Minnesota County Engineers Association

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July 20, 2016

Environmental Quality Board
Attn: Mandatory Category Rulemaking
520 Lafayette Road North
St. Paul, MN 55155

Subject: EQB Mandatory Categories Rulemaking: Preliminary Rules Language

Thank you for the opportunity provided by the Environmental Quality Board (EQB) to allow stakeholders and the public the opportunity to comment on this rulemaking process. I am submitting this comment letter on the Preliminary Rule Language changes for Minnesota Rule 4410 on behalf of the Minnesota County Engineers Association (MCEA). In addition to providing the opportunity to comment we appreciate the chance for MCEA representatives to be involved early in the rule making process.

It's our understanding that the EQB has released preliminary proposed rule changes pertaining to Minnesota Rule Chapter 4410, consistent with a 2015 legislative charge to support environmental review efficiency. We recognize that establishing thresholds for preparation of Mandatory EAW and EIS documents is not a simple exercise. The Environmental Review Process, specifically through the use of EAW and EIS documents, has been critical in providing governmental units with the information necessary to make environmentally sensitive decisions in the best interests of the public. At the same time, it is incumbent on all levels of government to ensure that government resources are used wisely, and that we seek ways to improve our efficiency in the delivery of products and services to the public.

The MCEA is supportive of the following proposed changes:

Mn Rule Chapter 4410.0200 Definitions
The MCEA supports the proposed changes to the definitions, including the addition of a definition for "Auxiliary Lane" to support the proposed changes in the Mandatory EAW Categories.

Mn Rule Chapter 4410.4300 Mandatory EAW Categories
Subpart 22, Item B: An EAW is required *"For construction of additional through lanes or passing lanes on an existing road for a length of two or more miles".* This is a change from the current rule of one mile.

Mn Rule Chapter 4410.4600 Exemptions
Subpart 14, Item C: "Modernization of an existing roadway or bridge by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders or adding auxiliary lanes that may involve the acquisition of minimal amounts of right-of-way is exempt." This rule has been changed by adding "reconstruction, adding shoulders or adding auxiliary lanes".

The MCEA strongly supports these language changes as a way to improve environmental review efficiency. The primary purpose of an EAW is to lay out the basic facts and potential impacts of a project as necessary to determine if an EIS is required for a proposed project. It has been a very rare occurrence when a county highway project of any type, regardless of length, has required completion of an EIS. In many cases, county highway construction projects of such a significant scope include federal funding, and would already be following the federal environmental review process. Resurfacing, restoration, rehabilitation, reconstruction, shoulders or auxiliary lane projects with minimal amounts of right-of-way along an existing road rarely have any substantive impacts. These changes are seen as being beneficial in ensuring public resources are spent wisely in the delivery of transportation projects by avoiding the administrative work to prepare unnecessary environmental documentation.

The MCEA is also pleased to see that the preliminary rules published for comment June 17, 2016 make no revisions to the mandatory EAW thresholds for impacts to public waters, public water wetlands and wetlands as set out in 4410.4300 Supb. 27. Again, impacts in these areas are subject to regulation by multiple agencies and any project related impacts are thoroughly addressed through the project development process and existing permitting requirements.

It is recognized that some stakeholders may feel that additional environmental review process based on thresholds would further reduce impacts or help to make the public aware of public projects. It is important to recognize that counties are diligent in trying to avoid and minimize impacts associated with highway construction projects. The projects are developed in coordination with regulatory agencies, stakeholders, and the public through engagement during the project development process. It is important to understand that county highway projects are still subject to all of the requirements of applicable federal, state, regional and local laws and rules pertaining potential impacts and mitigation, regardless of the environmental review path taken. Further, all County Engineers are also responsible to their Board of elected officials to ensure that public interests are being met.

Thank you for your consideration of our comments on the preliminary rule language changes to Mn Rule 4410. The MCEA would be happy to discuss these comments with you. Also, please let us know if the MCEA can be of assistance in any manner with this rulemaking effort.

Sincerely,

Mark J. Krebsbach, P.E.
President, Minnesota County Engineers Association
Dakota County Engineer

Cc: Mitch Rasmussen, Mn/DOT State Aid Engineer
Julie Ring, Executive Director, Association of Minnesota Counties
Emily Pugh, Transportation and Energy Policy Analyst, Association of Minnesota Counties

From:	Langan, Matthew A
To:	Ahlers-Nelson, Courtney (MPCA)
Cc:	Rosvold, Richard A; Rogers, Timothy G; Edman, Timothy J
Subject:	Mandatory Categories Rulemaking
Date:	Wednesday, July 20, 2016 2:08:04 PM

Courtney – Thanks for taking the time to speak with me last month about the Minnesota Environmental Quality Board's proposed rule amendments. As we discussed on the phone, the only (minor) comments we would like to submit are on 4410.4300, Subp. 3B, Electric Generating Facilities (lines 44-47):

B. For construction of an electric power generating plants and associated facilities designed for and capable of operating at a capacity of 25 megawatts or more and less than 50 megawatts and for which an air permit from the MPCA is not required or more, the PUC shall be the RGU. Environmental review shall be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.

We agree it makes sense to change the RGU from MEQB to MPUC for projects that meet this profile. As you know, MPUC and the Department of Commerce have been responsible for environmental review of electric generating facilities since 2005, and have the expertise and capacity to act as RGU for an EAW.

Also, it's important to clarify MPUC would carry-out the EAW preparation and review process according to MR Chp. 4410, not MR Chps. 7849 and 7850. In our phone conversation you identified that the last sentence in the subpart was left in in error (from the pre-amendment, existing rule language,) and we agree eliminating that last sentence removes the confusion, properly aligning the rule subpart with the correct environmental review process. So the subpart would read:

B. For construction of an electric power generating plants and associated facilities designed for and capable of operating at a capacity of 25 megawatts or more and less than 50 megawatts and for which an air permit from the MPCA is not required or more, the PUC shall be the RGU.

We hope you find these comments helpful. Please let us know if you have any questions.

-Matt

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4410.4300 MANDATORY EAW CATEGORIES.

Subpart 1. Threshold test.

An EAW must be prepared for projects that meet or exceed the threshold of any of subparts 2 to 37, unless the project meets or exceeds any thresholds of part 4410.4400, in which case an EIS must be prepared.

If the proposed project is an expansion or additional stage of an existing project, the cumulative total of the proposed project and any existing stages or components of the existing project must be included when determining if a threshold is met or exceeded if construction was begun within three years before the date of application for a permit or approval from a governmental unit for the expansion or additional stage but after April 21, 1997, except that any existing stage or component that was reviewed under a previously completed EAW or EIS need not be included.

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

Subp. 2. Nuclear fuels and nuclear waste.

Items A to F designate the RGU for the type of project listed:

A. For construction or expansion of a facility for the storage of high level nuclear waste, the EQB shall be the RGU.

B. For construction or expansion of a facility for the storage of low level nuclear waste for one year or longer, the MDH shall be the RGU.

C. For expansion of a high level nuclear waste disposal site, the EQB shall be the RGU.

D. For expansion of a low level nuclear waste disposal site, the MDH shall be the RGU.

E. For expansion of an away-from-reactor facility for temporary storage of spent nuclear fuel, the EQB shall be the RGU.

F. For construction or expansion of an on-site pool for temporary storage of spent nuclear fuel, the EQB shall be the RGU.

Subp. 3. Electric generating facilities.

For construction of an electric power generating plant and associated facilities designed for or capable of operating at a capacity of between 25 megawatts and 50 megawatts, the EQB shall be the RGU. For electric power generating plants and associated facilities designed for and capable of operating at a capacity of 50 megawatts or more, environmental review shall be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.

Subp. 4. Petroleum refineries.

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

Subp. 5. Fuel conversion facilities.

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

A. For construction of a facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 25,000 dry tons or more per year of input, the PCA shall be the RGU.

B. For construction or expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by 5,000,000 or more gallons per year of alcohol produced, the PCA shall be the RGU.

Subp. 6. Transmission lines.

For construction of a transmission line at a new location with a nominal capacity of between 70 kilovolts and 100 kilovolts with 20 or more miles of its length in Minnesota, the EQB shall be the RGU. For transmission lines and associated facilities designed for and capable of operating at a nominal voltage of 100 kilovolts or more, environmental review shall be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.

Subp. 7. Pipelines.

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

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

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

(1) five miles if the pipeline will occupy streets, highways, and other public property; or
(2) 0.75 miles if the pipeline will occupy private property; the EQB or the municipality is the RGU.

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

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

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

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

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

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

Subp. 8. Transfer facilities.

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

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

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

Subp. 9. Underground storage.

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

A. For expansion of an underground storage facility for gases or liquids that requires a permit, pursuant to Minnesota Statutes, section 103I.681, subdivision 1, paragraph (a), the DNR shall be the RGU.

B. For expansion of an underground storage facility for gases or liquids, using naturally occurring rock materials, that requires a permit pursuant to Minnesota Statutes, section 103I.681, subdivision 1, paragraph (b), the DNR shall be the RGU.

Subp. 10. Storage facilities.

Items A to C designate the RGU for the type of project listed:

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

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

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

Subp. 11. Metallic mineral mining and processing.

Items A to C designate the RGU for the type of project listed:

A. For mineral deposit evaluation of metallic mineral deposits other than natural iron ore and taconite, the DNR shall be the RGU.

B. For expansion of a stockpile, tailings basin, or mine by 320 or more acres, the DNR shall] be the RGU.

C. For expansion of a metallic mineral plant processing facility that is capable of increasing production by 25 percent per year or more, provided that increase is in excess of 1,000,000 tons per year in the case of facilities for processing natural iron ore or taconite, the DNR shall be the RGU.

Subp. 12. Nonmetallic mineral mining.

Items A to C designate the RGU for the type of project listed:

A. For development of a facility for the extraction or mining of peat which will result in the excavation of 160 or more acres of land during its existence, the DNR shall be the RGU.

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

C. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 20 or more acres of forested or other naturally vegetated land in a sensitive shoreland area or 40 acres of forested or other naturally vegetated land in a nonsensitive shoreland area, the local governmental unit shall be the RGU.

Subp. 13. Paper or pulp processing mills.

For expansion of an existing paper or pulp processing facility that will increase its production capacity by 50 percent or more, the PCA shall be the RGU.

Subp. 14. Industrial, commercial, and institutional facilities. [DW1]

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

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

(1) unincorporated area, 150,000;
(2) third or fourth class city, 300,000;
(3) second class city, 450,000;
(4) first class city, 600,000.

B. For construction of a new or expansion of an existing industrial, commercial, or institutional facility, other than a warehousing or light industrial facility, equal to or in excess of the following thresholds, expressed as gross floor space, the local government 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.

C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2 to 10, 12, 13, 15, or 17, for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EAW. If the project meets or exceeds the thresholds specified in any other subpart as well as that of item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.

D. This subpart does not apply to projects for which there is a single mandatory category specified in subparts 2 to 13, 16, 17, 20, 23, 25, 29, or 34, or part 4410.4400, subparts 2 to 10, 12, 13, 17, or 22, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an EAW must be determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.

Subp. 15. Air pollution.

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

A. For construction of a stationary source facility that generates 250 tons or more per year or modification of a stationary source facility that increases generation by 250 tons or more per year of any single air pollutant, other than those air pollutants described in item B, after installation of air pollution control equipment, the PCA shall be the RGU.

B. For construction of a stationary source facility that generates a combined 100,000 tons or more per year or modification of a stationary source facility that increases generation by a combined 100,000 tons or more per year of greenhouse gas emissions, after installation of air pollution control equipment, expressed as carbon dioxide equivalents, the PCA shall be the RGU. For purposes of this subpart, "greenhouse gases" include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride, and their combined carbon dioxide equivalents shall be computed by multiplying the mass amount of emissions for each of the six greenhouse gases in the pollutant GHGs by the gas's associated global warming potential published in

Table A-1 to subpart A of Code of Federal Regulations, title 40, part 98, Global Warming Potentials, as amended, and summing the resultant value for each.

Subp. 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 with a capacity of 1,000 or more kilograms per month, 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 water-related land use management district, or in an area characterized by soluble bedrock, the PCA shall be the RGU.

Subp. 17. Solid waste.

Items A to G designate the RGU for the type of project listed:

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 is 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 is the RGU.

C. For construction or expansion of a mixed municipal solid waste transfer station for 300,000 or more cubic yards per year, the PCA is the RGU.

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

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

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

G. For construction or expansion of a mixed municipal solid waste energy recovery facility ash landfill receiving ash from an incinerator that burns refuse-derived fuel or mixed municipal solid waste, the PCA is the RGU.

Subp. 18. Wastewater systems.

Items A to C designate the RGU for the type of project listed:

A. For expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of any part of that system by 1,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with a capacity less than 20,000,000 gallons per day or for expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of

any part of that system by 2,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with the capacity of 20,000,000 gallons or greater, the PCA shall be the RGU.

B. For expansion or reconstruction of an existing municipal or domestic wastewater treatment facility which results in an increase by 50 percent or more and by at least 200,000 gallons per day of its average wet weather design flow capacity, or construction of a new municipal or domestic wastewater treatment facility with an average wet weather design flow capacity of 200,000 gallons per day or more, the PCA shall be the RGU.

C. For expansion or reconstruction of an existing industrial process wastewater treatment facility which increases its design flow capacity by 50 percent or more and by at least 200,000 gallons per day or more, or construction of a new industrial process wastewater treatment facility with a design flow capacity of 200,000 gallons per day or more, 5,000,000 gallons per month or more, or 20,000,000 gallons per year or more, the PCA shall be the RGU. This category does not apply to industrial process wastewater treatment facilities that discharge to a publicly-owned treatment works or to a tailings basin reviewed pursuant to subpart 11, item B.

Subp. 19. Residential development. [DW2]

An EAW is required for residential development if the total number of units that may ultimately be developed on all contiguous land owned or under an option to purchase by the proposer, except land identified by an applicable comprehensive plan, ordinance, resolution, or agreement of a local governmental unit for a future use other than residential development, equals or exceeds a threshold of this subpart. In counting the total number of ultimate units, the RGU shall include the number of units in any plans of the proposer; for land for which the proposer has not yet prepared plans, the RGU shall use as the number of units the product of the number of acres multiplied by the maximum number of units per acre allowable under the applicable zoning ordinance or, if the maximum number of units allowable per acre is not specified in an applicable zoning ordinance, by the overall average number of units per acre indicated in the plans of the proposer for those lands for which plans exist. If the total project requires review but future phases are uncertain, the RGU may review the ultimate project sequentially in accordance with part 4410.1000, subpart 4.

If a project consists of mixed unattached and attached units, an EAW must be prepared if the sum of the quotient obtained by dividing the number of unattached units by the applicable unattached unit threshold, plus the quotient obtained by dividing the number of attached units by the applicable attached unit threshold, equals or exceeds one.

The local governmental unit is the RGU for construction of a permanent or potentially permanent residential development of:

A. 50 or more unattached or 75 or more attached units in an unsewered unincorporated area or 100 unattached units or 150 attached units in a sewered unincorporated area;

B. 100 unattached units or 150 attached units in a city that does not meet the conditions of item D;

C. 100 unattached units or 150 attached units in a city meeting the conditions of item D if the project is not consistent with the adopted comprehensive plan; or

D. 250 unattached units or 375 attached units in a city within the seven-county Twin Cities metropolitan area that has adopted a comprehensive plan under Minnesota Statutes, section 473.859, or in a city not located within the seven-county Twin Cities metropolitan area that has filed with the EQB chair a certification that it has adopted a comprehensive plan containing the following elements:

(1) a land use plan designating the existing and proposed location, intensity, and extent of use of land and water for residential, industrial, agricultural, and other public and private purposes;

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

(3) a sewage collection system policy plan describing, designating, and scheduling the areas to be served by the public system, the existing and planned capacities of the public system, and the standards and conditions under which the installation of private sewage treatment systems will be permitted;

(4) a capital improvements plan for public facilities; and

(5) an implementation plan describing public programs, fiscal devices, and other actions to be undertaken to implement the comprehensive plan, and a description of official controls addressing the matters of zoning, subdivision, private sewage systems, and a schedule for the implementation of those controls. The EQB chair may specify the form to be used for making a certification under this item.

Subp. 19a. Residential development in shoreland outside of the seven-county Twin Cities metropolitan area.

A. The local governmental unit is the RGU for construction of a permanent or potentially permanent residential development located wholly or partially in shoreland outside the seven-county Twin Cities metropolitan area of a type listed in items B to E. For purposes of this subpart, "riparian unit" means a unit in a development that abuts a public water or, in the case of a development where units are not allowed to abut the public water, is located in the first tier of the development as provided under part 6120.3800, subpart 4, item A. If a project is located partially in a sensitive shoreland area and partially in nonsensitive shoreland areas, an EAW must be prepared if the sum of the quotient obtained by dividing the number of units in the sensitive shoreland area by the applicable sensitive shoreland area threshold, plus the quotient obtained by dividing the number of units in nonsensitive shoreland areas by the applicable nonsensitive shoreland area threshold, equals or exceeds one. If a project is located partially in shoreland and partially not in shoreland, an EAW must be prepared if the sum of the quotients obtained by dividing the number of units in each type of area by the applicable threshold for each area equals or exceeds one.

B. A development containing 15 or more unattached or attached units for a sensitive shoreland area or 25 or more unattached or attached units for a nonsensitive shoreland area, if any of the following conditions is present:

(1) less than 50 percent of the area in shoreland is common open space;

(2) the number of riparian units exceeds by at least 15 percent the number of riparian lots that would be allowable calculated according to the applicable lot area and width standards for riparian unsewered single lots under part 6120.3300, subparts 2a and 2b; or

(3) if any portion of the project is in an unincorporated area, the number of nonriparian units in shoreland exceeds by at least 15 percent the number of lots that would be allowable on the parcel calculated according to the applicable lot area standards for nonriparian unsewered single lots under part 6120.3300, subparts 2a and 2b.

C. A development containing 25 or more unattached or attached units for a sensitive shoreland area or 50 or more unattached or attached units for a nonsensitive shoreland area, if none of the conditions listed in item B is present.

D. A development in a sensitive shoreland area that provides permanent mooring space for at least one nonriparian unattached or attached unit.

E. A development containing at least one unattached or attached unit created by the conversion of a resort, motel, hotel, recreational vehicle park, or campground, if either of the following conditions is present:

(1) the number of nonriparian units in shoreland exceeds by at least 15 percent the number of lots that would be allowable on the parcel calculated according to the applicable lot area standards for nonriparian unsewered single lots under part 6120.3300, subparts 2a and 2b; or

(2) the number of riparian units exceeds by at least 15 percent the number of riparian lots that would be allowable calculated according to the applicable lot area and width standards for riparian unsewered single lots under part 6120.3300, subparts 2a and 2b.

F. An EAW is required for residential development if the total number of units that may ultimately be developed on all contiguous land owned or under an option to purchase by the proposer, except land identified by an applicable comprehensive plan, ordinance, resolution, or agreement of a local governmental unit for a future use other than residential development, equals or exceeds a threshold of this subpart. In counting the total number of ultimate units, the RGU shall include the number of units in any plans of the proposer. For land for which the proposer has not yet prepared plans, the RGU shall use as the number of units the number of acres multiplied by the maximum number of units per acre allowable under the applicable zoning ordinance or, if the maximum number of units allowable per acre is not specified in an applicable zoning ordinance, by the overall average number of units per acre indicated in the plan of the proposer for those lands for which plans exist.

Subp. 20. Campgrounds and RV parks.

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

Subp. 20a. Resorts, campgrounds, and RV parks in shorelands.

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

A. construction or addition of 25 or more units or sites in a sensitive shoreland area or 50 units or sites in a nonsensitive shoreland area if at least 50 percent of the area in shoreland is common open space; or

B. construction or addition of 15 or more units or sites in a sensitive shoreland area or 25 or more units or sites in a nonsensitive shoreland area, if less than 50 percent of the area in shoreland is common open space.

If a project is located partially in a sensitive shoreland area and partially in nonsensitive shoreland areas, an EAW must be prepared if the sum of the quotient obtained by dividing the number of units in the sensitive shoreland area by the applicable sensitive shoreland area threshold, plus the quotient obtained by dividing the number of units in nonsensitive shoreland areas by the applicable nonsensitive shoreland area threshold, equals or exceeds one. If a project is located partially in shoreland and partially not in shoreland, an EAW must be prepared if the sum of the quotients obtained by dividing the number of units in each type of area by the applicable threshold for each area equals or exceeds one.

Subp. 21. Airport projects.

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

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

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

Subp. 22. Highway projects.

Items A to C designate the RGU for the type of project listed:

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

B. For construction of additional travel lanes on an existing road for a length of one or more miles, the DOT or local government unit shall be the RGU.

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

Subp. 23. Barge fleeting.

For construction of a new or expansion of an existing barge fleeting facility, the DOT or port authority shall be the RGU.

Subp. 24. Water appropriation and impoundments.

Items A to C designate the RGU for the type of project listed:

A. For a new appropriation for commercial or industrial purposes of either surface water or ground water averaging 30,000,000 gallons per month; or a new appropriation of either ground water or surface water for irrigation of 540 acres or more in one continuous parcel from one source of water, the DNR shall be the RGU.

B. For a new permanent impoundment of water creating additional water surface of 160 or more acres or for an additional permanent impoundment of water creating additional water surface of 160 or more acres, the DNR shall be the RGU.

C. For construction of a dam with an upstream drainage area of 50 square miles or more, the DNR shall be the RGU.

Subp. 25. Marinas.

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

Subp. 26. Stream diversion. [DW3]

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

Subp. 27. Wetlands and public waters.[DW4]

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

A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant to Minnesota Statutes, chapter 103G, the local government unit shall be the RGU.[DW5]

B. For projects that will change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more[DW6], excluding public waters wetlands, if any part of the wetland is within a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local government unit shall be the RGU.[DW7]

Subp. 28. Forestry.

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

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

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

Subp. 29. Animal feedlots.

The PCA is the RGU for the types of projects listed in items A and B unless the county will issue the feedlot permit, in which case the county is the RGU. However, the county is not the RGU prior to January 1, 2001.

A. For the construction of an animal feedlot facility with a capacity of 1,000 animal units or more or the expansion of an existing facility by 1,000 animal units or more if the facility is not in an area listed in item B.

B. For the construction of an animal feedlot facility of more than 500 animal units or expansion of an existing animal feedlot facility by more than 500 animal units if the facility is located wholly or partially in any of the following sensitive locations: shoreland; a delineated flood plain, except that in the flood plain of the Red River of the North the sensitive area includes only land within 1,000 feet of the ordinary high water mark; a state or federally designated wild and scenic river district; the Minnesota River Project Riverbend area; the Mississippi headwaters area; or an area within a drinking water supply management area delineated under chapter 4720 where the aquifer is identified in the wellhead protection plan as vulnerable to contamination; or within 1,000 feet of a known sinkhole, cave, resurgent spring, disappearing spring, Karst window, blind valley, or dry valley.

The provisions of part 4410.1000, subpart 4, regarding connected actions do not apply to animal feedlots. The provisions of part 4410.1000, subpart 4, regarding phased actions apply to feedlots.
With the agreement of the proposers, the RGU may prepare a single EAW to collectively review individual sites of a multisite feedlot proposal.

Subp. 30. Natural areas.

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

Subp. 31. Historical places.

