to exceed mandatory thresholds by themselves. Because review under this process could occur earlier in the process of planning development, it could have a greater influence on the design of the development and help avoid certain potential impacts altogether rather than only mitigating them. Local communities would be better able to integrate environmental review into their planning, and look at the "big picture" in their environmental review. Project proposers would benefit from having environmental review completed in advance of their projects, thus avoiding a potential source of delay. Overall, review would be more efficient by eliminating the need to prepare and review multiple environmental documents for projects in the area.

[All new material.] **Subpart 1. APPLICABILITY. A local unit of government may use the procedures of this part instead of the procedures of parts 4410.1100 to 4410.1700 and 4410.2100 to 4410.3000 to review anticipated residential and commercial development in a particular geographic area within its jurisdiction, if the local unit has adopted a comprehensive plan which includes at least the elements in items A to C:**

A. A land use plan designating the existing and proposed location, intensity and extent of use of land and water for residential, commercial, industrial, agricultural, and other public and private purposes.

B. A public facilities plan describing the character, location, timing, sequence, function, use and capacity of existing and future public facilities of the local governmental unit. The public facilities plan must include at least the following parts:

(1) 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; and
(2) a sewage collection system policy plan describing, designating, and scheduling the areas to be served by the public system, the 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.

C. An implementation program describing public programs, fiscal devices, and other actions to be undertaken to implement the comprehensive plan. The implementation plan must include a description of official controls addressing the matters of zoning, subdivision, and private sewage treatment systems, a schedule for the implementation of such controls, and a capital improvements program for public facilities.

A local governmental unit which has an adopted comprehensive plan that lacks any of the elements required by this subpart may qualify for the use of the procedures of this part upon a demonstration to the EQB chair that the lacking elements would have no substantial effect on purpose of or outcomes of the environmental review and upon receiving authorization from the EQB chair to use these procedures.

Subpart 1 sets forth the requirements for the content of a comprehensive plan which would qualify the local governmental unit to use the proposed substitute process. The required content was adapted from the requirements of Minn. Stat. section 473.859, which governs the preparation of comprehensive plans for cities in the Metropolitan Area. In addition to a land use plan, subpart 1 would require a qualifying plan to include elements addressing transportation systems, sewage systems, and an implementation program including official controls and a capital improvements program for public facilities. These elements are the minimum necessary to assure the the comprehensive planning process has adequately addressed basic questions of growth management and established mechanisms to manage future growth without serious environmental or social disruption. Without this level of prior planning, it is doubtful that a community could adequately forecast future development within a candidate area for review under this substitute process, or be able to adequately implement the mitigation plan which must be developed.

The final paragraph of subpart 1 is included as a reflection of the fact that Minnesota currently has no overall guidance for comprehensive plans. Communities in Greater Minnesota may have effective comprehensive plans which deviate somewhat from the standards inmposed on Metropolitan Area communities by Minn. Stat. section 473.859. In the event that a community has adopted a comprehensive plan which it believes meets the intent of subpart 1 but deviates from the exact requirements, the proposed rule would allow that community to receive authorization to use the substitute review process if it demonstrates to the EQB chair that the deviation between its plan and the specific requirements of subpart 1 would not affect the review.

[All new material.]
Subp. 2. RELATIONSHIP TO SPECIFIC DEVELOPMENT PROJECTS. Upon completion of review under this part, residential and commercial development projects within the boundaries established under subpart 3 that are consistent with development assumptions established under subpart 3 are exempt from review under parts 4410.1100 to 4410.1700 and 4410.2100 to 4410.3000 as long as the approval and construction of the project complies with the conditions of the plan for mitigation developed pursuant to subpart 5.

If a specific residential or commercial project, that is subject to an EAW or EIS, is proposed within the boundaries of an area for which an alternative review under this part is planned but has not yet been completed, the RGU may, at its discretion, review the specific project either through the alternative areawide review procedures or through the EAW or EIS procedures. If the project is reviewed through the alternative areawide review procedures, at least one set of development assumptions used in the process must be consistent with the proposed project, and the project must incorporate the applicable mitigation measures developed through the process.

The prohibitions of part 4410.3100, subparts 1 and 2 apply to all projects for which review under this part substitutes for review under parts 4410.1100 to 4410.1700 or 4410.2100 to 4410.3000. These prohibitions terminate upon the adoption by the RGU of the environmental analysis document and plan for mitigation under subpart 5.

Subpart 2 explains how use of the substitute process would relate to specific projects within the area. Paragraph one defines the conditions under which the substitute process would substitute for any EAWs or EISs which would otherwise be required. There would be two basic conditions: (1) the project must be consistent with assumptions made for development in the review; and (2) the project must be approved and implemented in compliance with the terms of the mitigation plan developed through the review. Any project which did not comply with either condition would forfeit its exempt status and be subject to the regular review process.

Paragraph 2 explains how a specific project which was proposed for approval about the time that the substitute review process was initiated would be handled. The proposed rule would allow the RGU the flexibility to either review the project independently through a regular EAW or EIS or to roll it into the areawide review process. In the latter case, at least one set of development assumptions would have to be consistent with the specific project, and the project would have to conform to the mitigation plan to retain its exempt status. Paragraph 3 indicates that if a specific project is covered through the substitute review process, the prohibitions on final approvals and on construction which apply to projects subject to the environmental review program would apply to the project until the process had been completed.

[All new material.] Subp. 3. ORDER FOR REVIEW; GEOGRAPHIC AREA DESIGNATION AND SPECIFICATION OF DEVELOPMENT. The RGU shall adopt an order for each review under this part that specifies the boundaries of the geographic area within which the review will apply and specify the anticipated nature, location, and intensity of residential and commercial development within those boundaries. The RGU may specify more than one scenario of anticipated development provided that at least one scenario is consistent with the adopted comprehensive plan. At least one scenario must be consistent with any known development plans of property owners within the area. The RGU may delineate subareas within the area, as appropriate to facilitate planning and review of future development, and allocate the overall anticipated development among the subareas.

Subpart 3 sets forth the requirements for the initiation of review under this substitute process. To use the process, the RGU must adopt an order which defines the boundaries of the geographic area to be covered and the anticipated residential and commercial development within the area. Because a range of development could generally be approvable in a given area, the process would allow the RGU to define several sets of development assumptions or scenarios for analysis in the review. Subpart 3 requires that at least one scenario be consistent with the comprehensive plan and one be consistent with any known plans for specific developments within the area.

Subpart 3 allows the RGU to subdivide the area under review into parts and to allocate specific fractions of the overall anticipated development among the sections. This would allow for greater specificity regarding development and potential impacts.

[All new material.] Subp. 4. ENVIRONMENTAL ANALYSIS DOCUMENT; FORM AND CONTENT. The EQB chair shall develop a standard list of content and format for the environmental analysis document to be used for review under this part. The standard content and format must be similar to that of the EAW, but must provide for a level of analysis comparable to that of an EIS for impacts typical of urban residential and commercial development. The standard content and format must provide for a certification by the RGU that the comprehensive plan requirements of subpart 1 are met. The EQB chair shall periodically review the standard content and format and make revisions to improve its utility.

The intent of subpart 4 is to assure a uniform level of analysis for all reviews prepared under this substitute procedure. The EQB chair would be directed to develop a standardized list of content for the reviews and a standardized format for presenting the content. The content is to be similar to that required for an EAW, but modified to achieve a greater level of analysis -- comparable to that in an EIS -- for impacts typically important for urban-type development. Examples would include: traffic and related air quality and noise analyses, wildlife habitat impairment, and stormwater runoff mangement. A copy of a preliminary set of standard content requirements recommended to EQB by the Urbanizing Areas Work Group is attached as Appendix 1.

Subpart 4 directs that the standard content and format include a certification by the RGU that it does indeed have in effect a comprehensive plan meeting the requirements of subpart 1.

The EQB chair is directed to periodically review and update the standard content and format to assure that review is as effective and efficient as it can be made.

[All new material.] Subp. 5. PROCEDURES FOR REVIEW. The procedures in items A to H shall be used for review under this part:

A. The RGU shall prepare a draft environmental analysis document addressing each of the development scenarios selected under subpart 2 using the standard content and format provided by the EQB under subpart 4. The draft document must be distributed and noticed in accordance with part 4410.1500.

B. Reviewers shall have 30 days from the date of notice of availability of the draft environmental analysis in the EQB Monitor to submit written comments to the RGU. Reviewers that are governmental units shall be granted a 15-day extension by the RGU upon a written request for good cause. A copy of the request shall be sent to EQB.

Comments must address the accuracy and completeness of the information provided in the draft analysis, potential impacts that warrant further analysis, further information that may be required in order to secure permits for specific projects in the future, and mitigation measures or procedures necessary to prevent significant environmental impacts within the area when actual development occurs.

Governmental units shall also state in their comments whether or not they wish to be notified by the RGU upon receipt of applications for specific development projects within the area.

C. The RGU shall revise the environmental analysis document based on comments received during the comment period. The RGU shall include in the document a section specifically responding to each timely, substantive comment received that indicates in what way the comment has been addressed. If the RGU believes a request for additional analysis is unreasonable, it may consult with the EQB chair prior to responding to the comment.

The RGU shall include in the document a plan for mitigation specifying the mitigation measures which will be imposed upon future development within the area in order to avoid or mitigate potential environmental impacts. The plan shall contain a description of how each mitigation measure will be implemented, including a description of the involvement of other agencies, if appropriate.

D. The RGU shall distribute the revised environmental analysis document in the same manner as the draft document and also to any other all persons who commented on the draft document and to the EQB staff. State agencies and the Metropolitan Council of the Twin Cities must have ten days from the date of receipt of the revised document to file an objection to the document with the RGU. A copy of the letter of objection must be filed with the EQB staff. An objection may be filed only if the agency filing the objection has evidence that the revised document contains inaccurate or incomplete information relevant to the identification and mitigation of potentially significant environmental impacts or that the proposed plan for mitigation will be inadequate to prevent potentially significant environmental impacts from occurring.

E. Unless an objection is filed in accordance with item D, the RGU shall adopt the revised environmental analysis document and the plan for mitigation at its first regularly scheduled meeting held 15 or more days after the distribution of the revised document. The RGU shall submit evidence of the adoption of the document and plan for mitigation to the EQB staff and all agencies which have stated that they wish to be informed of any future projects within the area as part of their comments on the draft environmental analysis document. The EQB shall publish a notice of the adoption of the documents and the completion of the review process in the EQB Monitor.

Upon adoption of the environmental analysis document and the plan for mitigation, residential and commercial projects within the area that are consistent with the assumptions of the document and that comply with the plan for mitigation are exempt from review under parts 4410.1100 to 4410.1700 and 4410.2100 to 4410.2800.

F. If an objection is filed with the RGU in accordance with item D, within five days of receipt of the objection the RGU shall consult with the objecting agency about the issues raised in the objection and shall advise the EQB staff of its proposed response to the objection. At the request of the RGU, the objecting agency, the EQB staff, and any other affected agency shall meet with the RGU as soon as practicable to attempt to resolve the issues raised in the objection.

Within 30 days after receipt of the objection the RGU shall submit a written response to the objecting agency and the EQB chair. The response shall address each of the issues raised in the objection. The RGU may address an issue by either revising the environmental analysis document or plan for mitigation, or by explaining why it believes that the issue is not relevant to the identification and mitigation of potentially significant environmental impacts.

G. Within five days of receipt of the RGU's response to the objection, the objecting agency must advise the EQB chair of whether it accepts the response and withdraws its objection or continues to object. If the objecting agency continues to object, the EQB chair shall place the matter on the agenda of the next regularly scheduled EQB meeting or of a special meeting.

H. If the matter is referred to the EQB pursuant to item G, the EQB shall determine whether the environmental analysis document and plan for mitigation is adequate, conditionally adequate, or inadequate. If the EQB finds the documents conditionally adequate or inadequate the EQB shall specify the revisions necessary for adequacy. The EQB shall only find the documents inadequate if it determines that they contain inaccurate or incomplete information necessary to the identification and mitigation of potentially significant environmental impacts or that the proposed plan for mitigation will be inadequate to prevent the occurence of potentially significant environmental impacts.

If the EQB finds the documents adequate or conditionally adequate the RGU shall adopt the documents under item E. If the documents were found conditionally adequate by the EQB, the RGU shall first revise the documents as directed by the EQB. If the EQB finds the documents inadequate, the RGU shall have 30 days to revise and circulate them for review in accordance with items D to H.

Subpart 5 sets forth the proposed procedures for the areawide review process. Items A and B specify the procedures for preparation and review of a draft environmental analysis document using the standard content and format developed by EQB. The distribution of the draft document for review would be the same as is used for the regular EAW process under part 4410.1500. The comment period would be set at 30 days, but in the event that a governmental unit cannot complete the review in 30 days it may automatically receive a 15 day extension from the RGU upon a written request explaining its reasons. It is anticipated that in some cases these reviews may be considerably more involved than review of a regular EAW, and 30 days may not provide adequate time. Rather than set a longer period, such as 45 days for all reviews, it was decided to include an automatic time extension of 15 days to governmental units for good cause. Commenters are directed to supply similar information to the RGU as for the EAW process, except greater emphasis is put on identification of mitigation measures and procedures to aid the RGU in developing the required mitigation plan. Commenters must also inform the RGU in these comments of whether they wish to be included in future notifications about actual development projects within the area.

Item C deals with completion of the finalized environmental analysis document and the accompanying plan for mitigation. In preparing the final document, the RGU must respond to each timely and substantive comment received on the draft, and must include a section in the final document indicating its responses. This process is analogous to the procedure for responding to comments on a draft EIS in the final EIS.

