EQB

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

Introduction

This document explains the need for and reasonableness of proposed amendments to the EQB rules governing the Minnesota environmental review program. It summarizes the evidence and argument that the Board is relying on to justify the proposed amendments. It has been prepared to satisfy the requirements of Minnesota Statutes, section 14.131 and Minnesota Rules, part 1400.2070.

In general, these amendments are proposed by the EQB to improve the effectiveness and efficiency of the environmental review process which has been in effect since 1974. The EQB is directed by Minn. Rules, part 4410.0400 to monitor the effectiveness of the environmental review process and to take appropriate action to improve the process. As part of its ongoing administrative and assistance functions, the EQB staff keeps track of problem areas in the rules, such as provisions that are ambiguous, misleading, difficult to interpret or apply, not achieving their intended purpose, or otherwise in need of revision. This information is the source of many of the proposed changes.

The source of the most significant revisions being proposed, however, is a several year-long analysis of problems with the process authorized by the Board, conducted by the EQB staff and the staffs of the member agencies of the EQB and supervised by a subcommittee of Board members. Public input on ideas for revision was obtained at several points throughout the process, including the following:

(1) Notice of solicitation of outside opinion was published in

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the State Register on January 7, 1991; 11 persons submitted comments in response, which were considered in the development of the report listed in item #2 below;

(2) In July 1991 a written report was presented to the EQB by the staff committee recommending certain changes in the program. This report was accepted by the Board and distributed in August 1991 to persons known to be interested in the process;

(3) In November 1991 a "focus group" meeting of persons of diverse backgrounds with experience in the environmental review process was held by the EQB subcommittee to review the July report;

(4) In April 1992 the Minnesota Environmental Initiative, a non-profit organization dedicated to helping solve environmental problems through constructive dialogue, held a conference on revision of the environmental review process; the conference findings were reviewed by the subcommittee;

(5) In March 1993 the subcommittee issued a report "Concepts for Revision of the Environmental Review Program" requesting comments, and held two public informational meetings (in April and May 1993); 19 written comments and 5 oral presentations were received; the subcommittee reviewed these comments as part of its process;

(6) The Minnesota Center for Environmental Advocacy met with the subcommittee several times in the fall of 1993 to discuss the results of a program audit study that it had performed on the environmental review program.

(7) On April 10, 1995 the Board published notice of proposed rule amendments in the State Register; notice was also mailed to the Board's rulemaking interested persons mailing list and published in the EQB Monitor. A Statement of Need and Reasonableness was made available to the public. The Board received numerous letters of comment and requests for a public hearing. In consequence of the level of interest in the rule amendments as well as the level of interest which had been shown during the 1995 legislative session in statutory amendments to the environmental review program proposed by the Board, the Board decided to put the formal rulemaking process on hold. The proposed rules published on April 10, 1995 were later withdrawn due to failure of the Board to proceed with a hearing within the time limit prescribed by law;

(8) The Board held a public forum on July 18, 1995. Notice of the public forum was published in the July 3, 1995 issue of the State Register and also in the EQB Monitor. All persons who had submitted comments on the April 10 rule draft were notified of the forum. At the forum the EQB staff explained the rule and statutory amendments that had been proposed and all participants had an

opportunity to ask questions or give comments; and

(9) on March 4, 1996 the Board published in the State Register a Request for Comments notice with the opportunity to submit comments through April 1, 1996.

The amendments now proposed are similar or identical in most respects to the amendments proposed in April 1995, except that modifications have been made in a few rule subparts to accommodate input received on the April 1995 draft.

Statement of the EQB's Statutory Authority

The EQB is given authority under Minn. Statutes, sections 116D.04 and 116D.045 to adopt rules to govern the environmental review program. Under these statutes, the Board has the authority to adopt the proposed amendments.

Requirements of Minnesota Statutes, section 14.131

Classes of persons affected, including those who will bear the costs and those who will benefit: As with the existing rules, the proposed amendments will affect primarily persons who propose to develop projects that have, or may have, the potential for significant environmental effects. The greatest impacts would be on those proposers who would come under review under the proposed rules but not under the current rules; these would be some of the proposers with the following classes of projects: industrial wastewater discharges; airports; projects destroying historic properties; and communication towers. In some respects the proposed amendments make review under the EIS process more rigorous; therefore, proposers whose projects require an EIS will be affected in this way. Otherwise, the amendments proposed are expected to make review more efficient. The proposed amendments do not affect the cost aspects of the rules except to update the procedures for assessing and paying the costs of review. As with the current rules, the beneficiaries are expected to be project proposers, units of government, and the general public.

Probable cost to the EQB and other agencies and the effect on state revenues: There should be no net impact on state revenues from the proposed amendments because if any fees are paid to the state for review due to the amendments it would directly go to offset costs incurred. The amendments may cause some small increases in costs to some state agencies due to the fact that a few new kinds of projects would be covered by EAW requirements that are not now covered, for which a state agency must do the review. The most notable example is the proposed industrial wastewater discharge mandatory EAW category; this new category could increase

review costs at the MPCA. It should be noted that the changes proposed in the EIS cost assessment procedures do not alter the costs of EISs or the fact that the proposer must bear the costs, they merely change the procedural aspects of the payment of the costs to the RGU.

Probable costs of complying with the amendments: Since most the amendments proposed either clarify ambiguities or make explicit provisions that the EQB believes are already implicit in the rules, they will not increase the costs of review. There are a few amendments that will increase the number of EAWs prepared and these provisions will cause increased costs: these amendments are within part 4410.4300 at subparts 1, 18, 21, and 31. A reasonable estimate of the number of increased EAWs due to these changes is 20. Allowing an average cost of $10,000 for each gives a cumulative total of $200,000 per year. There will likely be some unquantifiable cost savings due to the improvements in efficiency caused by the many clarifications in the amendments.

Relation to existing federal regulations: The proposed amendments would make one improvement in the relationship of the state program to the analogous federal NEPA regulations. At part 4410.1300 the amendments would automatically authorize the use of a federal EA document in place of the state EAW document. This would reduce paperwork and make a small improvement in the overall efficiency of the program.

Since these amendments would make overall only minor changes in a program that has been ongoing for over 20 years, the question of whether there may be less costly or less intrusive methods of achieving the purpose of the rule is not pertinent to this rulemaking.

Statement of Need and Reasonableness

This document has been prepared by the EQB staff based on the discussions that went into the development of the proposed revisions. For some of the proposed amendments, especially mandatory category changes, the information and argument presented have been developed by the staff of the EQB member agency with the greatest expertise with respect to the proposal.