For the destruction, in whole or part, or the moving of a property that is listed on the National Register of Historic Places or State Register of Historic Places, the permitting state agency or local unit of government shall be the RGU, except this does not apply to projects reviewed under section 106 of the National Historic Preservation Act of 1966, United States Code, title 16, section 470, or the federal policy on lands, wildlife and waterfowl refuges, and historic sites pursuant to United States Code, title 49, section 303, or projects reviewed by a local heritage preservation commission certified by the State Historic Preservation Office pursuant to Code of Federal Regulations, title 36, sections 61.5 and 1.7. This subpart does not apply to a property located within a designated historic district if the property is listed as "noncontributing" in the official district designation or if the State Historic Preservation Office issues a determination that the property is noncontributing.

Subp. 32. Mixed residential and industrial-commercial projects. [DW8]

If a project includes both residential and industrial-commercial components, the project must have an EAW prepared if the sum of the quotient obtained by dividing the number of residential units by the applicable residential threshold of subpart 19, plus the quotient obtained by dividing the amount of industrial-commercial gross floor space by the applicable industrial-commercial threshold of subpart 14, equals or exceeds one. The local governmental unit is the RGU.

Subp. 33. Communications towers.

For construction of a communications tower equal to or in excess of 500 feet in height, or 300 feet in height within 1,000 feet of any public water or public waters wetland or within two miles of the Mississippi, Minnesota, Red, or St. Croix rivers or Lake Superior, the local governmental unit is the RGU.

Subp. 34. Sports or entertainment facilities.

For construction of a new sports or entertainment facility designed for or expected to accommodate a peak attendance of 5,000 or more persons, or the expansion of an existing sports or entertainment facility by this amount, the local governmental unit is the RGU.

Subp. 35. Release of genetically engineered organisms.

For the release of a genetically engineered organism that requires a release permit from the EQB under chapter 4420, the EQB is the RGU. For all other releases of genetically engineered organisms, the RGU is the permitting state agency. This subpart does not apply to the direct medical application of genetically engineered organisms to humans or animals.

Subp. 36. Land use conversion~~, including golf courses.~~ [DW9][DW10]

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

A. For ~~golf courses, residential development~~ [DW11]~~where the lot size is less than five acres, and other~~ projects resulting in the permanent conversion of ~~80~~ 160 or more acres of ~~agricultural,~~[DW12] ~~native~~ prairie, forest, or naturally vegetated land[DW13], the local government unit shall be the RGU~~., except that this subpart does not apply to agricultural land inside the boundary of the Metropolitan Urban Service Area established by the Metropolitan Council.~~

B. For projects resulting in the conversion of 640 or more acres of forest or naturally vegetated land to a different open space land use[DW14], the local government unit shall be the RGU.

Subp. 36a. Land conversions in shoreland.

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

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

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

Subp. 37. Recreational trails.

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

A. Constructing a trail at least ten miles long on forested or other naturally vegetated land [DW15]for a recreational use other than snowmobiling or cross-country skiing, unless exempted by part 4410.4600, subpart 14, item D, or constructing a trail at least 20 miles long on forested or other naturally vegetated land exclusively for snowmobiling or cross-country skiing.

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

C. Paving ten or more miles of an existing unpaved trail, unless exempted by part 4410.4600, subpart 27, item B or F. Paving an unpaved trail means to create a hard surface on the trail with a material impervious to water.

D. Constructing an off-highway vehicle recreation area of 80 or more acres, or expanding an off-highway vehicle recreation area by 80 or more acres, on agricultural land or forested or other naturally vegetated land.

E. Constructing an off-highway vehicle recreation area of 640 or more acres, or expanding an off-highway vehicle recreation area by 640 or more acres, if the land on which the construction or expansion is carried out is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities such as mineral mining.

F. Some recreation areas for off-highway vehicles may be constructed partially on agricultural naturally vegetated land and partially on land that is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities. In that case, an EAW must be prepared if the sum of the quotients obtained by dividing the number of acres of agricultural or naturally vegetated land by 80 and the number of acres of land that is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities by 640, equals or exceeds one.

Statutory Authority: *MS s 116C.94; 116D.04; 116D.045; L 1998 c 401 s 54*
History: *11 SR 714; 13 SR 1437; 13 SR 2046; 17 SR 139; 21 SR 1458; 24 SR 517; 28 SR 951; 30 SR 319; 31 SR 539; 34 SR 721; 36 SR 567*
Published Electronically: *September 5, 2013*

Building a legacy – *your* legacy.

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June 29, 2016

Mr. Erik Dahl and Ms. Courtney Ahlers
Minnesota Environmental Quality Board Staff
520 Lafayette Road North
St. Paul, MN 55155

Re: Mandatory Categories Rulemaking

Dear Mr. Dahl and Ms. Ahlers,

WSB provides the following comments per the current open comment period regarding potential rule changes to the MEPA. These comments reflect our experience are based on WSB's 20 years of experience working for various Responsible Government Units (RGUs), mainly in the greater Twin Cities metro area.

4410.4300, Subp. 14 and 4410.4400 Subp. 11 Industrial, commercial, and institutional facilities

The proposed revisions to remove city classification thresholds appear to clarify and streamline the process. We are in support of these changes.

4410.4300, Subp. 19. Residential Development

As part of this EAW category, Part D includes language that the RGUs outside the metro area have to file with the EQB Chair confirming that they have an adopted Comprehensive Plan to be eligible under this EAW trigger. We recommend removing this as a filing requirement. The filing requirement is difficult to track and, as more and more cities adopt Comprehensive Plans, this requirement becomes obsolete and unnecessary. We suggest the following language:

Subp. 19. D. 250 unattached units or 375 attached units in a city within the seven-county Twin Cities metropolitan area or in a city not located within the seven-county Twin Cities metropolitan area that has an adopted Comprehensive Plan and the project is consistent with the Comprehensive Plan.

4410.4300, Subp. 22. Highway Projects

We support the proposed change that increases the EAW trigger from one mile to two or more miles of through lanes or passing lanes.

4410.4300, Subp 27. Wetland and Public Waters

Subp 27 Part B: The language in this subpart is confusing and difficult to decipher. It is our opinion that this trigger is no longer necessary for impacts to non-DNR wetlands. The Wetland Conservation Act (MR 8420) and US Corps of Engineers Section 404 permitting process are extremely robust, with requirements for alternatives analysis, avoidance and minimization, and finally mitigation. This permitting process is essentially more extensive of an environmental review process than the EAW process, and the EAW becomes redundant. We suggest removing Subpart 27. B.

Subp. 27.B: ~~For projects that will change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more, excluding public waters wetlands, if any part of the wetland is within a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local government unit shall be the RGU.~~

4410.4300, Subp. 36. Land Use Conversion, Including Golf Courses

This environmental review trigger has come up in conversation with numerous RGU's. I estimate only a few EAW's have been triggered by this category for our clients. At times, the trigger does not seem to meet the intent of the environmental review process for projects that are outside the MUSA and in an agricultural area where the proposed use would result in less impact than an agriculture use. For example, we have reviewed a few concept plans for parks including green space, natural areas, park, and play areas on agricultural land and RGU discussion ensued on the need for an EAW. The park use would have been less of an environmental impact than the intense agricultural use in terms of runoff and habitat and traffic would have been negligible. The use was also planned in the local Comprehensive Plan. In cases where land use conversion on agricultural land lead to a more sustainable use, an EAW seems onerous to the project proposer and RGU.

However, we do recognize recent projects that have brought the prime farmland designation into the headlines. Therefore, if the "agricultural" trigger is not to be removed, we suggest the following revisions to the language:

Subp. 36 Part A: "Golf courses, residential developments where the lot size is less than five acres, and other projects resulting in the permanent conversion of 80 or more acres of <u>prime farmland</u> ~~agricultural~~, native prairie, forest, or naturally vegetated land, except that this subpart does not apply to agricultural land inside the boundary of the Metropolitan Urban Service Area.."

This concludes our comments on the MEPA environmental review triggers. Thank you for the opportunity to comment. If we hear of other comments or suggestions from our RGU clients, we will pass those on to the EQB Staff. If you have questions, please feel free to call me at 763-287-7196.

Sincerely,

WSB & Associates, Inc.

Andi Moffatt

Andrea Moffatt
Principal, Environmental Manager

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Dakota COUNTY

July 12, 2016

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Erik Cedarleaf Dahl
Planning Director - Rulemaking
Environmental Quality Board
520 Lafayette Road North
St. Paul, MN 55155

Mandatory Category Rulemaking: Preliminary Rule Language

Mr. Dahl:

I am submitting this comment letter on the Preliminary Rule Language changes for Minnesota Rule 4410 on behalf of the Dakota County Board of Commissioners. We appreciate the willingness of the Environmental Quality Board (EQB) to provide all stakeholders and the public the opportunity to participate in this rulemaking process.

It's our understanding that the EQB has released preliminary proposed rule changes pertaining to Minnesota Rule Chapter 4410, consistent with a 2015 legislative charge to support environmental review efficiency. Specifically, the preliminary changes pertain to:

Mn Rule Chapter 4410.0200	Definitions
Mn Rule Chapter 4410.4300	Mandatory EAW Categories
Mn Rule Chapter 4410.4400	Mandatory EIS Categories
Mn Rule Chapter 4410.4600	Exemptions

We acknowledge that establishing thresholds for EAW and EIS documents is not a simple exercise. The Environmental Review Process, specifically through the use of EAW and EIS documents, has been critical in providing governmental units with the information necessary to make environmentally sensitive decisions in the best interests of the public. At the same time, it is incumbent on all government officials to ensure that government resources are spent wisely. With this in mind, we have the following comments:

Mn Rule Chapter 4410.0200 Definitions
Dakota County supports the proposed changes to the definitions, including the addition of a definition for "Auxiliary Lane" to support the proposed changes in the Mandatory EAW Categories, and the addition of "soil and water conservation districts and watershed management organizations" to reflect their ability to serve as local governmental units.

Mn Rule Chapter 4410.4300 Mandatory EAW Categories
Subpart 22, Item B: An EAW is required *"For construction of additional through lanes or passing lanes on an existing road for a length of two or more miles"*. This is a change from the current rule of one mile.

Dakota County fully supports both of these language changes because the purpose of an EAW **is to lay out the basic facts of a project necessary to determine if an EIS is required for a proposed project. Projects less than two miles in length, along an existing road, are not the type of projects that typically require the additional environmental review necessary for an EIS. Staff is not aware of any Dakota County highway projects in the past of this type that have been required to complete an EIS. This change therefore is beneficial in ensuring public resources are spent wisely in the delivery** of transportation projects. We do realize that there may be potential stakeholders that feel the Environmental Review Process helps to make the public aware of public projects. Dakota County is committed to not only creating awareness for projects and their potential impacts, but effectively engaging the public in identifying issues and developing solutions through the project development process. We do this for all projects that add lanes, regardless of the length of the project. We would be happy to add any agency or other stakeholder to our standard distribution list for all of our projects, which would allow them to get information directly from us, and would allow for project development to be both efficient and responsible.

Subpart 12, Item B: It would be appropriate for nonmetallic mineral mining to have expansion requirements similar to the language included in Subpart 17 for solid waste facilities.
Subpart 12, Item C: It would be appropriate for nonmetallic mineral mining to include other sensitive water areas such as drinking water supply areas, wellhead protection areas, or other designated sensitive water features.

Mn Rule Chapter 4410.4400 Mandatory EIS Categories
Subpart 9, Item C: We would support a language change that would also include other sensitive water areas such as drinking water supply areas, wellhead protection areas, or other designated sensitive water features.

Subpart 13, Item A: It's our understanding the elimination of a mandatory EIS for landfills of over 100,000 cubic yards was an error, and this requirement will be reinstated. Dakota County agrees with the EQB on reinstating this requirement.

Mn Rule Chapter 4410.4600 Exemptions
Subpart 14, Item C: *"Modernization of an existing roadway or bridge by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders or adding auxiliary lanes that may involve the acquisition of minimal amounts of right-of-way is exempt."* This rule has been changed by adding "reconstruction, adding shoulders or adding auxiliary lanes". Dakota County supports this change for the same reasons discussed above for 4410.4300 Subpart 22. These types of projects rarely, if ever, result in the need for an EIS. This change would allow local governmental units to continue to deliver projects in an environmentally responsible way, while being more effective with limited public resources available.

Thank you for your consideration of our comments on the preliminary rule language changes to Mn Rule 4410. We appreciate your attention to these comments and actions that address the concerns of Dakota County.

Sincerely,

Nancy Schouweiler, Chair
Dakota County Board of Commissioners

cc: Dakota County Board of Commissioners
Matt Smith, County Manager
Steve Mielke, Physical Development Director
Georg Fischer, Environmental Resource Director

Hennepin County
Public Works

Transportation Department
James N. Grube P.E., County Engineer
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July 5, 2016

Tara Carson
Minnesota Department of Transportation
Office of Environmental Stewardship (OES)
Mailstop 620
395 John Ireland Blvd
Saint Paul, MN 55155

RE: MnDOT Proposed Rule 4410 Rule Changes

Dear Ms. Carson:

The purpose of this letter is to comment on proposed language changes to Minnesota Rule 4410 (dated 4/6/2016), as it pertains to clarifying a number of definitions and raising the mandatory Environmental Assessment Worksheet (EAW) threshold from one to two miles for highway projects.

County staff support the changes proposed, including adding a definition for "Auxiliary lane"; and more particularly, increasing the mandatory EAW threshold from one to two miles of "through" lanes (previously called "travel" lanes), and excluding the newly defined "auxiliary lanes".

As director of Hennepin County's highway engineering group for the last 20 years, I can assure you that this expansion of the EAW threshold requirement will undoubtedly reduce the upfront time and cost of those smaller projects without jeopardizing the environment or the open review process.

The only modification I support that is different from what you have proposed is to include "passing lanes" in your definition of "auxiliary lanes". I believe adding "passing lanes" fits within the intent of the definition proposed, and would eliminate the need for the "or passing lanes" clause added to the EAW threshold. I feel this would make your proposed changes cleaner and easier to interpret and implement.

Thank you for the opportunity to comment on the proposed rule changes before they are publicly noticed, and offer staff to answer any questions you might have. Please contact Dave Jaeger at 612-348-5714 with for any desired follow-up.

Sincerely,

James N. Grube

James N. Grube, P.E.
County Highway Engineer

LYON COUNTY ENVIRONMENTAL

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Marshall, MN 56258
Office: (507) 532-8210

OUR MISSION: *Connecting residents to outdoor recreation, and encouraging participation in waste conservation practices to inspire our communities toward greater care of natural resources.*

July 18, 2016

Environmental Quality Board
Attn: Mandatory Category Rulemaking
520 Lafayette Road North
St. Paul, MN 55155-4194

Re: Mandatory Category Rulemaking: Preliminary Rule Language

To Whom It May Concern:

Minnesota Landfill Operator's Group (LOG) is providing this letter to provide comments regarding the preliminary amendments to Minnesota Rules 4410.4300 and 4410.4400 proposed by the Minnesota Environmental Quality Board (EQB). We appreciate the opportunity to provide comments and opinions on these important issues on behalf of our constituents.

Over the past nine years, we have provided correspondence to the Minnesota Pollution Control Agency (MPCA) Environmental Review Unit and the MPCA Solid Waste Permitting Unit expressing our concerns with previous policy changes in the implementation of the EQB Environmental Review Program for municipal solid waste (MSW) landfills by the MPCA as the Responsible Governmental Unit (RGU). We feel the current policies the MPCA is applying places a significant undue economic burden on small and rural publicly owned MSW disposal facilities. The proposed preliminary amendments to Minnesota Rules 4410.4300 and 4410.440 appear to further enhance the economic burden placed on small MSW disposal facilities that provide necessary and environmentally sound waste disposal services to residents of greater Minnesota. This conclusion is drawn based on the following discussion items relative to the proposed preliminary language.

Minnesota Rule Chapter 4410.4300 Mandatory EAW Categories

Minnesota Rule 4410.4300 Subpart 17 Solid Waste proposed preliminary language includes as a Mandatory Environmental Assessment Worksheet (EAW) Category, as indicated in italics below:

> *(A) For construction or expansion of a mixed MSW disposal facility (as defined by Minnesota Rules 7035.0300, subpart 6) for up to 100,000 cubic yards of air space per year, the PCA is the RGU.*

Parks, Trails, & Fairgrounds	Recycling Education	Hazardous Waste Program Manager	Accounts Payable Office Manager	Regional Landfill	Administrator
Brooke Wyffels	Sharon Root	Darron Grahn	Linnea Lasnetski	2025 – 200th Ave. Lynd,	504 Fairgrounds Road
(507) 532-8214	(507) 532-1307	(507) 532-8211	(507) 532-1305	Gene Rasmussen	Roger Schroeder
				(507) 865-4615	(507) 532-1306

The inclusion of the term "or expansion" in this category indicates that ***any*** expansion of a mixed MSW disposal facility for up to 100,000 cubic yards of air space per year would necessitate an EAW review, which is in direct contradiction with Item B, which requires an EAW review, "For expansion by 25% or more of previous permitted capacity of a mixed MSW disposal facility for up to 100,000 cubic yards of air space per year". We suggest removing the "or expansion" specification in Item A.

We do not agree with the replacement of the 100,000 cubic yard volume threshold specification from "waste fill" to "air space". In order to measure the volume of air space a disposal facility utilizes over the year, a topographic survey is compiled and the survey is compared from year to year. The measured "air space" includes the volume utilized by the waste deposited in the facility in addition to all daily, intermediate and final soil cover (which may account for up to 25% of the airspace consumed), piping and associated trench fill for leachate and landfill gas management, landfill access road remnants, stormwater management structures and several other components necessary for responsible solid waste disposal operations. The 1982 Statement of Need and Reasonableness (SONAR) identified solid waste as a mandatory category because of the potential for significant impacts relating to ground and surface water contamination through the migration of leachate. The non-waste elements included in the air space analysis do not contribute to the potential for these identified environmental impacts and should not be included in the 100,000 cubic yard volume analysis threshold for environmental review determination. The use of the term "air space" in the proposed changes offers too broad of a volume threshold analysis than what the intention of the SONAR states. Therefore, we request maintaining the current specification of "waste fill" as the 100,000 cubic yard per year volume measurement.

(B) For expansion by 25 percent or more of previous permitted capacity of a mixed MSW disposal facility for up to 100,000 cubic yards of air space per year, the PCA is the RGU.

We request the term "previous design capacity" be used instead of "previous permitted capacity". Minn. Rules 7035.0300 Subpart 32 defines "design capacity" as, "the total volume of compacted solid waste, topsoil, intermittent, intermediate, and final cover specified in the facility permit, as calculated from final contour and cross-sectional plan sheets that define the areal and vertical extent of the fill area." The term "permit capacity" is not defined in either Chapter 4410 or Chapter 7035, whereas "design capacity" is, and more strongly correlates with the definition of "capacity" used in Minn. Rules 4410.0200 subp. 6a: "Capacity as used in parts 4410.4300, subpart 17 and 4410.4400, subpart 13, means the maximum daily operational input volume a facility is designed to process on a continuing basis". The definition of "permit capacity" is found in the individual solid waste operating permit and is not the same definition for each site. "Permitted capacity" is typically based on the Certificate of Need (CON) that is determined in a county Solid Waste Management Plan and only justifies residential waste. Existing solid waste permits address air space that consists of residential waste, industrial waste, construction and demolition waste (if applicable) and cover material. Using an ambiguous term with no clarification defined in rules and no consistency from site to site will provide a conflicting and unpredictable setting for the environmental review process for MSW disposal facilities.

We also have concern with the economic implications of specifying "permit capacity" as the threshold for expansion. Recent policy revisions implemented by the MPCA for environmental review of MSW disposal facilities restrict the environmental review project scope to encompass development based on the 10-year CON analysis. Solid waste facilities in Minnesota that were granted permit capacity after 1991 (the implementation of Subtitle D federal Resource Conservation and Recovery Act standards) followed current state and federal regulations in the preparation of their respective county SWMP and facility permit applications. As a result, these facilities were granted permit capacity based on the calculated CON. However, facilities in Minnesota that prepared permit applications prior to the promulgation of current state and federal standards were granted permit capacity based on the ultimate footprint design of the facility. Therefore, there currently exists an enormous disparity of permit capacity volumes for MSW disposal facilities across Minnesota. Using a percentage based expansion threshold of permitted capacity places facilities with capacities granted prior to 1991 at a significant economic advantage (since they currently hold a much larger permit capacity) to facilities that were granted permit capacities in compliance with current regulatory standards. A facility with permit capacity granted after 1991 would likely need to perform several environmental assessments, at a significant cost, in order to gain the permit capacity that one facility may be granted with one environmental assessment, when the environmental impacts of receiving that same volume of waste will be essentially identical.

In this item, we again request to maintain the current specification of "waste fill" rather than "air space" as the 100,000 cubic yard per year volume threshold.

(F) *For expansion by at least ten percent of previous permitted capacity of a mixed MSW disposal facility for 100,000 cubic yards or more of air space per year, the PCA is the RGU.*

In this item, we again request to use "design" capacity rather than "permitted" capacity with the rationale detailed previously. We also request to maintain the current specification of "waste fill" rather than "air space" as the 100,000 cubic yard per year volume threshold to maintain the intent of the SONAR.

Minnesota Rule Chapter 4410.4400 Mandatory EIS Categories

Minnesota Rule 4410.4400 Subpart 13 Solid Waste proposed preliminary language includes as a Mandatory Environmental Impact Statement (EIS) Category, as indicated in italics below:

Removal of Item (A) For construction of a mixed MSW disposal facility for 100,000 cubic yards or more of waste fill per year, the PCA is the RGU.

The removal of this mandatory EIS category means that there are no environmental review requirements (EAW or EIS) for the construction of a mixed MSW disposal facility for 100,000 cubic yards or more of waste fill per year located outside of a water-related land use management district or outside an area characterized by soluble bedrock. Based on the discussion at the EQB's Workshop on June 28, 2016, we understand the removal of Item (A) is an error and it is not the EQB's intention to remove all environmental review requirements for constructing such a facility.

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

While we agree with removing the EIS requirement for expansion of a "larger" MSW disposal facility, removal of this EIS requirement will provide an even greater economic inequality for MSW disposal facilities in Minnesota. For a large disposal facility with a permit capacity that encompasses the ultimate development of the site, changing the environmental review requirement from and EIS to an EAW allows that facility to attain additional airspace at a much lower cost compared to a smaller facility with a permit capacity that was limited based on current regulatory standards. In the solid waste industry where airspace is the primary revenue source, this further enhances the already enormous economic disparity among facilities.

In order to alleviate this regulatory-based economic imbalance and comply with the intent of the environmental review SONAR for MSW landfills, we request:

- Environmental review project scopes for solid waste disposal facilities recognize the importance of future phased actions for the sites and encompass the entire planned ultimate development of the disposal facility rather than limiting the scope to a 10-year timeframe.
- Reference "design capacity" rather than the proposed "permitted capacity" as the expansion threshold.
- Continue to use the term "waste fill" rather than the proposed "airspace" at the 100,000 cubic yard volume measurement.
- Include EIS requirement for the construction of a mixed MSW solid waste disposal facility for 100,000 cubic yards or more of waste fill per year.

Thank you for the opportunity to provide comments on the preliminary environmental review language. We appreciate the EQB's efforts to include public opinion on this important matter and are open to future discussion on how we may pursue an environmental review process for MSW landfills so that our solid waste facilities may continue to provide cost-efficient and environmentally responsible waste management services to the residents of Minnesota.

If you have questions or concerns, please contact Roger Schroeder 507-532-8210.