Because it is anticipated that there may be differences of opinion about the level of analysis required in these reviews, at least in the initial stages of use, item C includes a provision allowing the RGU to consult with the EQB chair prior to responding to a comment if the RGU believes the comment asks for an unnecessary level of analysis. It is believed that this procedure would help minimize objections under item D and allow for more expeditious completion of the process.

The plan for mitigation called for is perhaps the key part of the entire substitute review process. It is the blueprint for avoidance and minimization of environmental impacts in the area reviewed from the future development projects. Since many of these will not yet be known when the review is completed, it is essential to have a well-established written guide to the mitigation measures identified in the review so that these can be applied to the actual projects at a later date. It should be noted that the plan for mitigation is more than a list of mitigation measures: it can include procedures and guidance for the imposition of these mitigation measures, including a description of how other agencies will be involved. For example, if wildlife habitat areas were within the area of review, the mitigation plan could include a process for discussions between the RGU, developers, and the DNR at the time of application for a specific project through which the DNR could recommend specific measures to minimize habitat loss.

Items D through H prescribe a procedure for resolving disputes between the RGU and reviewing agencies about the adequacy of the finalized review and the plan for mitigation. This process is included in this substitute review for the following reasons: (1) this form of review is new and at least initially there may be considerable differences of opinion about the level of analysis and mitigation expected; (2) the geographic area covered by these reviews may be large, and potential impacts may be considerable, necessitating that review be done well; and (3) review under this substitute process may be substituting for one or more EISs, for which the EQB would have had the option of determining the adequacy. The EQB is assigned authority to determine if the review has been adequately done under the objection process.

State agencies and the Metropolitan Council would be able to object to the final document and plan for mitigation as prescribed in item D. The process proposed for resolving the dispute has two stages. In the first, the objector and RGU would discuss the points of contention and could involve the EQB staff and other relevant agencies' staffs in these discussions. At the end of this stage the RGU would respond in writing to the objections, either revising the documents or explaining why no changes are necessary in its opinion. If the objector is satisfied at this point, the objection process would end. However, if the objector is still not satisfied, the matter would be referred to the EQB which would determine if changes were needed or if the analyses and mitigation plan are adequate.

If no objections are filed, or after any objection has been resolved, in accordance with item E the RGU would adopt the environmental analysis document and the plan for mitigation. Later, when actual projects are proposed, the RGU would screen them for consistency with the assumptions of the analysis and would impose the mitigation measures or procedures in the plan for mitigation. Consistency with the assumptions and mitigation would qualify the projects for exemption from normal review requirements.

[All new material.] Subp. 6 TIME LIMITS. Unless an objection is filed under subpart 5, item D, the RGU shall adopt the environmental analysis document and plan for mitigation no later than at its first meeting held more than 120 days after the date on which the RGU ordered review under this part. The time limit may be extended upon the agreement of all proposers whose project schedules are affected by the review.

Subpart 6 would set the timeframe for review under this substitute process at 120 days, as measured between the date of the order for review and the date on which the RGU adopts the analysis and plan for mitigation. Extension of time would be at the agreement of all proposers whose projects might be held up by a longer time period.

[All new material.] Subp. 7. UPDATING THE REVIEW. To remain valid as a substitute form of review, the environmental analysis document and the plan for mitigation must be revised if any of the circumstances in items A to H apply:

A. Five years have passed since the RGU adopted the original environmental analysis document and plan for mitigation or the latest revision. This item does not apply if all development within the area has been given final approval by the RGU.

B. A comprehensive plan amendment is proposed that would allow an increase in development over the levels assumed in the environmental analysis document.

C. Total development within the area would exceed the maximum levels assumed in the environmental analysis document.

D. Development within any subarea delineated in the environmental analysis document would exceed the maximum levels assumed for that subarea in the document.

E. A substantial change is proposed in public facilities intended to service development in the area that may result in increased adverse impacts on the environment.

F. Development or construction of public facilities will occur on a schedule other than that assumed in the environmental analysis document or plan for mitigation so as to substantially increase the liklihood or magnitude of potential adverse environmental impacts or to substantially postpone the implementation of identified mitigation measures.

G. New information demonstrates that important assumptions or background conditions used in the analysis presented in the environmental analysis document are substantially in error and that environmental impacts have consequantly been substantially underestimated. Or

H. The RGU determines that other substantial changes have occurred that may affect the potential for, or magnitude of, adverse environmental impacts.

The environmental analysis document and plan for mitigation must be revised by preparing, distributing and reviewing revised documents in accordance with subpart 5, items D through H, except that the documents must be distributed to all persons on the EAW distribution list under part 4410.1500. Persons not entitled to object to the documents pursuant to subpart 5, item D may submit comments to the RGU suggesting changes in the documents.

Subpart 7 deals with the circumstances under which an areawide review would need to be updated. This is a very important consideration for this form of review because of the fact that its effect is generally at a point in the future and not immediately after it has been completed. Therefore, it is important that the review be kept current with any changing circumstances. Subpart 7 lists seven specific changes which would trigger the need to revise the review and a general back-up provision to cover other circumstances which have not yet been identified. Item A proposes that the documents be updated at least every five years, simply to assure that the assumptions are still valid. Common to all the other circumstances which would require revisions is the idea that the assumptions on which the initial review was based are no longer valid for one reason or another. These changes could involve the developments themselves, the public infrastructure to serve it, the scheduling of either, or the background information on which the analysis depended.

Updating an analysis would be done simply by circulating a revised document and mitigation plan in the manner of subpart 5, except that the draft stage document would be eliminated.

[All new material.] Subpart 8. REPORT TO EQB. The EQB chair may ask the RGU to report on the status of actual development within the area, and on the status of implementation of the plan for mitigation. Upon request, the RGU shall report to the EQB chair within 30 days.

Subpart 8 would provide an explicit mechanism by which the EQB could "audit" how actual development compared to anticipated development in an area reviewed under this process and on the effectiveness of implementation of the mitigation plan. Its anticipated that questions may arise over whether RGU's have properly followed through after the review has been done, and this mechanism would provide a way for EQB to look into such questions.

33. 4410.3600, subp. 2. Alternative review; EQB adequacy decision authority

Subp. 2. EXEMPTION. If the EQB accepts a governmental unit's process as an adequate alternative review procedure, projects reviewed under that alternative review procedure shall be exempt from environmental review under parts 4410.1100 to 4410.1700, and 4410.2100 to 4410.3000 but the EQB retains its authority under part 4410.3000, subpart 1, to determine the adequacy of the environmental documents which substitute for the EIS in the approved process. On approval of the alternative review process, the EQB shall provide for periodic review of the alternative procedure to ensure continuing compliance with the requirements and intent of these environmental review procedures. The EQB shall withdraw its approval of an alternative review procedure if review of the procedure indicates that the procedure no longer fulfills the intent and requirements of the Minnesota Environmental Policy Act and parts 4410.0200 to 4410.7800. A project in the process of undergoing review under an approved alternative process shall not be affected by the EQB's withdrawal of approval.

The language proposed to be added here is intended to clarify whether the EQB retains authority to intervene to assume responsibility for the adequacy determination on an "EIS" prepared under an approved alternative review process. This issue has arisen in past cases of applications for approval of alternative review and needs further clarification in the rules. The proposed resolution of the issue is to explicitly state that EQB retains this authority. Because it is possible that future alternative review processes would not include an EIS (the two already approved to date include an EIS document meeting the content requirements of these rules), it is necessary to use the phrase "environmental review documents which substitute for the EIS in the approved process" rather than the term "final EIS." This is intended to apply only to the document(s) which contain the finalized analysis of impacts and alternatives, and not to other documents in the process which deal with other matters, such as scoping.

4410.3800. Generic EIS.

34. Subp. 2. ~~EQB AS~~ RGU. ~~If the EQB orders a generic EIS,~~ [T]he EQB ~~shall~~ may be the RGU for the generic EIS, or may designate another governmental unit to be the RGU, if that governmental unit consents to be the RGU. In determining which governmental unit should be the RGU for a generic EIS, the EQB shall consider the following factors with respect to each prospective RGU:

A. the nature and extent of the permit or approval authority;

B. expertise in the subject matter of the generic EIS, including the ability to address any complex issues;

C. available resources to complete the generic EIS; and

D. ability to provide an objective appraisal of potential impacts.

Whether the generic EIS is done by the EQB or another governmental unit, the document must be prepared using an interdisciplinary approach in accordance with part 4410.2200.

This proposed amendment would allow the another governmental unit to be the RGU for a generic EIS, in contrast to the present rule which allows only the EQB to be RGU for a generic EIS. This change is proposed because there may be types of projects for which a generic EIS is in order, but for which the EQB is not the best choice to be the RGU; the most likely circumstance would be a class of projects with complex technical issues for which the EQB staff lacks expertise but for which another agency -- perhaps PCA, DNR, or Health -- has the expertise.

It is proposed that the consent of the designee be required for the EQB to name another governmental unit as RGU, and that the EQB and the prospective designees consider the identified factors in deciding which unit ought to be the RGU. This consultation process is designed to ensure that the RGU indeed has the expertise, resources, and will to prepare the generic EIS.

The final paragraph is proposed to ensure that a generic EIS is subject to the same requirements for interdisciplinary preparation as a regular EIS.

35. Subp. 7. CONTENT. In addition to the content requirements specified in the scoping process, the generic EIS shall contain the following:
A to C. [Unchanged.]
D. if appropriate, a description of an alternative form of review that is proposed to be used to review specific projects whose impacts have been considered in the generic EIS. An alternative review proposal contained in a generic EIS must be approved by the EQB under part 4410.3600 prior to use.

The purpose of this proposed amendment is to explicitly provide that as part of a generic EIS the RGU may develop a proposed alternative form of review to be used as a follow-up to the generic EIS for specific projects. It is likely that in some cases the issues associated with specific projects would have been largely addressed in the generic EIS document, in which case the additional review needed for the projects could be accomplished is some more expeditious fashion than via an EIS -- perhaps through a modification of some permit processes -- without any loss of effectiveness. Any such proposed alternative review process would require approval by the EQB under part 4410.3600.

4410.4300. MANDATORY EAW CATEGORIES.

36. Subpart 1. THRESHOLD TEST. An EAW must be prepared for projects that meet or exceed the threshold of any of subparts 2 to ~~31~~ 34, unless the project meets or exceeds any threshold of part 4410.4400, in which case an EIS must be prepared.

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

This amendment is intended to emphasize to persons who are about to screen a project against the mandatory EAW categories that it is the whole of the project which is potentially subject to review. Although this directive appears elsewhere in the rules, as a practical matter many persons never get beyond comparing their project to the mandatory categories lists, and therefore it is important to place this directive at this point of the rules as well.

37. Subp. 7. PIPELINES. Items A and B designate the RGU for the type of project listed:

    A. For ~~construction~~ routing of a pipeline, greater than six inches in diameter and having more than 50 0.75 miles of its length in Minnesota, used for the transportation of coal, crude petroleum fuels, oil or their derivatives, the EQB shall be the RGU.

    B. For ~~construction~~ routing of a pipeline for transportation of natural or synthetic gas at pressures in excess of ~~200~~ 275 pounds per square inch with 50 0.75 miles or more of its length in Minnesota, the EQB shall be the RGU.

    Items A and B do not apply to repair or replacement of an existing pipeline within the existing right-of-way or to a pipeline located entirely within a refinery, storage facility or manufacturing facility.

The proposed amendment of the pipeline EAW categories is intended to bring the EAW thresholds into conformance with the thresholds for EQB routing of pipelines under Minn. Stat., section 116I, which was mandated by the 1987 Legislature.

The proposed revisions to the EAW category would require an EAW in the identical circumstances under which pipelines are subject to the EQB pipeline permitting process. The strategy behind this proposal and the mandatory EIS category proposal is to develop a pipeline review process through the EQB routing and permitting rules which will qualify as an alternative review process approvable by EQB under part 4410.3600 of the environmental review rules. Under this strategy, pipelines would not actually be reviewed through EAWs or EISs, but rather would receive equivalent review under the routing and permitting process.

Why is there any need to have mandatory EAW and EIS categories if all the pipelines they apply to will be given an equivalent review under the routing and permitting program? The basic reason is that the pipeline routing and permitting statute does not authorize the EQB to include in the routing and permitting rules all the elements necessary for complete environmental review under the environmental review program rules. This implies that a pipeline routed and permitted in compliance with the routing and permitting requirements alone would not necessarily be exempt from the need for an EAW or EIS. In order to avoid the potential for disruption and delay of the routing and permitting process -- which has strict timeframes by statute -- due to a request for an EAW or EIS (for instance through the filing of a citizens' petition) after the routing process was already underway, the EQB proposes to establish mandatory EAW and EIS requirements such that all pipelines subject to routing and permitting are also subject to an EAW or EIS. This then provides a basis for developing routing and permitting rules which go beyond the requirements of the routing and permitting statute and incorporate requirements from the environmental review program as well.

The implication for the pipeline industry is that some projects will be subjected to a more involved routing and permitting process than would otherwise be necessary, in trade for the assurance that the process will be predictable, without any unexpected, delay-causing EAWs or EISs along the way.

38. **Subp. 10. STORAGE FACILITIES. Items A to C designate the RGU for the type of project listed:**

A. [no change]

B. [no change]

C. For construction of a facility designed for or capable of storing on a single site 100,000 gallons or more of liquified natural gas, ~~or~~ synthetic gas, or anhydrous ammonia, the PCA shall be the RGU.