The following sections of the document summarize the rationale and evidence in support of each proposed amendment to the environmental review rules, in the order of appearance of the parts and subparts in the rule. **The text of the proposed amendments is printed as a separate document.**

Part 4410.0200 DEFINITIONS AND ABBREVIATIONS

Subparts 34, 43, 47, 48, 49, 50, 67, 78, 82, 92a, 92b, and 94. These changes are technical corrections initiated by the Office of the Revisor of Statutes and do not change the substance of the rules in any way. Most of these changes are corrections of outdated statutory or rule citations.

Subparts 19, 20, and 21. These three definitions are proposed to be deleted due to the proposed revisions in parts 4410.6000 to 4410.6500, concerning assessing EIS costs to the proposer. When these three definitions were adopted, the system for assessing EIS costs involved a cap on the assessment that was related to the cost of the project. The three terms were used to distinguish the actual and estimated costs of the EIS from the portion of the cost of the project. The three terms were used to distinguish the actual and estimated costs of the EIS from the portion of the costs that could legally be assessed to the proposer (this was the "EIS assessed cost"). Currently (due to statutory changes in 1988), the proposer is to be assessed for the entire EIS cost, and therefore it is not necessary any longer to have these terms defined.

Subp. 30. The amendment would simply correct the statutory reference to the proper current statute number.

Subpart 31. This term is no longer used in the rules due to changes elsewhere and can therefore be deleted from the definitions.

Subpart 51. Item F is proposed to be added in order to explicitly acknowledge that pollution prevention actions are a form of mitigation. Pollution prevention planning has become a specific activity of the MPCA since the last time the rules were revised (1988).

Subparts 53, 69, 70, and 82. The changes in these subparts would merely correct the references to the proper current statutory or rule numbers. In subp. 70 the phrase "public waters" would be added because the meaning of "protected wetland" under these rules is the meaning of "public waters wetland" in the current law (Minn. Stat., sec. 103G.005) whereas it was the meaning of the term "wetland" in past statutes.

Subp. 56a. This new definition is added because of the proposed new mandatory category for incineration of PCB-containing wastes at

part 4410.4400. The definition adopted is the one used by the PCA in its PCB regulations.

Subp. 83. This term is no longer used in the rules due to changes elsewhere and can therefore be deleted from the definitions.

Subp. 92c. The amendment would simply correct the statutory reference to the proper current statute number.

Part 4410.0400, subpart 4. The reason for the proposed change to the timeframe for legal appeals of RGU decisions is that currently there is a discrepancy between the timeframes for appeal specified in the rules and the statutes. Both the rules and statutes allow 30 days for appeal, but the rules count the time from the date of EQB Monitor notice of the decision while the statutes count the time from the date of the decision. The Attorney General's office has advised the EQB staff that if this difference should become an issue in a court challenge, the court would likely rule that the statutory appeal period prevails. If so, then the timeframe in the rules is incorrect and misleading, and could result in an aggrieved party missing its chance to file a legitimate challenge to a decision. Since being advised by the Attorney General's office of this problem, the EQB staff has been advising inquiring parties that they had best file any appeals within 30 days of the decision, not the EQB Monitor notice.

This rule amendment would end the discrepancy by altering the rule timeframe to be the same as that in the statutes. As a practical matter, most parties likely to be sufficiently aggrieved by a decision to file a legal challenge will have representatives present when decisions are made or will be in frequent contact with the RGU about the decision. The rules prescribe defined timeframes within which decisions must be made, allowing interested parties to anticipate the approximate date of a decision in advance. In addition, the RGU is required to give written notice of its decisions to petitioners and commenters within five working days. Therefore, while it is common to begin appeal periods with a noticed event, there are sufficient mechanisms in the environmental review process to assure that potentially aggrieved parties can be aware of RGU decisions when they are made to allow appeal to run from the date of the decision itself. Running the appeal period from the date of an EQB Monitor notice would add unnecessary delay to the process without significantly improving the public's opportunity to challenge RGU decisions.

Part 4410.0500, subpart 3. The reason for the addition of this new item is to refine the RGU selection criteria for petitions. Under the existing RGU selection criteria, whether or not the selected RGU has already reviewed and acted upon permit applications is not considered. In several of these instances, the RGU selected has objected to being assigned as RGU on the grounds that having already issued its permits, it cannot be a neutral judge of whether an EAW should be done or not. The EQB finds that there is considerable merit to this argument, since under these circumstances, the RGU cannot order an EAW without casting some doubt on whether its decision to grant the permit was sound. Furthermore, having already acted on its permits, the RGU would itself have no use for the information disclosed through an EAW, and would do the EAW solely to inform other units of government.

Under these circumstances, it would be more appropriate to assign the petition to the unit with the next-most authority over the project. This unit not only will not have compromised its ability to be neutral about the need for an EAW by having already acted on a permit, but will also be able to use the information disclosed in the EAW in its permitting process.

Under this new language, if subpart 5 is applicable in determining which unit of government has the next-most authority over the project, no completed data portion of the EAW is required. It would be an inappropriate burden on the project proposer to require that the data portions of an EAW be completed before an RGU has determined that an EAW is required for the project.

Part 4410.1200. This proposed addition to the EAW content would add to the required EAW content a description of the purpose of the project and, if the project is a public project, identification of the persons who would benefit from any positive impacts of the project. This type of information would help commenters suggest appropriate mitigation in some cases. Without knowing what goals a project is designed to achieve, it is difficult to assess whether changes in process, design or scale which are less environmentally harmful would also meet the project goals.

Part 4410.1300. The existing rules provide that the Chair may approve use of an alternative form to the standard EAW form. Historically, the only alternative forms that have been proposed are the forms used for federal NEPA Environmental Assessments. The purpose and content of federal EA documents are very similar to those of state EAWs, which is not surprising since the state

process is modeled on the NEPA process. NEPA EAs must be completed in compliance with the specific regulations of the federal agency funding or permitting the action in question, which regulations have been reviewed by the Council on Environmental Quality for compliance with NEPA. A properly completed NEPA EA would always be approvable as an alternative EAW (and historically have always been approved); therefore, requiring case-by-case review of EA formats as substitutes for EAWs is an unnecessary and redundant exercise.

Part 4410.1400. Two changes are proposed to the part on EAW preparation. First, the time schedule for completing an EAW that was ordered as a result of a petition would be changed to be the same as that for EAWs initiated in other ways. The current rules specify separate and different time schedules for EAWs depending on how they are initiated. This has resulted in continual confusion for RGUs, and seems to serve no useful purpose.

The second change proposed is to delineate more clearly how it is determined whether an EAW is complete and ready for public review. At present, the rule refers to the "completed" data portions of an EAW but does not specify what this is nor who determines that it is "complete." The EQB staff has historically interpreted the language to mean complete as determined by the RGU. The proposed change would specify in the rule that the RGU determines when the EAW is complete.