Cordially,

Roger Schroeder/ee

MN Landfill Operator's Group
Roger Schroeder, President

MINNESOTA CHAMBER of COMMERCE

August 3, 2016

Courtney Ahlers-Nelson
Environmental Quality Board
520 Lafayette Road North
St. Paul, MN 55155

Re: Environmental Review Mandatory Categories Rulemaking Comments

Dear Ms. Ahlers-Nelson:

The Minnesota Chamber of Commerce (Chamber) has members across the state, many of whom have had or will have projects that are subject to requirements under Minnesota's Environmental Review Program. Chamber members have a strong interest in providing constructive input to improve the rules governing the Environmental Review Program so that environmental reviews are conducted only when necessary; are completed in an efficient and effective manner; and are not redundant with requirements contained in other regulatory programs.

The Chamber previously submitted comments to EQB on December 20, 2015 regarding suggested revisions to the mandatory EAW triggers. EQB released its preliminary rule language on June 20th and initiated an additional public comment period. The Chamber appreciates EQB's on-going review of the Environmental Review rules and welcomes the opportunity to submit additional comments.

The Chamber requests that EQB amend Minn. R. 4410.4300 Subp. 15. to exempt certain air emission facilities from the stand-alone Mandatory EAW category trigger of 250 tpy air emission increase if those facilities are already listed in other mandatory environmental review categories. Suggested revisions are included below:

> Subp. 15. Air pollution. ~~Items A and B designate the RGU for the type of project listed.~~
>
> ~~§ A.~~ For construction of a stationary source facility that is not listed in Subps. 3, 4, 5, 11, 13, or 17D and generates 250 tons or more per year of any single air pollutant or modification of a stationary source facility that is not listed in Subps. 3, 4, 5, 11, 13, or 17D and increases generation by 250 tons or more per year of any single air pollutant, ~~other than those air pollutants described in item B~~, after installation of air pollution control equipment, the PCA shall be the RGU.

This exemption would only apply to facilities that are already subject to Part 70 air permit requirements and are already adequately listed in other mandatory environmental review categories. These are:

- Electric Generating Facilities (25 Megawatts and over) – subpart 3;
- Petroleum Refineries – subpart 4;
- Fuel Conversion Facilities (mainly ethanol plants) – subpart 5;
- Metallic Mineral Mining and Processing – subpart 11;
- Paper or Pulp Processing Mills – subpart 13; and

- Solid Waste (Incineration) – subpart 17D.

The proposed changes are consistent with the legislative goal to improve environmental review efficiency (2015 Special Session Law, Chapter 4, Article 3, Section2), and with Chamber's previously stated objectives to improve the Environmental Review process so that reviews are conducted only when necessary, are efficient and effective, and are not redundant with other requirements.

While contemplating whether to raise the Mandatory EAW air emission threshold from 100 tpy to 250 tpy in 2006, EQB and MPCA acknowledged multiple deficiencies in the justification for using stand-alone air emission thresholds as an EAW trigger, see Appendix 1 - 2006 SONAR for revisions to the Environmental Review Program Rules, starting on pg. 33. The main considerations raised in the 2006 SONAR were related to the extensiveness of the air emission permit programs at the MPCA; presence of other environmental review categories covering air emissions; the weak relationship between air emissions and other environmental review concerns; and the ability for the public to petition for an EAW. EQB re-iterated these same considerations in its 2012 Mandatory Environmental Review Categories Report, see Appendix 2. Specifically, the following considerations were acknowledged by EQB and MPCA:

- Part 70 Public Notice and Review - There are already public notice requirements for Part 70 permits as well as EPA review.

- Existing Modeling and Risk Analysis Requirements - These facilities often have to conduct air dispersion modeling, undergo an air emission risk analysis, and PSD review (which includes BACT).

- Adequacy of MPCA Air Program - MPCA staff believes that the air emissions permitting program addresses all major and minor concerns regarding air pollutants from new or expanding facilities.

- Redundant EAW Categories - Certain air emission facilities of concern to the MPCA and the general public are already captured in other mandatory environmental review categories (EGUs>25 MW; Petroleum Refineries; Fuel Conversion Facilities; Metallic Mineral Mining and Processing; Paper of Pulp Processing Mills; and Solid Waste Incinerators).

- Air Emission Triggered EAW Showed Little Value- MPCA reviewed 14 EAWs that were triggered under the Air Pollution category and found:
    - The amount of air emissions from these projects has little or no relationship to the impact of other environmental issues.
    - The few public comments that came in were related to air emission issues and were addressed in the air emissions permit.
    - Therefore, the environmental review threshold provides a rather "hit-or-miss" approach for examining other issues

While these considerations were used to justify raising the air emission trigger threshold from 100 tpy to 250 tpy in 2006, these points are also valid for creating a Mandatory EAW air emission increase exemption for facilities that hold Part 70 air permits and are already listed in other mandatory environmental review categories. In fact, these arguments are even more valid now due to many new and revised air regulations that have been enacted since 2006. It is redundant and time-consuming to

conduct an EAW for air emission purposes when a project is already subject to myriad (and more stringent) state and federal air permitting and regulatory requirements which are already protective of human health and the environment (NAAQS, PSD, NESHAPs, Regional Haze/BART, etc.).
The Chamber appreciates EQB's consideration of these comments to improve Minnesota's Environmental Review program.

Sincerely,

Tony Kwilas

Director, Environmental Policy

MINNESOTA BIO-FUELS ASSOCIATION, INC.

3033 Excelsior Blvd., Suite 208
Minneapolis, MN 55416
MnBiofuels.org / 612.888.9138

TO: Ms. Courtney Ahlers-Nelson
Minnesota Environmental Quality Board
520 Lafayette Road North
St. Paul, MN 55155
E-mail: courtney.ahlers@state.mn.us

FROM: Minnesota Bio-Fuels Association, Inc.

DATE: 5 August 2016

RE: Comments on Proposed Preliminary Amendments to Rules Governing the Environmental Review Program, Minnesota Rules Chapter, 4410.4300 and 4410.4400

We offer these comments for consideration by the Environmental Quality Board (EQB) during its review of preliminary proposed revisions to the mandatory EAW and EIS categories. Our comments consist of (1) initial concepts submitted to the EQB in December 2015 and (2) this initial response to the preliminary draft amendments. The initial comments are included here because the preliminary draft does not appear to address the entire set of issues that were open during the last round of comments.

Part I - Initial Concepts
Mandatory Categories for environmental assessment worksheets

1. Subp. 5. Fuel conversion facilities.

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

   For construction of a facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 25,000 dry tons or more per year of input, the PCA shall be the RGU.

B.

For construction or expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by 5,000,000 or more gallons per year of alcohol produced, the PCA shall be the RGU.

Issues for consideration

a. Biomass from relatively young plant material, versus fossil fuel material, and other agricultural products is renewable and should not be in the same class of materials such as peat and coal.
   i. To pave the way for the use of more renewable plant material which can be used to produce liquid fuels and reduce greenhouse gas (GHG) emissions on a expedited basis, the EQB should consider removing "biomass" as one of the elements that triggers an EAW.

   ii. In the alternative, raise the tonnage threshold so as to reflect the scope and scale in which production facilities will actually operate in 2016 and for the foreseeable future.

   iii. The Minnesota Bio-Fuels Association (MBA) can provide additional details should these matters go to a rulemaking process.

b. The gallon capacity increase trigger does not reflect the scope of incremental increase which is feasible at ethanol production facilities already operating within the State of Minnesota. Biofuel producers are already operating under various permits including those issued and administered by the Minnesota Pollution Control Agency. So biofuel producers can timely respond to environmental rules and provide low carbon renewable fuels, they need the ability to readily adapt to many factors in a dynamic market and regulatory situation. Thus, an incremental increase in their production capacity should not trigger the need for an EAW. Either strike the 5 million gallon trigger or increase the gallon number to appropriately reflect the typical production capacity increase made by an ethanol production plant.

2. *Subp. 10.* Storage facilities.

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

For construction of a facility designed for or capable of storing more than 7,500 tons of coal or with an annual throughput of more than 125,000 tons of coal; or the expansion of

an existing facility by these respective amounts, the PCA shall be the RGU.
B.

For construction of a facility on a single site designed for or capable of storing 1,000,000 gallons or more of hazardous materials, the PCA shall be the RGU.
C.

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

Issues for consideration

a. Part B should make the distinction between renewable biofuels, such as ethanol, versus other hazardous materials. That distinction should avoid triggering an EAW for biofuels.

b. In the alternative, increase the total number of gallon stored to reflect the current state of the biofuel industry in Minnesota with respect to already approved and operating storage tanks as well as in light of future trends.

3. Subp. 15. Air pollution.

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

For construction of a stationary source facility that generates 250 tons or more per year or modification of a stationary source facility that increases generation by 250 tons or more per year of any single air pollutant, other than those air pollutants described in item B, after installation of air pollution control equipment, the PCA shall be the RGU.

B.

For construction of a stationary source facility that generates a combined 100,000 tons or more per year or modification of a stationary source facility that increases generation by a *combined* 100,000 tons or more per year of greenhouse gas emissions, after installation of air pollution control equipment, expressed as carbon dioxide equivalents, the PCA shall be the RGU. For purposes of this subpart, "greenhouse gases" include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride, and their combined carbon dioxide equivalents shall be computed by multiplying the mass amount of emissions for each of the six greenhouse gases in the pollutant GHGs by the gas's associated global warming potential published

in Table A-1 to subpart A of Code of Federal Regulations, title 40, part 98, Global Warming Potentials, as amended, and summing the resultant value for each.

a. Issues for consideration
   i. Where, or if, the 250 ton provision might impact a biofuel production facility, it should be struck. Air emission issues are addressed under State and Federal rules are therefore be redundant.

   ii. Where, or if, the 100,000 ton provision might impact a biofuel production facility, it should be struck. Air emissions, including GHG factors, are already addressed under State and Federal permits and/or US EPA pathways for Renewable Identification Number valuation and calculations.

4. Subp. 18. Wastewater systems.

Items A to C designate the RGU for the type of project listed:

C.

For expansion or reconstruction of an existing industrial process wastewater treatment facility which increases its design flow capacity by 50 percent or more and by at least 200,000 gallons per day or more, or construction of a new industrial process wastewater treatment facility with a design flow capacity of 200,000 gallons per day or more, 5,000,000 gallons per month or more, or 20,000,000 gallons per year or more, the PCA shall be the RGU. This category does not apply to industrial process wastewater treatment facilities that discharge to a publicly-owned treatment works or to a tailings basin reviewed pursuant to subpart 11, item B.

Issues for consideration

a. Where, or if, this provision is applicable to a biofuel producer, the flow capacities should take into consideration the way in which biofuel plants actually operate and use and reuse water. Most ethanol plants in Minnesota reuse water and therefore do not discharge industrial wasterwater; however, this provision should not trigger an EAW for a biofuel producer.

b. MBA is available for consultation on this matter.

5. Subp. 24. Water appropriation and impoundments.

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

For a new appropriation for commercial or industrial purposes of either surface water or ground water averaging 30,000,000 gallons per month; or a new appropriation of either ground water or surface water for irrigation of 540 acres or more in one continuous parcel from one source of water, the DNR shall be the RGU.

B.

For a new permanent impoundment of water creating additional water surface of 160 or more acres or for an additional permanent impoundment of water creating additional water surface of 160 or more acres, the DNR shall be the RGU.
C.

For construction of a dam with an upstream drainage area of 50 square miles or more, the DNR shall be the RGU.

Issues for consideration

a. Minnesota biofuel producers continually explore processes and technologies by which they might be able to further reduce inputs, such as water, and/or otherwise reuse water. Some biofuel plants use, or have the potential to use, stormwater and/or municipal wastewater. These types of innovations by biofuel producers can serve to further reduce environmental demands while making more renewable biofuels available to displace finite fossil fuels.

b. Consider whether the total number of gallons impounded and or acres involved reflect the current reality in the biofuel industry. Once again, MBA can provide additional details should these matters go to a rulemaking process.

Mandatory Categories for environmental impact statements

1. Subp. 5. Fuel conversion facilities.

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

For construction of a facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 250,000 dry tons or more per year of input, the PCA shall be the RGU.
B.

For construction or expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by 50,000,000 or more gallons per year of

alcohol produced if the facility will be in the seven-county Twin Cities metropolitan area or by 125,000,000 or more gallons per year of alcohol produced if the facility will be outside the seven-county Twin Cities metropolitan area, the PCA shall be the RGU.

Issues for consideration

a. Biomass from relatively young plant material and other agricultural products is renewable and should not be in the same class of materials such as peat, coal and other finite, carbon intensive fossil fuels.
   i. To pave the way for the use of more renewable plant material which can be used to produce liquid fuels and reduce greenhouse gas (GHG) emissions on an expedited basis, the EQB should consider removing "biomass" as one of the elements that triggers an EIS.

   ii. In the alternative, raise the tonnage threshold so as to reflect the scope and scale in which production facilities will actually operate in 2016 and for the foreseeable future.

   iii. The Minnesota Bio-Fuels Association (MBA) can provide additional details should these matters go to a rulemaking process.

b. The gallon capacity triggers do not reflect the scope of ethanol production facilities already operating, or having the potential to operate, within the State of Minnesota. Biofuel producers are already operating under various permits including those issued and administered by the Minnesota Pollution Control Agency. So biofuel producers can timely respond to environmental rules and the growing need for low carbon renewable fuels, they need the ability to readily adapt to many factors in a dynamic market and regulatory situation. Thus, the gallon capacity numbers should not trigger the need for an EIS. Either strike the gallon trigger or increase the gallon number to appropriately reflect the typical expanded production capacity or the capacity for any new ethanol production plant.

Part II - Comments on the preliminary draft
EAW

1. Line 64: The tonnage threshold does not reflect the operation of a modern biofuel plant. Given Minnesota policy and law with respect to renewables, this provision could be corrected and narrowly tailored. Alternatively, exclude biofuel facilities from the definition of a fuel conversion facility.

2. Line 68 sets a 5,000,000 gallon threshold. Based on the current inventory of biofuel

plants in Minnesota and their operating capacities, the threshold should be raised to, for example, 50 million gallons.

3. Lines 74 - 76: This condition could negate the intent expressed in lines 71 through 74. Eliminate ambiguity by striking the condition starting in line 74.

4. Line 162: what substances are actually intended with this citation?

EIS

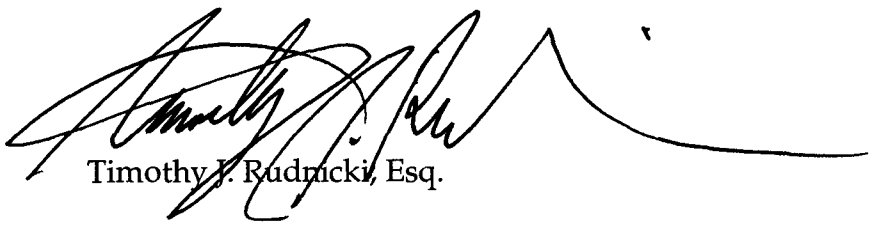
1. Lines 37 - 38: terms are undefined and the use of the word "cellulosic" could be limiting whereas the word "biomass" is inclusive of a broader array of renewable material. Further, the provision should not be limited to chemical products but instead include biofuels.

2. The exception provided in lines 37 - 38, with the inclusion of biomass and biofuels, should also be extended to relevant section applicable to the EAW.

Thank you for considering these comments on the EQB preliminary drafts.

You can reach me at 612.888.9138, Ext. 101 or by email at trudnicki@mnbiofuels.org

Respectfully submitted,



Timothy J. Rudnicki, Esq.

From:	Ray Bohn
To:	Ahlers-Nelson, Courtney (MPCA)
Cc:	George RadKe; Karen Umphress; Tom Umphress
Subject:	EQB Rules Comments
Date:	Friday, August 05, 2016 4:07:07 PM

TO: EQB

FROM: Ray Bohn

REPRESENTING: All-Terrain Vehicle Association of Mn & Amateur Riders Motorcycles Assn.

RE: Proposed EQB Rules

Please find below our comments on your proposed rules for Part 4110.4300 – Mandatory EAW Categories

Sections A & B: This proposed language does not conform to the recent legislative action on this rule because it treats existing trail as though it has the same potential for impact as new trails. That is obviously not what the legislature intended.

We suggest language similar to: "an EAW must be prepared if the combination of new construction and segments designated for a new use equals or exceeds 25 miles." Also, item C and D provisions should be included in this paragraph – not listed as separate "categories". They should not be stand alone provisions, since it is not a project. ????

In applying items A and B, if a proposed trail will contain segments of newly constructed trail and segments that will follow an existing trail but be designated for a new motorized use, an EAW must be prepared if the total of the segments equals or exceeds 25 miles. Trail segments do not count toward the EAW thresholds when: 1) designating an established corridor in current legal use as a recreational trail (see definition of "existing trail"); 2) designating an existing, legally constructed route for motorized recreational use, and 3) when adding a new motorized use to an existing motorized trail where the treadway width is not expanded as a result of the added use.

According to your proposed rule the way this is written, there are situations where an EAW would be mandatory for a new trail that is less than 25 miles long if it is combined with existing trail where the treadway is expanded.

Thank you.

John P. Lenczewski, Executive Director
Minnesota Trout Unlimited
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August 5, 2016

Ms. Courtney Ahlers
Environmental Quality Board
520 Lafayette Road North
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Courtney.Ahlers@state.mn.us

Via electronic mail

Re: Mandatory Category Rulemaking: Preliminary Rule Language

Dear Ms. Ahlers:

I am writing on behalf of Minnesota Trout Unlimited to express our strong support for environmental review, while raising concerns about the growing tendency of some agency staff to give very strained interpretations to mandatory EAW categories and needlessly delay restoration projects aimed at undoing past environmental abuses to our streams and rivers. These staff are suddenly proposing novel interpretations which they claim are based upon the plain language of the rules. We strongly disagree. In the interest of saving taxpayer hundreds of thousands of dollars and speeding the restoration of aquatic ecosystems we propose that changes be made to several mandatory EAW categories.

We are very strong supporters of Minnesota's environmental review statutes and rules and support their purpose of ensuring that permitting authorities have good information necessary to make informed decisions. A primary objective of the EAW rules, beyond determining whether an EIS is warranted, is to provide usable information to the governmental decision makers (permitting authorities). See Minnesota Rules 4410.0300, Subp. 4 A. No one has suggested that any of the trout habitat projects will ever rise to the level of needing an EIS. In the case of stream habitat restoration and enhancement projects, the primary permit required is a DNR Protected Waters permit. Experienced DNR hydrologists have repeatedly indicated that that permitting process they require (which includes a geomorphic survey of the stream, Phase 1 archeological investigation and SHPO review, Natural Heritage review, wetland delineation, USACE review and approval, and DNR Fisheries Section and Ecological and Water Resources Division involvement throughout the design process) already provides all the relevant information they could want or use. They insist that an EAW could not supply more useful information.

Until recently the misinterpreted of the stream diversion category, Minn. Rules 4410.4300, subpart 27, was our most common headache. Attached is one example of the type of letter we have been forced to draft to avoid the absurd outcomes which some DNR staff have pressed for. Until now we have been

able to seek the "second opinion" of local government units, who are the designated RGU. They have applied more common sense and considered the intent of the category when reading the rules. In short, the local government units have acted as a safety value against the strained, erroneous interpretations proposed by some in the DNR. However, we understand that the DNR is now poised to use another poor interpretation of the rules (in this case of Minn. Rules 4410.0500) to makes itself the RGU for all trout habitat projects funded with OHF funds. They have also signaled their intention to cite subparts 26, 27, 36 or 36a to require an EAW be prepared for every one of these habitat restoration projects. This unjustified expansion, far beyond the statutory purpose of environmental review and the threats the mandatory categories sought to address, can no longer be ignored.

As noted, staff in DNR's environmental review unit have until recently limited their strained interpretation of the rules to Minn. Rules 4410.4300, subpart 27. However, there appears to be a growing tendency on the part of some DNR staff to search the EQB rules for opportunities to force unintended meanings on more mandatory EAW categories in order to capture more and more restoration projects. This leads us to conclude that the best approach is to include clear exemptions for habitat projects within the language of subparts 26, 27, 36, and 36a themselves. It simply is too hard to predict what new, strained interpretations the staff may put forth next. Since our work reversing environmental degradation is limited to trout habitat restoration and enhancement projects, we limit our suggested changes to these types of projects.

We respectfully suggest that the following language be separately included within the body of each of subparts 26, 27, 36 and 36a: "Trout stream habitat restoration and enhancement projects conducted by or in collaboration with the DNR Fisheries Section are not subject to this subpart." There are other possible formulations, but we wish to be careful to limit the exemption only to those projects where the entire motivation and intent of the project is to improve habitat and stream function. Requiring the support of professionals in the DNR Fisheries Section ensures this.

We would like the opportunity to sit down with EQB staff to explore the best way to revise these subparts of 4410.4300 in such a way that they do not capture habitat restoration and enhancement projects which seek to undo past damage.

Thank you for your consideration of our comments.

Sincerely,

John P. Lenczewski

Attachment

Dear Mr. Johnson:

I am writing on behalf of Minnesota Trout Unlimited to clarify the nature of the trout habitat restoration project we are proposing to undertake on Pine Creek in Hart Township and the fact that it is not the type of project which requires preparation of an EAW. Being mistakenly required to prepare an EAW when not legally required to do so will cause us to lose our narrow 2014 work season, delay the project a year, needlessly cost tax payers many thousands of dollars and force local contractors to remain idle.

We are very strong supporters of Minnesota's environmental review rules and support their purpose of ensuring that permitting authorities have good information necessary to make informed decisions. A primary objective of the rules is to provide usable information to the governmental decision makers (permitting authorities). See Minnesota Rules 4410.0300, Subp. 4 A. However, in this instance the primary permit required is a DNR Protected waters permit to be issued by the DNR Area Hydrologist Bill Huber. I have discussed this project with Mr. Huber and he confirmed that he has already received all the relevant information he could want or use and that an EAW could not supply more useful information than he already possesses. He believes this habitat restoration project is very sound and he intends to issue the permit based upon the comprehensive information already provided to him. In short, incorrectly requiring preparation of an EAW will not yield any new information useable for the permitting decision.

It has come to our attention that some individuals in the DNR's St. Paul office are misinterpreting Minnesota Rule 4410.4300 Subp. 26 and suggesting this category should have a far greater scope than was ever intended. 4410.4300 requires preparation of an EAW for:

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

The rulemaking history makes it clear that the problem this mandatory category was intended to address was that posed by flood control and drainage projects where the stream channel is straightened or diverted to speed drainage off the land. It was never intended to apply to habitat restoration projects that seek to undo such past impacts and restore the stream channel to a natural pattern for the benefit of wildlife habitat, fisheries resources, and water quality.

The historical intended purpose of this rule is found on Page 152 of the 1982 SONAR, where it states:

> "This category area is proposed because the alteration of watercourses *affects flooding in downstream and adjacent areas*, wildlife habitat, fisheries resources, water quality, and area land use. *The traditional analysis of flood control and drainage projects* usually does not consider broad and long range environmental implications. Environmental review will facilitate a more comprehensive analysis. The qualitative measure applied to the EAW category is restricted to trout streams and natural watercourses because they have significant habitat, recreational, and resource values. *Alteration of these*

> *watercourses may significantly impact natural drainage.* A ten square mile quantitative threshold is applied to make the category administratively feasible and because minor diversion of headwaters watercourses is likely to have minimal flooding and habitat impacts. A ten square mile drainage area corresponds to approximately 6,400 acres." *(emphasis added)*

While people sometimes loosely use the term "realignment" in several ways, the rulemaking history indicates that the rule was intended to apply in the context of drainage efforts where "realignment" is used euphemistically to mean straightening:

> *"Realignment" is added* as an activity that *will* require an EAW. *Realignment often means straightening*, which has a serious effect on water flows and stream habitat. The 500-foot minimum length was added so that the category would no longer apply to minor stream alterations; this minimum threshold does not apply to trout streams. Experience has shown that stream diversions of less than this length generally have minimal environmental impacts and do not warrant a mandatory EAW requirement.