In the experience of the PCA staff, an anhydrous ammonia tank facility of 100,000 gallon or more size has a comparable potential for significant environmental impacts, including a danger to public health, as liquified or natural gas storage facilities. Consequently, it is reasonable to explicitly add anhydrous ammonia tanks to this category with the same threshold.

39. Subp. 14. INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL FACILITIES. Items A, ~~and~~ B, and C designate the RGU for the type of project listed, except as provided in items ~~C and D~~ D and E:

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 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.

~~A~~ 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 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;
(4) first class city -- 400,000 square feet.

The proposed new item A and the amendment of item B have the purpose of subdividing industrial-commercial-institutional facilities into "warehousing and light industrial facilities" and all other industrial-commercial-institutional (I-C-I) facilities, and establishing higher thresholds for the warehousing and light industrial category. The thresholds for this subcategory are proposed as 50% higher than the corresponding existing categories.

The rationale for this distinction derives from the facts that traffic-related impacts are typically the single most important type of impacts from I-C-I facilities, and that warehousing and light industrial land uses generate significantly less traffic than retail commercial, office, or heavy industrial land uses. Data from trip generation rate studies published by the Institute of Transportation Engineers (Trip Generation, An Informational Report (3rd edition), 1983, Washington D.C.) indicates that warehousing and light industrial uses generate roughly one-half as many peak hour trips per square foot of floor space as do other I-C-I uses. This means that the existing thresholds overestimate the traffic-related impacts of warehousing and light industrial facilities relative to other I-C-I uses. Because there are other impacts associated with I-C-I uses, for example stormwater runoff and wildlife habitat loss, it would not be appropriate to raise the thresholds for warehousing and light industrial uses in proportion to the ratio of trip generation, however, a 50% increase appears to be a reasonable adjustment.

B~~C~~. For construction of a new or expansion of an existing industrial, commercial, or institutional facility of 20,000 or more square feet of ground area, if the local governmental unit has not adopted approved ~~shoreland, flood plain, or wild and scenic rivers land use district ordinances, the Mississippi headwaters plan or the Project Riverbend plan~~ water-related land use management district ordinances or plans, as applicable, and either the project involves riparian frontage, or 20,000 or more square feet of ground area to be developed is within a ~~shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, Minnesota River Project Riverbend area, or the Mississippi headwaters area,~~ water-related land use management district, the local governmental unit shall be the RGU. However, this item only applies to shoreland areas, flood plains, and state wild and scenic rivers land use districts if the local unit of government has received official notice from the DNR that it must adopt applicable land use management ordinances within a specific period of time.

These are two independent changes proposed to this item, neither of which alters the threshold. The first involves replacing the lengthy recitation of types of water-related land use mangement districts and the corresponding list of ordinances and plans for each type with new coined terms which refer the contents of the two lists. The purpose of this change is simply to shorten the item in an attempt to make it more readable and therefore understandable. This item and the other analogous items which include these lists of districts and ordinances and plans have proven very dificult for local governmental units and proposers to understand. Further information about this change is presented at the section on the definition of "water-related land use management district."

The second change here is to qualify the circumstances under which the thresholds of this item apply in shorelands, flood plains and state wild and scenic rivers land use districts. Under the existing rules, this item applies whenever the local governmental unit has not adopted DNR-approved ordinances applying to these types of districts. Under the proposed change, the item would not apply in the absence of these ordinances until the point in time when DNR officially notifies the local unit that it must adopt the appropriate ordinances within a certain period of time.

The rationale for this change derives from the fact that many cities have never adopted DNR-approved shoreland ordinances, and despite ongoing efforts to bring these cities into compliance with this requirement, the DNR has resources enough to work with only a limited number of cities per year. Consequently, priority lists of cities have been developed and each year the DNR notifies cities at the top of the list that the time has come for them to develop an approvable ordinance. The priority lists take into account the extent of shoreland, etc., resources within each jurisdiction. The DNR is now recommending that only those cities which have been notified in this way would be subject to the special thresholds of this item. Initiating the special thresholds at this time would protect the water and related land resources from ill-planned "eleventh hour" projects which are likely to be proposed in order to gain approval before state standards are imposed.

40. Subp. 15. AIR POLLUTION. [Parking facilities.]

A. [Unchanged.]

B. For construction of a new parking facility for ~~1,000~~ 2,000 or more vehicles, the PCA shall be the RGU, except that this category does not apply to any parking facility which is part of a project reviewed pursuant to part 4410.4300, subpart 14, 19, 32, or 34 or part 4410.4400, subpart 11, 14, 21, or 22.

The PCA has requested that the Board raise the threshold for the parking facilities category from 1,000 vehicles to 2,000 vehicles. Experience has shown that the 1,000 vehicle threshold is unnecessarily low, resulting in unproductive reviews and sometimes resulting in PCA being RGU for an EAW of a project of a type normally associated with the local unit (e.g., shopping centers) but which was not large enough relative to the industrial-commercial category threshold to require an EAW by the local unit.

The 1,000 vehicle threshold was originally chosen because it is the threshold at which a proposer must apply for an indirect source air quality permit (ISP) from PCA; a permit may or may not be required if the project has less than 2,000 parking spaces, depending on the results of air quality modeling studies. The 2,000 vehicle threshold will correspond to the threshold at which an ISP is always issued. Therefore, raising the threshold to 2,000 from 1,000 will not create a potential "loophole" in the state's ability to prevent air pollution from vehicles, because projects will still have to go through the ISP process and be required to mitigate impacts to meet air quality standards, or be denied a permit for the parking facility.

Other than potential air quality effects, which are well-covered by the PCA ISP permits, the potential impacts of projects which required review under this category have frequently been minor. PCA staff and EQB staff agree that a threshold of 2,000 spaces would be much more indicative of potential for significant impacts.

40A. Subpart 16. HAZARDOUS WASTE. Items A to D designate the RGU for the type of project listed:

A. For construction or expansion of a hazardous waste disposal facility, the PCA shall be the RGU.

B. For construction of a hazardous waste processing facility ~~that sells processing services to generators, other than the owner and operator of the facility, of 1,000 or more kilograms per month capacity, or the expansion of a facility by~~ with a capacity of 1,000 or more kilograms per month ~~capacity~~, the PCA shall be the RGU.

~~C. For construction of a hazardous waste processing facility of 1,000 or more kilograms per month capacity or expansion of a facility by 1,000 or more kilograms per month capacity if the facility is located in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi River headwaters area, or in an area characterized by soluble bedrock, the PCA shall be the RGU.~~

C. For expansion of a hazardous waste processing facility that increases its capacity by ten percent or more, the PCA shall be the RGU.

D. For 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 ~~shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi River headwaters area~~ water-related land use management district, or in an area characterized by soluble bedrock, the PCA shall be the RGU.

The proposed change in item B would: (1) expand the category to cover all new hazardous waste processing facilities over 1,000 kilograms per month capacity, not only commercial operations; and (2) delete expansions from this item in order to establish a different threshold in item C. It is now believed by PCA that there is no valid reason to distinguish commercial facilities from generator-operated facilities. When the existing categories were established in 1982 it was anticipated that generator-operated facilities posed less of an environmental risk than commercial facilities; this is no longer believed to be the case.

Current item C is proposed to be deleted because the revision of item B now covers all facilities of 1,000 or more kilograms per month capacity and expansion of facilities is covered by new item C. New item C proposes to base the threshold for expansions of facilities on a percent increase rather than an absolute amount. A ten percent increase over previous capacity is proposed as the threshold.

The proposed revision of item D would merely simplify the wording by using the new term "water-related land use management district" to replace the recitation of the various land use district types included in this term.

42. Subp. 17. SOLID WASTE. ~~Items A to E designate the RGU for the type of project listed:~~ For the type of project listed in items A to F the PCA shall be the RGU unless the project will be constructed within the seven-county Twin Cities metropolitan area, in which case the Metropolitan Council shall be the RGU:

A. ~~For~~ Construction of a mixed municipal solid waste disposal facility for up to 100,000 cubic yards of waste fill per year ~~the PCA or Metropolitan Council shall be the RGU~~.

B. ~~For~~ 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 ~~the PCA or Metropolitan Council shall be 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 or Metropolitan Council shall be the RGU~~.

D. ~~For~~ Construction or expansion of a mixed municipal solid waste ~~energy resource~~ 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 ~~for 100~~ 30 or more tons per day of input, ~~the PCA or Metropolitan Council shall be the RGU~~.

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.

E~~F~~. ~~For~~ 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 ~~the PCA or Metropolitan Council shall be the RGU~~.

G. For construction or expansion of a mixed municipal solid waste resource recovery facility ash landfill receiving ash from an incinerator which burns refuse derived fuel or mixed municipal solid waste, the PCA shall be the RGU.

The first change proposed to this subpart is a clarification of the RGU responsibilities of the PCA and the Metropolitan Council. Since these categories were established in 1982 there has been an ongoing controversy about whether the distinction in RGU responsibilites is to be based strictly on geography or to be determined case-by-case by negotiations between the PCA and the Metropolitan Council. PCA and EQB staff have always maintained that the distinction is based solely on geography. The

proposed amendment would incorporate that interpretation into the rule language. However, for item G, the proposed mandatory category for a mixed municipal solid waste ash landfill, the PCA is proposed to be the RGU in all cases. This is because it is anticipated that an ash landfill project would not involve solid waste management issues or socio-economic issues of the type posed by projects involving the processing or disposal of "raw" solid wastes, for which the Metropolitan Council has special responsibilities and expertise.

The second revision proposed is a revamping of the mandatory categories for various subcategories of resource recovery facilities for mixed municipal solid waste. The proposed system would set a low threshold (30 tons per day) for any resource recovery facility which includes the combustion of mixed municipal solid waste or any fuel derived from such waste (item D); these facilities include "energy recovery facilities" and also any incinerators fueled, in whole or part, with solid waste or refuse-derived fuel, including the use of an existing incinerator.

The current resource recovery facility threshold is 100 tons per day of input. The reduction in the threshold for projects involving the combustion of mixed municipal solid waste is proposed based on information developed through the review of various resource recovery projects since 1982. The health risk information developed through these reviews is summarized in the section of this document concerning part 4410.4400, subpart 13, the mandatory EIS categories for solid waste projects.

The EAW threshold is proposed to be low because facility size is not the only important factor affecting the emission rate of a facility, and two other important factors become more of a concern as the facility size decreases. First, pollution control at small incinerators (approximately 40 to 60 tons per day) is problematical and expensive. In addition, federal regulations may or may not require state-of-the-art pollution controls and compliance with federal New Source Performance Standards. In the absence of such uniform requirements, considerable financial pressure will exist to provide less expensive pollution controls than those used on larger, field-erected facilities. Second, the smaller financial resources available to support smaller facilities may limit the operating and monitoring capabilities at smaller facilities, resulting in a greater potential for more frequent and extensive upset conditions.

The historic data on energy recovery projects permitted in Minnesota presented in Appendix 3, indicate that there have been six projects since 1979 with a capacity between 30 and 100 tons per day. Therefore, based on historic trends, it would be predicted that the proposed revision of the threshold downward to 30 tons per day would result in approximately one additional EAW per year. The same data also suggest that it is likely that a 30 ton per day threshold will result in the preparation of an EAW for virtually all future energy recovery projects. This appears warranted in view of the possible human health risks associated with the combustion of mixed municipal solid wastes (as discussed in the section on the mandatory EIS category revisions cited above).

A threshold of 50 tons per day of input is now recommended for two types of non-combustion resource recovery projects, namely compost facilities for mixed municipal solid wastes and production facilities for refuse-derived fuel (item E). This would represent a decrease from the existing threshold of 100 tons per day of input. Issues commonly associated with these projects to date have included traffic, odor, disposal of non-recyclables or compostable material, compost composition, compost application rates, and land use conflicts. It is believed that past reviews have demonstrated that sufficient potential exists for significant impacts at a project size about one-half of the existing threshold.

Other types of resource recovery facilities, namely recycling centers and yard waste composting operations, would no longer be subject to a mandatory EAW category under the proposed revamped category system. These types of facilities are unlikely to cause problems of the types noted above for mixed municipal solid waste compost facilities or refuse-derived fuel facilities. If such a project should pose such problems because of unusual circumstances, a discretionary EAW may be ordered by PCA or the Metropolitan Council.

Item G would establish a new EAW category for new or expanded landfills for ash from mixed municipal solid waste or refuse-derived fuel incinerators. Recent experience with the regulation of such ash indicates that, unless adequate measures are taken, there exists the potential for both human health and environmental risks resulting to exposure to the ash through inhalation, ingestion, or the food chain. In addition, various chemicals could leach from the ash and reach ground water unless the landfill is appropriately sited and designed. As indicated above, EAWs under this category would always be prepared by the PCA.

Chapter V, Fiscal Note, present an estimate of the potential financial impact to local governmental units of lowering the threshold for EAWs for solid waste combustion projects.

42. Subp. 18. SEWAGE SYSTEMS. Items A and B designate the RGU for the type of project listed:

A. For expansion, modification, or replacement of a municipal or domestic ~~sewer~~ sewage collection system resulting in an increase in ~~hydraulic capacity~~ design average daily flow of any part of that system by:

(1) 500,000 gallons per day or more in a first or second class city and in any city served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System;

(2) 100,000 gallons per day or more in a third class city not served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System;

(3) 50,000 gallons per day or more in a fourth class city not served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System; or

(4) 50,000 gallons per day or more in an unincorporated sewered area, 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 of 50 percent or more 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 ~~30,000~~ 50,000 gallons per day or more, the PCA shall be the RGU.