Part 4410.1700, subpart 7, item D. Two one-word revisions are proposed here to clarify the meaning of the existing criterion in item D. EQB frequently is asked whether the other environmental studies in question include only studies already completed (or completed results of studies underway but not totally yet completed) or include studies yet to be undertaken. The SONAR from the 1982 rule amendment process (page 63) is clear that it was existing studies that were contemplated in this rule. The insertion of the word "available" would clarify the rule language on this point. Secondly, the EQB wishes to clarify that information in a Generic EIS is to be included under the term "EIS's" as used in this item; therefore the words "or GEIS's" are proposed to be added. While we believe that this is implicit in the current language (a GEIS is a form of an EIS) it has been an issue in at least one case in which the decision on the need for an EIS was challenged.

Part 4410.2100, subpart 1. This revision is complementary to that proposed at part 4410.2300, item H, and is proposed for the same

reasons. Please refer to that section for the rationale for this change.

Part 4410.2100, subpart 11. In 1988 the EQB amended the rules to add the language of subpart 11 as an explicit procedure for the termination of an EIS if the project was downsized significantly or otherwise modified to the extent that the need for the EIS went away. This procedure that been used approximately three times since 1988, and its use in practice has revealed flaws that were not anticipated when the language was drafted. The current revision is intended to correct those flaws.

The first flaw to be corrected is that the current process fails to distinguish between those modified projects that still exceed a mandatory EAW threshold from those that do not. The current termination process fails to require preparation of an EAW for modified projects that exceed mandatory EAW thresholds. This is not always a problem because in some cases there may already be an EAW for the original (larger) project which also describes the impacts from the reduced project reasonably well. However, in other cases it may not be possible to anticipate the impacts of the revised project from the original EAW, in which cases unless a new EAW is prepared it is very difficult for interested parties to meaningfully comment on whether the EIS should be terminated or not.

One way in which this can happen was well-illustrated by one of the three actual cases of EiS termination already experienced. In this case, the original EAW had been prepared solely for purposes of scoping the EIS and, in accord with standard practice, had in response to many of the form's questions simply indicated that the topic would be studied in detail in the EIS without providing much factual information about the topic itself. Therefore, when this EIS was proposed to be terminated there was little factual information available upon which to decide if termination was justified. (In this case, the problem was solved by preparation of a new EAW.)

The revision proposed to deal with this flaw is to specifically require (at item A) preparation of an EAW to accompany the termination notice if the modified project exceeds any mandatory EAW thresholds. If the modified project does not exceed any mandatory threshold, no EAW would be prepared unless required at the discretion of the RGU or in response to a new citizen petition.

The second flaw in the current process is addressed in the second paragraph of the subpart. Under the current process, the RGU issues a notice of impending EIS termination, then, after reviewing any comments received, makes the final termination decision. However, in at least one past case, the RGU assumed that the notice was the decision. In view of this experience, the EQB staff believes that it would be better to revise the process so that no post-comment period action is needed by the RGU unless objections are raised in the comment period to termination.

Part 4410.2100, subpart 12. This amendment is proposed to correct a discrepancy between the EIS content and EIS cost provisions of the rules (parts 4410.6000 to 4410.6500) that stems from the fact that those respective sections of the rules date from different times. The cost provisions date from 1977. When the EIS process was overhauled in 1982 and scoping was added, no provision was added to link the EQB's authority to alter a cost agreement (between the RGU and the proposer) with the scope of the EIS itself. This amendment would provide that linkage and allow the EQB to adjust the scope of the EIS to the extent necessary to conform to its revision of the EIS cost.

Part 4410.2300, item G. The purpose of this proposed amendment is to strengthen the directive in the rules about the exploration of alternatives to the project as proposed in the EIS. Although according to statute, examination of appropriate alternatives is a key feature of an EIS, and is essential to state agency compliance with MEPA, many EISs fail to examine any alternatives to the project as proposed except the "no-build" alternative which is explicitly mandated to be included in all EISs.

This amendment would mandate that all EISs address all types of potential alternatives. If the RGU believed that discussion of a certain type of alternative was not appropriate or reasonable for the project in question, it would address that type of alternative by simply providing a brief explanation of its rationale for excluding an alternative of that type. This explanation may be developed in the EIS scoping phase and incorporated into the scoping decision, but it would also be incorporated into the EIS text.

The proposed rule would establish a two-part test for whether an alternative needs to be included in the EIS analysis: (1) is it potentially superior to the proposal from an environmental standpoint and (2) would it meet the underlying need for or purpose

of the project? These two criteria have been implicit in the program for some time but do not appear in the rules themselves. The EQB staff's guidance booklet, Guide to the Rules (June 1989), discusses the two criteria on page 22. In order to better assure that the RGU examines all reasonable alternatives, it is proposed to add the criteria to the rules themselves.

The list of types of alternatives that must be addressed proposed in the amendment was developed by examination of similar lists in the environmental review rules of the federal government and a number of other states that already use such lists (e.g., New York).

A second clarification about treatment of alternatives in an EIS is also included in this item. Currently, the rules are ambiguous about the proper treatment of alternatives that seemed "reasonable" at the time of scoping but later, after preliminary analysis, turn out not to be reasonable for some valid reason. The proposed language here would clarify that such alternatives should be discussed in the EIS only to the extent necessary to explain how and why it was determined that further, complete analysis was not appropriate.

Part 4410.2300, item H. This revision is complementary to that for part 4410.2100, subpart 1. The issue behind these proposed changes is the question of to what extent an EIS is to deal with all issues of an environmental nature versus only those of potential significance. The statute states that an EIS "analyzes its [the proposed project'] significant environmental impacts" (Minn. Stat., sec. 116D.04, subd. 2a) whereas the existing rules state that an EIS shall include a "thorough but succinct discussion of any direct or indirect, adverse or beneficial effect generated" (part 4410.2300, item H) (emphasis added). Although the rules go on to specify that the discussion shall "concentrate on those issues considered to be significant as identified by the scoping process" and that the "data and analysis shall be commensurate with the importance of the impacts," the existing rules appear to require coverage in an EIS of minor environmental issues which the statutory language appears to exclude entirely. This is an important practical distinction because much effort is expended by most RGUs during EIS scoping on deciding exactly what issues will be included.

The proposed language at item H of part 4410.2300 (along with that at part 4410.2100, subpart 1) is intended to realign the rules more

closely with the statutory language. The first language change is to insert the qualifier "potentially significant" in reference to the impacts to be analyzed, as in the statutory language, and at item H to delete the qualifier "any". The second change, at item H, is to delete the sentence "[t]he discussion shall concentrate on those issues considered to be significant as identified by the scoping process," and add clauses indicating that data and analyses should be commensurate with "the relevance of the information to a reasoned choice among alternatives and to consideration of the need for mitigation measures" and that the RGU should weigh the importance of the information against the cost of obtaining it when deciding on the level of detail of data and analysis needed in the EIS. These changes would shift the focus towards the purpose of the information -- better decision making -- and away from merely responding to public controversy.