1997 SONAR at page 20 *(emphasis added)*

Our habitat project is designed solely for the purpose of restoring trout habitat, stabilizing eroding stream banks, and restoring the stream channel's access to its floodplain. We began the design process in early November 2013 and received regular input from the MNDNR, Winona County SWCD office, US Army Corps of Engineers and others. Following their informal approval we submitted the MNDNR Protected waters permit. As part of the site review and design revision process, the agencies all agreed that an unstable, eroding bend at the top of the project site had an unnaturally tight curve which needed to be corrected to stabilize the channel and banks. The correction agreed upon was to re-establish a more expected radius of curvature combined with new floodplain flats, rather than attempting hard armoring. The channel is not being straightened, but restored to a natural curved pattern. This design maintains the same amount of habitat and stream length based on thalweg distance. The only "impacts" will be beneficial.

Many local volunteers and anglers are anxiously awaiting completion of this habitat project, which will improve fish and wildlife habitat, reduce erosion and sedimentation and improve water quality. Local contractors are waiting to be a part of helping to improve our natural resources. We have been working closely with area staff in the DNR Fisheries and Ecological & Water Resources divisions on this habitat restoration design since November 2013. They already have comprehensive information and they agree this well designed project should be permitted without delay. I urge you to contact the Area Hydrologist, Bill Huber, and Area Fisheries Manager, Steve Klotz, to confirm that an EAW would yield no new useable information.

We appreciate that one or more well-intentioned, but overzealous individuals in St. Paul have suggested an interpretation of a rule which would make Winona County the RGU for an EAW. However, Winona County has the opportunity to apply common sense and respectfully point out that under a more reasonable interpretation of the rule, the Pine Creek habitat

restoration project is not subject to this mandatory EAW provision. The DNR has indicated to me that it will defer to your determination on this matter.

I am happy to provide any additional information you might need regarding this great habitat restoration project. Thank you for your consideration.

Sincerely,

John P. Lenczewski

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August 5, 2016

VIA ELECTRONIC MAIL

Courtney Ahlers-Nelson
Planning Director, Environmental Review
Environmental Quality Board
Attn: Mandatory Category Rulemaking
520 Lafayette Road North
St. Paul, MN 55155

Re: Comments on the 4410 "Mandatory Categories" rulemaking

I am writing on behalf of the Minnesota Center for Environmental Advocacy (MCEA) and the undersigned organizations to provide comments to assist you in the Mandatory Categories Rulemaking that the Environmental Quality Board (EQB) is undertaking pursuant to 2015 Minnesota Laws Special Session, Chapter 4, Article 3, Section 2.

MCEA and the undersigned organizations believe the Minnesota Environmental Policy Act (MEPA) is central to the stewardship of Minnesota's resources and the welfare of all Minnesotans. Therefore, we are interested in and concerned with changes to MEPA's implementing rules, and have strong input to share regarding the preliminary proposed changes to Minnesota Rules (Minn. R.) Chapter 4410 released for public comment on June 20th, 2016 by EQB[1]. We appreciate this opportunity to provide comments for your consideration and look forward to continued involvement as this rulemaking proceeds.

We have reviewed preliminary proposed changes to Minn. R. 4410.0200, Minn. R. 4410.4300-4400 and Minn. R. 4410.4600 and have positive feedback, broad concerns, and specific recommendations in a number of different areas. This letter details our review, and in addition to the comments provided here we have enclosed a number of attachments to aid EQB's work going forward.

To begin with, we would like to acknowledge EQB's efforts to make important clarifications and improvements in a number of areas. The addition of definitions and rule and statute references throughout will improve the clarity and consistency of the program and make the rules more usable to practitioners across the board. The addition of Responsible Governmental Units (RGU) to several categories that have frequently required a RGU change will make the process easier to administer, reduce lost time for project proponents, and offer a less cumbersome route for some

[1] https://www.eqb.state.mn.us/content/eqb-mandatory-categories-rulemaking

local governments to exercise their option to defer to an alternative RGU. EQB's efforts to identify these important improvements demonstrate a flavor of "streamlining" that MCEA supports.

Although we appreciate the positive changes that have been proposed by EQB at this preliminary stage, we have identified a number of issues that we believe require further attention. We have detailed below two of the central concepts guiding EQB's approach to the rulemaking that we find troublesome. In addition, we have provided detailed feedback on a number of the specific preliminary proposed changes that we believe are problematic.

Two central concepts guiding EQB's approach to the rulemaking are troublesome

There are two overarching themes present in the justification provided for the proposed changes that undermine the basic value and function of environmental review. The first is the persistent urge to align environmental review thresholds with permitting thresholds. The second is the "use it or lose it" philosophy that seems to compel EQB staff to propose the elimination of protective thresholds that are rarely breached. Both of these philosophies weaken the value of the environmental review program and jeopardize the ability of decision-makers to adequately consider environmental impacts.

Environmental review ≠ permitting

Environmental review serves a unique purpose, with underlying objectives that are distinct from those addressed by the permitting process. Because the underlying objectives are different, it is not necessary - and in many cases it does not make any sense - for permitting and environmental review thresholds to perfectly align. The basic driver behind the permitting process is to ensure that appropriate restrictions and conditions are placed on activities that have been identified to have an impact on the environment and human health above certain thresholds. Environmental review, on the other hand, is a critical thinking effort that characterizes the nature and magnitude of impacts associated with a given action, and analyzes alternatives to that action as well as opportunities to mitigate the impacts. If this critical thinking process is only applied where permitting thresholds already tell us that an impact threshold has been exceeded, we only get a fraction of the benefit that environmental review can and should provide.

Where a specific permitting threshold is exceeded, environmental review provides decision-makers with a broader scope of information than the permitting process alone would necessarily generate: an analysis of alternatives that may provide an avenue to avoid impacts across a broad suite of environmental resources, and identification of mitigation to minimize or offset these impacts. However, the benefits of environmental review extend far beyond informing the conditioning of permits. Environmental review can define impacts and thresholds that may not already be well understood or addressed in the permitting realm, explore collateral resource impacts and tradeoffs that alternatives may create, and it can and should provide a framework for considering the cumulative effects of many otherwise separate permitting decisions. In this context, environmental review is a critical planning tool in the decision-making process. Relying exclusively on permitting thresholds to determine whether environmental review is necessary eliminates an important opportunity to identify and minimize impacts on a broader planning-level basis.

The implementation of Minn. R. 4410.4300 Subpart 3 demonstrates the value of decoupled environmental review and permitting thresholds. Under Minn. R. 4410.4300 Subp. 3, preparation of an Environmental Assessment Worksheet (EAW) is required for construction of an electric power generating plant and associated facilities designed for or capable of operating at a capacity of between 25 megawatts and 50 megawatts. As established in Minn. R. 7850.1400 Subpart 1, however, a permit from the Public Utilities Commission is not required to construct a power plant of less than 50 megawatts. So, in this case the environmental review threshold has been established well below the relevant permit threshold.

As distributed generation projects have cropped up across Minnesota in the last several years, this mandatory category has been put to work several times and the result has been better informed planning. In the case of the University of Minnesota, Twin Cities Combined Heat and Power (CHP) Project[2], air modeling not required by the permitting process was conducted as a part of environmental review, and provided information to support pollution control decisions. In the case of Minnesota Municipal Power Agency's Shakopee Distributed Generation Facility[3], noise modeling conducted as a part of environmental review informed layout decisions and helped to identify equipment-specific mitigation measures. In the case of Flint Hills Resources CHP Cogeneration Project[4], the cumulative effects analysis completed as part of environmental review identified several simultaneously proposed projects and provided information that ultimately highlighted the need for additional local traffic study[5].

If the permitting threshold and environmental review threshold were aligned, in each of these cases important opportunities to understand and mitigate impacts would likely have been missed. To the extent that "aligning with permitting thresholds" has been provided as justification for any of the preliminary proposed changes to Minn. R. 4410, we request a more thoughtful evaluation of the value that may be lost in coupling environmental review thresholds with permitting thresholds.

Sometimes an "unused" threshold is the best kind of threshold

Across a wide diversity of applications, thresholds serve as deterrent as much as a trigger. Speed limits, for example, set the trigger for the highway patrol to issue a ticket, but most drivers choose to stay under the threshold. While speed-limit-abiding drivers are not giving local law enforcement a chance to put the threshold to "use," the speeding ticket threshold certainly still serves an important purpose. Some thresholds are virtually never crossed, but their presence inspires restraint, and the formulation of the threshold offers a timely and effective path forward in the unlikely event that it is crossed.

Environmental review mandatory categories are no exception when it comes to the concept of threshold as deterrent. The success the mandatory category framework is as much about what does not show up in the EQB Monitor as it is about what does. It is very common for project proponents to evaluate their proposed projects relative to the environmental review requirements and determine what modifications could be made to avoid crossing the relevant thresholds. Environmental review rules are at their best and most efficient when they can

[2] https://www.pca.state.mn.us/sites/default/files/p-ear2-61a.pdf
[3] https://www.pca.state.mn.us/sites/default/files/p-ear2-93a.pdf
[4] https://www.pca.state.mn.us/sites/default/files/p-ear2-64a.pdf
[5] https://www.pca.state.mn.us/sites/default/files/p-ear2-65b.pdf

prompt project proponents to consider impacts and alternatives and adopt plans that avoid critical impact thresholds. In this case, a threshold that does not get crossed may be providing more value than one that does. To the extent that "lack of use" has been provided as justification for the preliminary proposed changes to Minn. R. 4410, we request a more thoughtful evaluation of the value that these thresholds provide in terms of deterring impacts.

A number of the specific preliminary proposed changes are problematic

In addition to the two broad philosophical shortcomings of the preliminary proposed rules discussed above, there are a number of specific proposed changes that are shortsighted and threaten the integrity of Minnesota's environmental review program.

Eliminating the greenhouse gas threshold squanders a valuable instrument for climate action

Under Minn. R. 4410.4300 Subpart 15, "Air Pollution," the preliminary rule proposes to eliminate Subpart 15B, which requires preparation of an EAW for construction of a stationary source facility that generates a combined 100,000 tons or more per year or modification of a stationary source facility that increases generation by a combined 100,000 tons or more per year of greenhouse gas emissions, after installation of air pollution control equipment, expressed as carbon dioxide equivalents.

The justification for eliminating this greenhouse gas threshold provided in the preliminary rule document is based on the US Supreme Court's 2014 invalidation of EPA's "tailoring rule" which had required a Prevention of Significant Deterioration permit for facilities with greenhouse gas emissions exceeding 100,000 tons. The tailoring rule was EPA's effort to modify Clean Air Act permitting requirements to reflect their finding that greenhouse gas emissions are pollutants that threaten human health. Prior to the invalidation, MPCA and EQB had incorporated this 100,000 ton greenhouse gas requirement into Minnesota's air permitting and environmental review programs.

While the 2014 invalidation of EPA's tailoring rule has clear implications for Minnesota's air permitting program, the ruling did nothing to modify our growing understanding of the grave environmental effects of greenhouse gas emissions, and has no bearing on what can or should be evaluated in environmental review. As discussed at length above, it is not necessary - and in many cases it does not make any sense - for permitting and environmental review thresholds to be coupled.

In this case, we have an undeniable understanding that greenhouse gas emissions impact the environment through climate change. Minnesota's environmental review framework provides an excellent venue to assess whether emissions associated with a proposed action will cause significant impacts and identify alternatives to reduce these impacts. Requiring alignment between the permitting world (which has yet to establish appropriate greenhouse gas thresholds and restrictions) and the environmental review world (in which a clear mandate exists to inform decision-makers about greenhouse gas impacts and alternatives), creates a needless artificial information barrier that stands in the way of progress toward managing greenhouse gas emissions and climate change impacts in the state of Minnesota.

In light of the distinct gap between the treatment of greenhouse gases in permitting and their potential for significant environmental impacts, this rule update is an ideal opportunity to bring Minn. R. 4410 in line with the reality that greenhouse gas emissions have the potential for significant impacts at levels much lower than the now defunct Tailoring Rule's 100,000 ton per year threshold. Climate change is the ultimate cumulative effect. Any action that results in the release of greenhouse gases to the atmosphere contributes, at least in some way, to a cumulatively significant impact on the world's climate, ocean acidification, habitat and species loss, rising sea level, human health risks, and more. At the same time, any single project can be dismissed as having no discernable impact. Yet we also know that we cannot effectively mitigate climate change unless we investigate and seize every opportunity to lower emissions.

Rather than eliminate the threshold entirely, an action inconsistent with the state's greenhouse gas reduction goals, we recommend adopting a mandatory EAW threshold much lower than 100,000 metric tons of carbon dioxide equivalent emissions per year, based on federal guidance. We recognize that the EQB must balance the reality that any greenhouse gas emission contributes to a significant effect with the reality that the state's capacity to complete environmental review is finite. EQB might look to existing federal guidance to establish an appropriate threshold for mandatory EAW preparation. In December of 2014, the U.S. Council on Environmental Quality (CEQ) released revised draft guidance on the consideration of greenhouse gas emissions and climate change impacts.[6] The guidance recommends that agencies may consider 25,000 metric tons of carbon dioxide equivalent emissions on an annual basis as a reference point below which a quantitative analysis of greenhouse gas emissions is not warranted[7]. On August 2nd, 2016 the CEQ finalized the December, 2014 guidance[8]. The final guidance drops the 25,000 metric ton per year threshold, and simply recommends that agencies quantify a proposed action's direct and indirect greenhouse gas emissions, suggesting that a quantitative analysis is warranted even below the 25,000 metric ton per year threshold provided in the draft guidance. Both the draft and final guidance emphasize that agency analyses should be commensurate with projected greenhouse gas emissions and climate impacts, and should employ appropriate quantitative or qualitative analytical methods to ensure useful information is available to inform the public and the decision-making process in distinguishing between alternatives and mitigations.

Building on the CEQ's recommendations to develop an appropriate threshold and guidance in Minn. R. 4410.4300 may effectively address basic objectives that drive EAW preparation: determining whether a proposed project has the potential for significant environmental effects, and indicating how the project can be modified to lessen its environmental impacts.[9] Combined with effective guidance on the evaluation of alternatives and targeted mitigation strategies, a 25,000 metric ton per year mandatory EAW category, for example, could provide an effective framework to acknowledge the significant impacts of greenhouse gases on climate and

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[6] CEQ, 2014. Revised Draft Guidance for Greenhouse Gas Emissions and Climate Change Impacts. https://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/ghg-guidance

[7] The 25,000 metric ton threshold also aligns with 40 CFR Part 98 Subpart C reporting requirements for stationary combustion. 25,000 metric tons per year roughly equivalent to a stationary fuel combustion units with maximum heat rated input capacity of 30 million British thermal units per hour(mmBtu/hr), combustion of 11,000 metric tons of bituminous coal or 5.6 million standard cubic feet (scf) of natural gas

[8] https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/nepa_final_ghg_guidance.pdf

[9] Minnesota Environmental Quality Board, 2010. EAW Guidelines. Preparing Environmental Assessment Worksheets. https://www.eqb.state.mn.us/sites/default/files/documents/eawrules.pdf

incentivize mitigation. For example, guidance could be developed[10] directing preparers of EAWs to provide a rigorous evaluation of measures to avoid and minimize greenhouse gas emissions (alternative designs, alternative fuels), and a negative declaration could be supported by the project proponent's mitigation of any emissions over the mandatory EAW threshold that could not be avoided[11]. The state of California's approach to addressing climate change and greenhouse gas under the California Environmental Quality Act (CEQA) may serve as a well-established framework for an effective process under MEPA. Several CEQA guidance documents have been included as attachments for reference.

As the state of Minnesota continues to grapple with a path forward on climate action, the information provided to decision-makers through effective environmental review of projects that will result in major emissions of greenhouse gases would be invaluable. During the EQB's presentation of the long-awaited results of the Climate Solutions and Economic Opportunities report, one of the key messages was that Minnesota has strong climate goals and a commitment to help maintain a stable climate on earth, but that Minnesota does not have policies in place to meet them. EQB staff and all of the commissioners pointed to the need to make deep changes across all sectors – the immediate need for bold action. In order for our decision-makers to target effective, efficient change, they need to be armed with information about impacts, tradeoffs, and alternatives. In the face of the challenges before Minnesota, eliminating the one critical mandatory threshold that facilitates informed decision-making about greenhouse gas emissions and climate change impacts on a systematic, project-by-project basis is unacceptable.

The decades-old timber harvesting Generic Environmental Impact Statement (GEIS) is not a substitute for a modern project-by-project review

Under Minn. R. 4410.4300 Subpart 28, "Forestry," the preliminary rule proposes the elimination of Subpart 28B, which requires preparation of an EAW for a clear cutting of 80 or more contiguous acres of forest, any part of which is located within a shoreland area and within 100 feet of the ordinary high water mark of the lake or river. The explanation provided in the preliminary rule indicates that "the development of the Forestry Generic Environmental Impact Statement has prevented this category from being used."

There are several critical flaws in the rationale cited for the elimination of this threshold. First, for the reasons discussed above, eliminating a threshold simply because it has never been crossed is ill-conceived and defies logic.

Second, and perhaps more important, the assertion that the preparation of a GEIS in some manner "prevents" subsequent review is at odds with Minnesota Rules and the very concept of the GEIS. Under Minn. R. 4410.3800, Subpart 1a GEIS may be used to study types of projects that are not adequately reviewed on a case-by-case basis. The 1994 GEIS on Timber Harvesting and Forest Management in Minnesota looked broadly at a host of separate timber harvesting and forest management operations across the state with the objective of developing a basic understanding of the status and sustainability of timber harvesting and related forest

[10] MPCA's existing guidance on the evaluation of greenhouse gases in environmental review provides few requirements for EAWs beyond a quantitative accounting of total emissions. MPCA, 2011. Discussing greenhouse gas emissions in Environmental Review. https://www.pca.state.mn.us/sites/default/files/p-ear1-07.pdf

[11] Mitigation could be developed in the form of offsets, or payments – linked to the social cost of carbon – to be paid into a climate change action fund.

management in Minnesota, identifying and assessing environmental impacts of timber harvesting and related forest management in Minnesota, and developing strategies to mitigate existing or potential significant adverse impacts.[12] The benefit of the GEIS is that it provides analysis and mitigation strategies that can be relied upon on an individual project basis as long as the GEIS remains adequate at the time the specific project is subject to review. As indicated in Minn. R. 4410.3800, Subpart 8, preparation of a GEIS does not exempt proposals from project-specific environmental review. Instead, it offers a platform for subsequent project review. Project reviewers can draw on the GEIS, and adopt and build upon its conclusions and recommendations for mitigation in the assessment of the extent of review required for an individual project.

The adequacy and timeliness of the GEIS is a key factor in applying the GEIS's impact assessment and mitigation measures on a project-specific basis. In the case of the Timber Harvesting and Forestry Management GEIS, the relevance of the analysis and conclusions has faded in the 22 years since the GEIS was prepared. First, substantive changes have occurred in the last two decades in our forests and in our climate that significantly affect the potential environmental effects from the types of actions considered in the GEIS. Second, the inconsistent application of the mitigations proposed in the GEIS has undermined the project-by-project relevance of the conclusions of that work. Third, at the time of the GEIS preparation, DNR indicated that the analysis and conclusions of the GEIS would be obsolete after new forest inventory analysis (FIA) numbers were released. Since the 1994 preparation of the timber harvesting GEIS, the FIA numbers have been updated three times.

Relying on the outdated analysis and poorly implemented mitigation measures in the Timber Harvesting and Forest Management GEIS is not an appropriate approach for assessing forestry projects, and certainly not an appropriate justification for eliminating an environmental review threshold. We, therefore, request that EQB retain the protective threshold under Minn. R. 4410.4300 Subpart 28B in its entirety.

The proposed threshold changes for industrial, commercial and institutional facilities are arbitrary

Under Minn. R. 4410.4300 Subpart 14, "Industrial, commercial, and institutional facilities," the preliminary rule proposes to eliminate the graduated thresholds that require preparation of an EAW for construction of large facilities, with the threshold square footage varying relative to the size of the community to be impacted by the project. Instead of considering the magnitude of these projects relative to the size of the community they will impact, the preliminary rule proposes uniform adoption of the highest threshold currently in rule. Similar changes are proposed under Minn. R. 4410.4400 Subpart 11, with the mandatory EIS threshold no longer varying based on the size of the impacted community. The explanation provided in the preliminary rule indicates that the "deletion reflects concerns with the threshold change corresponding to the size of the city."

The proposed change is untenable for two primary reasons. First, this line of reasoning fails to address the original intent of the graduated thresholds, and is not grounded in any

[12] Jaakko Poyry Consulting, 1994. Final Generic Environmental Impacts Statement Study on Timber Harvesting and Forest Management in Minnesota. Prepared for Minnesota EQB.

environmentally relevant analysis. Second, the proposal to uniformly adopt the highest threshold currently in rule appears to be an arbitrary choice with no factual justification.

The original intent of the graduated thresholds in Minn. R. 4410.4300 Subpart 14 and Minn. R. 4410.4400 Subpart 11 was to reflect that the size of a facility relative to the community where it is proposed is an indicator of the potential for societal and environmental disruption. In theory, the construction of large facilities in small communities would be likely to produce relatively larger social and environmental impacts than the construction of a facility of the same size in a much larger community. The explanation for the proposed elimination of the graduated thresholds fails to identify any shortcoming in this earlier logic and is at odds with EQB's earlier analysis[13] that suggested that any changes to these thresholds merit "very careful analysis."

The choice to uniformly adopt the highest thresholds currently in rule jeopardizes smaller communities, eliminating a clear, structured opportunity to gain information valuable for community planning and decision-making in the communities that are least likely to have other planning resources at their disposal. Environmental review is often mistakenly viewed by local governments as a burden rather than an opportunity. EQB's sympathy for that sentiment is implicit in the threshold hike proposed in the preliminary revisions to this category. While eliminating thresholds that would otherwise bring local governments into environmental review may alleviate groans from EQB's local partners in the short term, it misses the longer term opportunity for better local planning that environmental review can facilitate. Rather than eliminating important thresholds, EQB should focus efforts on educating and assisting local governments to put environmental review to work for the benefit of their communities.

I appreciate the opportunity to share our input. We understand that this is the beginning of a multi-phase effort to update Minn. R. 4410, and look forward to working with EQB and participating through all phases of the process. Please do not hesitate to contact me if you would like to discuss any of these comments further.