The first change to this subpart would substitute "sewage collection system" for "sewer system" to avoid any confusion about whether wastewater treatment facilities are included here. The second change is to replace the term "hydraulic capacity" with the more specific term "design average daily flow." The measure of hydraulic capacity in use by PCA at present is the design average daily flow, but hydraulic capacity has other possible interpretations which makes that term ambiguous.

The change in item B is proposed to correct an error made while revising the rules in 1986. At that time, the term "average wet weather design flow" was substituted in the rules for the previous term "capacity." Along with the change in terms was supposed to have occurred an increase in the threshold from 30,000 gallons to 50,000 to account for the fact that wet weather flows typically include substantial amounts of infiltrating water. However, somehow that change was not included in the revisions made in 1986. Therefore, this change is proposed at this time.

43. Subp. 19. Residential projects.

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, and which is zoned for residential development or is identified for residential development by an applicable comprehensive plan, 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. 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.

This proposed new paragraph has as its intent the clarification of what "phased actions" means relative to residential development. Historically, residential projects have been most subject to circumvention of the rules through the segmentation of large projects into smaller increments. Residential projects are by their nature more prone to incremental development than any other common type of project. Frequently, residential developers will plat only a fraction of a parcel at a time, and wait for those lots to sell before platting another fraction. Eventually over a period of years the entire parcel has been developed -- with the total number of units built frequently exceeding the EAW or even EIS threshold -- without review under these rules.

Theoretically, the RGU is to prevent circumvention through segmentation by application of the "phased actions" provisions of the rules. However, unless the RGU is very aggressive in its interpretation of this term, a developer can easily argue that his or her project does not meet the definition. This is done by arguing that the second of the three conjunctive criteria which comprise the definition, "are substantially certain to be undertaken sequentially over a limited period of time," does not apply because of the uncertainty in the timing of future phases. Since no one can truly be certain of market conditions several years into the future, and because usually each phase of a residential project is viable independent of other phases, there is always the possibility that future phases will not be built within a "limited period of time." Therefore the RGU must almost always conclude that phased actions does not apply if the proposer exerts pressure.

In fact, not only is it relatively easy for proposers to use this "loophole" for residential projects to avoid environmental review, but the incentive to do so can also work counter to efforts of local communities to properly plan development irrespective of the environment. Rather than present a large plat for approval, a developer may choose to present a smaller plat in order to remain under the EIS or EAW threshold. If not for the EIS or EAW requirements, the city or county would have been able to review the larger plat and integrate it into the planning for the community, but because of the desire to circumvent the EAW and EIS requirements, the community must plan for only one small piece at a time.

Thus, the ability to easily circumvent the phased actions definition for residential development can lead to a fragmentation of local planning and review as well as to avoidance of environmental review.

The proposed solution to this circumvention problem was developed with the assistance of the EQB's work group on environmental review of residential developments and commercial development in urbanizing areas. Basically, the approach is to require all potential ultimate development to be included in the initial unit count. Potential ultimate development would mean all planned or allowable units on all the contiguous land owned by the proposer or under option. On land for which the proposer had not yet developed definite plans, the number of units would be considered to be the maximum number allowable under the zoning ordinance. Only land zoned or specified for residential development in the comprehensive plan for residential development would be counted.

This approach could be considered as the most aggressive possible interpretation of the "phased actions" principle, corresponding to an interpretation that land zoned or officially planned for residential development will all be developed over a limited period of time. This approach is feasible for residential development because it is possible to predict ultimate development from the zoning ordinance, and EQB believes it is warranted for residential development because of the known extent of segmentation of residential projects. It should be noted that the urbanizing areas work group considered applying a similar approach to commercial development but found it infeasible because few zoning ordinances or comprehensive plans place definite limits on ultimate development of a commercial nature in the way it is done for residential development.

The proposed approach does, however, recognize that future phases of development may indeed lie quite far in the future. To allow reasonable flexibility in the treatment of future phases, the proposed approach allows flexibility in <u>when and how</u> the review must be done rather than in <u>whether</u> it must be done. Under this proposal, the RGU may choose to prepare an EAW for each separate plat as it is proposed, or may group any number of phases of the entire project together under one EAW (provided the whole project does not exceed the EIS threshold.) The division of the entire project for purposes of review would need to be in accordance with the new provisions for treating phased actions set forth at parts 4410.1000. It should be noted that the EAW form is intended to be revised to better disclose and integrate future impacts from later phases into the review so that cumulative impacts are better treated.

~~Items A and B designate the RGU for the type of project listed. If a development consists of both attached and unattached units, each individual unit shall be considered an as unattached unit.~~ <u>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 of item A or B, plus the quotient obtained by dividing the number of attached units by the applicable attached unit threshold of item A or B, equals or exceeds one (1).</u>

The first sentence of this paragraph is not being deleted, but is rather being moved to follow the rest of this paragraph. The remainder of the paragraph presents a proposal to introduce a more rationale way of determining whether residential projects involving mixtures of unattached and attached units meet the threshold for review. Currently, if even one unit is an unattached unit, all units are treated as if they are

unattached. While this is simple, it is also not very reasonable in cases where most units are attached. The proposed change would in effect use a weighted average approach, giving equal weight to each type of unit and its applicable threshold. While this approach would be somewhat more difficult to apply, it would be much more equitable and logical. It should be noted that it uses the same method of computation as is propsed for the new mixed residential and industrial-commercial mandatory categories.

The method of computation, expressed as a formula is:

$$S = A/B + C/D$$

where A = number of unattached units
B = unattached unit threshold
C = number of attached units
D = attached unit threshold

If S equals or exceeds 1.0, review is required.

An example: assume the project consists of 50 single family units (unattached) and 300 apartments (attached) in a city meeting the comprehensive plan requirements above, so that the thresholds are 250 unattached and 375 attached units.

Step 1. Divide 50 by 250: 50/250 = 0.20
Step 2. Divide 300 by 375: 300/375 = 0.80
Step 3. Add the quotients from 1 and 2: 0.20 + 0.80 = 1.00
Step 4. Compare the sum to 1.00. Since the sum equals 1.00, review is required.

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

~~A. For construction of a permanent or potentially permanent residential development of:~~

~~(1) 50 or more unattached units or 75 or more attached units in an unsewered area;~~

~~(2) 100 or more unattached units or 150 or more attached units in a third or fourth class city or sewered unincorporated area;~~

~~(3) 150 or more unattached units or 225 or more attached units in a second class city;~~

~~(4) 200 or more unattached units or 300 or more attached units in a first class city, the local governmental unit shall be the RGU.~~

[All new material.] A. The local governmental unit is the RGU for construction of a permanent or potentially permanent residential development of:

(1) 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 sewered unincorporated area;

(2) 100 unattached units or 150 attached units in a city that does not meet the conditions of subitem 4;

(3) 100 unattached units or 150 attached units in a city meeting the conditions of subitem 4 if the project is not consistent with the adopted comprehensive plan; or

(4) 250 unattached units or 375 attached units in a city within the seven-county Twin Cities metropolitan area which has adopted a comprehensive plan pursuant to Minnesota Statutes, section 473.859, or in a city not located within the seven-county Twin Cities metropolitan area which has filed with the EQB chair a certification that it has adopted a comprehensive plan containing the following elements: 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; a transporatation plan describing, designating, and scheduling the location, extent, function, and capacity of existing and proposed local public and private transporation facilities and services; 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; a capital improvements plan for public facilities; and 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 such controls. The EQB chair may specify the form to be used for making a certification under this subitem.

The proposed changes in item A would overhaul the mandatory category system for residential development in cities. These changes were recommended by the EQB's Urbanizing Areas Work Group, a special task force of city planners, developers, environmentalists, and review agency staff which was formed by EQB to address problems with the rules related to residential and commercial devlopment in rapidly growing areas. The overhaul has two basic elements: (1) the thresholds are no longer tied to "city class," a surrogate for a city's population, but instead would be tied to the existence of a comprehensive plan and the consistency of the project with that plan; and (2) where there was an acceptable comprehensive plan and the project was consistent with that plan, the thresholds would be set higher than they are at present.
City class is used in the current rules as a way to gauge a city's capacity to "absorb" growth without serious environmental or social disruption. The Urbanizing Areas Work Group concluded that a better measure of this capacity is the existence of a good comprehensive plan. A "good" comprehensive plan is proposed to be one containing the elements listed in subitem 4; this list is substantially the same as that presented in Minnesota Statute, section 473.859, which sets out the requirements for comprehensive planning in the Twin Cities metropolitan area.

It is proposed that where there is a plan containing the required elements and where the project conforms to the plan, that the thresholds for an EAW be set at 250 unattached or 375 attached units. These thresholds are higher than the thresholds now in effect in cities of all classes -- from 50 unattached/75 attached units higher in a first class city to 150/175 units higher in a third or fourth class city. The Urbanizing Areas Work Group concluded that too many unnecessary reviews were being required on residential projects with only minor impacts, and that therefore the thresholds should be raised where comprehensive plan requirements have been met. This view is supported by the statistic that nearly 24% of all environmental reviews between 1982 and 1986 involved residential projects, but that less than 2% of these reviews involved EISs; in comparison, 12% of all reviews involved industrial-commercial- institutional projects, yet 22% of these reviews involved EISs. Under the proposed new threshold system, only quite large residential projects will require review in situations where the city has previously done decent comprehensive planning and the project is in conformance with the plan.

However, where the city has not done comprehensive planning meeting the minimal requirements specified in subitem 4 or where the project is inconsistent with that planning, review will be required at the same thresholds that presently apply to third and fourth class cities. This may cause some first and second class cities in Greater Minnesota to experience a lowering of the thresholds applicable to them, depending on whether they have adopted comprehensive plans and what content they contain. It should be noted that presently all first, second, and third class cities in the metropolitan area have adopted comprehensive plans meeting the requirements of subitem 4, according to information obtained from the Metropolitan Council.

In order to qualify for the 250/375 unit thresholds, cities of Greater Minnesota would be required to submit to the EQB chair a certification that that they has indeed adopted a comprehensive plan meeting the requirements specified in subitem 4. It is anticipated that the EQB chair would develop a "standard statement" to be declared or perhaps even a standard checklist or form to be used, to ensure that the city carefully considers whether its plan addresses each of the elements considered necessary for a qualifying plan. Such a requirement is unnecessary in the metropolitan area because there all cities (except one fourth class city) have already adopted plans meeting these requirements.

It should be noted that it is impossible to predict with certainty that a general increase in residential thresholds will lead to a decrease in the number of residential project EAWs, because the more restrictive system of counting the total number of units also proposed for incorporation into the rules (see above) will cause the size of some projects to increase. Additionally, the proposed substitute review process of part 4410.4000 would provide an alternate way of reviewing these same projects.

Subitem A(1) presents the thresholds for unincorporated areas. These thresholds are not proposed to be changed, however, the word "unincorporated" is proposed to be added to correct a mistake in the current rules caused by the inadvertent omission of this word. Presently, an unsewered residential project in a third or fourth class city fits the wording of either subitem A(1) or subitem A(2), creating the question of which threshold is supposed to apply. This ambiguity can be corrected by adding the qualifier "unincorporated" to subitem A(1).

B. For construction of a permanent or potentially permanent residential development of 20 or more unattached units or of 30 attached units, if the local governmental unit has not adopted state approved ~~shoreland, flood plain, or wild and scenic rivers land use district ordinances, the Mississippi headwaters plan, or the Project Riverbend plan~~ water-related land use management district ordinances or plans, as applicable, and either the project involves riparian frontage, or five or more acres of the development is within a ~~shoreland, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area~~ water-related land use management district, the local governmental unit shall be the RGU. However, this item only applies to shoreland areas, flood plains, and state wild and scenic rivers land use districts if the local governmental unit has received official notice from the DNR that it must adopt applicable land use management ordinances within a specific period of time.

This amendment is proposed for the same reasons as the analogous change at part 4410.4300, subp. 14, item (new) C dealing with industrial-commercial-institutional projects. The reader should refer to that discussion for a presentation of the rationale for this amendment.

44. Subp. 21. AIRPORT RUNWAY PROJECTS. 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 or the local governmental unit shall be the RGU.

No change is proposed in the subpart text itself, only in the caption. The reason for the change relates to the interrelationship of this subpart to part 4410.4300, subpart 14, items (new) D and E, for industrial-commercial projects. This latter part exempts from its scope projects "for which there is a single mandatory category specified in subparts ...[a list of subparts is given including the subpart for "airport projects"]." The problem is that this language would appear to exempt all airport projects from the industrial-commercial category, despite the fact that the mandatory categories for airports deal only with runway improvements and do not cover other possible types of airport projects which may have potential environmental impacts. The simplest solution to this discrepancy is to re-caption this subpart as "airport runway projects", thus limiting the exemption imposed by part 4410.4300, subp. 14, item E to runway projects.

45. Subp. 24. WATER APPROPRIATIONS 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 or ground water averaging 30,000,000 gallons per month~~,-or-exceeding-2,000,000-gallons-in-any-day-during-the-period-of use~~ 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 and C. [Unchanged]

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 during 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.

46. Subp. 26. STREAM DIVERSIONS. For the diversion or channelization of ~~a-designated-trout-stream-or~~ a natural watercourse with a total watershed of ten or more square miles or a designated trout stream, unless exempted by part 4410.4600, subpart 14, item E, or 17, the local governmental unit shall be the RGU.