A third change would occur in the final sentence of item H concerning the treatment in an EIS of differences of opinion. Here, again, the modifier "significant" would replace the more general phrase "the effects the project may have."

Part 4410.2400. This revision is needed to correct a typographical error in the section caption.

Part 4410.2500. This section of the rules concerning the treatment of incomplete or unavailable information is basically a paraphrase of the similar section of the general federal NEPA guidance issued by the Council on Environmental Quality. Since the current rule was adopted in 1982, the CEQ updated and significantly changed its guidance on unavailable and incomplete information. This proposed amendment to the EQB's rules will realign the Minnesota rules with the latest federal guidance.

The single most significant change here is the deletion of the directive that the RGU "weigh the need for the project against the risk and severity of possible adverse impacts were the project to proceed in the face of uncertainty" and to include in this a "worst case analysis." This provision has always been at odds with the nature of the state EIS process because in the Minnesota process, in contrast to the federal process, the EIS does not include a decision about which alternative is best -- that type of decision is left to post-EIS permitting processes. Thus, it has always been out of place in the state EIS process rules to specify a standard for project decision-making, regardless of whether information is known or uncertain. The proposed revised language sticks to

providing guidance about presentation of information: what is known, and the relevance of what is not known to the decisions that must be made.

Part 4410.2800, subpart 4. This proposed change complements those at parts 4410.2100, subpart 1 and 4410.2300, item H regarding clarifying that an EIS need only discuss significant impacts. A change is needed here because the criteria for determining EIS adequacy must parallel the guidance for EIS content.

The phrase to be added at the end of the subpart is needed to amplify the guidance about what level of detail is needed in the analysis of each issue covered in an EIS. The criteria added here indicate that level of detail needed for an issue depends on the significance of the impact and the level of detail of information useful to the decision makers.

Part 4410.3100, subparts 1, 2 and 9. These amendments are technical changes initiated by the Office of the Revisor of Statutes.

Part 4410.3100, subpart 4. This amendment would simply correct an incorrect reference in the existing rules.

Part 4410.3200. It is proposed to delete this entire rule part because it fails to comply with the enabling statute and probably should have never been included as part of the environmental review rules in the first place.

The narrower issue is that the scope of the rule is more limited than the scope of the statute. Subdivision 9 of Minn. Stat., sec. 116D.04 authorizes the EQB to review for conformance with MEPA "any state project or action significantly affecting the environment or for which an EIS is required." The rule restricts the scope of review to "any project wholly or partially conducted by a state agency if an EIS or Generic EIS has been prepared." Projects permitted by state agencies, but not at least partially conducted by state agencies, are covered by the statutes but not the rule. Further, in theory there could be projects "significantly affecting the environment" but for which no EIS is done, and these would also be covered by the statute's but not the rules' scope.

Review by the Board under subdivision 9 is rare: it has only been considered twice in 20 years. When the issue first arose, in 1989, the Attorney General's office advised the EQB staff that if the Board invoked its authority to review the action in question, the

procedures to be followed should not be based on part 4410.3200 because of the discrepancy with the statutes.

The preferred method for resolving the statutory vs. rule discrepancies is to delete this entire part and in later rulemaking create a more appropriate rule elsewhere, possibly in chapter 4405.

Part 4410.3610. The same wording change is proposed at six places within the rule governing the Alternative Urban Areawide Review process. At each place where the phrase "residential and[/or] commercial development[/project]" occurs, it would be replaced by the phrase "residential, commercial, warehousing and[/or] light industrial development[/project] and associated infrastructure." The changes are intended to clarify that warehousing and light industrial development and public infrastructure necessary to support development are eligible for review under the AUAR process along with "residential and commercial" development. Past AUAR reviews have already included infrastructural projects and light industrial and warehousing uses. The amendment is intended merely to bring the language of the rule into conformance with existing practice and to avoid confusion about the type of development that is eligible for use of this process.

Part 4410.4000. [this would be a new part; number may be different in adopted rule]. This proposed addition would create an explicit authorization for the use of Tiered EISs. Tiered EISs are already in use, but because their use is not explicit in the current rules, they have to date been labeled as an EIS and Supplemental EISs, or explicitly approved as Alternative Review by EQB action under part 4410.3600. These methods have succeeded in "legalizing" tiered EISs as needed, but it is preferable and clearer in meaning to create a special form of EIS process called a Tiered EIS.

As stated in the proposed language, a tiered EIS process is the most effective way to accomplish environmental review where the decision-making process that the review supports itself proceeds in stages or "tiers." The most common situation in which this occurs is the siting of some type of facility. Often, the most feasible way to site something is to: first, choose "candidate search areas" within which there may be several suitable sites; second, choose the best search area; and third, pick the best site in the chosen search area. Such a process has (at least) two tiers of decisions (e.g., choose the best search area, choose the best site in that search area).

With a tiered EIS process, in each tier of decision-making, the appropriate information to assist in the choice to be made in that tier is prepared. The level of detail and site-specificity of the information increases as you move from one tier to the next, and only issues "ripe" at the particular stage of decision-making are discussed in that particular tiered EIS.

The federal NEPA process has recognized the tiered EIS concept for a number of years, and it is frequently used in the federal process for the siting of facilities which could be located at many different locations. The most notable use of it in Minnesota, although it is officially established as an approved Alternative Review, is the Dual-Tack Airport Siting Process conducted by the Metropolitan Council and the Metropolitan Airports Commission. This siting process actually involves a five-tiered decision-making process, each with the equivalent of a tiered EIS.

It should be noted that the current rules do include a definition of "tiering," at part 4410.0200, subpart 88, although the term is used only in part 4410.3800, Generic EIS, in referring to the incorporation by reference of information from a broader, Generic EIS into a more project-specific EIS.

Part 4410.4300, subpart 1. The change proposed would revise the way in which EAW mandatory category thresholds would be applied to projects, specifically with respect to projects that are expansions, additions to, or extensions of past projects.

The existing rules (and, in fact, all previous editions of these rules back to 1974) do not explicitly state how to treat the existing part of a development or facility when determining if an EAW is required for a proposal which is an expansion, addition, or extension of an existing project (except for "network" projects for which guidance is given at parts 4410.1000, subp. 4, paragraph 3 and 4410.2000, subp. 4, paragraph 3). However, it has always been the interpretation of the EQB that only proposals yet to be approved and built are to be included when applying the thresholds -- i.e., existing development is not to be counted, even if it can be argued that when the existing development was built an EAW or EIS should have been required because the then future stages of the project (the present project) should have been included as part of the project under the "phased actions" provisions.