Sincerely,

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[13] Minnesota Environmental Quality Board, 2013. Mandatory Environmental Review Categories Report. Prepared In Response to Minnesota Laws 2012 Chapter 150 – S.F. No. 1567, Article 2, Section 3.

c. Will Seuffert, Executive Director EQB
David Frederickson, EQB Chair, Commissioner Department of Agriculture
Brian Napstad, EQB Vice Chair, Chair Board of Water and Soil Resources
Shawntera Hardy, Commissioner Department of Employment and Economic Development
John Linc Stine, Commissioner Minnesota Pollution Control Agency
Mike Rothman, Commissioner Department of Commerce
Charlie Zelle, Commissioner Department of Transportation
Tom Landehr, Commissioner Department of Natural Resources
Matt Massman, Commissioner Department of Administration
Dr. Edward Ehlinger, Commissioner Department of Health
Scott Strand, Executive Director MCEA

INSTITUTE FOR LOCAL GOVERNMENT

ABOUT THE ENVIRONMENTAL REVIEW PROCESS
(Also Called "the CEQA Process")

Cities and counties weigh a variety of factors when deciding whether to approve a proposed land use or other project. One such factor is what kind of effect a project would have on the environment.

The California Environmental Quality Act guides the process of gathering such information. A nickname for this law is "CEQA" (pronounced "See-Kwa"). The process is quite complex and technical. This sheet provides an overview of some basic concepts though.

The term "environment" includes natural and man-made elements of our surroundings. This includes land, air, water, minerals, plants, animals and noise. It also includes things like historic buildings.

Determining the Level of Environmental Review

In some cases, state-level decision-makers have decided that no environmental review is necessary. Some kinds of projects are exempt from the environmental review process. There are two sources of exemptions. One source is the CEQA statute (these are known as "statutory exemptions"). The Legislature makes this decision. The other source of exemptions is the CEQA Guidelines. These are adopted by the state's Resources Agency to provide guidance on implementing CEQA. These are known as "categorical exemptions."

Instead of using "mandatory categories" as like we do in MN, CA requires preparation of the equivalent of our EAW for every project, unless it is specifically exempt

The "Initial Study"

If a project is not exempt, the next step is to prepare an initial study. Such a study asks the question "are there facts that indicate that a project could have a significant effect on the environment?"

"Negative Declarations"

If the answer is "no," then a "negative declaration" occurs. When an agency uses a negative declaration, it is saying two things. It is reaching a conclusion (or making a "declaration") that an environmental impact report is not necessary (the "negative"). An environmental impact report is a more detailed analysis of a project's effects on the environment.

There are two situations in which a "negative declaration" is used. One is when decision-makers conclude that a project will not have a significant effect on the environment. The other is when the project has potentially significant effects, but they can be reduced or avoided by imposing certain conditions on the project. This type of negative declaration is known as a "mitigated negative declaration."

Evaluating Information in the CEQA Process

Decision-makers receive lots of information through the CEQA process. Some of this information can also be technical. Reasonable people can disagree about how much weight to give to pieces of information. Indeed even experts can disagree.

What if it is not clear whether a project will have an effect on the environment? If there is a "fair argument" that a project may have a significant effect, decision-makers will usually direct that an environmental impact report be prepared.

There can be other points in the environmental review process when reasonable people can disagree about how information should be evaluated. Recognizing this, the law gives decision-makers a fair amount of latitude in determining what information is the most persuasive.

INSTITUTE FOR LOCAL GOVERNMENT

ABOUT THE ENVIRONMENTAL REVIEW PROCESS (Also Called "the CEQA Process")

"Environmental Impact Reports"

If the initial study shows that the project may have a significant effect on the environment, the next step is to prepare the more extensive environmental impact report. Such reports are often referred to by the initials "EIR."

Such reports contain a number of items. It describes the proposed project. It identifies and analyzes each significant environmental impact expected to result from the proposed project. The report also recommends steps to avoid or minimize those impacts. These actions are called "mitigation measures." Possible alternative projects are considered too, including the option of no project.

Impact on the Decision-Making Process

The information from the environmental review process helps decision-makers decide whether to approve a project. The report also helps them decide whether putting conditions on a project's approval helps. But the ultimate decision on whether to approve a project is up to decision-makers (after complying with CEQA).

If the project approval includes mitigation measures, the agency must adopt a reporting or monitoring program to assure those measures occur.

Thinking Ahead When It Comes to Environmental Review

The process of evaluating environmental effects on a project-by-project basis can be both time-consuming and expensive. The California Environmental Quality Act gives decision-makers a number of options to address this.

For example, "master" and "program" environmental impact reports can consider the environmental impacts of major policy decisions (for example, the decision to adopt a general plan). When projects come along that are consistent with these policies, the need for further environmental review and analysis is reduced or eliminated.

CEQA also allows agencies to build upon prior environmental reviews. This avoids unnecessarily repeating analysis which has already occurred and is still current. This is called "tiering" off of earlier reviews. It enables the agency to focus the current environmental review on issues that were not analyzed in the earlier review.

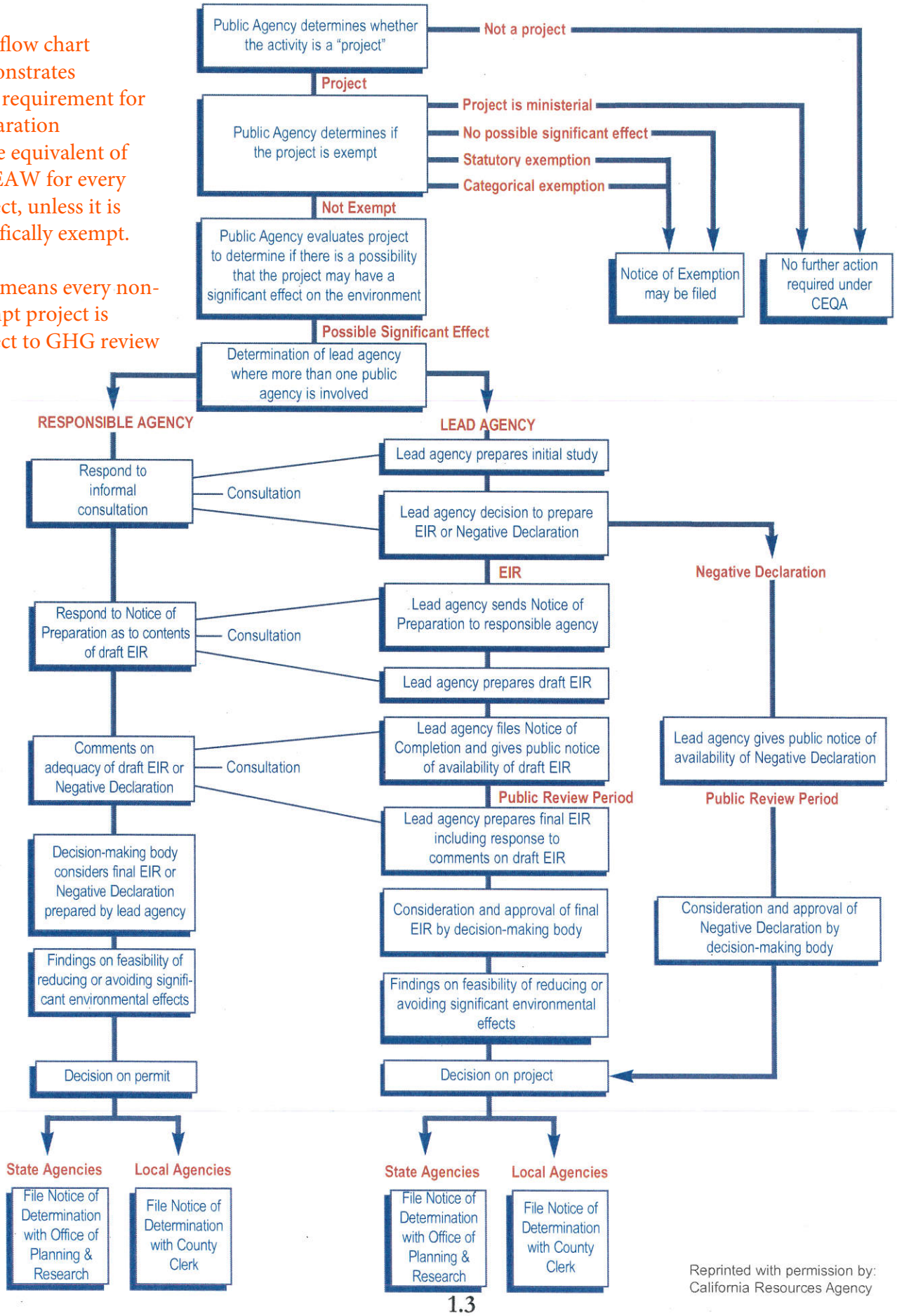
To Learn More

- State of California website on California Environmental Quality Act: http://ceres.ca.gov/ceqa/
- *The Planning Commissioner's Handbook*, League of California Cities, 2005, Chapter 4: The Planning Framework (www.ca-ilg.org/pch4)
- California Public Resources Code Section 21000 and following (accessible from www.leginfo.ca.gov/calaw)
- Solano Press (www.solano.com) has a number of land use-related publications, including one on the California Environmental Quality Act, available for purchase

CEQA PROCESS FLOW CHART

This flow chart demonstrates CA's requirement for preparation of the equivalent of our EAW for every project, unless it is specifically exempt.

This means every non-exempt project is subject to GHG review



(4) The mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable.

Note: Authority cited: Sections 21083, 21083.05, Public Resources Code. Reference: Sections 21003, 21065, 21068, 21080, 21082, 21082.1, 21082.2, 21083, 21083.05, and 21100, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68; *San Joaquin Raptor/Wildlife Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal.4th 1112; and *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98.

15064.4. DETERMINING THE SIGNIFICANCE OF IMPACTS FROM GREENHOUSE GAS EMISSIONS

Here's the specific rule language that guides the determination of whether GHG impacts are significant and require mitigation to avoid EIS

(a) The determination of the significance of greenhouse gas emissions calls for a careful judgment by the lead agency consistent with the provisions in section 15064. A lead agency should make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. A lead agency shall have discretion to determine, in the context of a particular project, whether to:

(1) Use a model or methodology to quantify greenhouse gas emissions resulting from a project, and which model or methodology to use. The lead agency has discretion to select the model or methodology it considers most appropriate provided it supports its decision with substantial evidence. The lead agency should explain the limitations of the particular model or methodology selected for use; and/or

(2) Rely on a qualitative analysis or performance based standards.

(b) A lead agency should consider the following factors, among others, when assessing the significance of impacts from greenhouse gas emissions on the environment:

(1) The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting;

(2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project.

(3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. Such requirements must be adopted by the relevant public agency through a public review process and must reduce or mitigate the project's incremental contribution of greenhouse gas emissions. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project.

Note: Authority cited: Sections 21083, 21083.05, Public Resources Code. Reference: Sections 21001, 21002, 21003, 21065, 21068, 21080, 21082, 21082.1, 21082.2, 21083.05, 21100, Pub. Resources Code; *Eureka Citizens for Responsible Govt. v. City of Eureka* (2007) 147 Cal.App.4th 357; *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98; *Berkeley Keep Jets Over the Bay Com. v. Board of Port Comm.* (2001) 91 Cal.App.4th 1344; and *City of Irvine v. Irvine Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868.

The next 15 pages are CA's form that's roughly equivalent to MN's EAW form. You'll see on the next page the GHG evaluation requirement

APPENDIX G:
ENVIRONMENTAL CHECKLIST FORM

NOTE: The following is a sample form and may be tailored to satisfy individual agencies' needs and project circumstances. It may be used to meet the requirements for an initial study when the criteria set forth in CEQA Guidelines have been met. Substantial evidence of potential impacts that are not listed on this form must also be considered. The sample questions in this form are intended to encourage thoughtful assessment of impacts, and do not necessarily represent thresholds of significance.

1. Project title: _____
2. Lead agency name and address:
   _____
   _____
   _____
3. Contact person and phone number: _____
4. Project location: _____
5. Project sponsor's name and address:
   _____
   _____
   _____
6. General plan designation: _____ 7. Zoning: _____
8. Description of project: (Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation. Attach additional sheets if necessary.)
   _____
   _____
   _____
   _____
9. Surrounding land uses and setting: Briefly describe the project's surroundings:
   _____
   _____
   _____
   _____
10. Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement.)
    _____
    _____
    _____
    _____

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

☐ Aesthetics	☐ Agriculture and Forestry Resources	☐ Air Quality
☐ Biological Resources	☐ Cultural Resources	☐ Geology /Soils
☐ Greenhouse Gas Emissions	☐ Hazards & Hazardous Materials	☐ Hydrology / Water Quality
☐ Land Use / Planning	☐ Mineral Resources	☐ Noise
☐ Population / Housing	☐ Public Services	☐ Recreation
☐ Transportation/Traffic	☐ Utilities / Service Systems	☐ Mandatory Findings of Significance

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

_____ _____

Signature Date

_____ _____

Signature Date

EVALUATION OF ENVIRONMENTAL IMPACTS:

1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from "Earlier Analyses," as described in (5) below, may be cross-referenced).

5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:

   a) Earlier Analysis Used. Identify and state where they are available for review.

   b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.

   c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.

9) The explanation of each issue should identify:

a) the significance criteria or threshold, if any, used to evaluate each question; and

b) the mitigation measure identified, if any, to reduce the impact to less than significance

SAMPLE QUESTION

Issues:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
I. AESTHETICS. Would the project:				
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☐
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☐
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☐	☐	☐
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	☐	☐	☐	☐
II. AGRICULTURE AND FORESTRY RESOURCES. In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:				

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	☐
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☐
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	☐	☐	☐	☐
d) Result in the loss of forest land or conversion of forest land to non-forest use?	☐	☐	☐	☐
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	☐	☐	☐	☐
III. AIR QUALITY. Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☐	☐
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	☐	☐	☐	☐
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☐	☐
e) Create objectionable odors affecting a substantial number of people?	☐	☐	☐	☐
IV. BIOLOGICAL RESOURCES: Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☐	☐
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	☐	☐	☐	☐
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☐	☐	☐
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☐	☐	☐
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☐	☐
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
V. CULTURAL RESOURCES. Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	☐	☐	☐	☐
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?	☐	☐	☐	☐
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	☐	☐	☐	☐
d) Disturb any human remains, including those interred outside of formal cemeteries?	☐	☐	☐	☐
VI. GEOLOGY AND SOILS. Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	☐	☐	☐	☐
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☐	☐	☐	☐
ii) Strong seismic ground shaking?	☐	☐	☐	☐
iii) Seismic-related ground failure, including liquefaction?	☐	☐	☐	☐
iv) Landslides?	☐	☐	☐	☐
b) Result in substantial soil erosion or the loss of topsoil?	☐	☐	☐	☐
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	☐	☐	☐	☐
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	☐	☐	☐	☐
VII. GREENHOUSE GAS EMISSIONS. Would the project:				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	☐	☐	☐	☐
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	☐	☐	☐	☐
VIII. HAZARDS AND HAZARDOUS MATERIALS. Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☐	☐
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☐	☐
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☐	☐	☐
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☐
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☐
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☐
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	☐	☐	☐	☐
IX. HYDROLOGY AND WATER QUALITY. Would the project:				
a) Violate any water quality standards or waste discharge requirements?	☐	☐	☐	☐
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	☐	☐
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	☐	☐	☐	☐
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	☐	☐	☐	☐
f) Otherwise substantially degrade water quality?	☐	☐	☐	☐
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	☐	☐
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	☐	☐	☐	☐
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☐	☐	☐
j) Inundation by seiche, tsunami, or mudflow?	☐	☐	☐	☐
X. LAND USE AND PLANNING. Would the project:				
a) Physically divide an established community?	☐	☐	☐	☐
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	☐	☐	☐	☐
XI. MINERAL RESOURCES. Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☐
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☐
XII. NOISE -- Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☐	☐	☐
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	☐	☐	☐	☐
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☐
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☐
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XIII. POPULATION AND HOUSING. Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☐	☐	☐	☐
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☐
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☐
XIV. PUBLIC SERVICES.				
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:	☐	☐	☐	☐
Fire protection?	☐	☐	☐	☐
Police protection?	☐	☐	☐	☐
Schools?	☐	☐	☐	☐
Parks?	☐	☐	☐	☐
Other public facilities?	☐	☐	☐	☐
XV. RECREATION.				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	☐	☐	☐	☐
XVI. TRANSPORTATION/TRAFFIC. Would the project:				
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	☐	☐	☐	☐
b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	☐	☐	☐	☐
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	☐	☐	☐	☐
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☐
e) Result in inadequate emergency access?	☐	☐	☐	☐
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XVII. UTILITIES AND SERVICE SYSTEMS. Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	☐	☐	☐	☐
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☐
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☐
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	☐	☐	☐	☐
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☐
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	☐	☐
g) Comply with federal, state, and local statutes and regulations related to solid waste?	☐	☐	☐	☐
XVIII. MANDATORY FINDINGS OF SIGNIFICANCE.				
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number o restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☐	☐	☐
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☐	☐	☐

Note: Authority cited: Sections 21083 and 21083.05, Public Resources Code. Reference: Section 65088.4, Gov. Code; Sections 21080(c), 21080.1, 21080.3, 21083, 21083.05, 21083.3, 21093, 21094, 21095, and 21151, Public Resources Code; *Sundstrom v. County of Mendocino,*(1988) 202 Cal.App.3d 296; *Leonoff v. Monterey Board of Supervisors,* (1990) 222 Cal.App.3d 1337; *Eureka Citizens for Responsible Govt. v. City of Eureka* (2007) 147 Cal.App.4th 357; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th at 1109; *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656.

Revised 2009

Sample theshold of significance recommendation Sacramento AQMD

SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT

Resolution No. 2014 - 028

Recommended Greenhouse Gas Emissions Thresholds of Significance

WHEREAS, Section 15064.7 of the California Environmental Quality Act (CEQA) Guidelines encourages public agencies to develop and publish thresholds of significance to use in the determination of the significance of environmental effects, and states that thresholds of significance adopted for general use as part of the agency's environmental review process must be adopted by ordinance, resolution, rule or regulation; developed through a public review process; and supported by substantial evidence; and

WHEREAS, the Sacramento Metropolitan Air Quality Management District utilized guidance published by the California Air Pollution Control Officers Association, *CEQA & Climate Change, Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act*, and a review of local projects in developing the recommended greenhouse gas emissions thresholds of significance; and

WHEREAS, the Sacramento Metropolitan Air Quality Management District held a public workshop on November 13, 2013, coordinated with local agencies, held a public hearing on October 23, 2014, and considered comments on the recommended greenhouse gas emissions thresholds of significance; and

WHEREAS, the Sacramento Metropolitan Air Quality Management District provided substantial evidence supporting the recommended greenhouse gas emissions thresholds of significance and mitigation levels in a document entitled *Justification for Greenhouse Gas Emissions Thresholds of Significance*; and

WHEREAS, the adoption of the recommended greenhouse gas emissions thresholds of significance will support compliance with CEQA and lead to contributions to greenhouse gas emission reductions goals of the Global Warming Solutions Act (AB32); and

WHEREAS, jurisdictions that have adopted greenhouse gas reduction plans meeting the requirements of Section 15183.5 of the CEQA Guidelines or have adopted their own greenhouse gas emissions thresholds of significance may opt not to utilize the Sacramento Metropolitan Air Quality Management District's recommended greenhouse gas emissions thresholds of significance if a project demonstrates consistency with the jurisdiction's reduction plan or threshold.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Directors of the Sacramento Metropolitan Air Quality Management District has determined that the development and adoption of the recommended greenhouse gas emissions thresholds of significance meets the requirements of Section 15064.7 of the CEQA Guidelines; and

BE IT FURTHER RESOLVED THAT the Board of Directors of the Sacramento Metropolitan Air Quality Management District adopts the following recommended greenhouse gas thresholds of significance:

- Construction phase of projects – 1,100 metric tons of CO2e per year
- Operational phase of land development projects – 1,100 metric tons of CO2e per year
- Stationary source projects – 10,000 direct metric tons of CO2e per year; and

BE IT FURTHER RESOLVED THAT the level of mitigation for significant projects is based on demonstrating consistency with AB32 and the California Air Resources Board's Climate Change Scoping Plan goal to reduce greenhouse gas emissions, which is currently a 21.7% reduction of emissions, and

BE IT ORDERED THAT the Board of Directors of the Sacramento Metropolitan Air Quality Management District authorize staff to update the mitigation percentage as changes to the Scoping Plan are made, in consultation with District Counsel, and an opportunity for public comment is provided prior to any changes being made; and

BE IT FURTHER ORDERED THAT the recommended thresholds of significance are effective immediately upon adoption.

On a Motion by Director Hansen and seconded by Director Frost, the foregoing Resolution was passed and adopted by the Board of Directors of the Sacramento Metropolitan Air Quality Management District, State of California, the 23rd day of October, 2014, by the following vote.

AYES: Directors Cohn, Crews, Fong, Frost, Hansen, MacGlashan, Nottoli.

NOES: Directors Starsky.

ABSENT: Directors Cooper, Peters, Serna, Terry, Warren, Yee.

Chair, Board of Directors
Sacramento Metropolitan Air
Quality Management District

(SEAL)

ATTEST:

Clerk of the Board
Sacramento Metropolitan Air Quality Management District

Environmental Quality Board

Attn: Mandatory Category Rulemaking August 3, 2016

520 Lafayette Road North
St. Paul, MN 55155

Sent via email to courtney.ahlersous@state.mn.us

Re: Mandatory Category Rulemaking: Preliminary Rule Language

MN350 submits the following comments regarding the proposed changes to the rules governing Environmental Impact Statements, MN Rules sections 4410.0200, 4410.4300, 4410.4400 and 4410.4600. The proposed rules do not address a key issue about which MN350 and other environmentalists have previously petitioned the Board. There are no proposed changes to the Responsible Governmental Unit "RGU" for pipelines. As so thoughtfully laid out by Willis Mattison and others at the December, April and May meetings of the EQB, the PUC is not the appropriate RGU for pipeline EIS studies.

While it is true that the PUC is required by statute to approve all pipeline routing issues, that designation should have no bearing on the selection of the appropriate RGU for pipeline EIS studies. The PCA and DNR are far more experienced in assessing the environmental impact of pipelines and other major facilities than the PUC and the Department of Commerce. The PUC and Department of Commerce have never conducted an EIS on a major crude oil pipeline. In contrast, the PCA has responsibility for overseeing any pipeline spills and has numerous experts on its staff to forecast, assess and clean up such spills. Similarly, DNR staff have the expertise to assess past and future impacts of pipeline construction and any spills or ruptures on fish, wildlife, forest, wetland and wild rice lake resources.

Accordingly, MN350 urges the EQB to amend MN Rule 4410.0400 as follows:

Subp. 24. Pipelines.
For routing and certificate of need applications of a pipeline ~~subject to the full route selection procedures under Minnesota Statutes, section 216G.02~~, the ~~Public Utilities Commission~~ PCA and DNR jointly, are ~~is~~ the RGU.

Finally, there is a significant gap in the regulatory protection scheme for pipelines that are abandoned without replacement. As renewable energy replaces fossil fuel, the need for hazardous liquid pipelines will decrease and abandonment will become increasingly common. The state should explicitly require an EIS or at least an EAW, in those abandonment situations involving pipelines as defined in Minn. Stat. section 216G.01, subdivision 3. We urge the EQB to propose legislation to address the risks to the environment from pipeline abandonment.