The change to this subpart is intended to correct an error made in 1982. According to the DNR staff, diversion or channelization of any designated trout stream should have been subject to an EAW regardless of watershed size. However, by careless wording of the sentence, the modifying phrase "with a total watershed of ten or more square miles" became applicable to trout streams as well as other natural watercourses. To correct this mistake it is simply necessary to reorder the sentence.

46a. AGRICULTURE AND FORESTRY. Items A to D designate the RGU for the project listed:

A to C. [Unchanged.]

D. For projects resulting in the permanent conversion of 80 or more acres of agricultural, forest, or naturally vegetated land to a more intensive, developed land use, the local government unit shall be the RGU, except that this item does not apply to agricultural land inside the boundary of the Metropolitan Urban Service Area established by the Metropolitan Council.

This amendment was recommended by the EQB's Urbanizing Areas Work Group. It was suggested that the local comprehensive planning process required by Minn. Stat., ch. 473.859 and the Metropolitan Council's process for determining the extent of the Urban Service area (primarily a designation of where public sewer service will be extended) will have adequately addressed the issues associated with the conversion of agricultural land to urban uses, and that therefore, preparation of an EAW would be duplicative. The state Department of Agriculture, which was represented on the work group, agreed that the category should not apply within the MUSA, adding that it was the policy of the Department to encourage growth within the MUSA in order to avoid leap-frog growth outside of the MUSA which would be more detrimental to agricultural land resources. In view of these arguments, EQB is proposing to delete the 80 acre threshold for agricultural lands inside the established MUSA boundary.

47. Subp. 29. ANIMAL FEEDLOTS. For the construction of an animal feedlot facility of 1,000 animal units or more or the expansion of an existing facility by 1,000 animal units or more, or construction of a total confinement animal feedlot facility of 2,000 animal units or more or the expansion of an animal feedlot facility by 2,000 animal units or more if the expansion is a total confinement facility, the PCA shall be the RGU ~~if the feedlot is in a shoreland, delineated flood plain, or Karst area; otherwise the local unit of government shall be the RGU~~.

Two changes are proposed to this subpart. First, the threshold for feedlots which totally confine the animals is proposed to be set at twice the existing threshold (which would still apply to non-total confinement operations). This recommendation is based on experience with numerous feedlot applications over the last five years. That experience has demonstrated that total confinement operations pose significantly less environmental threat than unconfined methods. The second change is to assign PCA as RGU for all feedlots, rather than only those in "sensitive areas." This is based on the principle that the unit of government with the greatest approval authority over a project should be the RGU. Under the existing rules, local units with minimal or no authority over feedlot applications have been assigned as RGU. Not only does PCA have the major responsibility for feedlot regulation, but it also has greater technical expertise relative to the environmental concerns from feedlots.

48. [New subpart: all new material]:
Subp. 32. MIXED RESIDENTIAL AND INDUSTRIAL-COMMERCIAL PROJECTS. If a project includes both residential and industrial-commercial components, the project must have an EAW prepared if 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 (1). The local governmental unit is the RGU.

This new subpart is included to close a loophole in the existing rules. Currently, a project consisting of a mix of residential and commercial uses (e.g., a condominium complex with retail shops and office space) only requires an EAW if either the residential component or the commercial component exceeds its respective threshold. This means that projects which nearly equal thresholds for two categories are not reviewed, despite the fact that they may have the potential for significant environmental effects.

To close this loophole it is proposed to calculate whether such a project needs review in the following manner:

Step 1. Divide the number of residential units by the applicable residential category threshold.
Step 2. Divide the amount of commercial gross floor space by the applicable industrial-commercial-institutional category threshold.
Step 3. Add the quotients obtained in steps 1 and 2.
Step 4. If the sum obtained in step 3 equals or exceeds 1.0, an EAW is mandatory.

This can be expressed as a formula as:

$$S = A/B + C/D$$

where A = number of residential units
B = residential threshold
C = amount of industrial-commercial gross floor space
D = industrial-commercial-institutional threshold

If S exceeds or equals 1.0, review is mandatory.

An example: assume the project consists of 250 apartments and 200,000 square feet of retail gross floor space in a second class city with an adopted comprehensive plan. Accordingly, the applicable mandatory category thresholds are: 375 attached residential units and 300,000 square feet of commercial floor space.

Step 1. Divide 250 by 375: 250/375 = 0.67
Step 2. Divide 200,000 by 300,000: 200,000/300,000 = 0.67
Step 3. Add the quotients from 1 and 2: 0.67 + 0.67 = 1.34
Step 4. Compare the sum from 3 to 1.0: 1.34 > 1.0 so an EAW is mandatory.

49. [New subpart: all new material]:
Subp. 33. COMMUNICATION TOWERS. For construction of a communications tower equal to or in excess of 500 feet in height, the local governmental unit is the RGU.

In recent years EQB has received a number of petitions involving communications towers. This is apparently a response to increased construction of various communications towers associated with recent advances in communications, such as in-car telephones. Information from the DNR indicates that such towers have a high potential for killing night migrating birds: perhaps as high as 2,500 birds per tower in excess of 500 feet. In addition, communications towers have a potential for significant aesthetic impacts if not properly sited. This seems to be an example of a situation where a new mandatory category is warranted.

Until recently, the federal FCC prepared an environmental assessment for any proposed tower in excess of 500 feet, but has recently eliminated this procedure. The proposed threshold would adopt this former federal threshold.

50. [New subpart: all new material]:
Subp. 34. SPORTS OR ENTERTAINMENT FACILITIES. For construction of a new sports or entertainment facility designed for or expected to accomodate a peak attendance of 5,000 persons, or the expansion of an existing sports or entertainment facility by this amount, the local governmental unit is the RGU.

This new category is proposed in order to have a more appropriate threshold measure for facilities of this type. A significant number of facilities of this type have been reviewed since 1982, and experience with them demonstrates that environmental review is appropriate, but that existing mandatory categories are not well-suited to such facilities. Facilities reviewed include six horse racing track proposals (four reviews proceded only to the draft EIS stage), three music amphitheaters, a sports complex, a basketball arena, and a zoo expansion.

Presently, these facilities are covered by the general industrial-commercial-institutional category, which has a threshold based on gross floor space. The problem with this relative to sports or entertainment facilities is that the nature of the use of the floor space is entirely different from that in industrial, retail, office or typical industrial-commercial uses. As an example, for past horse racing track proposals the total gross floor space of all buildings exceeded mandatory EAW or even EIS thresholds yet largely consisted of horse stables and grandstands. Clearly, such space is fundamentally different from the floor space of an office building, a retail store, or a factory. Because of this difference, gross floor space of sports or entertainment facilities does not correlate with environmental impacts in the same way that it does for more typical industrial or commercial development.

To resolve this discrepancy, a new category with a threshold based on a parameter more appropriate to this type of facility is proposed. To develop this threshold, EQB staff and the EQB Technical Representatives Committee examined data on representative projects of this type reviewed since 1982 plus the 1977 Minnesota Zoological Gardens EIS. This data is presented as appendix 2. Review of this data indicated that peak attendance appears to be the best estimator of the magnitude of the potential environmental impacts from the projects.

The threshold proposed is 5,000 persons because it was concluded from past experience that facilities of this size may have potential for significant environmental impacts based on traffic generation alone. (It should be noted that assuming 2.5 persons per vehicle, 5,000 attendance means 2,000 vehicles to be parked, which would require an EAW under the proposed parking space mandatory EAW category if not covered here.) In addition, experience shows that these facilities may pose other environmental impacts such as noise from amplified sound or crowds, stormwater runoff, and large volumes of animal manure requiring disposal.

The local governmental unit has been proposed as RGU, consistent with the principle that the unit with the greatest responsibility for approving the project be the RGU. Facilities of this type pose major questions of land use compatibility and zoning, and hence the main "go-no go" decision normally lies with local unit.

4410.4400, Mandatory EIS Categories.

53. Subpart 1. THRESHOLD TEST. An EIS must be prepared for projects that meet or exceed the thresholds of any of subparts 2 to ~~20~~ 24.

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

The proposed change to this subpart is analogous to that proposed for part 4410.4300, subpart 1. The reader is referred to the discussion of the rationale for this change located at that section of this document.

54. Subp. 11. INDUSTRIAL, COMMERCIAL, INSTITUTIONAL FACILITIES. Items A, ~~and~~ B, and C designate the RGU for the type of project listed, except as provided in items ~~C and D~~ D and E:

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;
(2) third or fourth class city -- 750,000;
(3) second class city -- 1,000,000;
(4) first class city -- 1,500,000.

~~A~~ 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 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;
(4) first class city -- 1,000,000 square feet.

The proposed amendment to items A and B is analogous to, and has the same rationale as, the proposed change in part 4410.4300, subpart 14, items A and B. The reader is directed to that section of this document for information about this proposal.

BC. For construction of a new or expansion of an existing industrial, commercial, or institutional facility of 100,000 or more square feet of ground area, if the local governmental unit has not adopted state approved ~~shoreland, flood plain, or wild and scenic rivers land use district ordinances, the Mississippi headwaters plan or the Project Riverbend plan~~ water-related land use management district ordinances or plans, as applicable, and either the project involves riparian frontage, or 100,000 or more square feet of ground area to be developed is within a ~~shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, Minnesota River Project Riverbend area, or the Mississippi headwaters area,~~ water-related land use management district, the local governmental unit shall be the RGU. However, this item only applies to shoreland areas, flood plains, and state wild and scenic rivers land use districts if the local governmental unit has received official notice from the DNR that it must adopt applicable land use management ordinances within a specific period of time.

The proposed change to this item is analogous to that of part 4410.4300, subpart 14, item C. Please refer to that section for the rationale for this amendment.

54A. Subp. 12. HAZARDOUS WASTE. Items A to C designate the RGU for the type of project listed:

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

B. For the construction or expansion of a hazardous waste disposal facility in a ~~shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi River headwaters area~~ water-related land use management district, or in an area characterized by soluble bedrock, the PCA shall be the RGU.

C. For construction or expansion of a hazardous waste processing facility ~~that sells processing services to generators other than the owner and operator of the facility,~~ if the facility is located in a ~~shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi River headwaters area~~ water-related land use management district, or in an area characterized by soluble bedrock, the PCA shall be the RGU.

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 and generator-operated facilities. Additionally, the cumbersome listing of types of water-related sensitive areas is proposed to be replaced by the new term "water-related land use management district."

55. Subp. 13. SOLID WASTE. ~~Items A to D designate the RGU for the type of project listed:~~ For the type of project listed in items A to D the PCA shall be the RGU unless the project will be constructed within the seven-county Twin Cities metropolitan area, in which case the Metropolitan Council shall be the RGU:

A. ~~For~~ Construction of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste fill per year ~~the PCA or Metropolitan Council shall be the RGU.~~

B. ~~For~~ Construction or expansion of a mixed municipal solid waste disposal facility in 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~~ water-related land use management district or in an area characterized by soluble bedrock ~~the PCA or Metropolitan Council shall be the RGU.~~

C. ~~For~~ Construction or expansion of a mixed municipal solid waste ~~energy resource~~ 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 ~~for 500~~ 250 or more tons per day of input, ~~the PCA or Metropolitan Council shall be the RGU.~~

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.

~~B~~ 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 or Metropolitan Council shall be the RGU.~~

The proposed change to the introduction of this subpart is intended to clarify the assignment of the RGU responsibility between the PCA and the Metropolitan Council. Further information about the need for this change is provided at the section on part 4410.4300, subpart 17.

The proposed change in wording of item B is intended to reduce the complexity of the sentence in order to improve its clarity. This change is analogous to those proposed for part 4410.4300, subparts 14 and 19, and part 4410.4400, subparts 11 and 14. The term "water-related land use management district" is explained in the section on part 4410.0200.

The proposed revisions at items C and D are similar to those proposed for the solid waste EAW categories, subdividing the resource recovery facility category to set more appropriate thresholds based on knowledge of their potential impacts derived from environmental reviews since 1982. 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.

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 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.

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-87-021, 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).

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 its 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).

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 negociated 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.

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 of individual circumstances, it was not reasonable to set the mandatory 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.

Chapter V, Fiscal Note, of this document presents an estimate of the potential financial impact of the proposed reduction of the EIS threshold for solid waste combustion projects on local units of government.

56. Subp. 14. RESIDENTIAL PROJECTS. An EIS is required for residential development if the total number of units which may ultimately be developed on all contiguous land owned or under an option to purchase by the proposer, and which is zoned for residential development or is identified for residential development by an applicable comprehensive plan, 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. 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, which may not exceed ten percent of the applicable EIS threshold, by means of the procedures of part 4410.1200 to 4410.1700 instead of the procedures of part 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.

The proposed revisions of subpart 14 are analogous in purpose and form to those described at part 4410.4300, subpart 19, mandatory EAW thresholds for residential projects, to which the reader is directed for an explanation of the basic rationale for these changes.

There is one difference in how projects which exceed the EIS threshold would be treated compared to those which exceed only the EAW threshold. That difference pertains to the second paragraph of the subpart and concerns the provision that a limited first phase of the project may be reviewed through an EAW.

In the case where the ultimate project exceeds the EIS threshold, it is proposed that an initial phase of no more than ten percent of the appropriate EIS threshold be allowed review through an EAW while all future units be reviewed by an EIS or EIS and supplements. Division of the project for purposes of review would need to conform with the requirements of parts 4410.2000, subpart 4 and 4410.3000. This approach to a project exceeding the EIS threshold recognizes that there may in truth be uncertainty about the ultimate size of the project, and that in view of this it may be unreasonable to delay the entire project for the period of time necessary to complete an EIS (probably nine to twelve months). This approach would allow the proposer to initiate the project and begin to recoup expenses while an EIS is prepared for the remaining 90% or more of the project. If the EAW should demonstrate that the initial phase presents a significant environmental threat by itself -- for instance if it should be located on the most sensitive part of the site -- the inital phase could be ordered to be included in the EIS or be reviewed through its own EIS.

