

1 Environmental Quality Board

2 Proposed Permanent Rules Relating to Environmental Review Program

3 4410.0200 DEFINITIONS AND ABBREVIATIONS.

4 [For text of subpart 1, see M.R.]

5 Subp. 1a. [See repealer.]

6 [For text of subps 2 to 9a, see M.R.]

7 Subp. 9b. **Connected actions.** Two projects are "connected actions" if a responsible  
8 governmental unit determines they are related in any of the following ways:

9 A. one project would directly induce the other;

10 B. one project is a prerequisite for the other and the prerequisite project is not  
11 justified by itself; or

12 C. neither project is justified by itself.

13 [For text of subps 10 to 68, see M.R.]

14 Subp. 69. **Protected Public waters.** "Protected Public waters" has the meaning given  
15 public waters in Minnesota Statutes, section 103G.005.

16 Subp. 70. **Protected Public waters wetland.** "Protected Public waters wetland" has the  
17 meaning given public waters wetland in Minnesota Statutes, section 103G.005,  
18 subdivision 15a.

19 [For text of subps 70a to 80, see M.R.]

20 Subp. 81. **Sewered area.** "Sewered area" means an area:

21 A. that is serviced by a wastewater treatment facility or a publicly owned or  
22 homeowner owned, operated, or supervised centralized septic system servicing the  
23 entire development; or

24 [For text of item B, see M.R.]

1 [For text of subps 82 to 91, see M.R.]

2 Subp. 92. **Wastewater treatment facility.** "Wastewater treatment facility" means a  
3 facility for the treatment of municipal or industrial waste water. ~~It includes on-site~~  
4 ~~treatment facilities.~~

5 [For text of subps 92a to 96, see M.R.]

6 **4410.1000 PROJECTS REQUIRING AN EAW.**

7 [For text of subps 1 to 4, see M.R.]

8 Subp. 5. **Change in proposed project; new EAW.** If, after a negative declaration has  
9 been issued but before the proposed project has received all approvals or been  
10 implemented, the RGU determines that a substantial change has been made in the  
11 proposed project that or has occurred in the RGU's circumstances, which change may  
12 affect the potential for significant adverse environmental effects that were not addressed  
13 in the existing EAW, a new EAW is required.

14 **4410.1100 PETITION PROCESS.**

15 [For text of subps 1 to 5, see M.R.]

16 Subp. 6. **EAW decision.** The RGU shall order the preparation of an EAW if the  
17 evidence presented by the petitioners, proposers, and other persons or otherwise known  
18 to the RGU demonstrates that, because of the nature or location of the proposed project,  
19 the project may have the potential for significant environmental effects. The RGU shall  
20 deny the petition if the evidence presented fails to demonstrate the project may have the  
21 potential for significant environmental effects. In considering the evidence, the RGU  
22 must take into account the factors listed in part 4410.1700, subpart 7. The RGU shall  
23 maintain, either as a separate document or contained within the records of the RGU, a  
24 record, including specific findings of fact, of its decision on the need for an EAW.

25 [For text of subps 7 to 9, see M.R.]

26 **4410.1200 EAW CONTENT.**

**4410.1200**

1 The EAW shall address at least the following major categories in the form provided  
2 on the worksheet:

3 [For text of items A to E, see M.R.]

4 F. known governmental approvals, reviews, or financing required, applied for, or  
5 anticipated and the status of any applications made, including permit conditions that  
6 may have been ordered or are being considered; and

7 G. if the project will be carried out by a governmental unit, a brief explanation of  
8 the need for the project and an identification of those who will benefit from the project;  
9 and

10 H. an assessment of the compatibility of the project with approved plans of local  
11 units of government.

#### 12 **4410.1400 PREPARATION OF AN EAW.**

13 The EAW shall be prepared as early as practicable in the development of the  
14 proposed project. The EAW shall be prepared by the RGU or its agents.