Sincerely,

Kevin Whelan
Executive Director
MN350

Red River Watershed Management Board

July 5, 2016

Will Seuffert
Executive Director
Environmental Quality Board
444 Lafayette Road
St. Paul, MN

Dear Director Seuffert

RE: MN EQB ENVIRONMENTAL REVIEW EAW & EIS CATEGORY COMMENTS SUBMITTED BY THE RED RIVER WATERSHED MANAGEMENT BOARD (RRWMB)

PREFACE

A little bit of background will be helpful in setting the context for the comments and recommendation being submitted. About 15 years ago there were considerable conflicts related to flood damage reduction projects in the Red River Valley. Moratoriums on permitting and litigation were imminent. To address the issues the state of MN and the Red River Watershed Management Board agreed to enter into facilitated mediation to provide a framework for coordination and cooperation that would result in projects that would be able to be permitted. I would refer you to and by reference attach the documents from the following web site http://www.rrwmb.org/FDRWG.html and the LTFS, Long Term Flood Solutions plan, prepared by the Red River Basin Commission (RRBC), Final Report to the States of Minnesota Pursuant to Session Laws (2009 Chapter 93) and North Dakota Pursuant to the 2009 North Dakota Chapter 20, House Bill 1046, section 9, http://www.redriverbasincommission.org/Long_Term_Flood_Solutions/long_term_flood_solutions.html.

In December 1998, an agreement to reduce flood damage and improve natural resources in the Minnesota portion of the Red River Basin was reached by representatives of watershed districts, state and federal agencies, local governments, various special interest organizations, and private landowners. *Please pay special attention to the membership of the Mediation Work Group and its roles and responsibilities and participation.* Based on this Agreement, the related public, private, and citizen engagement we believe that thresholds for EAW and EIS categories can justifiably be significantly raised or eliminated or as an alternative added to the "EXEMPTIONS" of the rule.

Secondly, we would encourage EQB to conduct the rule making process with an integrated approach. While addressing policy issues in one rule making process and

then address the details in another rule making process may seem to provide for some timing and efficiency advantages, we do not feel that it best serves the purposes of the intended rule making related to the mandatory catagories. Separating the policy from the detail creates uncertainty and potential confusion as to what the policy changes will actually mean. Integrating the two processes will provide more effective; transparent; certainty; and in the end a more efficient and understandable process and final rule.

MANDATORY EAW COMMENTS & RECOMMENDATIONS

1. **Subp. 24 Water appropriation & impoundments:** It would seem that separating "appropriation" and "impoundments" into more separate and independent subdivisions.There really is minimal if any relationship between the two activities and it would be good to make the difference clearer by separations rather than just segmenting within the same subdivision.
    - **Subp 24 A.** No comments.
    - **Subp 24 B.** The threshold of 160 acres in the Red River of the North river basin is far too small. A more practical and reasonable threshold taking into consideration the Red River Valley Flood Damage Reduction Mediation Agreement (MWG) would be 1000 acres or to not have a threshold at all for projects that are following the Mediation Agreement. The 1000 acres is reasonable threshold when you consider that the Mediation Process already provided a major public process for distributed water retention projects and the LTFS plan of the RRBC calls for a 20% reduction in peak flood flows with allocations to all major watersheds in the RRB to secure 1,000,000 acre feet of storage. Each WD has a comprehensive strategy to achieve their respective allocation and most every project will be far greater than 160 acres. It is an antiquated threshold. See the reference to appropriate documents above. Most of these water retention/detention projects also incorporate various natural resource enhancements for the benefit of fish; wildlife; recreation; birding; etc. The Mediation process provides for extensive involvement of citizens, landowners, state and federal agencies and various diverse interest groups as you can see by the membership on the Mediation Work Group.
    - **Subp 24. C.** The threshold for the projects related to the Mediation Agreement should be eliminated or at a minimum the provision relate only to construction of a High Hazard Dam.

Subp. 26 Stream diversion. In the Red River Valley the threshold is really not applicable since the major river systems in the RRV have been channelized by the Federal and State Government efforts in the 50's and 60's. Current efforts are restoring the altered and channelized streams to more natural stream corridors and meandering of the river

systems. These types of restorations should not be required to go through the mandatory EAW process. Another way to address this issue is to interpret these channelized rivers and streams or "altered natural watercourses" as defined in 103G to be exempt from the mandatory EAW process. ***103G.005 DEFINITIONS****: Subd. 3.****Altered natural watercourse.****"Altered natural watercourse" means a former natural watercourse that has been affected by artificial changes to straighten, deepen, narrow, or widen the original channel.*We should be encouraging the restoration of these channelized river and stream systems rather than putting unreasonable processes in place that can only make these projects more costly, but also act as a disincentive. The special reference to trout streams is fine.

2. **Subp. 27 Wetlands and public waters.**
    - **Subp 27 A.** This provision would require an EAW for any change to the cross section of a public water watercourse. As with the discussion in Subp 26, in the RRV these thresholds may have had some relevance back in the 50's and 60's and prevented some of the channelization that took place by State and Federal projects of the time. However, today these thresholds make no sense at all. They only serve to create more administrative process/cost that works to inhibit the restoration of the river systems. Therefore, In the RRV and consistent with the Mediation Agreement these thresholds should not apply or be added to the exempt provisions.
    - **Subp 27 B.** OK.
3. **Subp. 36 Land use conversion.**
    - **Subp 36 A.** No problem with the golf courses or residential development of this category. However, the permanent conversion of 80 or more acres of agricultural land or natural vegetation is not reasonable or practical for projects that are implemented through and under the terms of the Mediation Agreement in the RRV. In almost all instances the water resources projects implemented through the Mediation Agreement are on agricultural land and involve more than 80 acres. There is significant public engagement and involvement with the project development and implementation. Either change this number to 1000 acres or eliminate the mandatory requirement for those projects implemented under the Mediation Agreement. In addition there should be consistency with other natural resources projects that result in conversion of 80 or more acres of agricultural lands. What about BWSR RIM Reserve program and DNR's WMA and habitat programs that acquire agricultural lands and convert them to non agricultural land. It is also suggested that the RGU for these projects involving conversion of agricultural lands should be the MN Department of Agriculture.

- **Subp 36 B.** The same reasoning for raising the threshold to 2000 acres or eliminating the category for all projects implemented consistent with the Mediation Agreement.

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

Subp 36a A. A requires a mandatory EAW for a project that impacts more than 1320 feet of a shoreline in a nonsensitive shoreland area. This does not make any practical sense when trying to restore an existing channelized public waters watercourse that is also shorelands. This provision should apply ONLY to natural unaltered shoreland watercourses and exempt altered natural watercourses. ***103G.005 DEFINITIONS****: Subd. 3.****Altered natural watercourse.****"Altered natural watercourse" means a former natural watercourse that has been affected by artificial changes to straighten, deepen, narrow, or widen the original channel.*

Subp 36a B. Same comments apply to this category as applies to Subp 36 A. For streams the shore impact zone is 50 feet and for stream restoration efforts for an existing channelized shoreland watercourse this mandatory category makes no practical sense and should be clarified to exempt impacts related to channelized/altered watercourses and should apply ONLY to shorelands on natural watercourses and exempt altered natural watercourses. ***103G.005 DEFINITIONS:*** *Subd. 13.****Natural watercourse.****"Natural watercourse" means a natural channel that has definable beds and banks capable of conducting confined runoff from adjacent land.*

Subp 36a C. As with Subps A and B this category is inappropriate for nonsensitive shoreland areas that are channelized watercourses. In many instances you have CRP land or in some instances RIM Reserve easement lands that would be altered with the restoration of the watercourse. In the end you will have far greater buffers and natural vegetation that exists today. Activities for nonsensitive areas in this category should be exempt for channelized shoreland watercourse areas or altered natural watercourses.

MANDATORY EIS COMMENTS & RECOMMENDATIONS

1. **Subp. 18 Water appropriations and impoundments.** For a project that is implemented consistent with the Mediation Agreement it would be appropriate to eliminate this or exempt this category. The Mediation Agreement process the involvement of the regulatory agencies and local interests certainly takes the place of the purposes of the EAW. In addition the DNR's rigor when a Class 1, High Hazard Dam, is proposed. These thresholds were established many years ago and since that time DNR

rules and regulations have significantly changes also warranting changes to the EIS provisions. Again consider separating the impoundments from the appropriations provisions as separate subdivisions.

2. **Subp. 20 Wetlands and public waters.** OK.
3. **Subp. 23 Water diversions.** OK.
4. **Subp. 27. Land conversion in shorelands.** This mandatory EIS category may be appropriate for sensitive shoreland areas that are lakes or public waters wetlands, however, in the RRV is has very little practical application as it relates to 80 acres or more of nonsensitive shoreland areas that are channelized rivers and streams. This type of provision can deter or be a disincentive for the restoration of altered and channelized stream and river systems back to the natural meandered and buffered conditions that enhance natural resources. These provisions should be clarified to eliminate the application to "altered natural watercourses".

EXEMPTIONS COMMENTS & RECOMMENDATIONS

1. **Subp. 15 Water impoundments:** This exemption maybe redundant depending on the actions taken with respect to the mandatory categories. May also be appropriate to exempt all water impoundments, which include wetland restorations, of 1000 acres or less when done under the state and federal wetland restoration programs and those impoundment projects implemented consistent with the RRV FDR Mediation Agreement.

Subp. 17 Ditch maintenance or repair: This exemption deserves clarification as it has limitations and constraints that are not consistent with current provisions of 103E and there seems to be a 20 year provision that seems to be trying to reference provisions of the Wetland Conservation Act that applies only to wetlands. It would be appropriate to clarify this exemption to include all maintenance and repair drainage systems period. So the provision would read "Maintenance and repair of a public drainage system under 103E and maintenance and repair of a private drainage system with the limits of its original construction flow capacity." *"**103G.245 WORK IN PUBLIC WATERS:** Subd. 2.**Exceptions.** A public waters work permit is not required for: (1) work in altered natural watercourses that are part of drainage systems established under chapter 103D or 103E if the work in the waters is undertaken according to chapter 103D or 103E; (2) a drainage project for a drainage system established under chapter 103E that does not substantially affect public waters; or (3) culvert restoration or replacement of the same size and elevation, if the restoration or replacement does not impact a designated trout stream."*

2.

3. **Subp. 21 Construction projects:**
    - **Subp 21 A.** OK.
    - **Subp 21 B.** OK.
    - **Subp 21 C.** This provision seems to be subject to significant interpretation of when O & M can be done and what constitutes "substantial" impact. If you are doing maintenance and repair to a flood damage reduction project that requires some significant improvements to ensure the long-term sustainability of the structure, who determines if that is substantial or not? It might be more appropriate to just say "Operation, maintenance, or repair work to existing authorized projects and structures is exempt." Many water resource projects constructed under authorized state and federal permits require that the projects be properly operated and maintained.
    - **Subp 21 D.** This provision seems to be missing one element of authorization in the exemption. The provision should include "maintenance and repair" in addition to "Restoration or reconstruction". It seems that this provision may be appropriate for historic buildings; however, the provision is clearly not appropriate to limit restoration and construction or maintenance and repair to water resources projects that have been lawfully permitted. In addition the permits require that the authorized projects be appropriately maintained.
    - **Subp 21 E.** OK.

The Red River Watershed Management Board appreciates the consideration of these recommendations during the final rule making process. If you have any questions please contact Ron Harnack, 651.341.7651, harnackcreek@hotmail.com, RRWMB Project Coordinator. We also ask that we be kept informed of the continuing process and the opportunity to provide testimony at formal public hearings regarding these rules. We do believe that a formal public hearing on the rules should be conducted.

Thank-you
Ron Harnack
Project Coordinator
RRWMB

CC: Courtney Aylers-Nelson
Naomi Goral, Administrator, RRWMB
John Finney, Chair, RRWMB
Henry Van Offelen

Comment to Rulemaking on Mandatory Categories of Environmental Review:

Submitted by Kristen Eide-Tollefson, in consultation with Bushaway Task Force Members

Comment regarding the following changes to the draft dated 6/17/2016

https://www.eqb.state.mn.us/content/eqb-mandatory-categories-rulemaking

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

A. Highway safety improvement projects are exempt.

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

C. Modernization of an existing roadway or bridge by resurfacing, restoration, ~~or~~ rehabilitation, reconstruction, adding shoulders or adding auxiliary lanes, that may involve the acquisition of minimal amounts of right-of-way is exempt.

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

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

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

Summary Comment Points:

A. The addition of "reconstruction, adding shoulders, or auxiliary lanes" broadens the potential number of exempted projects dramatically, without regard to context;
B. Reconstruction is significantly different in type and scope, than "restoration, resurfacing, or rehabilitation" of an existing roadway. All parties consulted commented that reconstruction affects the FOOTPRINT of the roadway and SCOPE of the project, and therefore has the potential for significant impacts;
C. Unlike "restoration, resurfacing, or rehabilitation", reconstruction can affect the character, identity, environmental and aesthetic qualities of a roadway. It can affect patterns of interaction, access, context and scale, even within right-of-way;
D. The sole criterion of "acquisition of minimal (?) amounts of right-of-way" is a wholly insufficient consideration. There are many more potential impacts than property acquisition, even within the parameters of the established right-of-way;
E. It is not uncommon for engineering designs to be driven by funding, historic projections, through-put planning, trends and other factors that may not adequately consider local factors and the impacts on community quality of life;

F. State standards can and should be more restrictive than federal guidelines and requirements. Site specific environmental review is necessary to create accountability for government action; context sensitive consideration of project design alternatives; and the identification of appropriate solutions;
G. The potential for significant impacts and the identification of socio-economic and environmental issues can only be determined with the "meaningful participation" of the potentially affected community;
H. "Hearing all Voices", while an excellent policy for public engagement, does not necessarily translate into "meaningful participation";
I. "Meaningful participation" requires transparency of information (including statistics, rationale and funding sources) and the possibility that potentially affected citizens and communities can affect design decisions. This is not the same as voting on predetermined designs at a public informational meeting.

Environmental Review (ER) adds value and targets resources towards best outcomes:

J. The environmental review process provides for information transparency and consistency of formatting, coordinated review , and project accountability to site specific environmental factors and values;
K. All agencies and interests have access to the same information, and each other's perspectives;
L. The procedural requirements of ER create process predictability, equitable access, a time frame and way to constructively engage controversy and opposition;
M. Citizen and local government engagement in environmental review adds value and can improve project outcomes;
N. Generalized planning statistics and engineering standards may drive designs and costs that are unnecessary and may even undermine existing assets and values.
O. Site specific environmental review utilizes local knowledge to better align investments with community health and environmental values;
P. ER targets mitigations; identifies site specific, context sensitive, values and solutions. This can lower costs, and/or better target limited resources.
Q. ER Provides opportunity for and accountability to implementation of state policies and programs (such as Complete Streets, and CSS);
R. Citizen input can increase the benefits and usefulness of the infrastructure improvements to the community*. Both as a planning and communication tool, ER provides impetus for innovation and improved alignment with the Department's stated Vision and goals. Reconstruction should not be exempted.

APPENDIX to PUBLIC COMMENT:

Vision: "Minnesota's multimodal transportation system maximizes the health of people, the environment and our economy" - Minnesota Department of Transportation

> "The last three Federal Transportation Acts have created less of a federal presence in many transportation decisions. The diminished federal role results in more state/local authority and responsibility for these decisions. The funding flexibility and expanded project eligibility under these acts has given decision makers more options to address transportation priorities. Public involvement in transportation issues and decision making is vital because of this expanded eligibility and diversity. Federal Law requires an opportunity for early and continuous involvement in the development of the Statewide Transportation Plan and the STIP. Public involvement is also a mandatory component of the MPO planning process." PII-2, State of Minnesota STIP 2012-2015

***Lessons from the Reconstruction of Bushaway Road (2008-2016)**

- Local knowledge is an essential ingredient for successful road infrastructure improvements
- Provisions in environmental review provide qualitative and quantitative opportunities for meaningful public engagement that is not matched by any other venue.
- Engineering design is driven by statewide projections and standards which may not accurately reflect local realities or values. Persistence, challenge and independent research by the Bushaway Task Force was necessary to reconcile safety record, demographic and growth projection discrepancies. This was key to the ability of the task force to negotiate design with the county.
- Where government is the proposer and often the RGU, environmental review requirements level the playing field and create equitable access to information, meaningful engagement in project design and alternatives, with the guidance of review standards and accountability for government action.
- Public input is needed to align broad plans and engineering drivers with local concerns.
- Engineering standards may undermine community health and environmental values, and should not be accepted as the final word. <u>Meaningful participaton in alternative design considerations is crucial.</u>
- In the case of Bushaway Road, the county prepared a 'voluntary EAW'. Even though they did not produce it until the 11th hour of decision three years later, ER requirements were studied by the Task Force. And repeated requests for 'concept approval' were able to be delayed because an EAW was in play. This was the major factor (and lever) that allowed needed design alternative negotiations to continue.

- Public and local government input can increase public safety and health outcomes by identifying existing 'traffic calming' factors (such as natural curves, trees) that may have other socio-economic and environmental values (such as tourist attraction, scenic amenities, climate cooling, carbon, and stormwater mitigation). This was a very important element of design negotiations for the Bushaway neighborhood and task force.
- The Bushaway Task Force also studied highway policy for context sensitive design, and advocated the application of Low Impact Design principles to the environmentally sensitive Bushaway corridor. This demonstrates the importance of policy accountability and the opportunity that public participation provides for motivating its application.

In summary, the Bushaway Road experience demonstrates the role environmental review in guiding project proposers, as well as public and local governments towards alternatives that lessen impacts and costs, maximize environmental benefits and make best use of state and federal resources. It also provides a venue for negotiating shared investments in best outcomes for both the state and community. Road reconstruction, addition of shoulders and auxiliary lanes should not be added to rule exemptions.

Thank you for the opportunity to comment.

Kristen Eide-Tollefson in consultation with members of the Bushaway Task Force (and others)

Bushaway Road (1858-2016) – a long story shortly told:

This is the story of the successful conclusion of a three decade long fight over the reconstruction of a small scenic segment of the state's first platted roadway -- Bushaway Road. First proposed in the mid 1980's, during an era of suburban growth, Minnetonka, the county and state planned an expansion of Bushaway Road to facilitate commuter through-put from Minnetonka to Hwy 12, in anticipation of the pending construction of Hwy 394. An elaborate cloverleaf was anticipated for the 101/McGinty (Co. 19) intersection and bridge, at 17 feet above the existing grade to accommodate the cloverleaf and the railroad's need for increased height. At the same time, a 4 acre fill was proposed in the design for the Gray's Bay bridge reconstruction, to increase access to Lake Minnetonka.

Local neighborhood opposition was predictable, organized and effective. The neighborhoods on both sides of the Gray's Bay bridge joined forces. Supported in their concerns by Congressman Ramsey and the City of Wayzata, they lobbied at the legislature to maintain local approval, and went to court to force an EIS to be completed on the project, focusing on the infill plans for Gray's Bay. Judge Tony Riley upheld the appeal, and in 1987, a settlement agreement was signed by the city of Wayzata, Minnetonka, and the County. The duration was 30 years, with automatic renewals in 10 year increments. It included a provision that any rebuild of Bushaway Road would not exceed the existing 2 lane capacity; that the parties would cooperate in an initiative to make Bushaway a scenic byway; that an EIS would be completed on the Gray's Bay infill; that truck traffic would be diverted; and other provisions necessary to settle the lawsuit between the cities.

Meanwhile, the state had produced a number of creative design options for the Bushaway bridge and roadway. All depended upon the lowering of the tracks to bring the height increase within an acceptable range. Despite promising negotiations, the railroad eventually withdrew from the plan and design negotiations ceased. In 1988, a "temporary" two-lane bridge (MnDOT Bridge No. 99140) was moved in by MnDOT to replace the old-style wooden 1931 railroad bridge (MnDOT Bridge No. 1947), which had replaced the original 1915 bridge.

Bushaway settled into a 10 year reprieve until the County returned in 1996, to propose a semaphore for the Bushaway/McGinty intersection that had, for over 125 years, been governed by nothing more than stop signs. Controversy and suspicion of expansion plans was again stirred. Finally, in 1997, the county returned seeking municipal consent from the Wayzata City Council for the transfer of County Trunk Highway (TH) 101 from MnDOT to Hennepin County; a transfer which came with the promise of funds for needed repairs and reconstruction of the roadway and bridge and a change of status to a State Aid Highway.

The city added a condition to its consent, that state aide standards would not be inappropriately applied to the scenic roadway. County officials promised to work with the city to ensure satisfaction. Just 10 years later that assurance, in a letter to the Wayzata City administrator from the county department head, was pulled from the neighborhood's archives to provide a foundation for the 'next round' of negotiations. In 2007 the county presented new design plans for the reconstruction of South 101, including the Bushaway roadway and bridge. By this time, several of the stalwart defenders of the scenic roadway were dead. And the neighborhood advocacy faction moved into a second generation.

The 2007 design proposal: Following the rage for rapid integration of roundabouts in road reconstruction, the new proposal for South 101 featured dramatic two lane roundabouts: one spanning the railroad bridge at 101 and McGinty at a height of 3 feet over the current bridge grade; and another topping a prominent Indian mound, replacing a hairpin curve (which avoided the mound) on the other side of Gray's Bay. In order to accommodate the roundabout at the Bushaway intersection, Co. road 19 (Eastman Road in Wayzata), was to be shifted north and elevated over the railroad right of way, providing for the possibility of yacht club parking below (which had been negotiated with the Yacht Club before public vetting of the design took place).

The county's corridor design for North 101, which traumatized the community with acres of felled trees strewn along the roadway, was anticipated to be extended to South 101. In addition to the roundabout, for the 1.5 mile Bushaway segment, a new turn lane was proposed for safety reasons, to limit turning access for residents. 'Faux' concrete pressed walls were planned to line the corridor to replace aging estate gates and stone walls and 'modernize' the corridor. A large number of trees would be felled to accommodate the lane, shoulders, curb and gutter and a new eight foot trail.

The Bushaway Task Force: In July of 2008, a Bushaway Task Force was appointed by Wayzata Mayor Humphrey in response to neighborhood concerns regarding the reconstruction design proposal for the city's famed historic tree lined residential boulevard and the eastern gateway to Minnetonka's 'old lake road'. Originally known as "Holdridge", it is the oldest residential section of the city; and features a number of architecturally important historic 'lake' homes – built by a coterie of Minneapolis' business magnates.

The neighborhood organized. They created a vision statement for the road and a number of supporting documents, including a comparative analysis of the county's reconstruction proposal and the city's comprehensive plan. They created a website, held meetings, celebrations and continued to inform the process through participation in the task force, which mediated

negotiations. It was the task force, supported by the city, that kept all parties at the table and successfully negotiated the resolution of a *decades long* battle over the road. **http://bushaway.wikifoundry.com/**

As with many communities facing what they regard as a threat to identity and character, the community first turned to its history. Coincidentally, 2008 also marked the 150th anniversary of the 1858 establishment of the Dayton-Shakopee road, running directly from the Ms. River at Dayton, to the Mn. River at Shakopee. The neighborhood later raised money to commission an historic study. This helped to motivate the City's designation of Bushaway as a local, historic scenic byway, thereby fulfilling one of the conditions of a 1987 settlement agreement between the cities and county. **http://bushaway.wikifoundry.com/page/2008+Best+of+Historic+Bushaway**

Despite the long record of controversy and opposition to previous proposals for the reconstruction of Bushaway Road, the County came in with a completed design, a consultant, earmarked funding, and supporting rationale with statistics from the statewide plan. These statistics did not jibe with local safety records, demographics or growth projections. And the county was unresponsive to initial calls for "context sensitive solutions". Even with municipal consent all the balls were in the county's court. Without the rules and requirements of environmental review, neither the city nor the neighborhood could have participated "meaningfully" in affecting the design and decision criteria and conditions.