It is recognized that because of the policy of not counting anything already approved or built, a potential loophole exists

through which review can be circumvented. By segmenting larger projects into smaller pieces and staging them over time without revealing the true size of the whole up-front, proposers can avoid EAW thresholds even though the whole project, if considered together, would exceed the thresholds. The proposed amendment would close this loophole by explicitly establishing a new policy for treating existing stages or components of a project when applying the EAW thresholds.

Under the proposed new policy, existing stages or components would be required to be included as part of the project when comparing the project to the EAW thresholds, unless those stages or components (1) were already reviewed through an EAW or EIS or (2) were constructed more than three years previously or prior to the effective date of this amendment. The three year period was chosen because it represents the amount of time historically considered by the EQB staff to typically represent "a limited period of time" as used in the definition of "phased actions" at part 4410.0200, subpart 60. Therefore, the proposed revision would count only those existing project stages that would have met the test of being part of a phased action with the current proposal if the current proposal had been acknowledged when the earlier stage was under review. The application of the counting of past stages is proposed to be limited to project stages occurring after the effective date of these amendments, to give fair warning to proposers of this revised policy on applying the mandatory categories to staged projects.

Part 4410.4300, subpart 9. This amendment is a technical correction initiated by the Office of the Revisor of Statutes.

Part 4410.4300, subp. 14. Industrial, commercial and institutional facilities. Item C is proposed to be deleted because it is obsolete. Working in coordination with the Federal Emergency Management Agency, virtually all flood-prone communities and counties in Minnesota have now been identified and converted from the "emergency" to the "regular" state of flood plain management. With the adoption of the new shoreland rules in 1989, the DNR began an aggressive program of prioritizing cities and counties, providing training and grant money to those given notification. Once notified, the city or county had two years to adopt the new rules into its local zoning ordinances. This process is essentially now complete. One of the elements of the new shoreland rules was a greatly-expanded rivers classification system. This reduced the need for expanding the wild and scenic rivers program.

With the above changes in place, the issue is no longer adoption of new programs, but local administration and enforcement of existing programs. Therefore, the requirements of item C are no longer applicable.

Part 4410.4300, subp. 15. Air pollution. The words proposed to be added are intended to extend the coverage of this mandatory category to modifications of air emission facilities which will increase emissions by the same threshold amount as for new facilities. From an environmental standpoint, it is immaterial whether 100 tons of a pollutant come from a totally new facility or a modification of an existing facility. The omission of modified facilities from this category when the rules were adopted in 1982 was probably an unintentional oversight.

Part 4410.4300, subp. 17. Solid waste. All the changes proposed in this subpart relate to altering the reassignment of the RGU for the various solid waste mandatory categories for projects that occur within the Twin Cities metropolitan area. The MPCA is proposed to assume responsibility for these projects in the metro area. The MPCA is already responsible for these projects if not in the metro area. The change is needed because of statutory changes made in 1994 that eliminated the Metropolitan Council's role in solid waste planning for the metropolitan area. That special role was the reason that the Council was assigned as RGU in the 1982 amendments to the rules. With the elimination of that role by the Council, responsibility for serving as RGU should be transferred back to the MPCA.

Part 4410.4300, subp. 18. Wastewater. The threshold for collection system expansions in item A would be raised for cities of all sizes, including those which discharge to systems operated by Metropolitan Council Wastewater Services (MCWS) or the Western Lake Superior Sanitary District (WLSSD). Presently, EAWs are required for sewer projects with design flows of 500,000 gallons per day within 1st and 2nd class cities or the MCWS or WLSSD systems, 100,000 gpd for 3rd class cities, and 50,000 gpd for 4th class cities and unincorporated areas. Over the most recent three-year period, the MPCA has prepared EAWs for approximately 15 projects per year under the sewage system category, more than half of which were sewer extensions. This level of review is believed to be unjustified because the majority of the sewer extensions are relatively minor expansions of much larger systems, and because the increases in wastewater flow accompanying sewer extensions usually occur gradually over a period of many years.

Furthermore, problems which have been cited as associated with sewer systems, i.e., construction erosion, the degradation or loss of wetlands, seepage from sewer lines, and the potential for secondary development, are addressed by permit programs for runoff from construction sites and the preservation of wetlands, and by the application of minimum standards for sewer construction and maintenance. The potential for impacts from secondary development will also continue to be addressed through state and local requirements for environmental review and permitting.

In item B, a clarification is proposed stating that an EAW is not mandatory for a domestic wastewater treatment expansion unless it increases the design flow capacity of the facility by at least 50% AND it is an increase of at least 50,000 gallons per day. This is consistent with past and present policy of the MPCA that the preparation of EAWs should not be mandatory for projects that involve relatively minor expansions of existing, small treatment facilities.

Regarding new item C, the rules currently provide for mandatory EAW categories for certain types of industrial facilities which may involve the generation of industrial wastewater. Examples are petroleum refineries, fuel conversion facilities, mineral mining and processing, and pulp and paper processing. These and other industrial project may also require environmental review because of their potential air emissions (under subpart 15). However, because there is currently no EAW category pertaining directly to the generation of industrial wastewater, some major industrial projects may not be subject to mandatory review. Examples would be food processing and the manufacture of wood products other than pulp or paper.

The proposed new category at item C would establish a threshold for the construction of new or expansion of existing industrial process wastewater treatment facilities. Process wastewater is not intended to include noncontact cooling water, storm water runoff, or animal feedlot runoff. The proposed threshold is based on existing PCA nondegradation regulations for new or expanded discharges. Projects of this magnitude are likely to generate significant local impacts. This category would not apply to industries which discharge to publicly owned treatment facilities. Such discharges are subject to the terms and conditions of pre-existing discharge permits and are also regulated by local jurisdictions under existing programs and subject to state and federal oversight. It also would not apply to tailings basins

which are covered by the mandatory metallic mineral mining category at subpart 11, item B; this exclusion is stated in the proposed amendment to eliminate the potential for future questions over which agency, MPCA or DNR, should be the RGU for review of such facilities.

Part 4410.4300, subp. 19. Residential development. The new language in the first paragraph is proposed to cover situations which the present rules do not cover -- where the local zoning ordinances do not specify an upper limit on the number of units per acre. A reasonable approach is to assume that the number of units on these acres will be the overall average number of units per acre on the planned-out portions of the parcel.

Item B is deleted for the same reasons as for part 4410.4300, subp. 14. While not every community has a shoreland ordinance, those having high resource value waters or which are subject to high development pressure have been identified and brought into the shoreland management program. A similar case applies to flood plain management.

