

## REQUEST FOR COMMENTS

### **Possible Amendment to Rules Governing the Environmental Review Program, *Minnesota Rules*, chapter 4410, Adopting Mandatory Review and Exemption Categories for Recreational Trails**

**Subject of Rules.** The Minnesota Environmental Quality Board (EQB) is required by legislation passed in the 2003 legislative session to “adopt rules providing for threshold levels for environmental review for recreational trails.” These rules are to be adopted by January 1, 2005. The EQB hereby requests comments on its possible adoption of rules establishing thresholds at which mandatory Environmental Assessment Worksheets (EAWs) and mandatory Environmental Impact Statements (EISs) would be required for certain recreational trails, and also establishing thresholds below which certain recreational trails would be exempted from environmental review. The rules that establish thresholds for mandatory EAWs and EISs are commonly referred to as “mandatory categories” and those that establish thresholds for exemptions are commonly referred to as “exemption categories,” (or simply as “exemptions”). Mandatory and exemption categories are organized in the EQB’s rules according to type or class of project or activity. This proposed rulemaking would potentially add mandatory categories and exemption categories for various types of recreational trails. These categories could apply to private as well as public recreational trails (provided that private trails would only be subject to review if governmental approval or financial assistance was involved).

Currently, the environmental review rules do not contain any mandatory review or exemption categories that apply directly to recreational trails of any type. An EAW may be prepared on a discretionary basis by a unit of governmental for a recreational trail, and citizens may request preparation of an EAW by filing a citizens petition as authorized by the environmental review rules. If the EQB adopts mandatory review and exemption categories, review will become automatic for some trail projects, while discretionary review (including review initiated by citizen petition) will no longer be possible for some other projects. It is likely, however, that for most types of recreational trail projects, environmental review will neither become mandatory nor exempted through this rulemaking. For most of the classes of projects for which there now are mandatory review and exemption categories in the EQB’s rules, most of the projects within the class neither fit within the mandatory categories nor the exemption categories (and are therefore subject to discretionary review).

**Persons Affected.** Adoption of mandatory review and exemption categories for recreational trails would directly affect units of government and private organizations that establish and construct recreational trails. Some new or extended trails proposed by these entities would become subject to the review procedures of the environmental review process. These entities would bear the costs of preparing the review documents, and the design and schedule for establishment of the trails may be altered as a result of this process.

Individuals and groups that use recreational trails may be indirectly affected by the adoption of mandatory review and exemption categories for recreational trails in that the design of and schedule for establishment of new or extended trails may be altered as a result of this process.

The public will also be affected by adoption of mandatory review and exemption categories for recreational trails. For those new or extended trails for which an EAW or EIS would be made mandatory, the public would automatically be able to participate in the review of the potential environmental impacts of those trails through review of the EAW or EIS documents. However, for any trail projects for which exemptions are adopted, the public would no longer have the opportunity to seek discretionary environmental review through the filing of a citizens petition.

**Statutory Authority.** *Minnesota Statutes*, section 116D.04, subd. 2a (2) authorizes the EQB to adopt rules establishing mandatory review and exemption categories for various types of activities. The EQB is specifically directed to adopt such categories for recreational trails by Laws of Minnesota 2003, Chapter 128, Article 1, section 167, subd. 3 (enacted as Senate File 905 in the 2003 regular legislative session).

**Public Comment.** Interested persons or groups may submit comments or information on these possible rules in writing or orally until 4:30 p.m. on Wednesday, **October 1, 2003**.

The EQB is especially seeking information about the following topics:

- For which types of recreational trails should mandatory EAW, mandatory EIS, and exemption categories be established? Should some types of trails not be placed in any of these categories (and therefore remain subject to possible discretionary review on a case-by-case basis)?
- Could some types of trails be logically grouped together into the same categories due to similar environmental impacts?
- What criteria or parameters should the EQB use to establish thresholds for review and exemption categories – i.e., what criteria or parameters would be the best indicators of potential for environmental impacts?
- Specific proposals for mandatory EAW, mandatory EIS, or exemption categories.
- Sources of information that might help EQB in developing categories -- e.g., published studies on environmental impacts from types of recreational trails or classifications of trails developed by other states according to potential for environmental impacts.

After reviewing the comments received, the EQB will decide if it would be useful to hold public meetings to discuss the proposed rules and obtain additional comments. Also, the EQB may consider forming an advisory committee to discuss the proposed rules more formally, if it appears that forming an advisory committee would be useful.

**Rule Drafts.** The EQB has not yet prepared a draft of the possible rules. It is the EQB's intent to obtain input from interested persons and organizations prior to drafting rules. Once a rule draft has been completed it will be available upon request and will be posted at the EQB's website at: [www.eqb.state.mn.us/review.html](http://www.eqb.state.mn.us/review.html).

**Agency Contact Person.** Written or oral comments, questions, requests to receive a draft of rules when a draft has been completed, or requests for more information on these possible rules should be directed to:

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TTY users may call the Board at 800/627-3529.

**Alternative Format.** Upon request, this Request for Comments can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact the agency contact person at the address or telephone number listed above.

**Note:** Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submitted comments during the development of the rules and you want to ensure that the administrative law judge reviews the comments, you should resubmit the comments after the rules are formally proposed. The EQB presently anticipates that rules may be formally proposed in late 2003 or in 2004.

July 28, 2003

Robert A. Schroeder, Chair  
Environmental Quality Board