15 When an EAW is to be prepared, the proposer shall submit the completed data  
16 portions of the EAW to the RGU. The RGU shall promptly determine whether the  
17 proposer's submittal is complete within 30 days or such other time period as agreed  
18 upon by the RGU and proposer. If the RGU determines that the submittal is incomplete,  
19 the RGU shall return the submittal to the proposer for completion of the missing data. If  
20 the RGU determines that the submittal is complete, the RGU shall notify the proposer of  
21 the acceptance of the submittal within five days. The RGU shall have 30 days from  
22 notification to add supplementary material to the EAW, if necessary, and to approve the  
23 EAW for distribution. The RGU shall be responsible for the completeness and accuracy  
24 of all information.

#### 25 **4410.1500 PUBLICATION AND DISTRIBUTION OF AN EAW.**

26 A. The RGU shall provide one copy of the EAW to the EQB staff within five days

1 after the RGU approves the EAW. This copy shall serve as notification to the EQB staff  
 2 to publish the notice of availability of the EAW in the EQB Monitor. At the time of  
 3 submission of the EAW to the EQB staff, the RGU shall also submit one copy of the  
 4 EAW to:

5 [For text of subitems (1) to (6), see M.R.]

6 (7) the ~~Environmental Conservation Library~~ state archaeologist;

7 (8) the Indian Affairs Council;

8 ~~(8) (9) the Legislative Reference~~ Environmental Conservation Library;

9 ~~(9) (10)~~ (10) the regional development commission and regional development library  
 10 for the region of the project site;

11 ~~(10) (11)~~ (11) any local governmental unit within which the project will take place;

12 ~~(11) (12)~~ (12) the representative of any petitioners pursuant to part 4410.1100; and

13 ~~(12) (13)~~ (13) any other person upon written request.

14 [For text of items B and C, see M.R.]

15 **4410.1700 DECISION ON NEED FOR EIS.**

16 [For text of subps 1 and 2, see M.R.]

17 Subp. 2a. **Insufficient information.** If the RGU determines that information necessary  
 18 to a reasoned decision about the potential for, or significance of, one or more possible  
 19 environmental impacts is lacking, but could be reasonably obtained, the RGU shall  
 20 either:

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

23 B. postpone the decision on the need for an EIS, for not more than 30 days or such  
 24 other period of time as agreed upon by the RGU and proposer, in order to obtain the  
 25 lacking information. If the RGU postpones the decision, it shall provide written notice of

1 its action, including a brief description of the lacking information, within five days to  
2 the project proposer, the EQB staff, and any person who submitted substantive  
3 comments on the EAW.

4 Subp. 3. **Form and basis for decision.** The RGU's decision shall be either a negative  
5 declaration or a positive declaration. ~~If a positive declaration, the decision shall include~~  
6 ~~the RGU's proposed scope for the EIS.~~ The RGU shall base its decision regarding the  
7 need for an EIS ~~and the proposed scope~~ on the information gathered during the EAW  
8 process and the comments received on the EAW.

9 [For text of subps 4 to 9, see M.R.]

#### 10 4410.2100 EIS SCOPING PROCESS.

11 [For text of subps 1 to 3, see M.R.]

12 Subp. 4. **Scoping period for some discretionary EIS's.** If the EIS is being prepared  
13 pursuant to part 4410.2000, subpart 3, item A, the following schedule applies:

14 A. At least ten days but not more than 20 days after notice of ~~a positive declaration~~  
15 is published in the EQB Monitor, a public meeting shall be held to review the scope of  
16 the EIS. Notice of the time, date, and place of the scoping meeting shall be published in  
17 the EQB Monitor within 15 days of receipt of the proposer's scoping cost payment  
18 pursuant to part 4410.6500, subpart 1, item A, and a press release shall be provided to a  
19 newspaper of general circulation in the area where the project is proposed. All meetings  
20 shall be open to the public.