The task force met from 2008-2010 when it issued a final report, outlining the environmental and socio-economic issues associated with the road reconstruction, and recommendations for the city's municipal approval conditions. Although the neighborhood continued to advocate for resurfacing and rehabilitating of the road, plans for reconstruction went forward. It is important to note that the reconstruction of this segment, including the roadway, bridge (on the same alignment) and causeway at Gray's Bay, could have been 'exempted' under the proposed rule change. See the final report for details of the Task Force impacts analysis and city's negotiations. **http://users.soc.umn.edu/~rea/documents/BUSHWAY%20REPORT%20FINAL_10-13-10.pdf**

Most importantly, the rule prohibiting final government decisions until the EAW process was complete kept the information on the table until the impact, design and mitigation issues could be resolved. The City of Wayzata's Task Force continued to participate in design negotiations with the county and watershed district through 2013 when approval was granted and the county, as RGU, made a negative declaration on the EAW. **http://www.startribune.com/contentious-lake-minnetonka-road-project-moves-forward/228807991/**

The overwhelming impact issue was the roadway's famed tree canopy (see cover photo of the report) which was associated by the community with a number of environmental and comprehensive plan values, and city ordinances. Negotiations with the County were finally tree by tree. A landscape group to oversee, among other details, the renovation of the "Big Woods" remnant that frames the roadway, was subsequently appointed. They vetted design proposals and will be called back to meet when the road and bridge are essentially complete later this year.

The Final Design: The final redesign significantly reduced tree impacts, maintained the two lane footprint, adding shoulder, curb and gutter. The county created a special pinchpoint footprint to avoid historic gates and walls, and most significantly retained the original alignment of road and bridge (with a slight shift east). Both roundabouts were eventually abandoned (the second when they hit bones). Armed with the historic record of engineering challenges, and public support, the project manager negotiated successfully with the railroad for the lowering of the tracks.

With the help of the county's landscape and historic consultants, the final design of Bushaway Road modernizes the roadway, while maintaining its historic character. The trail, at the advice of the neighborhood, was shifted to the west side of the road, to save trees and to better align with public use and city trail plans which will soon create a complete loop through Wayzata. County and city collaborated to bury the powerlines, improving the scenic character of the road. Additional investments were needed to implement the vision of authentic stone walls, the protection of old stands of trees at the intersection, and the historic brick and iron fenceline on the north side of the bridge – among other negotiated features. The redesigned causeway will create a continuous trail into Minnetonka.

The neighborhood contributed innumerable hours of meetings, research, reports, presentations made possible by generous contributions of time, local expertise and money. The task force was chaired by a succession of two council members and supported by a third, and an untold number of professional hours of the city engineer. The city and mayor held firm through 5 years of negotiations and turnover in both the task force and council, providing the hearings and resolutions that sustained and guided continued negotiations. The final negotiated design was also informed by the Minnetonka Watershed District's which worked closely with the parties throughout, and invested in a 'value engineering' review that focused on the causeway, trail, stormwater impacts and evaluated the proposed turn lanes at the intersection and bridge.

All parties deserve the commendations bestowed by the Wayzata City Council and Mayor Wilcox. And all recognize the transformative effect of the joint effort upon the project outcomes. Each appreciates the parties' investments in the process.

Respectfully submitted,

Kristen Eide-Tollefson, Bushaway Task Force member
Though this narrative accurately reflect the public record, this representation is my own

Saint Louis County

Public Works Department • Richard H. Hansen Transportation & Public Works Complex
4787 Midway Road, Duluth, MN 55811 • Phone: (218) 625-3830

James T. Foldesi, P.E.
Public Works Director/
Highway Engineer

July 14, 2016

Environmental Quality Board
Attn: Mandatory Category Rulemaking
520 Lafayette Road North
St. Paul, MN 55155

Subject: St. Louis County Comments on EQB Mandatory Categories Rulemaking Preliminary Rules

The St. Louis County Public Works Department (SLC PW) respectfully submits the following comments on the preliminary rule revisions to EQB Mandatory Categories rules (Minn. R. 4410.0200, 4410.4300, 4410.4400 and 4410.4600).

As part of our responsibility for maintaining over 3,000 miles of county roads and bridges, the SLC PW complies with EQB rules along with several other environmental regulatory programs. As St. Louis County and other road authorities around the country strive to repair or replace this nation's aging infrastructure, the number of projects and associated environmental review and permitting will continue to grow, underscoring the need for, and benefit of, looking for opportunities to maximize the efficiency of the environmental review and permitting process.

The SLC PW is supportive of the following proposed changes:

Mn Rule Chapter 4410.0200 Definitions

Proposed changes to the definitions, including the addition of a definition for "Auxiliary Lane" to support the proposed changes in the Mandatory EAW Categories.

Mn Rule Chapter 4410.4300 Mandatory EAW Categories

Subpart 22, Item B: An EAW is required "For construction of additional ~~travel~~ through lanes or passing lane(s) on an existing road for a length of two or more miles". This is a prudent change from the current rule of one mile.

Mn Rule Chapter 4410.4600 Exemptions

Subpart 14, Item C: "Modernization of an existing roadway or bridge by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders or adding auxiliary lanes that may involve the acquisition of minimal amounts of right-of-way is exempt." This rule has been changed by adding "reconstruction, adding shoulders or adding auxiliary lanes".

The SLC PW supports these language changes as a way to improve environmental review efficiency.

In addition, SLC PW supports that EQB is not proposing mandatory category changes that would pull significantly more projects into the environmental review process than existing rules. I believe this is justified, given that our projects are developed in coordination with regulatory agencies, stakeholders, and the public through engagement during the project development process. County highway projects are still subject to all of the requirements of applicable federal, state, regional and local laws and rules pertaining potential impacts and mitigation, regardless of the environmental review path taken.

In particular I was pleased to see that the preliminary rules published for comment June 17, 2016 make no revisions to the mandatory EAW thresholds for impacts to public waters, public water wetlands and wetlands as set out in 4410.4300 Supb. 27.

I would also like to point out the following difference between how EQB rule revisions affect Counties versus their impact on MnDOT for your consideration in this and future rule revisions. Mn/DOT prepares all projects as if they are federal, so they are doing project memos, environmental assessments, EAWs and EISs as appropriate for every project according to FHWA. For local road agencies such as St. Louis County, most projects are not federal projects. EQB rule changes impacting, for example, mandatory EAW thresholds, could require us to do EAWs for non-federal projects that we were not required to do in the past, therefor having a greater impact on local road authorities than on Mn/DOT.

I would also like to express appreciation to EQB staff for reaching out to counties and other road authorities early in this rule revision process.

If you have any questions regarding our input, please do not hesitate to contact me at (218)625-3840 or e-mail foldesij@stlouiscountymn.gov.

Sincerely,

James T. Foldesi, P.E.

Public Works Director/Highway Engineer

Cc: Carol Andrews, P.E., Environmental Project Manager, SLC PW

Internal Memorandum

DATE: August 3, 2016

TO: Courtney Ahlers-Nelson, EQB Staff
Erik Dahl, EQB Staff

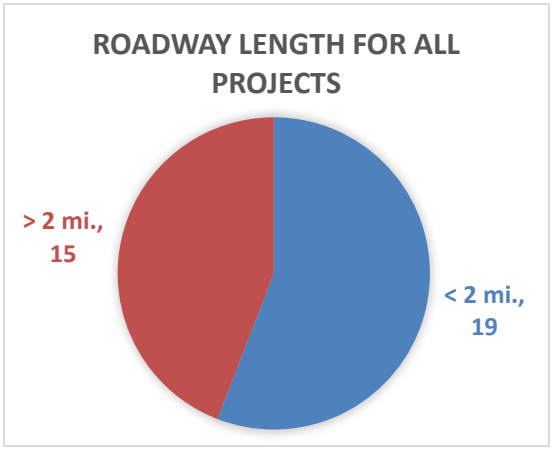
FROM: LisaBeth Barajas, Local Planning Assistance Manager, Metropolitan Council

CC: Adam Duininck, Chair, Metropolitan Council
Wes Kooistra, Regional Administrator, Metropolitan Council
Beth Reetz, Community Development Director, Metropolitan Council
Amy Vennewitz, Metropolitan Transportation Services Deputy Director, Metropolitan Council
Scott McBride, MnDOT Metro District
Pat Bursaw, MnDOT Metro District

SUBJECT: Proposed Change to the Highways Threshold for EAWs – Metropolitan Council Data

After our last meeting in June, Council staff has reviewed its data on environmental reviews that met the mandatory threshold for highway expansions under Minn. Rules 4410.4300, Subp. 22. The Council started with environmental reviews in 2010 as this is when our electronic database is complete. If it is wished, the Council can review further back in our paper records.

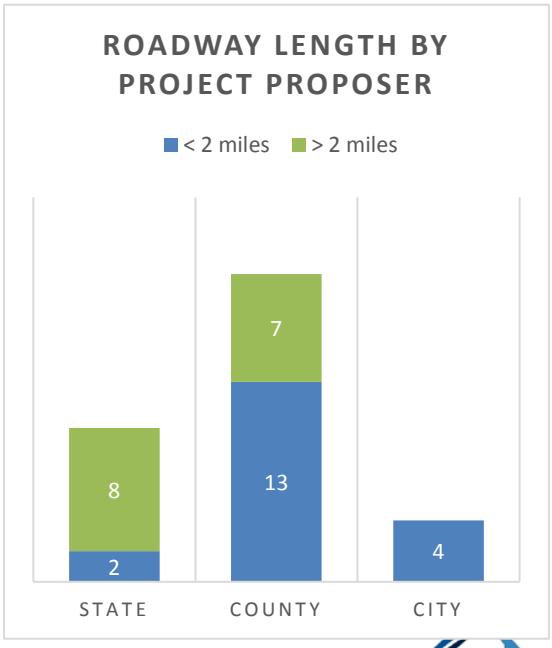
As a baseline, in the 7-county metro area, there were 34 projects since 2010 that met the mandatory threshold of 1 mile under this section of Minn. Rules. Just over half of the proposed projects (19) were less than 2 miles in length.



Project Length

Broken down by project proposer, as shown on the chart on the lower right, we find the following:

- Metro area counties proposed the most number of projects
- All of the **county projects** greater than 2 miles were environmental assessments (EAs); all those less than 2 miles were EAWs
- The **state's projects** were largely over 2 miles in length all of which were subject to federal environmental review, with only 2 EAWs being prepared for those less than 2 miles in length
- All of the **city projects** were less than 2 miles and were EAWs



The result of increasing the highway threshold from 1 to 2 miles means that, in the last 7 years:

- the State would not have prepared 2 EAWs

METROPOLITAN COUNCIL

- Counties would not have prepared 13 EAWs (more than half of their projects)
- Cities would not have prepared any EAWs
- 19 of the 34 projects would not have been subject to any environmental review (56%)

The change in the threshold from 1 to 2 miles, if it started in 2010, would mean that all locally funded projects would not have undergone any sort of environmental review. Only projects with federal funds would have undergone environmental review.

Project Components

As noted in previous conversations and in correspondence, the Council is concerned about the impact of the proposed threshold change in the increasingly urban metro area. Data regarding the project characteristics for the 34 environmental reviews that were prepared under this threshold show that half of these projects are rural-to-urban section conversions. In other words, a rural 2-lane roadway section is converted to a curb and gutter urban section with the addition of anywhere from 1 to 3 lanes. A majority of the metro projects also include bicycle and/or pedestrian improvements such as sidewalks and trails. A third of the projects specifically indicate that the intent is to address stormwater issues or existing drainage issues.

Project Components

Components	Number of Projects	Percent of Total Projects
Rural-to-Urban Section Conversion	17	50%
Bike/Ped improvements	20	59%
Bridge work	8	24%
Stormwater / drainage	11	32%
Interchange	2	6%
Reconfiguration/reconstruction	4	12%
Intersection improvements	4	12%
MnPASS / Transit	4	12%
Lane additions	7	21%
Road extensions	2	6%

Only 7 of the metro projects included additions of lanes to an already urban roadway: this includes turn lanes, auxiliary lanes, and through lanes (as described in the text of the environmental review document). Many of these projects contained other project components, such as bridge work and drainage.

Council Comments on Projects

At our last meeting, Council staff had preliminary data on the topic areas covered in the Council's environmental review comments. As discussed at the meeting, the Council has further analyzed the data to categorize those comments among three categories: Design-related, Systems-related, and general Coordination. Many reviews included comments in more than one category, while only 3 reviews had no comments from the Council.

MC Comments*

Type	Number of Projects	Percent of Total Projects
Design	20	59%
System	9	26%
Coordination	16	47%
No comments	3	9%

* Many projects contain more than one type of comment (ex. Design and System)

The Council's statutory responsibility is to guide the orderly and economic development of the region (public and private) of the metropolitan area (Minn. Stats. 473.145 and 473.851), with specific oversight over the regional systems including the wastewater, transportation (including transit and aviation), and parks and open space; and further responsibilities for water supply, and water quality, and land use. In that frame, the Council's comments

are meant to protect the regional systems first, reduce temporary impacts to those systems (like during construction), review for consistency with regional policies (land use, housing, natural resources, water resources, transportation, climate resilience, and economic competitiveness), improve the overall project, and ensure that intergovernmental coordination takes place where applicable or appropriate.

Conclusion

Given the impact demonstrated to the projects in the metropolitan area by the proposed change, the Council continues to oppose the proposed threshold change from 1 to 2 miles for projects under Minn. Rules 4410.4300, Subp. 22. As noted above, this change would have resulted in more than half of the projects avoiding any environmental review evaluation with the majority of those projects proposed by counties and cities. In addition, this change would have the effect of relying entirely on federal standards for environmental review (only federally funded projects were greater than 2 miles in length), standards over which Minnesota does not have control, are changeable, and may not always be effective for Minnesota's environmental landscape.

Because of the increasingly urban nature of the metropolitan area, and the Metropolitan Council's responsibilities to ensure the orderly and economical development of the region, it is imperative that the proposed threshold not be applied in the metropolitan area.

From: pop3.arvig.net
To: Seuffert, Will (MPCA); Ahlers-Nelson, Courtney (MPCA)
Subject: Alternative Environmental Review for Pipelines
Date: Thursday, July 14, 2016 2:09:25 PM

Will and Courtney,
My previous comments and request for RGU change for pipeline projects included my strong recommendations that the special EQB authorization for “alternative review” be withdrawn as a part of the current rule making and revision. I wish to formally reaffirm that request with this email.

This change in EQB rules would be consistent with the Appeals Court (and as affirmed by the Supreme Court) pipelines should undergo full EIS rather than alternative review.

Furthermore, citizens and agency experience with alternative review as applied to pipeline found serious shortcomings in citizen participation, peer review, responsiveness to comments, interagency (local, state and federal) totally inadequate and not in the public interest. Consistency between pipeline routing and Certificates of Need would be well served if EQB rules required a mandatory EIS. See my documentation supporting my RGU change request for details and specific short-comings of this alternative review.

This change would also avoid the temptation and/or opportunity for pipeline companies to manipulate the review process by advancing routing permits ahead of Certificate of Need review in an attempt to circumvent the full process.

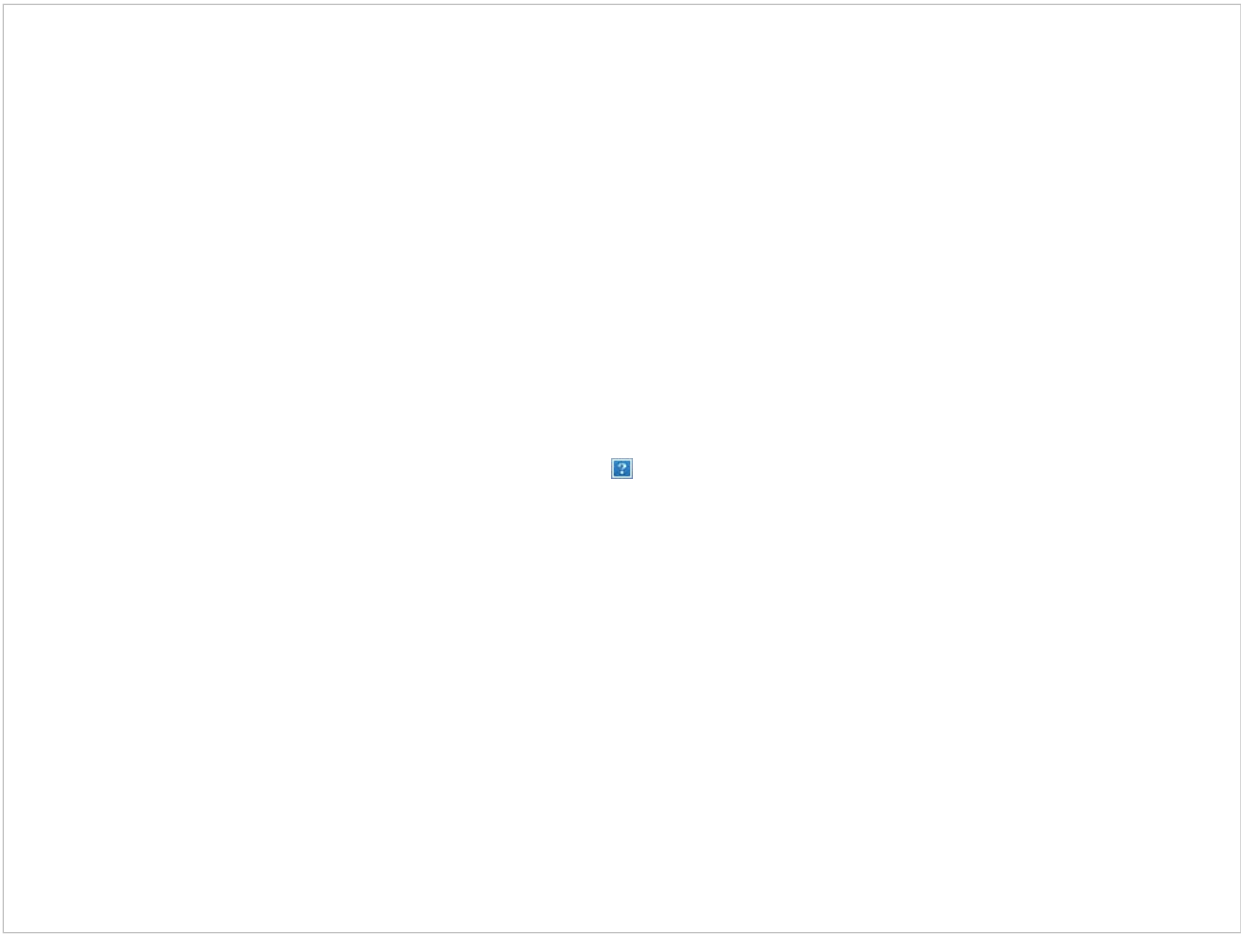
Thank you for considering my comments.
Willis

From: pop3.arvig.net
To: Seuffert, Will (MPCA)
Cc: Ahlers-Nelson, Courtney (MPCA)
Subject: RE: EQB Rules Revision
Date: Saturday, July 16, 2016 11:28:32 PM
Attachments: image001.jpg

Thanks Will,
I have indeed gotten in some boat time and fishing in since we spoke last. Here is a photo of my daughter Lori and my oldest grandson Corey with some Red Lake Walleyes that we ate that evening.

I'll will want to talk w/ you or Courtney sometime next week before the end of the comment period on rule changes. I would like to speak to either of you about the need to add an additional category of mandatory EIS for pipeline and other fossil fuel related facility abandonment issues.

New pipeline projects can (and hopefully will pending outcome of the current EIS scoping process) include abandonment issues in environmental review before permitting but as we emerge from the fossil fuel era, more and more pipelines will be abandoned, possibly without positive revenue flows sufficient to cover removal of the pipe and cleanup of any previously undiscovered leaks or spills. This would be quite a new twist for ER rules and MEPA since it would not be triggered by permitting. I would like to discuss the need for any legislation that might be necessary to sweep these (and any other fossil fuel related infrastructure that could face abandonment, not unlike coal mines. It could include coal fired power plants and on-site coal and coal ash storage or disposal sites.
Willis



From: Seuffert, Will (MPCA) [mailto:Will.Seuffert@state.mn.us]
Sent: Friday, July 15, 2016 9:30 AM
To: pop3.arvig.net; Ahlers-Nelson, Courtney (MPCA)
Subject: RE: EQB Rules Revision

Hi Willis-
We received both of your emails/comments. Courtney is out today but will get back to you next week if she has any questions. Hopefully you are getting out on the water and doing a little fishing this summer.
Enjoy the weekend.
Will

From: pop3.arvig.net [mailto:mattison@arvig.net]
Sent: Thursday, July 14, 2016 11:27 AM
To: Seuffert, Will (MPCA); Ahlers-Nelson, Courtney (MPCA)
Subject: EQB Rules Revision

Dear Will and Courtney,

Time will not allow me to reiterate my concerns and requests for RGU change with regard to crude oil pipelines in your current pubic comment period. However, as you may recall, I did request that my entire request for change in RGU assignment for the Sandpiper and Line 3 projects along with all supporting materials submitted with that request be entered as public comment on the current EQB rule changes.

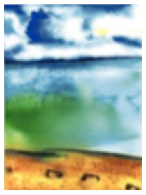
Please consider my specific request for RGU change as my general request for change in EQB environmental review rules to the same effect for the same reasons provided.

Please confirm that you are both willing and able to consider my requests as applicable and in appropriate form for consideration in your rule revisions.

Thank you,

Willis Mattison

This email has been checked for viruses by Avast antivirus software.
www.avast.com



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August 8, 2016

Courtney Ahlers-Nelson, Planning Director (courtney.ahlers@state.mn.us)
Members of the Minnesota Environmental Review Environmental Quality Board
520 Lafayette Road North
St. Paul, MN 55155

Re: Comments on the Minnesota Rule Ch. 4410 "Mandatory Categories" Rulemaking

Dear Ms. Ahlers-Nelson, Board Members,

I'm submitting the comments below as an individual, although the perspectives of current and former clients inform my comments. For the past thirty-five years, I've practiced public interest law in Minnesota in a variety of capacities. During the past twenty-one years, I've represented state and national environmental groups, individuals, grassroots citizens' groups, organic farms, renewable energy businesses and local governments. My work has focused on protecting environmental resources, environmental health and environmental justice.

In my experience, the disparity in resources between citizens and groups seeking to protect environmental resources, health and justice and those seeking to develop projects that could threaten these values is significant, and ever increasing. Through the course of my legal career, I've also seen the role of the Minnesota Pollution Control Agency (MPCA) and the Minnesota Environmental Quality Board (EQB) change.

Rather than being defenders of environmental quality, the agencies at best seem to consider themselves arbiters between the interests of the putative regulated parties and the citizens or organizations defending the environment. Environmental review and citizen accountability are in short supply. The MEQB has struggled for its very survival, and the MPCA, designed to have a citizen board independent of legislative pressure, no longer has that board. State agencies often exercise their discretion to deny environmental review or limit its scope. Citizen concerns about human health, climate change and cumulative impacts of projects are the most obvious casualties of this discretion.

This context increases my concern about the EQB's proposed changes to Mandatory Categories for Minnesota Rules Chapter 4410 to implement environmental review under the Minnesota Environmental Policy Act (MEPA). The proposed rule amendments appear to be designed to increase convenience for responsible governmental units (RGUs), not to enhance protection of Minnesota's natural resources, health or accountability to citizens. Proposed rules have yet to be analyzed in terms of the impacts their adoption could have on these resources and values.

1. Analyze and document the effects of the proposed Mandatory Categories amendments on disclosure, avoidance, minimization and mitigation of environmental impacts.