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 of item A or B, plus the quotient obtained by dividing the number of attached units by the applicable attached unit threshold of item A or B, equals or exceeds one (1). Items A and B designate the RGU for the type of project listed. ~~If a development consists of both attached and unattached units, each individual unit shall be considered an as unattached unit.~~

~~A. For construction of a permanent or potentially permanent residential development of:~~

~~(1) 100 or more unattached units or 150 or more attached units in an unsewered area;~~

~~(2) 400 or more unattached units or 600 or more attached units in a third or fourth class city or sewered unincorporated area;~~

~~(3) 600 or more unattached units or 900 or more attached units in a second class city;~~

~~(4) 800 or more unattached units or 1,200 or more attached units in a first class city, the local governmental unit shall be the RGU.~~

[All new material.] A. The local governmental unit is the RGU for construction of a permanent or potentially permanent residential development of:

(1) 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 sewered unincorporated area;

(2) 400 unattached units or 600 attached units in a city that does not meet the conditions of subitem 4;

(3) 400 unattached units or 600 attached units in a city meeting the conditions of subitem 4 if the project is not consistent with the adopted comprehensive plan;

(4) 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 pursuant to 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:

(i) 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;

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

(iii) 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;
(iv) a capital improvements plan for public facilities; and
(v) 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 such controls.
The EQB chair may specify the form to be used for making a certification under this subitem.

The proposed revision of item A is analogous to that described at part 4410.4300, subpart 19, item A, mandatory EAW thresholds for residential projects, to which the reader is directed for an explanation of the basic rationale for these changes.

It should also be noted that the proposed revision preserves the numerical ratios between the thresholds for mandatory EAW and EIS categories at 1::4, the same ratio as at present (i.e., 250 unattached/375 attached units :: 1,000 unattached units/1,500 attached units).

B. For construction of a permanent or potentially permanent residential development of 40 or more unattached units or of 60 attached units, if the local governmental unit has not adopted state approved ~~shoreland, flood plain, or wild and scenic rivers land use district ordinances, the Mississippi headwaters plan, or the Project Riverbend plan~~ water-related land use management district ordinances, as applicable, and either the project involves riparian frontage, or ten or more acres of the development are within a ~~shoreland, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area~~ water-related land use management district, the local governmental unit shall be the RGU. However, this item only applies to shoreland areas, flood plains, and state wild and scenic rivers land use districts if the local unit of government has received official notice from the DNR that it must adopt applicable land use management ordinances within a specific period of time.

The proposed revision of item B is analogous in purpose to that described at part 4410.4300, subpart 19, item B, mandatory EAW thresholds for residential projects, to which the reader is directed for an explanation of the basic rationale for these changes.

57. Subp. 15. AIRPORT RUNWAY PROJECTS. For construction of a paved and lighted airport runway of 5,000 or more feet of length or greater, the DOT or the local governmental unit shall be the RGU.

Please refer to the section on part 4410.4300, subpart 21 for information on the reasons for this proposed revision.

58. [New subpart: all new material]:
Subp. 21. MIXED RESIDENTIAL AND COMMERCIAL-INDUSTRIAL PROJECTS. If a project includes both residential and commercial-industrial components, the project must have an EIS prepared if 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 (1).

The rationale for this proposal is analogous to that of part 4410.4300, subpart 32, on mixed residential and industrial-commercial projects. Please refer to that section for a discussion.

59. [New subpart: all new material]:
Subp. 22. SPORTS OR ENTERTAINMENT FACILITIES. For construction of a new outdoor sports or entertainment facility designed for or expected to accomodate a peak attendance of 20,000 or more persons or a new indoor sports or entertainment facility designed for or expected to accomodate a peak attendance of 30,000 or more persons, or the expansion of an existing facility by these amounts, the local governmental unit shall be the RGU.

This new category is proposed in order to have a more appropriate threshold measure for facilities of this type. A significant number of facilities of this type have been reviewed since 1982 -- six horse racing track proposals, three music amphitheaters, a sports complex, a basketball arena, and a zoo expansion -- among which five required EISs. Experience with them demonstrates that EISs are appropriate for some of these facilities, but that existing mandatory categories are not well-suited to such facilities.

Presently, these facilities are covered by the general industrial-commercial-institutional category, which has a threshold based on gross floor space. The problem with this relative to sports or entertainment facilities is that the nature of the use of the floor space is entirely different from that in industrial, retail, office or other typical industrial- commercial uses. Because of this difference, gross floor space of sports or entertainment facilities does not correlate with environmental impacts in the same way that it does for more typical industrial or commercial development.

EQB staff and the EQB Technical Representatives Committee examined data on representative projects of this type reviewed since 1982 plus the 1977 Minnesota Zoological Gardens EIS. This data is presented as appendix 2. Review of this data indicated that peak attendance appears to be the best estimator of the magnitude of the potential environmental impacts from the projects. In addition, it was concluded that whether the facility was outdoors or indoors was of considerable importance with respect to noise impacts, which have tended to be one of the major potential impacts of these facilities. It was determined that the EIS category ought to distinguish between indoor and outdoor facilities, with a higher threshold for those indoors. (It should be noted that the proposed EAW category for these facilities does not make a distinction between indoor and outdoor facilities. This is partly because it was felt less important to provide a distinction when an EAW process was at stake than when the more extensive EIS process was at stake, and partly because the "noisy" facilities have all been relatively large anyway.)

The thresholds proposed are 20,000 persons, peak attendance if outdoors, and 30,000, if indoors. The outdoor number was chosen on the basis of the data in appendix 2, and is the dividing line between the projects which historically were reviewed through EISs and those which were not subject to EISs. Based on the past projects, this seems to be the most reasonable "round number" at which to set the EIS threshold. The indoor EIS threshold was chosen to be 50% higher.

The local governmental unit has been proposed as RGU, consistent with the principle that the unit with the greatest responsibility for approving the project be the RGU. Facilities of this type pose major questions of land use compatibility and zoning, and hence the main "go-no go" decision normally lies with local unit.

60. [New subpart: all new material:]
Subp. 23. WATER DIVERSIONS. For a diversion of waters of the state to an ultimate location outside of the state in an amount equal to or greater than 2 million gallons per day, expressed as a daily average over any 30-day period, the DNR shall be the RGU.

This new category is proposed at the suggestion of the DNR, and is in recognition of the awareness that has 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 and for comparing the 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.

61. [New subpart: all new material]
Subpart 24. PIPELINES. For ~~construction~~ routing of a pipeline subject to the pipeline routing permit process pursuant to Minnesota Statutes, section 116I.015, the EQB shall be the RGU.

The proposed EIS category would apply only to those pipelines subject to the full EQB routing and permitting process, for which rules are under development concurrent with the revision of the environmental review program. It is the EQB's strategy to develop a pipeline review process through the EQB routing and permitting rules which will qualify as an alternative review process approvable by EQB under part 4410.3600 of the environmental review rules. Pipelines would, then, not actually have separate EISs prepared, but rather would receive equivalent review under the routing and permitting process.

The rationale for this approach is that the pipeline routing and permitting statute does not authorize the EQB to include in the routing and permitting rules all the elements necessary for complete environmental review under the environmental review program rules. Consequently, a pipeline routed and permitted in compliance with the routing and permitting requirements alone would not necessarily be exempt from the need for an EAW or EIS.

In order to avoid the potential for disruption and delay of the routing and permitting process -- which has strict timeframes by statute -- due to a request for an EAW or EIS (for instance through the filing of a citizens' petition) after the routing process was already underway, the staff decided to recommend that the mandatory EAW and EIS requirements be set so that all pipelines subject to routing and permitting are also subject to an EAW or EIS. This then provides a basis for developing routing and permitting rules which go beyond the requirements of the routing and permitting statute and incorporate requirements from the environmental review program as well.

The implication for the pipeline industry is that some projects will be subjected to a more involved routing and permitting process than would otherwise be necessary, in trade for the assurance that the process will be predictable, without any unexpected, delay-causing EAWs or EISs along the way.

4410.4600. Exemptions.

62. Subpart 2. STANDARD EXEMPTIONS. The following projects are standard exemptions:
A. [unchanged]
B. projects for which all governmental decisions have been made However, this exemption does not in any way alter the prohibitions on final governmental decisions to approve a project under part 4410.3100;
C to E. [unchanged]

The proposed addition to item B has the intent of preventing an RGU from interpreting this standard exemption as a legal way to circumvent review if otherwise required. Historically, this exemption has sometimes been misinterpreted in that way, and may occasionally have caused projects to have received approval without required review.

63. Subp. 11. SEWAGE SYSTEMS. Construction of a new wastewater treatment facility ~~or sewer system~~ with a capacity of less than ~~3,000~~ 5,000 gallons per day average wet weather flow or the expansion of an existing wastewater treatment facility by less than ~~that amount~~ 5,000 gallons per day average wet weather flow or the expansion of a sewage collection system by less than 5,000 gallons per day design average daily flow or a sewer line of 1,000 feet or less and eight-inch diameter or less, is exempt.

The PCA has recommended these amendments to rationalize the sewage systems exemptions and to incorporate the updated measures of "capacity" also incorporated into parts 4410.0200 and 4410.4300, subpart 18. The first two changes are to introduce the capacity measurement of "average wet weather flow" and to adjust the threshold accordingly to account for infiltration of ground water into the sewer at wet weather times.

The other change is to move the exemptions for sewer lines from subpart 20 to this subpart, and at the same time double the length requirement for an exemption from 500 feet to 1,000 feet to exempt typical local hook-ups and minor connections.

64. Subp. 17. ~~STREAM DIVERSIONS~~ DITCH MAINTENANCE OR REPAIR. [Text unchanged.]

This proposed caption change is intended to make the caption correspond to the actual subject of this exemption, which is the maintenance and repair of drainage ditches, and not stream diversions.

65. Subp. 20. UTILITIES. Utility extensions are exempt as follows: water service mains of 500 feet or less and 1-1/2 inches diameter or less; ~~sewer lines of 500 feet or less and eight inch diameter or less;~~ local electrical service lines; gas service mains of 500 feet or less and one inch diameter or less; and telephone service lines.

The deletions in this subpart are actually a transfer (with modifications) to subpart 11. Please refer to the section for additional information about this change.

66. 4410.5000, subpart 1. Bulletin. To provide early notice of impending projects which may have significant environmental effects, the EQB shall pursuant to Minnesota Statutes, section 116D.04, subdivision 8, publish a bulletin with the name of "EQB Monitor" containing all notices as specified in part 4410.5200. The EQB chair may prescribe the form and manner in which the governmental units submit any material for publication in the EQB Monitor, and the EQB ~~chairperson~~ chair may withhold publication of any material not submitted according to the form or procedures the EQB chair has prescribed.

The proposed changes here would authorize the EQB chair rather than the Board to set the standards for Monitor content and enforce them. It is believed that these matters are not of a policy nature and do not need the action of the Board. As a practical matter, decisions under this part are seldomly necessary anyway, since the Monitor has been published for over ten years.

67. 4410.6000 Projects requiring an assessment of EIS preparation cost. ~~When a private person proposes to undertake a project, and the final determination has been made that an EIS will be prepared by a governmental unit on that project, the proposer shall be assessed for the reasonable costs of preparing and distributing the EIS in accord with parts 4410.6100 to 4410.6500.~~ The RGU shall assess the project proposer for its reasonable costs of preparing and distributing an EIS in accord with parts 4410.6100 to 4410.6500.

This revision would implement two changes made in the 1988 Legislative session concerning the authority of an RGU to assess the project proposer for its EIS costs. These changes were enacted by Laws of Minnesota 1988, chapter 501, which amended Minnesota Statutes, section 116D.045 in two fundamental ways: (1) the RGU is now allowed to assess its reasonable costs for preparing and distributing an EIS without reference to the total value of the project; and (2) public project proposers as well as private project proposers are now subject to assessment for the EIS costs. The revised language of the rule amendment would simply incorporate these directives into the appropriate rule.

The first change in the law cited above was made because experience with EISs over the years has demonstrated that a substantial number projects were of a total value which was too low to yield sufficient funding to pay the costs of preparing an EIS when the assessment was based on the formula in the statutes (which appears in the rules at part 4410.6100, subpart 2). Out of 34 EISs prepared since 1982, the formula yielded inadequate funding in at least nine cases. Moreover, certain classes of projects with a relatively high potential for significant environmental impacts tended to be of low total value, e.g., landfills. To resolve such funding problems, the Legislature amended the law to authorize the RGU to recover its full reasonable costs for the EIS.

The second change in the law was to make public projects subject to the cost assessment provisions. Since 1982, 13 public project EISs were done (excluding projects by MnDOT which reviews its highway projects through a slightly different procedure) of which seven were done by a governmental unit other than the proposer. Until now, the RGU for such EISs had to rely on persuasion in order to get the proposing agency to pay for any of the RGU's EIS costs. The Legislature amended the law to make all projects, public as well as private subject to the cost assessment provisions of the law.

68. 4410.6100 Determining EIS assessed cost.

Subp. 2. [Delete]
Subp. 3 to 5. [Renumber]

The subpart proposed for deletion reiterates the cost assessment formula which formerly appeared in the statutes, but which was deleted by the 1988 Legislature (Laws 1988, chapter 501). The EIS cost statute now allows for full recovery of the RGU's reasonable costs of preparing and distributing an EIS. Consequently, the outdated formula must be deleted.