21 B. Within ~~30~~ 15 days after ~~the positive declaration is published in the EQB Monitor~~  
22 of the public scoping meeting, the RGU shall issue its final decision regarding the scope  
23 of the EIS. If the decision of the RGU must be made by a board, council, or other similar  
24 body which meets only on a periodic basis, the decision may be made at the next  
25 regularly scheduled meeting of the body following the scoping meeting but not more  
26 than 45 days after the positive declaration is published in the EQB Monitor.

1 [For text of subps 5 to 7, see M.R.]

2 Subp. 8. **Amendments to scoping decision.** After the scoping decision is made, the  
3 RGU shall not amend the decision without the agreement of the proposer unless  
4 substantial changes are made in the proposed project that affect the potential significant  
5 environmental effects of the project or substantial new information arises relating to the  
6 proposed project that significantly affects the potential environmental effects of the  
7 proposed project or the availability of prudent and feasible alternatives to the project. If  
8 the scoping decision is amended after publication of the EIS preparation notice, notice  
9 and a summary of the amendment shall be published in the EQB Monitor within 30  
10 days of the amendment. The notice may be incorporated into the notice of the  
11 availability of the draft or final EIS.

12 Subp. 9. **EIS preparation notice.** An EIS preparation notice shall be published within  
13 45 days after the ~~scoping decision is issued~~ RGU receives the proposer's cash payment  
14 pursuant to part 4410.6410, subpart 3, or 4410.6500, subpart 1, item B. The notice shall be  
15 published in the EQB Monitor, and a press release shall be provided to at least one  
16 newspaper of general circulation in each county where the project will occur. The notice  
17 shall contain a summary of the scoping decision.

18 [For text of subps 10 to 12, see M.R.]

19 **4410.3100 PROHIBITION ON FINAL GOVERNMENTAL DECISIONS.**

20 Subpart 1. **Prohibitions.** If an EAW or EIS is required for a governmental action  
21 under parts 4410.0200 to 4410.6500, or if a petition for an EAW is filed under part  
22 4410.1100 that complies with the requirements of subparts 1 and 2 of that part, a project  
23 may not be started and a final governmental decision may not be made to grant a  
24 permit, approve a project, or begin a project, until:

25 [For text of items A to C, see M.R.]

26 D. a variance is granted under subparts 3 to 7 or the action is an emergency under  
27 subpart 8.

4410.3100

1 To start or begin a project includes taking any action within the meaning of  
2 "construction," as defined in part 4410.0200, subpart 10.

3 [For text of subs 2 to 9, see M.R.]

4 **4410.3610 ALTERNATIVE URBAN AREAWIDE REVIEW PROCESS.**

5 Subpart 1. **Applicability.** A local unit of government may use the procedures of this  
6 part instead of the procedures of parts 4410.1100 to 4410.1700 and 4410.2100 to  
7 4410.3000 to review anticipated residential, commercial, warehousing, and light  
8 industrial development and associated infrastructure in a particular geographic area  
9 within its jurisdiction, if the local unit has adopted a comprehensive plan that includes  
10 at least the elements in items A to C. ~~For purposes of this part, "light industrial~~  
11 ~~development, facility, or project" includes a development, facility, or project engaged in~~  
12 ~~the assembly of products from components that are not produced at the site, but does~~  
13 ~~not include any development, facility, or project, including an assembly development,~~  
14 ~~facility, or~~ The procedures of this part may not be used to review any project, meeting  
15 the requirements for a mandatory EAW in part 4410.4300, subparts 2 to 13, 15 to 17, 18,  
16 item B or C, or 24, or a mandatory EIS in part 4410.4400, subparts 2 to 10, 12, 13, or 25.  
17 The local unit of government is the RGU for any review conducted under this part.

18 [For text of items A to C, see M.R.]

