

EQB Environmental Review Advisory Panel Feedback: EAW and EIS Categories

Note: The following table corresponds to the “Survey Results – Proposed Changes to Existing EAW and EIS Categories” found in the June 2017 Environmental Review Advisory Panel Agenda.

Mandatory EAW/EIS Category	Discussion Points	Group Agreement and/or Recommendations to EQB
<p>MR 4410.4300, subp.2 and 4410.4400, subp.2 –</p> <p>Nuclear fuels (EAW and EIS)</p>	<ul style="list-style-type: none"> • Category has limited usage but for one existing case - One utility (Xcel) is affected. • The change being discussed, would direct someone to an EIS regardless. 	<ul style="list-style-type: none"> • Follow up with MDH on whether low level nuclear waste parts of the category need to be changed. • Coordinate with tribal liaisons to get data and information.
<p>MR 4410.4300, subp.11 –</p> <p>Metallic mineral mining and processing (EAW)</p>	<ul style="list-style-type: none"> • Part A of 4410.4300, subp. 11 - The evaluation/exploration might be very limited or large but likely not in secret. Is the evaluation rule outdated? • An EAW is not necessary, it might also give environmental review a bad name out there. • Exemptions are clear—EAW is only triggered under certain circumstances. Need to read the exemption and the mandatory category together. • There are temporary impacts. • Exploration is not a unique event and other processes are already conducted (EAWs/permits); exploration is already captured in those. • This rule was written in the 1980s and needs to be reevaluated by EQB like all rules. • Part A of 4410.4300, subp. 11 has no size /limit. • Evaluations are done when there is a plan/proposal—at what time do you do an evaluation or EAW? As early as possible in the process? • Part B of of 4410.4300, subp. 11 - What is the overlap with environmental improvement? Can in-pit tailings storage be excluded because it promotes beneficial reuse? 	<ul style="list-style-type: none"> • Part A of 4410.4300, subp. 11, consider the size of the exploration/disturbance/threshold. • Consider a threshold identified by acreage. • Part B of of 4410.4300, subp. 11 - The DNR would likely not support raising the 320 acre threshold. • EAW before supplemental EIS when changes to the project occur—original EIS might still be valid (multiple agreement). • DNR/RGU has discretion and the definition for “mineral deposite evaluation” is okay.

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<p>MR 4410.4300, subp.12 –</p> <p>Nonmetallic mineral mining (EAW)</p>	<ul style="list-style-type: none"> • Confusion of what is “mining”—clarification is needed. Does the end use of the material mined matter? • Trigger drives business decisions in ways that doesn’t make sense (category at large). • Lots of change in the industry since the 1980 (financing). • What other state laws are being impacted by changing this category? • Part B of 4410.4300, subp.12 - LGU’s see alot of mines less than 40 acres and less than 10 feet deep and CUPs end up being a mini-EAW. • Alternative ER depends on the LGU and the CUP - not all CUPs should be allowed to use this alternative review. 	<ul style="list-style-type: none"> • Part B of 4410.4300, subp.12 - Current trigger is nebulous—RGUs (state and local) agree (multiple agreement). • Ideas for thresholds: • Consider calculation on the volume instead of mean depth— feels like just moving threshold not really doing anything. • Penetrating the water table as a threshold— this better captures the impact (multiple agreement). • Consider an alternative ER process and/or document that can dovetail CUPs, for example with additional notification requirements; requirements for cultural resources - EAW could be fulfilled with an alternative process.
<p>MR 4410.4300, subp.19 and 4410.4400, subp.14 –</p> <p>Residential development (EAW and EIS)</p>	<ul style="list-style-type: none"> • Type of determinations is too convoluted. • Complexity in determining whether a project meets the threshold or not is not proportional to the project type. • Extra unnecessary step without benefit? • Other parts of project are already captured. <ul style="list-style-type: none"> ○ But EAW brings it all together. ▪ But, this can be done without a mandatory category. 	<ul style="list-style-type: none"> • The math problem (as opposed to the threshold) is overly difficult (multiple agreement). • Develop a mandatory category tool to calculate whether trigger is hit (multiple agreement).
<p>MR 4410.4300, subp.19a and 4410.4400, subp.14a –</p> <p>Residential development in shoreland outside Twin Cities (EAW and EIS)</p>	<ul style="list-style-type: none"> • What is “sensitive”? • How much overlap with county processes? Is a mandatory category necessary? <ul style="list-style-type: none"> ○ Depends on county size/location. ○ EAW brings it together; allows for public comment on this at the local level. ○ State oversight necessary if conflict between jurisdictions. 	<ul style="list-style-type: none"> • Need for sensitivity criteria.
<p>MR 4410.4300, subp.20 –</p>	<ul style="list-style-type: none"> • This is CUP everywhere. <ul style="list-style-type: none"> ○ Gets lots of attention. ○ Redundancy between CUP and ER. • Where are protections listed if this category is eliminated? 	<ul style="list-style-type: none"> • Better sensitivity triggers. • Related to new category “Highly Important Natural Resources.”