69. Part 4410.6200 Determining EIS estimated cost, and EIS actual cost, ~~and project estimated cost~~.

Subpart 1 and 2. [Unchanged.]
Subp. 3. [Delete.]

The deleted term in the caption and the deleted subpart both concern the "project estimated cost," a concept formerly used to derive the amount of money the proposer was required to pay to the RGU. The revised statutes no longer tie the proposer's cost obligation to the value of the project, and hence, the term "project estimated cost" no longer has any relevancy. The term's definition, at part 4410.0200, subpart 65, is also proposed for deletion at this time.

70. 4410.6300 Revising EIS assessed cost.

Subpart 1. ALTERATION OF PROJECT SCOPE. If the proposer substantially alters the scope of the project after the final determination has been made that an EIS will be prepared and the EIS assessed costs has been determined, the proposer shall immediately notify the RGU and the EQB.

If the change will likely result in a net change of greater than five percent in the EIS assessed cost, the proposer and the RGU shall make a new determination of the EIS assessed cost. The determination shall give consideration to costs previously expended or irrevocably obligated, additional information needed to complete the EIS and the adaptation of existing information to the revised project. The RGU

shall submit either a revised agreement or a notice that an agreement cannot be reached following the procedures of part 4410.6100, subpart 1, except that that such agreement or notice shall be provided to the EQB within 20 days after the proposer notifies the RGU and EQB of the changes in the project. ~~If the changed project results in a revised project estimated cost of $1,000,000 or less, the proposer shall not be liable for further cash payments to the EQB or the local governmental unit beyond what has been expended or irrevocably obligated by the RGU at the time it was notified by the proposer of the change in the project.~~

[Rest of subpart unchanged.]

The deleted language was in the rule to explain what to do if the "Project estimated cost" fell below the minimum threshold ($1,000,000) for which the proposer had any obligation to pay for EIS costs. Under the revised statutes (Laws 1988, chapter 501) the proposer's obligation is not related to the value of the project. Hence, this provision no longer has any relevance and must be deleted.

71. 4410.6400 Disagreements regarding EIS assessed cost.

Subpart 1. NOTICE TO EQB. If the proposer and the RGU disagree about the EIS assessed cost, the proposer and the RGU shall each submit a written statement to the EQB identifying the EIS estimated cost, ~~and the project estimated cost~~ within ten days after the RGU notifies the EQB that an agreement could not be reached. The statements shall include the EIS preparation costs identified in part 4410.6200, subparts 1 and 2 as they pertain to the information to be included in the EIS, a brief explanation of the costs, and a discussion of alternative methods of preparing the EIS and the costs of those alternatives.

Subp. 2. [Delete.]
Subps. 3 to 7. [Renumber.]

This change deletes reference to "project estimated costs," a concept no longer relevant in view of statutory changes made by the 1988 Legislature (Laws 1988, chapter 501) which severed the former connection between the project's cost and the proposer's EIS cost obligations.

IV. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. section 14.115, subd. 2 (1986) requires the Board, when proposing rules which may affect small businesses, to consider the following methods for reducing the impact on small businesses:

(a) the establishment of less stringent compliance or reporting requirements for small businesses;

(b) the establishment of less stringent schedules and deadlines for compliance or reporting requirements;

(c) the consolidation or simplification of compliance or reporting requirements;

(d) the establishment of performance standards for small businesses to replace design or operational standards required; and

(e) the exemption of small businesses form any or all requirements of the rule.

The proposed amendments to the environmental review program rules may occasionally have impacts on small businesses. However, in most cases the program impacts relatively large businesses simply because most mandatory categories are based on the premise that the larger the scale of a project, the greater its potential for significant environmental effects, and because in general small businesses do not construct large-scale projects. This would be particularly true for mandatory EIS projects: it is quite unlikely that a small business would ever propose a project requiring a mandatory EIS.

Many of the proposed amendments in the mandatory categories will make the categories less-inclusive, which would decrease the potential for the rule to apply to a small business. The exceptions, those category changes proposed which would make the categories more inclusive include: pipelines; anhydrous ammonia storage facilities; solid waste resource recovery or incineration facilities; communication towers; sports or entertainment facilities; water diversions; and mixed residential-commercial projects. It is possible that some of these changes could apply to a small business as defined in the cited statute. Again, it is very unlikely that a small business would require an EIS for a project under the proposed EIS category changes.

The environmental review program rules are not of a nature in which factors (a) to (d) listed above could be incorporated. The rules are not regulatory, but rather establish a set of processes for the disclosure of information to be used in the decision-making process of approving projects. The rules do not involve reporting requirements, compliance schedules, or impose design or operational standards on projects. Consequently, no less stringent requirements could be applied in the case of small businesses.

With respect to factor (e), the exemption of small businesses from any or all rule requirements, it would be contrary to the basic purpose of the program to exempt a project from review for any reason other than reasons relating to its anticipated impact on the environment. The focus of the program is on the disclosure of the potential environmental impact of the

project in question. An impact is an impact, regardless of who may be responsible for the project. Therefore, it would be inappropriate to exempt projects on the basis of who is the proposer.

The EQB has attempted over the 14 years of existence of this program to streamline its procedures and eliminate unnecessary requirements. A prominent example, which directly benefits small businesses which may become involved with the program, is the simplification of the EAW form in 1982. At that time the document was shortened from 12 pages to 4 pages, with a commensurate decrease in the number of pieces of information needed. The existing EAW form is probably about the mimimal form which could be used and still disclose the information necessary to consider the full range of potential impacts possible.

It should be noted that in the development of many of the rule amendments, those dealing with residential and commercial projects in cities, the EQB enlisted the assistance of the Builders Association of Minnesota, an organization which represents small home builders. The executive director of this organization was a member of the Urbanizing Areas Work Group, which recommended a number of the proposed amendments. Residential projects have historically been the single largest class of project reviewed, and this is a class of project which may be proposed by a small business more frequently than most other types of projects for which their are mandatory categories.

V. FISCAL NOTE

Revisions proposed to the mandatory EAW and EIS categories for construction of facilities for the combustion of mixed municipal solid waste may result in an impact to local governmental units significant enough to require a fiscal note pursuant to Minn. Stat., section 14.11, subd. 1. That statute requires that an agency proposing a rule give an estimate of the total cost to all local units for the two years following implemetation of the rule if the total is expected to exceed $100,000 in either of those years. If the proposed category threshold revisions at parts 4410.4300, subpart 17 and 4410.4400, subpart 13 are implemented, there may be additional costs to local units which are proposers for resource recovery projects.

Based on information from representatives of the Minnesota Waste-to-Energy Association, it appears that there may be about 15 resource recovery projects planned for implementation in the next five years, for a yearly average of three projects. This estimate agrees with the annual average number of facilities permitted by PCA since 1982 (14 total facilities) according to the data in Appendix 3.

Based on past experience, a reasonable estimate of the cost of an EIS for a modest sized resource recovery facility is about $125,000. Assuming the worst case, i.e., that none of these facilities would require an EIS without the proposed revisions and that all will require an EIS with the revisions and that in all cases a local unit will pay for the EIS, it can be estimated that the proposed EIS category revision could result in an

annual increase in costs to local units of about $375,000, equivalent to a biennial cost of $750,000. This estimate is undoubedly high because it is very likely that some of the projects would have required an EIS as a result of the EAW process anyway.

A conservative estimate of the cost can be made from the data on facilities permitted by PCA since 1979 (Appendix 3). This data indicates that there were no facilities proposed over this time period with a capacity between 250 tons/day and 500 tons/day for which no EIS was prepared. At this rate, the proposed revision of the mandatory EIS threshold downward to 250 tons/day would result in no additional EIS costs to local units. This estimate is probably low as it is quite likely that some facilities in this size range will be proposed in the future. Therefore, the proposed revisions in question will probably result in increased costs to local units of somewhere in the range $125,000 and $500,000 per biennium over the next five or so years.

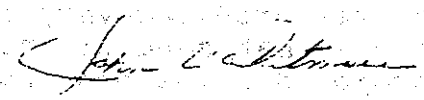
The cost to local governments due to the proposed revision of the EAW category thresholds would be minimal. Using data from an EAW cost survey done by EQB in 1983, and assuming that an EAW for a resource recovery facility would be among the most expensive to prepare, it may be estimated that an EAW may cost the proposer $10,000 to $15,000. Using the data in Appendix 3, it can be estimated that approximately one facility will be proposed each year with a capacity between 30 tons/day and 100 tons/day. Therefore, the proposed revision of the EAW threshold from 100 tons/day to 30 tons/day would be estimated to result in one additional EAW per year, with a potential total cost of $15,000, or a biennial cost of $30,000. Allowing for the greater interest in resource recovery in recent years, this estimate should probably be scaled-up somewhat, so that perhaps a biennial estimate of $50,000 would be more accurate. It should be noted that the cost of the health risk assessment which will be a standard part of an EAW for such facilities in the future is not properly considered as part of the EAW cost since such an assessment will be needed to support applications for air quality permits. The $15,000 allowed for EAW costs may or may not cover the health risk assessment costs in a particular case.

The EQB does not believe that any other proposed rule revisions will have a significant fiscal impact on local governmental units. In almost all cases, project proposers will be private parties and local unit RGUs have the authority to recover their costs of environmental review from the project proposer.

VI. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. Rules, parts 4410.0200 to 4410.7800 are both needed and reasonable.

Dated: August 3, 1988



John C. Ditmore, Chair
Environmental Quality Board

LIST OF WITNESSES AND EXHIBITS

Witnesses

In support of the need for and the reasonableness of the proposed amendments, the following witnesses will testify at the rulemaking hearing:

1. Gregg M. Downing, EQB coordinator for the environmental review program: Mr. Downing will testify regarding the need for and reasonableness of the amendments in general, in particular the amendments to the procedures of the process.

2. The following persons, who are the Technical Representatives from their respective agencies to the Environmental Quality Board, and other member agency staff as deemed appropriate will be available to testify in support of the need for and reasonableness of amendments relating to regulatory authorities and areas of expertise of their agencies, particularly mandatory EAW and EIS categories:

A. Dept. of Agriculture: Paul Burns;

B. Dept. of Health: [unknown at this time due to personnel changes currently underway];

C. Dept. of Natural Resources: Charlotte Cohn;

D. Dept. of Public Service: Dennis Devereaux;

E. Pollution Control Agency: Clifford Anderson; in addition, other staff will testify in support of the proposed amendments to the solid waste mandatory categories, including Eric Kilberg, Office of Planning and Review, and appropriate staff of the Divisions of Groundwater and Solid Waste and Air Quality;

F. Dept. of Transportation: Patricia Bursaw;

G. Board of Water and Soil Resources: Jim Birkholz; and

H. Waste Management Board: Susan Thornton.

Exhibits

In support of the need for and reasonableness of the proposed amendments, the following exhibits will be entered into the hearing record by the Board:

Ex. No.	Document
1	Regulations of the Council on Environmental Quality for Implementing the National Environmental Policy Act, 40 CFR part 1508.25, definition of "connected actions"
2	Urbanizing Areas Work Group Report to EQB
3	Trip Generation (3rd edition), Institute of Transportation Engineers.
4	Winona County Resource Recovery Facility Draft EIS, MPCA, May 1988.
5	Technical Work Paper on Health Risk Assessment, Winona County Resource Recovery Facility EIS process, ICF/Clement Associates, May 1988
6	Technical Work Papers on Supplemental Health Risk Assessment, Winona County Resource Recovery Facility EIS process, J.B. Stevens and Associates, May 1988, (4 volumes)
7	Anoka County RDF Facility Final EIS, MPCA, 1986
8	MPCA permit for the Hennepin Energy Recovery Corporation incinerator, 1987
9	U.S. EPA, Municipal Waste Combustion Study, document EPA/530-SW-87-021, June 1987
10	U.S. EPA, Region 5 Office of Public Affairs, Summary of Risk Assessment and Proposed Risk Management Actions, Midland, Michigan, April 1988

LIST OF APPENDICES

1. Urbanizing Areas Work Group recommendations for content of an Alternative Urban Areawide Review document.

2. Data on Sports and Entertainment Projects

3. Solid waste resource recovery facilities permitted by PCA

APPENDIX 1

EQB URBANIZING AREAS WORK GROUP
Recommendations for Content of
An Alternative Urban Areawide Review Process

These recommendations are based on the items of the standard EAW form (copy attached); the numbers used here refer to the numbered items on the EAW form.

1 - 4a: same
4b (maps, drawings):
- drop county map
- the land use map and zoning map called for should cover the entire community; if the review area lies along a municipal boundary, land use and zoning maps for the adjoining portions of the neighboring jurisdiction would also be required
- DNR wants a detailed cover type map -- see item 14

5. Description: The project description should include the following:
- anticipated development and development densities by zone, ownership, parcel or other meaningful subdivisions of area
- development staging and construction schedules, to extent known.
- infrastructure planned to service development and its phasing -- discuss interactions between infrastructure staging and development and how any constraints on infrastructure development may influence staging of development

6 - 11: same

12. Plan consistency: this item will be worded in the positive: e.g., "Discuss the relationship of the proposed development to the Comprehensive Plan and zoning ordinances." Must discuss consistency with all components of CP not just land use (i.e., transportation, sewer etc.)