19 Subp. 2. **Relationship to specific development projects.** The prohibitions of part  
20 4410.3100, subparts 1 and 2, apply to all projects for which review under this part  
21 substitutes for review under parts 4410.1100 to 4410.1700 or 4410.2100 to 4410.3000. The  
22 prohibitions terminate upon the adoption by the RGU of the environmental analysis  
23 document and plan for mitigation under subpart 5. Upon completion of review under  
24 this part, residential, commercial, warehousing, and light industrial development  
25 projects and associated infrastructure within the boundaries established under subpart 3  
26 that are consistent with development assumptions established under subpart 3 are

1 exempt from review under parts 4410.1100 to 4410.1700 and 4410.2100 to 4410.3000 as  
2 long as the approval and construction of the project complies with the conditions of the  
3 plan for mitigation developed under subpart 5.

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

13 ~~The prohibitions of part 4410.3100, subparts 1 to 3, apply to all projects for which~~  
14 ~~review under this part substitutes for review under parts 4410.1100 to 4410.1700 or~~  
15 ~~4410.2100 to 4410.3000. These prohibitions terminate upon the adoption by the RGU of~~  
16 ~~the environmental analysis document and plan for mitigation under subpart 5.~~

17 After an order for review has been adopted under subpart 3, the RGU may not  
18 remove a project from the alternative urban areawide review process without providing  
19 opportunity for public comment about the proposed removal. The RGU must provide  
20 notice of the intended removal and the reasons for the removal in the same manner as  
21 for distribution of an EAW under part 4410.1500, except that notice is not required to be  
22 published in the EQB Monitor. Agencies and interested persons have 15 days from the  
23 date of receipt of the notice to file comments about the proposed removal of the project  
24 from the review. If adverse comments are received, the RGU must consider the  
25 comments and determine whether to keep the project in the review or remove it from  
26 the review based on whether the project may have the potential for significant  
27 environmental effects, taking into account the interaction of the project with other



1 anticipated development in the alternative urban areawide review area. If no adverse  
2 comments are received within 20 working days of giving notice, the project may be  
3 removed from the review without further action by the RGU.

4 If a specific project will be reviewed under the procedures of this part rather than  
5 under the EAW or EIS procedures and the project itself would otherwise require  
6 preparation of an EIS under part 4410.4400 or will comprise at least 50 percent of the  
7 area covered by the alternative urban areawide review, the RGU must follow the  
8 additional procedures of subpart 5a in the review.

9 [For text of subps 3 and 4, see M.R.]

10 Subp. 5. **Procedures for review.** The procedures in items A to H must be used for  
11 review under this part.

12 A. The RGU shall prepare a draft environmental analysis document addressing  
13 each of the development scenarios selected under subpart 2 3 using the standard content  
14 and format provided by the EQB under subpart 4. A draft version of the mitigation plan  
15 as described under item C must be included. The draft document must be distributed  
16 and noticed in accordance with part 4410.1500.

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

21 Comments ~~must~~ may address the accuracy and completeness of the information  
22 provided in the draft analysis and draft mitigation plan, potential impacts that warrant  
23 further analysis, further information that may be required in order to secure permits for  
24 specific projects in the future, ~~and~~ mitigation measures or procedures necessary to  
25 prevent significant environmental impacts within the area when actual development  
26 occurs, and the need to analyze additional development scenarios.

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

4 [For text of item C, see M.R.]

5 D. The RGU shall distribute the revised environmental analysis document,  
6 including the plan for mitigation, in the same manner as the draft document and also to  
7 any persons who commented on the draft document and to the EQB staff. State agencies  
8 and the Metropolitan Council of the Twin Cities have ten days from the date of receipt  
9 of the revised document to file an objection to the document with the RGU. A copy of  
10 any letter of objection must be filed with the EQB staff. An objection may be filed only if  
11 the agency filing the objection has evidence that the revised document contains  
12 inaccurate or incomplete information relevant to the identification and mitigation of  
13 potentially significant environmental impacts, that the review has not analyzed  
14 sufficient development scenarios as required by this part, or that the proposed plan for  
15 mitigation will be inadequate to prevent potentially significant environmental impacts  
16 from occurring.