Part 4410.4300, subp. 20. The caption change recognizes the specific types of development intended for inclusion in this category. The added "expansion" language recognizes that, given the high natural resource values generally present where these facilities are located, expansion has the same potential for environmental impacts as original construction.

Part 4410.4300, subp. 21. The caption change is proposed to generalize the category to airports from airport runways.

Item A is proposed to require EAW preparation for the original construction of a paved airport runway. At present, for reasons that are no longer apparent, only certain extensions of a runway (those that would allow use by jet aircraft) and the construction of a 5,000 or more foot long runway require review under the EQB's rules (the latter is a mandatory EIS at 4410.4400, subp. 15). New paved runways less than 5,000 feet do not require review at all, although those longer require a mandatory EIS. This is illogical. The present scheme would allow construction of a new airport with multiple runways and unlimited support facilities without any mandatory review provided no runway exceeded 5,000 feet.

Construction of a paved runway has potential for a variety of environmental effects, including: noise, land use conversions,

including loss of habitat and farmland, wetland encroachment, stormwater runoff, and also may pose local and regional economic and demographic impacts. The potential for impacts would be increased if the runway was associated with a new airport.

The change in item B is to recognize that the Metropolitan Airports Commission (MAC) is the appropriate governmental unit to serve as RGU for projects conducted by the Commission. Under the RGU selection standards of part 4410.0500, the RGU should be the unit with the greatest responsibility for supervising or approving the project as a whole. In the case of MAC projects, this is clearly the Commission. The Commission has served as the RGU for a series of projects in the past, for which special review requirements were established in state statutes. The new item A would also specify MAC as a potential RGU.

Part 4410.4300, subp. 24. Water appropriations and impoundments. In item B language is inserted for clarification to avoid the misinterpretation that small additions to impoundments might be interpreted to require a mandatory EAW once the 160-acre threshold had been passed. It is the size of the addition and not the total size of the impoundment that is the crucial factor.

In item C, "class II dam" has been deleted since it is a hazard classification and does not relate directly to environmental impacts. In place of "class II" dams has been substituted "dams with an upstream drainage area of at least 50 square miles." This will include many of the class II dams, but will also include some dams of lower hazard classification. It is believed that the watershed size is a better indicator of potential environmental impacts than is hazard classification.

Part 4410.4300, subp. 25. Marinas. The new language is for clarification, attempting to specify that an EAW is required when marina size reaches or surpasses 20,000 square feet, and in 20,000 square foot increments thereafter. The original language would require an EAW for every expansion after the initial 20,000 square foot size had been reached.

Part 4410.4300, subp. 26. Stream diversion. "Realignment" is added as an activity that will require an EAW. Realignment often means straightening, which has a serious effect on water flows and stream habitat. The 500-foot minimum length was added so that the category would no longer apply to minor stream alterations; this minimum threshold does not apply to trout streams. Experience has

shown that stream diversions of less than this length generally have minimal environmental impacts and do not warrant a mandatory EAW requirement.

Part 4410.4300, subp. 28. The caption is proposed to be changed because after the other revisions proposed, this subpart will apply only to forestry activities.

Item C is proposed to be moved from this subpart to proposed new subpart 35 that deals with land use conversions.

Item D is proposed to be moved from this subpart and reinserted in a modified form at the new subpart 35 dealing with land use conversions.

Part 4410.4300, subp. 31. Historic places. Three changes are being proposed to this category.

First, "destruction" of a historic property is being clarified to explicitly include being moved to a new location and partial destruction of the physical structure of the place. In practice, the existing category has been interpreted in this way in the past by the Historical Society and the EQB, and it would be beneficial to make this explicit. The logic behind the interpretation is that in some or many cases the historic value of a designated property derives from its association with its locale (e.g., a remaining example of the type of dwelling built by the earliest settlers in a particular place) or from certain features of a building design rather than from the structure as a whole (e.g., certain details of a building facade might be exemplary of a certain architectural style). In these cases, moving the structure or demolishing part of the structure might destroy the historical value of the place without the literal destruction of the property.

Second, the scope of this category is being proposed to be expanded to cover places listed on the State Register of Historic Places as well as the National Register.

Third, it is being proposed that the EAW requirement not be applied to historic places that undergo historic review under two federal programs. The first is review under the National Historic Preservation Act of 1966 (16 U.S.C. 470), section 106; this review is commonly referred to as "section 106" review. The second is review pursuant to 49 U.S.C. 303, federal policy of lands, wildlife and waterfowl refuges, and historic sites; this review is commonly

referred to as "section 4f" review. These reviews apply to projects sponsored or assisted by federal agencies, including many highway construction projects. The review of historical resources under these programs is typically more rigorous than would be the case with an EAW, and therefore, requiring projects to undergo both would be redundant.

Part 4410.4300, subp. 33. Communication towers. The current category for communication towers is based on well-documented hazards to birds posed by towers over 500 feet tall. However, tower location can be as much a factor in bird mortality as height, as towers located along migration routes or adjacent wetlands used by waterbirds can be a hazard even if they are less than 500 feet tall. A 300-foot height is proposed for communication towers in sensitive areas to recognize that birds typically fly at heights considerably less than 500 feet in the vicinity of wetlands or along river bluffs.

The river valleys and north shore of Lake Superior identified in this category are significant migration routes used by waterfowl, raptors, and passerine birds. A two-mile distance is proposed because these migration corridors are not narrow or precise. Visual impacts also merit consideration in evaluating towers proposed along river valleys and bluffs.

Wetland areas support a disproportionately high number of bird species and densities. Protected waters and wetlands correspond with areas supporting larger concentrations of waterfowl and shorebirds. Protected waters and wetlands are also readily identified by local government units and the 1000-foot distance corresponds with the shoreland zone in many cases. Typically, local flights around marshes, and feeding flights to nearby food sources, occur at low elevations within a 1000-foot distance.

Part 4410.4300, subp. 36. Land use conversions, including golf courses. A new subpart is proposed based on the existing items C and D of subpart 28. These two items deal with the conversion of lands from one use to another and have never fit well under the caption of subpart 28, "agriculture and forestry."

As a practical matter, the project type which most often has required review in the past under items C or D of subpart 28 is golf courses. Large courses often convert 80 or more acres of natural land or farmland to the more intensive use as a golf course. With the 80-acre conversion category "buried" as item D

under a subpart with a caption that is somewhat of a misnomer, situations have occurred where RGU officials examining the rules to see if a golf course proposal required an EAW have missed the 80-acre category. This can be easily remedied by this proposed reorganization of the rule items, and by highlighting golf courses by the specific mention of their name in the caption and rule text.