13. Land use:
- drop question re past land use
- word question to elicit information about land use in adjoining areas which may interact with development in area reviewed

14. Cover types: augment list with cover type map showing:
- wetlands - identified by type (Circular 39) and protected status
- watercourses - rivers, streams, creeks, ditches
- lakes - identify protected waters status and shoreland management classification
- woodlands - break down when possible to deciduous or coniferous
- grassland - identify native and old field
- pasture
- cropland
- current development: roads, residences, commercial
- proposed locations for development (to extent predictable)
- proposed mitigation (to extent known):
  - areas to be protected
  - wetlands to be created, enhanced, restored
  - replacement for lost woodland or grassland

This map must be at least as detailed as a USGS topographic map.

15/16/17. Soils/geologic features:
- replace listing of soil types with "Discuss the suitability of the areas soils for the proposed uses and describe any limitations presented."
- add to the list of geologic hazards the following: former dumps or landfills, sites of potential hazardous materials contamination.
- emphasize need to display these features on maps

18. Shorelands, flood plains, wild/scenic river districts: change to ask:
- describe and map proposed work in shoreland etc. areas
- discuss the consistency of the proposed development with appropriate ordinances and DNR standards

19. same

20. Groundwater use: a same; drop b

21. Erosion control: add: describe /map grading and excavation plans (to extent predictable) including identification of "hazard areas"

22. Stormwater and Wastewater: revise the whole item as follows:
- separate stormwater from wastewater and for stormwater present:
  - identify/map whole stormwater receiving system
  - identify trout streams and other especially sensitive watercourses
  - describe stormwater management system and mitigation
  - for lakes* present basic physical (area, depth) and water quality data (if available)
  - for lakes* present a "nutrient budget" describing the change in phosphorus loadings due to the development (this analysis is the same as is now being done for EAWs where lakes are involved).

*Lakes to be limited to those of recreational/ecological importance (e.g., the Met Council priority lakes, DNR natural environment lakes, DNR game lakes or some other similar set of lakes) and only those within the region (i.e., don't need to include Lake Pepin for instance)

- for wastewater present:
  - wastewater flow characteristics: average, peak volumes; # sewered units; flows by land use
  - layout of sewers and capacities of "downstream" lines and treatment facilities
  - staging and timing information
  - if on-site system used, suitability of soils etc

23. Air pollution/dust/noise/odors:
- drop dust and odors
- noise: if the area includes or adjoins major noise source(s) (either existing or proposed) a noise analysis is needed to determine if development in area would be subjected to excessive noise and if so mitigation must be identified
- air pollution: a traffic-related air quality analysis using methods acceptable to MPCA will generally be required, and would be based on

the traffic analysis (see item 28); an analysis may not be necessary for projects which generate little traffic and involve no congested roadways or intersections. The analysis would predict impacts on air quality, compare the results to state standards, and identify appropriate mitigation measures where necessary.

24. Solid/hazardous waste: same for solid waste, drop hazardous waste

25. Wildlife habitat: DNR feels that no additional information beyond that described at item 14 is necessary.

26. Historical/archeological: same

27. Misc. sensitive features: drop c, otherwise same

28. Traffic: A traffic analysis commensurate with the impact of the proposed development on the local, regional, and state transportation systems and traffic-related environmental resources (such as air quality and noise) must be provided. The analysis must use generally-accepted methods and assumptions (such as ITE traffic generation rates). The analysis must contain the following elements:

- maps and information on the existing and proposed functional classification system, including state, regional, and local roadways intersections and interchanges. The information must include data o existing and proposed capacities and background (i.e., without the proposed development) traffic volumes; data should be presented for ADTs, peak days, peak hours, or whatever other measures are relevant to identify potential congestion problems. The geographical scope o the information should extend outwards from the area as far as the traffic generated by the proposed development may significantly impa the roadway system.
- if not already presented in response to item 5, a description and mapping of major traffic-related features of the proposed developmen such as parking lots or ramps, new or upgraded roadways, intersectio and interchanges, and transit facilities, along with their anticipat scheduling
- trip generation rates and trip totals for projected development within the area. This should be broken down by land use zones and/o other meaningful subdivisions of the area. Totals should be given fo ADT, peak day, peak hour, etc. as is necessary to identify potential congestion problems. Projected distribution of traffic upon the roadway system must be given.
- analysis of impact of proposed development on the roadway systems:
    - comparision of capacities to project plus background volumes (for critical time periods)
    - analysis of Levels of Service and delay times at critical points
    - identification of improvement needs and appropriate mitigatio measures (structural and non-structural); discuss responsibilities commitments to supply mitigation measures
- description/maps of pedestrian and bicycle facilities

29. Utilities public [illegible]s, drop

E.R. # (filled in by EQB) _____

Environmental Assessment Worksheet (EAW)

MARK APPROPRIATE BOX:

☐ **REGULAR EAW** ☐ **SCOPING EAW**

NOTE TO REVIEWERS: For regular EAWs, written comments should address the accuracy and completeness of the EAW information, potential impacts that may warrant investigation and/or the need for an EIS. For scoping EAWs, written comments should address the accuracy and completeness of the information and suggest issues for investigation in the EIS. Such comments must be submitted to the Responsible Government Unit (RGU) during the 30-day period following notice of the EAW's availability in the *EQB Monitor*. Contact the EQB (metro: 612/296-8253; non-metro: 1-800-652-9747, ask for environmental review program) or the RGU to find out when the 30-day comment period ends.

---

1. Project Name _____

2. Proposer _____

Contact Person _____

Address _____

_____

Phone _____

3. RGU _____

Contact Person _____

and Title _____

Address _____

_____

Phone _____

4. Project Location: _____ ¼ _____ ¼ Section _____ Township _____ Range _____

a. County Name _____ City/Township Name _____

b. Attach copies of each of the following to the EAW:

1. a county map showing the general area of the project.
2. a copy(ies) of USGS 7½ minute, 1:24,000 scale map.
3. a site plan showing the location of significant features such as proposed structures, roads, extent of flood plain, wetlands, wells, etc.
4. an existing land use map and a zoning map of the immediate area, if available

5. Describe the proposed project completely (attach additional sheets as necessary).

6. Reason for EAW preparation: _____

List all mandatory category rule #'s which apply: _____

7. Estimated construction cost _____

8. Total project area (acres) _____ or length (miles) _____

9. Number of residential units _____ or commercial, industrial, or institutional square footage _____

10. Number of proposed parking spaces _____

11. List all known local, state and federal permits, approvals, funding required:

Level of Government	Type of Application	Status
Federal:		
State:		
Local:		

12. Is the proposed project inconsistent with the local adopted comprehensive land use plan or any other adopted plans? ___ No ___ Yes
If yes, explain:

13. Describe current and recent past land use and development on and near the site.

14. Approximately how many acres of the site are in each of the following categories? (Acreages should add up to total project area before and after construction.)

	Before	After		Before	After
Forest Wooded	_____	_____	Wetland (types 3-8)	_____	_____
Cropland	_____	_____	Impervious Surface	_____	_____
Brush grassland	_____	_____	Other (specify)	_____	_____

15. Describe the soils on the site, giving the SCS soil classification types, if known.

16. Does the site contain peat soils, highly erodible soils, steep slopes, sinkholes, shallow limestone formations, abandoned wells, or any geologic hazards? If yes, show on site map and explain: ___ No ___ Yes

17. What is the approximate depth (in feet) to:
a. groundwater _____min. _____avg. b. bedrock _____min. _____avg.

18. Does any part of the project area involve:

a. shoreland zoning district?	___ No	___ Yes
b. delineated 100-year flood plain?	___ No	___ Yes
c. state or federally designated river land use district?	___ No	___ Yes

If yes, identify water body and applicable state classification(s), and describe measures to protect water and related land resources:

19. Describe any physical alteration (e.g., dikes, excavation, fill, stream diversion) of any drainage system, lake, stream, and/or wetland. Describe measures to minimize impairment of the water-related resources. Estimate quantity of material to be dredged and indicate where spoils will be deposited.

20. a. Will the project require an appropriation of ground or surface water? If yes, explain (indicate quantity and source):

___ No ___ Yes

b. Will the project affect groundwater levels in any wells (on or off the site)? If yes, explain:

___ No ___ Yes

21. Describe the erosion and sedimentation control measures to be used during and after construction of the project.

22. a. Will the project generate:

1. surface and stormwater runoff?	___ No	___ Yes
2. sanitary wastewater?	___ No	___ Yes
3. industrial wastewater?	___ No	___ Yes
4. cooling water (contact and noncontact)?	___ No	___ Yes

If yes, identify sources, volumes, quality (if other than normal domestic sewage), and treatment methods. Give the basis or methodology of estimates.

b. Identify receiving waters, including groundwater, and evaluate the impacts of the discharges listed above. If discharges to groundwater are anticipated, provide percolation permeability and other hydrogeological test data, if available.

23. Will the project generate (either during or after construction):

a. air pollution?	___ No	___ Yes
b. dust?	___ No	___ Yes
c. noise?	___ No	___ Yes
d. odors?	___ No	___ Yes

If yes, explain, including as appropriate distances to sensitive land uses; expected levels and duration of noise; types and quantities of air pollutants from stacks, mobile sources, and fugitive emissions (dust), odor sources; and mitigative measures for any impacts. Give the basis or methodology of estimates.

24. Describe the size and amount of solid and [illegible] ashes that will be generated and the method and location of disposal.

25. Will the project affect:

a. fish or wildlife habitat, or movement of animals?	No	Yes
b. any native species that are officially listed as state endangered, threatened, or of special concern (animals and/or plants)?	No	Yes

If yes, explain (identify species and describe impacts):

26. Do any historical, archaeological or architectural resources exist on or near the project site? If yes, explain (show resources on a site map and describe impacts):

— No — Yes

27. Will the project cause the impairment or destruction of:

a. designated park or recreation areas?	No	Yes
b. prime or unique farmlands?	No	Yes
c. ecologically sensitive areas?	No	Yes
d. scenic views and vistas?	No	Yes
e. other unique resources (specify)?	No	Yes

If yes, explain:

28. For each affected road indicate the current average daily traffic (ADT), increase in ADT contributed by the project and the directional distributions of traffic.

29. Are adequate utilities and public services now available to service the project? If not, what additional utilities and/or services will be required?

— No — Yes

Summary of Issues

For regular EAWs, list the issues as identified by "yes" answers above. Discuss alternatives and mitigative measures for these issues. For scoping EAWs, list known issues, alternatives, and mitigative measures to be addressed in EIS.

CERTIFICATION BY RESPONSIBLE GOVERNMENTAL UNIT

I hereby certify that the information contained in this document is true and complete to the best of my knowledge and that copies of the completed EAW have been made available to all points on the official EQB distribution list.

Signature _____ Date _____

Title _____

APPENDIX 2. DATA ON SPORTS AND ENTERTAINMENT FACILITIES RECEIVED IN PAST

Project	(Attendance Park/Avg.)	Events	Parking Spaces Paved/Unpaved	Acreage	Special Environment Concerns
Starwood Music Center	17,000/3,200	51	3,200/3,500	86	Outdoor crowd noise (OCN) Amplified Music (AM)
Pheasant Ridge Music Center	20,000/10,600 (medium)	60	5,000+/2,200	175	OCN AM
Cantebury Downs (EIS)	23,000+/12,000	145	5,000+/4,000	390	OCN Horses stabled
Heartland Horse Racing (Little Falls)	9,000/3,300	74	1,600+/2,000	206	OCN Horses stabled
NBA Arena	19,000/ -	-	90 new (to use existing ramps)	723,000 sq. feet	
Nat'l Sports Cntr. Blaine	12,000/ -	(3 events of 12,000)	4,000/none	164	OCN
Lake Superior Zoo Expansion	4,500-6,000/ 2,300/3,000	-	515/none	20	Animals
MN Zoo (1977) (EIS)	30,000/4,000	all year	2,500/none	480	Animals

APPENDIX 3. Solid Waste/RDF Facilities Permitted by MPCA

Facility	Type	Size in tons/day	Permit Date	start up	Envir. Review	Health Risk Assessment (HRA)	Pollution Contol Equipment
Western Lake Superior Sanitary District (in Duluth)	RDF	150	To be issued in 1987	1979 for sludge, 1986 RDF	No	No	Cyclones & Wet Scrubber
St. John's University (in Collegeville, Stearns County)	MB	72	1979, reissue 6/85	1981	No	No	MPCA reqired them install an electrified stone bed
Richards Asphalt (in Savage)	MB	72	1981, 4/86 reissue	12/82	No	No	Electrostatic precipitator (ESP)
City of Red Wing	MB	90	1/82	9/82	EAW	No	ESP
NSP Red Wing	RDF	960	9/84	7/88	No	No	ESP
NSP Mankato	RDF	850	5/85	7/88	No	No	ESP
City of Perham	MB	80	5/85	12/87	No	No	ESP
Olmstead County	MB	200	9/85	4/87	EAW	Minor HRA	ESP
Pope/Douglas Counties	MB	80	4/86	3/87	No	No	ESP
City of Fergus Falls	MB	94	8/86	7/87	No	No	Venturi Scrubber
Washington/Ramsey (incineration at NSP power plants)	RDF	600(765)?	-	-	EIS	No	N/A
Polk County (in Fouston)	MB	103	10/86	1/88	EAW	Minor HRA	ESP
Anoka County (in Elk River)	RDF	1080	11/86	10/88	EIS	Yes with food chain	Dry scrubber and bag house
Hennepin County	MB	1000	1/87	1/90	EIS	Yes with food chain on several area lakes only	Dry Scrubber and bag house
Winona County	MB	150	1988	1988	EAW to be done	To be done including food chain	To be determined based on results of HRA
Pennington County	?	55	-	-	-	-	-
City of Bagley	?	150	on hold (funding)	-	-	-	-