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

25 Upon adoption of the environmental analysis document ~~and~~, including the plan for  
26 mitigation, residential, commercial, warehousing, and light industrial projects and

1 associated infrastructure within the area that are consistent with the assumptions of the  
2 document and that comply with the plan for mitigation are exempt from review under  
3 parts 4410.1100 to 4410.1700 and 4410.2100 to 4410.2800.

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

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

16 [For text of item G, see M.R.]

17 H. If the matter is referred to the EQB under item G, the EQB shall determine  
18 whether the environmental analysis document ~~and, including the~~ plan for mitigation  
19 ~~are, is~~ adequate, conditionally adequate, or inadequate. If the EQB finds the ~~documents~~  
20 document conditionally adequate or inadequate, the EQB shall specify the revisions  
21 necessary for adequacy. The EQB shall only find the ~~documents~~ document inadequate if  
22 it determines that ~~they contain~~ it contains inaccurate or incomplete information  
23 necessary to the identification and mitigation of potentially significant environmental  
24 impacts, that the review has not analyzed sufficient development scenarios as required  
25 by this part, or that the proposed plan for mitigation will be inadequate to prevent the  
26 occurrence of potentially significant environmental impacts.

1 If the EQB finds the ~~documents~~ document adequate or conditionally adequate, the  
2 RGU shall adopt the ~~documents~~ document under item E. If the ~~documents~~ were  
3 document is found conditionally adequate by the EQB, the RGU shall first revise the  
4 ~~documents~~ document as directed by the EQB. If the EQB finds the ~~documents~~ document  
5 inadequate, the RGU has 30 days to revise the ~~documents~~ document and circulate ~~them~~  
6 it for review in accordance with items D to H.

7 Subp. 5a. Additional procedures required when certain specific projects are  
8 reviewed. The procedures in this subpart must be followed in addition to those in  
9 subpart 5 if a specific project will be reviewed under the procedures of this part rather  
10 than under the EAW or EIS procedures and the project itself would otherwise require  
11 preparation of an EIS under part 4410.4400 or will comprise at least 50 percent of the  
12 ground area covered by the alternative urban areawide review.

13 A. Prior to the approval of the order for review under subpart 3, the RGU must  
14 conduct a public comment process to assist it in identifying appropriate development  
15 scenarios and relevant issues to be analyzed in the review. The RGU shall prepare a  
16 draft order for review and distribute it and provide notice of its availability in the same  
17 manner as for an EAW under part 4410.1500. The draft order for review must include  
18 the information specified in subpart 3.

19 B. Government units and interested persons shall participate in the public  
20 comment process according to part 4410.1600, except the comments shall address  
21 suggested additional development scenarios and relevant issues to be analyzed.  
22 Comments may suggest additional development scenarios, including development at  
23 sites outside of the proposed alternative urban areawide review boundary, if the  
24 additional scenarios would likely minimize or avoid potentially significant  
25 environmental impacts that may result from development of the scenarios based on or  
26 incorporating the plans for the specific project or projects that require use of the  
27 procedures of this subpart. The comments must provide reasons why a suggested  
28 additional scenario is potentially environmentally superior.

1        C. The RGU must consider all timely and substantive comments received when  
2 finalizing the order for review. The RGU shall apply the criteria for excluding an  
3 alternative from analysis found in part 4410.2300, item G, in determining if a suggested  
4 alternative scenario should be included or excluded. If the RGU excludes a suggested  
5 additional development scenario, it must document its reasons for excluding the  
6 scenario in a written record of decision.

7        D. The RGU shall adopt the final order for review within 15 days of the end of the  
8 comment period. A copy of the order and the RGU's record of decision for the order's  
9 adoption must be sent within ten days of the decision to the EQB and to anyone who  
10 submitted timely and substantive comments.

11                                [For text of subps 6 to 8, see M.R.]

12        **4410.3800 GENERIC EIS.**

13                                [For text of subps 1 to 4, see M.R.]

14        Subp. 5. **Criteria.** In determining the need for a generic EIS, the EQB shall consider:

15                                [For text of items A to G, see M.R.]