The second type of project covered by this category for which clarification is needed is residential development. The residential development mandatory category at subpart 19 is based on the number of units in the development and does not consider the amount of land being consumed by the development. Obviously, the use of naturally vegetated or agricultural land for a typical suburban housing subdivision is just as much of a permanent conversion to a more intensive land use as conversion to a golf course. Therefore, it is proposed that residential development be specifically mentioned in the rule text to assure that it is covered by this category. However, while dense residential development is obviously a conversion to a more intensive land use, as the density of residential development decreases, in most cases less and less of each lot is likely to be converted out of its former condition. A homeowner with a 5 or 10 acre lot is not likely to establish and maintain an urban-type lawn over the whole lot; in fact, especially where the lot is wooded, the presence of natural conditions over much of the lot may be a primary reason why the owner purchased the lot in the first place. In view of this fact, it is necessary to draw a dividing line in the rule between residential development that converts the basic land use and that which does not; the EQB has chosen a five-acre lot size as the most reasonable place to draw the line. This dividing line is consistent with the EQB's past practice in providing guidance to RGU's about applying the land use conversion category to residential developments.

Part 4410.4400, subpart 7. This amendment is a technical correction initiated by the Office of the Revisor of Statutes.

Part 4410.4400, subp. 11. Industrial, commercial and institutional facilities. The rationale for these changes is identical to that for part 4410.4300, subp. 14. Please refer to that discussion.

Part 4410.4400, subp. 13. Solid waste. The rationale for these changes is identical to that for part 4410.4300, subp. 17. Please refer to that discussion.

Subp. 14. Residential development. The rationale for these changes is identical to that for part 4410.4300, subp. 19. Please refer to that discussion.

Part 4410.4400, subpart 25. Incineration of wastes containing PCBs. This revision is necessary to bring the rules into conformance with Minn. Stat., section 116.38, subd. 2 which explicitly prohibits the PCA from permitting or allowing the incineration of wastes containing at least 50 ppm of PCBs (polychlorinated biphenyls) until an EIS is prepared. The primary environmental concern with the burning of PCBs is the emission of hazardous combustion products and their fate in the environment, including human health impacts.

Part 4410.4600, subpart 1. Scope of exemptions. The intent of the deletion of subpart 26 from the list is to correct an inadvertent error made by the EQB in amending the rules in 1986. When the language in subpart 1 about projects under subparts 3 to 26 being exempt unless they had characteristics exceeding mandatory EAW categories was added in 1986, subpart 26 should have been treated like subpart 2 not subparts 3 to 25, but inadvertently it was not. The actions exempted by subpart 26 are not "projects" but governmental actions without any direct impact on the environment; consequently, they logically cannot have attributes exceeding any mandatory EAW thresholds and are therefore always exempt, just as the "standard" exemptions of subpart 2 are.

Part 4410.4600, subpart 10. [Exemptions for] Commercial and institutional facilities.

The EQB believes that it was a mistake to include all "industrial" activities in this exemption category along with commercial and institutional facilities when this category was established in 1982. At that time, this exemption was set up to be parallel to the mandatory EAW and EIS categories which include all industrial, commercial and institutional facilities together. While that grouping is valid for establishing minimum thresholds for review, in hindsight, it can be seen to be invalid when establishing exemption thresholds; heavy-type industrial operations should never have been included.

The existing rule language has been interpreted by project proposers in a number of specific instances to exempt heavy industrial projects because they would take place outdoors, and hence, have less "gross floor space" than the specified thresholds

for exemption. In at least three cases (including the case of a concrete recycling operation, a case which was ultimately decided in the Minnesota Supreme Court) the EQB has argued that this is an erroneous application of this exemption category, because clearly the types of impacts posed by the three projects were worthy of review. In fact, in two of the cases the impacts were at least partly caused by the fact that the operations did not take place within a building --meaning that for those operations, at least, "gross floor space" was inversely related to environmental impacts.

The floor space-based thresholds are largely based on the relationship between building size and impacts such as operational output, number of workers, trip generation, etc. Heavier industrial facilities in general must be considered to potentially have greater overall environmental impacts than similarly-sized light industrial, warehousing, commercial or institutional facilities because the industrial processes may generate wastes, emissions, noise and other impacts in addition to those more closely-related to building size. Therefore, it is inappropriate to include heavy industrial facilities along with light industrial, warehousing, commercial and institutional facilities in this exemption category. The proposed changes would limit this exemption to only light industrial and warehousing operations along with commercial and institutional projects.

Part 4410.5200, subpart 3. This change is a technical correction initiated by the Office of the Revisor of Statutes.

Part 4410.6100.

Subpart 1. The first amendment would change the date of initiation of the time period for submission of the cost agreement to the date of Monitor publication rather than issuance. This is more in keeping with the timeframes of part 4410.2100. The second and third revisions would bring the language into line with the present statute and delete reference to the proposer's data collection costs and "EIS assessed costs" which are no longer relevant. The final change deletes language that no longer applies under the current rules process for initiating an EIS.

Subpart 3. Subpart 3 is proposed to be deleted because due to the statutory change in 1988 that requires proposers to pay the full cost of an EIS, it is no longer relevant to exclude certain data collection costs from the EIS cost to be assessed.

Subparts 4 and 5. The language to be deleted in both subparts is no longer necessary under the revised scheme for assessing EIS

costs and can be deleted.

Part 4410.6200.

Subpart 1. The first revision to subpart 1 substitutes the new statutory language regarding the EIS costs for the language used under the older statutes. Next, item C is deleted because the proposer's data collection costs are no longer relevant to the cost that the RGU can assess to the proposer. In item F, new language is added to clarify that scoping costs are legitimate costs of the EIS to be assessed to the proposer; since the existing language precedes the introduction of scoping into the process, it is now unclear whether scoping costs can be assessed to the proposer. In item G, the word "final" is deleted because under the present EIS process the comment hearing is held on the draft not the final EIS.

Subpart 2. The only revision is here to update the language to eliminate the outdated distinction between the actual EIS costs and the portion assessed to the proposer.

Subpart 3 and 4. These subparts are proposed to be added to assure that EIS scoping costs are understood to be included in the EIS costs assessable to the proposer.

Subpart 5. This subpart incorporates the relevant provisions formerly at part 4410.6300, which will now be deleted.

Part 4410.6300. This part is proposed to be deleted as a rule part, with the provisions still relevant under the current statutes to be remain in the rules as subpart 5 of part 4410.6200.

Part 4410.6400 and part 4410.6410. It is proposed to overhaul subparts 1 to 6 of 4410.6400 to bring the provisions into harmony with the present principle that the proposer bears the costs of an EIS. The overhauled language will become subparts 1 and 2 of new part 4410.6410. The language of 4410.6400, subpart 7 will now become part 4410.6410, subpart 3.