My first recommendation is that EQB engage in a comprehensive re-evaluation of the proposed Mandatory Categories rulemaking from the perspective of environmental protection under MEPA.

Based on the documents and explanations of the proposed Mandatory Categories rule amendments thus far, it seems that much of the agencies' analysis has been in terms of the convenience to project proponents. For example, the MPCA's March 2015 comment "Environmental Review SONAR

Justification for EQB Rule Revisions" supports eliminating environmental impact statement (EIS) requirements for certain solid waste facilities as follows: "It is not cost effective to require proposers to go through the EIS process. . .The MPCA does not believe the cost, both in time and dollars, justifies the additional review."

Another theme used to justify the proposed rules is the scope of permits. The EQB's proposed rule "discussion" for Minnesota Rule 4410.4300, Subp. 15 and the MPCA's March 2016 "Justification for Deleting GHG Mandatory Category" both assume that it is appropriate to "align" environmental review with the scope of permitting. If knowledge of environmental impacts cannot result in permit denial under an existing statute, it is implicitly argued that Minnesotans are better off not knowing the harm that a proposed permit will cause to their health, resources or climate.

MEPA defines a broader purpose for disclosure and analysis of environmental effects. These purposes include "to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of human beings" and "to enrich the understanding of the ecological systems and natural resources important to the state and to the nation." Minn. Stat. §116D.01.

Under MEPA, "Where there is potential for significant environmental effects resulting from any major governmental action, the action shall be preceded by a detailed environmental impact statement prepared by the responsible governmental unit." That EIS "describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated." Minn. Stat. §116.02, Subd. 2a.

The existence of a threshold for environmental review may, in itself, improve environmental decision-making. Project proponents may select appropriate alternatives in size, location or technology to avoid triggering environmental review requirements. Public engagement during the environmental review process may also result in avoidance, minimization or mitigation of adverse impacts.

Environmental review also serves to inform communities about impacts to health and natural resources and may influence both public and private decisions. Awareness of the air quality impacts of a proposed project may influence private decisions to buy or sell property nearby, particularly for families with health concerns, or may result in local changes to zoning laws. Disclosure of greenhouse gas impacts of projects may cause changes in consumer behavior or mobilize communities to seek changes in regulations or policies to support more sustainable technologies.

Metropolitan Council comments on the proposed rules argue that neither the paucity of EISs nor the low level of public input should be used to remove EAW thresholds.[1] Based on my experience, I would emphasize that reducing the already limited scope of environmental review could fortify a negative feedback loop, rendering citizens less informed, less empowered and less effective to avoid, minimize and mitigate adverse impacts to their health and environment. That result is inconsistent with MEPA and with the public interest.

Recommended Actions:

- Analyze and identify for each proposed rule change for what projects (size, type, location) an EAW or an EIS would no longer be required or the project would be exempted from environmental review.[2]

[1] The May 3, 2016 Metropolitan Council comment notes, "the value of the environmental review process is not predicated on past controversy or level of public input, but rather on disclosure of potential impacts."
[2] This analysis and a record of effected environmental issues should be provided even if EQB believes that a rule amendment is required under recent legislation, such as the proposed changes to Minn. R. 4410.4300, Subp. 37.

- Describe the types of environmental effects potentially resulting from the affected projects, including but not limited to effects on air, water, wetlands, wildlife, health and greenhouse gas emissions.
- Engage input from non-profit groups concerned about environmental effects, citizens who have participated in prior environmental review and local government units, such as watershed districts, that are specifically concerned with environmental quality.
- Revise proposed rules based on the above analysis and input, including in any discussion an explicit environmental protection and public interest analysis.

2. Specific provisions of the proposed Mandatory Categories rulemaking amendments should be revised or rejected.

A. Retain differential threshold for EAW and EIS in smaller cities. (Minn. R. 4410.4300, Subp. 14, Minn. R. 4410.4400, Subp. 11)

The Mandatory Categories rule amendments propose to raises both the mandatory EAW and the mandatory EIS threshold for new or expanded commercial or industrial facilities for every type of facility in every city in Minnesota that is smaller than Minneapolis, St. Paul, Duluth or Rochester and in all rural areas. Under existing rules, for cities with a population of less than 100,000, the triggers for both an EAW and an EIS depend on the scale of the project as compared with the size of the city. Under the proposed amendments, the least stringent trigger, designed to apply to large metropolitan areas, would be arbitrarily used as the threshold for environmental review of projects in small cities, towns and unincorporated areas.

My service on the St. Paul City Council and work representing citizens in rural areas, large and small cities confirms simple common sense. The impact of a new or expanding commercial, industrial or institutional facility is different in a small city or in an unincorporated rural area. Positive economic effects may be greater, natural resources may be more significantly impacted, or stresses on socioeconomic and traffic systems may be greater. Unlike a first class city, where there is ample experience with large facilities, zoning laws may not have contemplated the type or scale of the facility and may be insufficient to minimize or mitigate its impacts. Applying a 600,000 square foot EAW threshold and a 1,500,000 square foot EIS threshold in smaller communities will give citizens and neighbors less information about the planned facility and reduce the likelihood that projects will be planned and executed to minimize negative impacts and enhance positive ones.

The EQB discussion justifies the proposed change citing "concerns" with a variable threshold based on city size. However, the record is devoid of any discussion of the views of citizens or potential neighbors of such facilities for which EAWs and EISs would no longer be required. The only recent argument supporting this change is from WSB, an entity that works for RGUs (cities) "mainly in the greater Twin Cities metro area."[3] No analysis of the impacts of this proposed amendment on natural resources has been provided.

Recommendation: EQB should retain existing differential mandatory EAW and EIS thresholds for smaller cities, towns and rural areas in Minn. R. 4410.4300, Subp. 14 and Minn. R. 4410.4400, Subp. 11.

B. Reduce greenhouse gas emissions threshold for mandatory EAW. (Minn. R. 4410.4300, Subp. 15.)

In 2011, when the existing threshold for an EAW related to greenhouse gas emissions was proposed, many citizens and environmental advocates argued that the limit for environmental review should be far lower than the 100,000 proposed as "consistent" with the federal proposed

[3] Comment of WSB, June 29, 2016.

permit requirement.

In February 2011, I commented that the appropriate threshold for state environmental review should be based on Minnesota's policy to reduce Greenhouse Gas (GHG) Emissions in Minnesota Statutes Chapter 216H, subdivision 2. I argued that an EAW should be required for any project that would produce 10,000 tons per year level of GHG emissions. Whether or not these emissions required a permit, disclosure could result in community advocacy and negotiations to reduce or offset the carbon footprint of a project.

In 2012, the Minnesota Department of Health published a report*, Incorporating Health and Climate Change into the Minnesota Environmental Assessment Worksheet*,[4] supporting analysis of climate change in environmental review. The MDH suggested that a project proponent should describe "any efforts it is taking to mitigate [GHG] emissions or adapt to the potential impacts of climate change." (*Id*., p. 24) Descriptions of GHG review in other states noted that assessments asked for an identification of sources and types of GHG emissions, whether a project generated GHG emissions that could have a significant direct or indirect impact on the environment, whether the project requires substantial energy consumption, and whether the project would conflict with an applicable plan or policy to reduce GHG emissions. (*Id.*, pp. 30-31, 36)

It is undisputed that federal regulations of air pollutants provide a floor, not a ceiling, for state authority to regulate pollution. The U.S. Supreme Court decision on the EPA's tailoring rule is inapplicable to limit any aspect of state authority. Disclosure and analysis of GHG emissions is needed to mitigate climate change impacts, alert the public about environmental choices and to support Minnesota policy enacted into statute.

Recommendation: Minnesota Rule 4410.4300, Subp. 15, Item B should be retained and the threshold to trigger an EAW should be reduced to 10,000 tons per year of GHG emissions.

C. Reject change in hazardous waste EAW threshold that would allow reduced scrutiny of toxic waste storage and processing. (Minn. R. 4410.4300, Subp. 16).

The need for an analysis of the environmental consequences of the proposed rule change is particularly acute when reduced scrutiny is proposed for generation, storage and processing of hazardous waste -- that is by definition toxic and dangerous. The "discussion" by EQB staff of endorses the change in mandatory EAW thresholds in Minn. R. 4410.4300, Subp. 16 on the basis of "clarification and consistency" without explaining the circumstances under which a hazardous waste facility that would currently require an EAW could evade environmental review.

Current rules require an EAW for a hazardous waste facility with the capacity to generate or receive 1,000 kilograms or more per month of hazardous wastes.

Should the change in EAW thresholds be enacted, only hazardous waste facilities with the *permitted* capacity of 1,000 kilograms or more per month would require an EAW. Under the proposed change, if a facility were to *actually* generate or receive 999 kilograms or less per month of toxic waste, it would not require review even if its capacity far exceeded 1,000 kilograms. In addition, that facility could also expand capacity (potentially multiple times) without any EAW, so long as each expansion was less than 10 percent.

Recommendation: EQB should retain existing EAW thresholds for hazardous wastes in Minn. R. 4410.4300, Subp. 16. Any changes in language must preserve or make more stringent EAW requirements for toxic waste generation, storage and processing.

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[4] MDH, *Incorporating Health and Climate Change into the Minnesota Environmental Assessment Worksheet,* September 2012, available at http://www.health.state.mn.us/topics/places/docs/eawreport.pdf.

D. Reject changes in EAW and EIS threshold pertaining to solid waste landfills and garbage burners (Minn. R. 4410.4300, Subp. 17; 4410.4400, Subp. 13).

The proposed rule amendments to trigger an EAW in Minn. R. 4410.4300, Subp. 17 would no longer evaluate cubic yards of "waste fill" to determine whether an EAW is required for a mixed municipal solid waste facility, but would use "air space" to set the threshold. Although the EQB discussion states that this is the "current solid waste permit technology," there is no discussion of the effect of compaction on the quantity of potentially polluting waste that could be landfilled without EAW review under the proposed definition of landfill size.

The difference between "waste fill" and "air space" and the need to know the volume of solid waste as well as the air space it occupies becomes clear with even a cursory review of industry compaction practices to increase landfill profitability. A representative explanation:

> The business of landfills is air, selling empty space to be filled with solid waste, and in this industry not all air is equal. . . It all comes down to compaction. Volume may be fixed, but density is not, and the more solid waste you can fit into a given volume, the more valuable that space is. That is why it is absolutely necessary to have an accurate and reliable way of tracking the change in the volume of solid waste before and after compaction.[5]

If an EAW were no longer required based on waste volume, a solid waste disposal facility could use compaction to avoid environmental review even as more and more solid waste is landfilled.

In addition to the proposed rule amendment to allow a larger volume of waste before an EAW is triggered, the EQB rule would only trigger an EAW for a solid waste landfill or garbage burner based on "permitted" capacity. As with the hazardous waste rule change proposed above, this rule amendment would allow a solid waste landfill or garbage burner to avoid an EAW for construction of a large capacity waste landfill or burner, so long as the permit when the facility opens falls below the 100,000 cubic yard threshold.

Even if an expansion could still trigger an EAW, it must be recognized that once a 100,000 cubic yard capacity waste landfill or garbage burner has been constructed there are fewer options to avoid, minimize or mitigate impacts from the facility on air quality and water quality and on human health.

The dramatic proposed changes in mandatory EIS requirements for solid waste landfills and burners in Minn. R. 4410.4400, Subp. 13 are not immediately evident, since the rule cross-references permit language and the discussion provides no explanation of the proposed changes other than to say that language is being brought "up to date." Both the proposed rule changes and the lack of analysis provided to the public conflict with the purpose and intent of MEPA.

Under current rules, an EIS is required for construction of a solid waste landfill of 100,000 cubic yards or more and for a 25% percent expansion of such a large landfill. An EIS is also required for construction, expansion or re-use for garbage or refuse-derived-fuel (RDF) of an incinerator with a capacity of 250 tons per day of waste input. Finally, an EIS is required for a compost or RDF production facility with a capacity of 500 tons per day of waste.

The proposed rule amendment to Minn. R. 4410.4400, Subp. 13 would *eliminate the EIS requirement for construction of a solid waste landfill* unless the landfill were located in a water-related land use management district or in an area with soluble bedrock. No landfill expansions would require an EIS no matter their location.

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[5] Firmatek website, Compaction and Airspace: The Keys to Landfill Profitability, June 15, 2011 available at http://firmatek.com/compaction-and-airspace-the-keys-to-landfill-profitability-2/.

As with the EAW triggers, the EIS requirement for garbage burners, RDF burners, composting facilities and RDF production facilities would be based on permitted size, not actual capacity, allowing a facility to evade an EIS at the time of construction. However, unlike the EAW trigger, there would be no requirement for an EIS no matter how much the permitted capacity of a garbage burner were to expand. In simple terms, a proponent could build a new garbage burner with 300 or even 500 tons per day of capacity without an EIS if the permit allowed just 249 tons per day of combustion. Once the burner was built, the owner could increase the permitted capacity without ever triggering a mandatory EIS.

The potential impacts of solid waste landfills and composting on water quality, odor and air emissions and the serious adverse air quality, health and environmental justice impacts associated with garbage combustion are well-known. MEPA also specifically declares a state responsibility to "reduce wasteful practices which generate solid wastes," and recycle materials "to conserve both materials and energy." Minn. Stat. §116D.02, Subd. 2. The lack of environmental analysis of reduction in environmental review of landfills, RDF facilities and garbage burners that could result from the proposed rules is very troubling.

Recommendation: EQB should make none of the amendments for solid waste landfills and garbage burners proposed for Minn. R. 4410.4300, Subp. 17 or Minn. R. 4410.4300, Subp. 13. All changes that reduce environmental review of waste disposal and combustion should be rejected.

E. Reject change that would allow clearcutting of forests near lakes and rivers without an EAW. (Minn. R. 4410.4300, Subp. 28).

The proposed amendment for Minn. R. 4410.4300. Subp. 28 would eliminate the requirement for an EAW when 80 or more acres of contiguous forest are clearcut, affecting a shoreline area within 100 feet of lakes or rivers.

The rationalization provided in the discussion of this proposal is as follows: "The development of the Forestry Generic Environmental Impact Statement has prevented this category from being used." However, no evidence supports this assertion. It is also quite possible that the mandatory EAW requirement has reduced clearcutting near the shorelines of lakes and rivers, so that this category need not be applied.

More fundamentally, the purpose and structure of a generic EIS neither prevents nor reduces the need for individualized consideration of the impacts of specific forest clearcuts affecting shorelines. Minnesota rules pertaining to a generic EIS could not be more specific:

> **Subp. 8. Relationship to project-specific review**. Preparation of a generic EIS does not exempt specific activities from project-specific environmental review. Minn. R. 4410.3800.

Reference to Minnesota Forestry Generic EIS is a red herring. There is no justification for removing the mandatory EAW requirement when 80 or more acres off contiguous forest are proposed for clearcutting near the shore of a Minnesota lake or river. The potential impact of this proposed rule change must be carefully analyzed in terms of environmental impacts to forests, lakes, rivers, habitats and the property values of riparian property owners. This analysis should also take into consideration various recent proposals for forest destruction, including but not limited to those in the Pineland Sands area.

Recommendation: Reject change that would remove mandatory EAW for clearcutting of 80 acres of more of contiguous forest affecting shoreline areas under Minn. R. 4410.4300, Subp. 28.

F. Reject changes that would eliminate mandatory EAW for projects encroaching on national parks, state parks, wilderness, or BWCA or destroying state trails. (Minn. R. 4410.4300, Subp. 30).

The proposed Mandatory Categories amendment to Minn. R. 4410.4300, Subp. 30 would eliminate the requirement for an EAW when a project encroaches on national parks, state parks, wilderness, the Boundary Waters Canoe Area or scientific and natural areas (SNA) unless that land is "permanently" converted. The rule change would also remove the requirement that an EAW be prepared when state trail corridors are affected, event if they are permanently destroyed.

The rationale provided for these changes is inadequate and untenable. No justification at all is provided for eliminating environmental review for state trail corridors, even if a project permanently destroys all or part of a state trail.

The record contains no environmental analysis of the difference between "physical encroachment" and "permanent" conversion. Based on decades practicing environmental law, I'm concerned that the number of situations where it could be proved that conversion of park or wilderness resources was "permanent" are circumscribed. Even for non-ferrous mines that destroy hundreds of acres of wildlife habitats and wetlands, reclamation plans often claim that resources will eventually be restored.[6]

The only explanation given for deleting "physical encroachment" is that "no definition was ever developed." This rationale is nonsense. These terms are plain English used in hundreds of Minnesota cases, ordinances and public laws, many of which pertain to compensation of private parties. Should provision of a definition of "physical encroachment" be desirable, such definition for use in environmental review could be readily derived.

In an issue area where there are so many known and obvious stakeholders (e.g. Friends of the Boundary Waters Wilderness, Voyageurs National Park Association, Northeastern Minnesotans for Wilderness, Campaign to Save the Boundary Waters, Sierra Club North Star Chapter, WaterLegacy) the lack of their engagement is particularly troubling.

Recommendation: Retain all existing EAW thresholds based on physical encroachment on national parks, state parks, wilderness, the BWCA, SNAs and state trails in Minn. R. 4410.4300, Subp. 30.

G. Analyze environmental impacts of removing EAW requirements and reject exemption from environmental review for recreational trails. (Minn. R. 4410.4300, Subp. 37, Minn. R. 4410.4600, Subp. 27)

The EQB may not have the discretion to retain a mandatory EAW for trail construction between ten and 25 miles or for adding motorized uses to existing motorized trails. The discussion justifying proposed amendments to Minn. R. 4410.4300, Subp. 37 cites a 2015 Minnesota Session law that seems to require these changes.[7]

However, there is no session law requiring that the rulemaking process be a fact-free environment. Even if EQB staff must propose an amendment to narrow mandatory EAWs for motorized use of trails, that does not eliminate the need for an environmental analysis of the consequences of this rule. Constructing a trail up to 24 miles long in sensitive forest or wetlands areas may have adverse environmental impacts, and converting a snowmobile trail to all-terrain-vehicle use on non-frozen

[6] It is claimed, for example, that restoration of the PolyMet NorthMet copper-nickel mine site would potentially create lynx habitat, although this successional process could take decades. PolyMet Final EIS, pp. 5-433, 5-435.
[7] Minn. Laws 2015, Ch. 4, section 33.

ground may adversely impact wetlands, water quality, seasonal wildlife and quietude. These consequences should be explained.

More troubling, there is no statutory requirement to *exempt* any recreational trails from all environmental review, including a discretionary EAW. The EQB's proposed exemptions for paving any trail of any length located on an abandoned railroad grade and for adding a new motorized use to any trail segment of any length located on an abandoned railroad grade (Minn. R. 4410.4600, Subp. 27, Items G and H) could result in adverse impacts to wetlands, water quality, wildlife and quietude. No justification is provided for this wholesale exemption from environmental review other than to say these new exemptions are an "Insertion for greater clarity."

Recommendation: Provide a rigorous analysis of the environmental consequences of eliminating mandatory EAWs for recreational trails in proposed amendments to Minn. R. 4410.4300, Subp. 37. Reject exemptions from environmental review of trail paving and adding motorized use to trails proposed in amendments to Minn. R. 4410.4600, Subp. 27

H. Reject deletion of mandatory EIS for radioactive deposits. (Minn. R. 4410.4400, Subp. 8)

The EQB has proposed to remove the requirement in Minn. R., 4410.4400, Subp. 8 that there be a mandatory EIS for evaluation for extraction of 1,000 tons of more of radioactive material, such as uranium. The justification provided for deletion is that the provision has not been used "due to the lack of deposits in the state with radioactive characteristics."

Although it may be true that this provision has not been used, no evidence is provided to support the assertion that there are *no* mineral deposits in the state with radioactive characteristics. A brief search online disclosed a geology text and scientific literature contradicting the assumption that there are no uranium deposits in Minnesota for which future environmental review might provide analysis and protection from environmental harm. Two such references are excerpted below:

> Pegmatites in the Lower Precambrian units of northern Minnesota could contain uranium minerals; some with abnormally high radioactivity are present in Minnesota's Northwest Angle. The metamorphic migmatite terrane west of the Vermillion Batholith in Northern Minnesota appears to be similar to, but older than, rocks in Southwest Africa that contain low-grade but large uranium deposits; some rock exposures in the Big Falls area have radioactivity levels many times greater than dot the numerous quartz veins of the area.[8]

> Exploration for unconformity-type uranium deposits in the late 1970s in east-central Minnesota led to the discovery of several uranium-bearing phosphorite occurrences in rocks of early Proterozoic age.[9]

It has not been established that Minnesota lacks radioactive minerals. There is a significant environmental risk in removing the requirement for an EIS in the event that uranium deposits are confirmed and their evaluation is sought. There is no risk of any kind in retaining existing rules in place, given the uncertainty of these deposits.

Recommendation: Reject the proposed deletion of the EIS requirement for radioactive mineral deposits in Minn. R. 4410.4400, Subp. 8.

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[8] Richard W. Ojakangas, *Minnesota's Geology*, Univ. of Minnesota Press, 1982, pp. 146-147 (chapter cross-references omitted).

[9] McSwiggen et al., "Uranium in Early Proterozoic Phosphate-Rich Metasedimentary Rocks of East-Central Minnesota," *Economic Geology*, Vol. 111, No. 6, pp. 173-183.

I. Reject exemptions from environmental review for adding roadway lanes. (Minn. R. 4410.4600. Subp. 14).

The EQB staff received comments from the Metropolitan Council opposing the Minnesota Department of Transportation (MnDOT) request to exempt addition of auxiliary lanes to highways from all environmental review. The Metropolitan Council stated,

> [E]xcluding auxiliary lanes regardless of length from the environmental review process opens to the door to a wide variety of unexamined freeway expansions. Removing auxiliary lanes from review might simplify the process for the RGU, but it undermines the purpose of the environmental review process. As noted above, all of these projects in the metro area carry increasing complexity and potential for impacts, thereby justifying maintaining the existing threshold for this category.[10]

The EQB discussion provides no response to this comment and, in fact, no justification for exempting all additions of highway shoulders or auxiliary lanes from environmental review. Simplification of the process for the RGU cannot justify exemptions; if RGU convenience were the dominant concern, no environmental review would survive.

Recommendation: Reject amendment to Minn. R. 4410.4600, Subp. 14 to exempt addition of shoulders or auxiliary lanes to roadways or bridges from environmental review.

Conclusion

The EQB was designed to play an important role in safeguarding Minnesota's environment and ensuring Minnesota's progress toward a sustainable future. No doubt, this role becomes more challenging when the EQB has been under legislative attack and when the culture of state agencies favors the convenience of project proponents over environmental protection. In today's difficult circumstances, it becomes even more important for the EQB to restore the emphasis on the environmental consequences of rulemaking and to reject proposed amendments that would make avoidance, minimization and mitigation of environmental harm less likely.

My comments are motivated by concern that the proposed Mandatory Categories amendments reflect a harmful set of choices. It is my hope that these comments, along with the EQB's deliberate engagement of other groups and individuals concerned about environmental protection and public accountability, will lead to a more robust analysis and the rejection of many of the proposed amendments to Minnesota Rules Chapter 4410 that would neither protect the environment, inform the community, nor support the purposes of the Minnesota Environmental Policy Act.

Please don't hesitate to contact me at 651-646-8890 if you have questions or if there is any other way I can contribute to your analysis of environmental review rulemaking issues.

Sincerely yours,

Paula Goodman Maccabee

cc. Will Seuffert, EQB Executive Director (will.seuffert@state.mn.us)

[10] Metropolitan Council comments, *supra*, fn. 1.