16        H. the regional and statewide significance of the impacts and the degree to which  
17 they can be addressed on a project-by-project basis; and

18        I. the degree to which governmental policies affect the number or location of such  
19 projects or the potential for significant environmental effects;

20        J. the degree to which the cost of basic information ought to be borne by the public  
21 rather than individual project proposers;

22        K. the need to explore issues raised by a type of project that go beyond the scope of  
23 review of individual projects; and

24        L. the need to understand the long-term past, present, and future effects of a type  
25 of action upon the economy, environment, and way of life of the residents of the state.

1 [For text of subps 6 and 7, see M.R.]

2 Subp. 8. **Relationship to project-specific review.** Preparation of a generic EIS does  
3 not exempt specific activities from project-specific environmental review.  
4 ~~Project-specific environmental review shall use information in the generic EIS by tiering~~  
5 ~~and shall reflect the recommendations contained in the generic EIS if the EQB~~  
6 ~~determines that the generic EIS remains adequate at the time the specific project is~~  
7 ~~subject to review.~~

8 [For text of subp 9, see M.R.]

9 **4410.4300 MANDATORY EAW CATEGORIES.**

10 [For text of subps 1 to 14, see M.R.]

11 Subp. 15. **Air pollution.** ~~Items A and B designate the RGU for the type of project~~  
12 ~~listed:~~

13 A. For construction of a stationary source facility that generates ~~100~~ 250 tons or  
14 more per year or modification of a stationary source facility that increases generation by  
15 ~~100~~ 250 tons or more per year of any single air pollutant after installation of air pollution  
16 control equipment, the PCA shall be the RGU.

17 ~~B. For construction of a new parking facility for 2,000 or more vehicles, the PCA~~  
18 ~~shall be the RGU, except that this category does not apply to any parking facility which~~  
19 ~~is part of a project reviewed pursuant to part 4410.4300, subpart 14, 19, 32, or 34, or part~~  
20 ~~4410.4400, subpart 11, 14, 21, or 22.~~

21 [For text of subps 16 and 17, see M.R.]

22 Subp. 18. **Wastewater systems.** Items A to C designate the RGU for the type of project  
23 listed:

24 A. For expansion, modification, or replacement of a municipal sewage collection  
25 system resulting in an increase in design average daily flow of any part of that system  
26 by 1,000,000 gallons per day or more if the discharge is to a wastewater treatment

1 facility with a capacity less than 20,000,000 gallons per day or for expansion,  
2 modification, or replacement of a municipal sewage collection system resulting in an  
3 increase in design average daily flow of any part of that system by 2,000,000 gallons per  
4 day or more if the discharge is to a wastewater treatment facility with the capacity of  
5 20,000,000 gallons or greater, the PCA shall be the RGU.

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

12 [For text of item C, see M.R.]

13 Subp. 19. **Residential development.** An EAW is required for residential development  
14 if the total number of units that may ultimately be developed on all contiguous land  
15 owned or under an option to purchase by the proposer, and that is zoned for residential  
16 development or is identified for residential development by an applicable  
17 comprehensive plan or annexation agreement, equals or exceeds a threshold of this  
18 subpart. In counting the total number of ultimate units, the RGU shall include the  
19 number of units in any plans of the proposer; for land for which the proposer has not  
20 yet prepared plans, the RGU shall use as the number of units the product of the number  
21 of acres multiplied by the maximum number of units per acre allowable under the  
22 applicable zoning ordinance or, if the maximum number of units allowable per acre is  
23 not specified in an applicable zoning ordinance, by the overall average number of units  
24 per acre indicated in the plans of the proposer for those lands for which plans exist. If  
25 the total project requires review but future phases are uncertain, the RGU may review  
26 the ultimate project sequentially in accordance with part 4410.1000, subpart 4.

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

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

8 [For text of items A to D, see M.R.]

9 [For text of subps 20 to 26, see M.R.]