The primary cause for the revisions in the language of subparts 1 to 6 is to remove outdated language concerning EIS assessed costs. In subpart 7 it is proposed to alter the language from "commencing the EIS process" to "commencing preparation of the draft EIS" because with the addition of scoping, the EIS process now begins with scoping, whereas it is not until after scoping is completed that the cost of the EIS content can be determined.

Part 4410.6500.

Subpart 1. The first revision proposed to the payment schedule for EIS costs is contained in new subpart A. This text

would add a procedure for the RGU to assess the proposer for its costs of scoping the EIS. The proposed process is kept rather basic because scoping is not generally costly in comparison to the EIS preparation itself, and because if the RGU overcharges the proposer for scoping, the excess can simply be rolled over to cover part of the EIS preparation cost.

In item B (old A) the timeframe for the submission of the proposer's half-cash payment for the preparation of the EIS itself would be modified. It would now occur within ten days of the agreement on EIS costs following scoping. Ten days is more reasonable than the existing figure of 30 days, since it is in the proposer's interest to get the EIS moving. The prohibition on starting the EIS until this payment is received is needed so there can be no disagreement about whether the RGU must receive payment before starting work. Ambiguity on this point could lead to financial loss to an RGU, and ultimately to the taxpayers.

In item C (old B) the amount of and time of the second cash payment to the RGU for EIS work would be modified. Both changes here are needed to cover cash outlays and obligations by the RGU for the work that has gone into the draft EIS. In most cases, by the time the draft EIS is prepared the RGU will have done approximately 90% of the actual work on the EIS; all that remains to be done, basically, is to respond to comments , revise the document as necessary and print it, and go through certain procedural steps. It makes sense, therefore, to have 90% of the estimated cost of the EIS paid to the RGU by this point.

In item D (old C) the language regarding final settlement of cost payments is revised to fit changes in the statutes since the existing rules were written regarding the EIS adequacy determination and the fact that the proposer no longer submits payment through the EQB if the RGU is a state agency.

Subpart 2. This provision would now be incorporated under subpart 1, item D.

Subparts 3 and 4. These subparts are proposed to be deleted because due to statutory changes there is no longer any need to specify different mechanisms of payment depending on whether the RGU is a state agency or local unit. Now, all payments are made directly to the RGU regardless of what unit the RGU is.

Subpart 5. This subpart is proposed to be deleted as its

provision has been incorporated into subpart 1, item B.

Subpart 6. First, the caption is proposed to be changed to bring attention to the fact that this provision bars state agencies from issuing permits until the proposer has satisfied all EIS cost obligations. A sentence is added to clarify that upon receipt of final payment, the RGU must so notify EQB so that the EQB can in turn notify state agencies that permits may be issued.

Subpart 7. This provision regarding time extensions by the EQB chair is proposed to be deleted as unnecessary. If there are time delays due to cost disagreements or problems in preparing the EIS, it is better to let these be resolved directly by agreement of the RGU and proposer. The chair does not have authority to extend the timeframes for EIS preparation under parts 4410.2100 to 4410.2800, so it would be inconsistent to authorize the chair to extend the timeframes for cost issues.

CONCLUSION

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

Dated: 6-20-96, 1996

Charles W. Williams, Chair

Minnesota Environmental Quality Board
In the Matter of Proposed Amendments to the Rules Governing the Environmental Review Program

SONAR SUPPLEMENT #1
NOTICE PLAN

This section of the Statement of Need and Reasonableness describes the Board's intended plan for providing notice of rulemaking in addition to notice in the State Register and mailed notice to all persons on the Board's rulemaking mailing list.

By way of background, as described on pages 1 to 3 of the SONAR, several years of work have preceded this rulemaking, during which many persons and organizations have participated. All of these persons and groups which had a real interest in the revisions the Board was contemplating have been added to the official rulemaking mailing list. Particularly noteworthy is the fact that all persons commenting on rules proposed in April 1995 or requesting a hearing were added to the list. This means that the Board's current rulemaking list already covers most of the groups likely to be interested in this rulemaking.

The first mechanism proposed as a means of additional notice is the EQB Monitor, a bi-weekly publication of the EQB with a mailing list of approximately 400. The EQB Monitor is the official means of notification of the availability of Environmental Assessment Worksheets, Environmental Impact Statements, and of other important notices related to environmental review. The Monitor has been published since 1977 and is routinely examined by most parties with an interest in environmental review in Minnesota. Notice in the Monitor of this rulemaking would be an effective way of reaching potentially interested parties who may not read the State Register and who may not have placed their names on the Board's rulemaking mailing list. Many legal firms and consulting firms that work in the environmental area receive the Monitor; not only are these firms interested in developments in this program for their own interests, but also they would be likely to notify their clients if they believe the interests of the clients may be at stake.

The second mechanism for additional notice proposed is to send a letter with the Notice as soon as possible to key interested groups asking that they distribute the notice or a summary of it to their members through newsletters or other means. Key groups to be included are:

1. Minnesota Chamber of Commerce -- the Chamber, which represents the interests of a wide variety of businesses has been closely involved with Board discussions of possible revisions to the program for the past several years; since the Chambers' membership is broad its newsletter would be the most effective way to notify the broad spectrum of businesses that could potentially be affected by the amendments. Because the Environmental Review Program has such a broad applicability, it is not possible to focus notice efforts on particular business or trade groups.

2. Minnesota Association of Counties and League of Cities -- these two organizations would be the most effective means to notify local units of government of the rulemaking; local units are frequently required to prepare Environmental Assessment Worksheets and Impact

Statements. Both organizations have been recently involved in discussions of possible program changes.

3. Minnesota Planning Association -- this is the professional organization for local planners; in most cases where cities are responsible for review, and also in some cases where counties are responsible, it is the planning staff that conducts the review. This organization has been involved in discussions with the EQB about program changes in recent years and would be a good mechanism to provide notice to planners.

Minnesota Environmental Quality Board
In the Matter of Proposed Amendments to the Rules Governing the Environmental Review Program

SONAR SUPPLEMENT #2

This section of the Statement of Need and Reasonableness addreses the requirement of Minn. Stat., section 14.131 that it include:

"(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;"

Since this rulemaking involves only amending existing rules to make various improvements or corrections, rarely was there any obvious 'alternative method' available to the Board. With almost all the amendments, rule drafting was simply a matter of adding a new word or phrase to slightly alter the rule's meaning.

There is one proposed amendment where the Board did consider and reject an alternative approach. At part 4410.4300, subpart 1 the Board proposes a new requirement that certain existing project stages or components be included when determining if the project exceeds an EAW mandatory category threshold. The Board originally intended that any stage or component built since the 1982 rule amendments went into effect be included; this proposal in fact was part of the proposed amendments noticed in April of 1995. Due to comments received on that aborted rulemaking, the Board has modified the provision so that only stages or components for which construction commenced within the most recent three years and after this provision goes into effect would need to be included.