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<p>Resorts, campgrounds, and RV parks in shoreland (EAW)</p>	<ul style="list-style-type: none"> • Not all shorelines are equal in nature, so treat them the same to make it easier? • “Common open space” is carrot to proposer. • MPCA criteria can be applied. • Cumulative effect is a concern and this category is needed to it. <ul style="list-style-type: none"> ◦ But, it might be picked up elsewhere (for instance, an AUAR). ▪ But this could depend on the county. • Competing concerns between resource-based society and tax-based economy need to be addressed. Resources need protections. 	<ul style="list-style-type: none"> • Further discussion on definition of shoreland/lakes (MPCS vs DNR vs ...) • DNR would support treating all shoreland as “sensitive.”
<p>MR 4410.4300, subp.22 – Highway projects (EAW)</p>	<ul style="list-style-type: none"> • Rarely is there a road project without a federal ER trigger. Does this mean there is redundancy in federal and state ER? • Consideration of type of activity? <ul style="list-style-type: none"> ◦ Not much redundancy here between permitting and environmental review. • Certain aspects of project not captured, for instance disturbance of tribal burial grounds and cultural resources. <ul style="list-style-type: none"> ◦ This is a failure of the federal ER process. 	<ul style="list-style-type: none"> • Consider increasing the threshold versus other factors in road project not in NEPA. • Ask MNDOT whether an EAW adds information for the public/RGU/decision-makers – what makes the category valuable and what are we getting from state ER that we are not getting from federal review?
<p>MR 4410.4300, subp.24 – Water appropriations and impoundments (EAW)</p>	<ul style="list-style-type: none"> • Permits are not easy to get and DNR process is rigorous; therefore why additional environment review for water appropriations? <ul style="list-style-type: none"> ◦ Environmental review is redundant. ◦ But, environmental review process is not necessarily burdensome and DNR permitting does not allow for large public input. ◦ Clarification – category only applies to <i>new</i> water appropriations. • Environmental review is for the public; should not be afterthought. • Threshold comments: <ul style="list-style-type: none"> ◦ Clarifying language for GWMA ◦ “One source of water” seems problematic ◦ Consider the resources that are impacted when setting a different threshold 	<ul style="list-style-type: none"> • Part A of 4410.4300, subp.24 - Consider new versus existing water appropriations, when is feedback/public input needed. • Part A of 4410.4300, subp.24 - “one source of water” seems problematic (multiple agreement); should there be a reference with “one aquifer”? • Part A of 4410.4300, subp.24 - Clarify thresholds for GWMA (multiple agreement). • Need for a forum to discuss this category. • Do not increase trigger of 700 gpm. • No exemption for mining pit dewatering processes.
<p>MR 4410.4300, subp.19 –</p>	<ul style="list-style-type: none"> • EIS/EAWs do not change anything for proposers, but costs are substantial. 	<ul style="list-style-type: none"> • The threshold should not be changed.

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<p>Animal feedlots (EAW)</p>	<ul style="list-style-type: none"> • Environmental review slows down the process of permitting/local processes, therefore this decouples the two. • The number of animals is not the problem—the ratio of land to animals is the problem. • Cumulative impacts of feedlots is a public concern. • This is a controversial category change. • The rule has not kept up with technology. • RGU concern: how are feedlots managed. 	<ul style="list-style-type: none"> • There needs to be a discussion around the number vs. the ration of land/animals as a threshold.
<p>MR 4410.4300, subp.33 – Communication towers (EAW)</p>	<ul style="list-style-type: none"> • Similar to comments on previous category. • This is more about where the towers are located. 	<ul style="list-style-type: none"> • None at this time.
<p>MR 4410.4300, subp.36a – Land conversions in shoreland (EAW)</p>	<ul style="list-style-type: none"> • Part A of 4410.4300, subp. 36a – “permanently convert” is defined, but other parts of the category uses “alter” and this term is not defined. As a result, this category captures projects that should not be captured and were not intended to be captured—e.g. habitat improvement projects. 	<ul style="list-style-type: none"> • Clearly define “alter” for this category (<i>multiple agreement</i>). • Continue the conversation around language and how to exclude projects that result in an ecological improvement.