10 Subp. 27. **Wetlands and ~~protected~~ public waters**. Items A and B designate the RGU  
11 for the type of project listed:

12 A. For projects that will change or diminish the course, current, or cross-section of  
13 one acre or more of any ~~protected~~ public water or ~~protected~~ public waters wetland  
14 except for those to be drained without a permit pursuant to Minnesota Statutes, chapter  
15 103G, the local government unit shall be the RGU.

16 B. For projects that will change or diminish the course, current, or cross-section of  
17 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or  
18 more, excluding ~~protected~~ public waters wetlands, if any part of the wetland is within a  
19 shoreland area, delineated flood plain, a state or federally designated wild and scenic  
20 rivers district, the Minnesota River Project Riverbend area, or the Mississippi  
21 headwaters area, the local government unit shall be the RGU.

22 [For text of subps 28 to 30, see M.R.]

23 Subp. 31. **Historical places**. For the destruction, in whole or part, or the moving of a  
24 property that is listed on the National Register of Historic Places or State Register of  
25 Historic Places, the permitting state agency or local unit of government shall be the  
26 RGU, except this does not apply to projects reviewed under section 106 of the National



1 Historic Preservation Act of 1966, United States Code, title 16, section 470, or the federal  
2 policy on lands, wildlife and waterfowl refuges, and historic sites pursuant to United  
3 States Code, title 49, section 303, or projects reviewed by a local heritage preservation  
4 commission certified by the State Historic Preservation Office pursuant to Code of  
5 Federal Regulations, title 36, sections 61.5 and 61.7. This subpart does not apply to a  
6 property located within a designated historic district if the property is listed as  
7 "noncontributing" in the official district designation or if the State Historic Preservation  
8 Office issues a determination that the property is noncontributing.

9 [For text of subp 32, see M.R.]

10 Subp. 33. **Communications towers.** For construction of a communications tower  
11 equal to or in excess of 500 feet in height, or 300 feet in height within 1,000 feet of any  
12 protected public water or protected public waters wetland or within two miles of the  
13 Mississippi, Minnesota, Red, or St. Croix rivers or Lake Superior, the local governmental  
14 unit is the RGU.

15 [For text of subps 34 to 37, see M.R.]

16 **4410.4400 MANDATORY EIS CATEGORIES.**

17 [For text of subps 1 to 4, see M.R.]

18 Subp. 5. **Fuel conversion facilities.** Items A and B designate the RGU for the type of  
19 project listed:

20 [For text of item A, see M.R.]

21 B. For construction or expansion of a facility for the production of alcohol fuels  
22 which would have or would increase its capacity by 50,000,000 or more gallons per year  
23 of alcohol produced if the facility will be in the seven-county Twin Cities metropolitan  
24 area or by 125,000,000 or more gallons per year of alcohol produced if the facility will be  
25 outside the seven-county Twin Cities metropolitan area, the PCA shall be the RGU.

26 [For text of subps 6 to 13, see M.R.]

1        Subp. 14. **Residential development.** An EIS is required for residential development if  
2 the total number of units that the proposer may ultimately develop on all contiguous  
3 land owned by the proposer or for which the proposer has an option to purchase, and  
4 that is zoned for residential development or is identified for residential development by  
5 an applicable comprehensive plan or annexation agreement, equals or exceeds a  
6 threshold of this subpart. In counting the total number of ultimate units, the RGU shall  
7 include the number of units in any plans of the proposer; for land for which the  
8 proposer has not yet prepared plans, the RGU shall use as the number of units the  
9 product of the number of acres multiplied by the maximum number of units per acre  
10 allowable under the applicable zoning ordinance, or if the maximum number of units  
11 allowable per acre is not specified in an applicable zoning ordinance, by the overall  
12 average number of units per acre indicated in the plans of the proposer for those lands  
13 for which plans exist. If the total project requires review but future phases are uncertain,  
14 the RGU may review the ultimate project sequentially in accordance with part  
15 4410.2000, subpart 4.

16        The RGU may review an initial stage of the project, that may not exceed ten percent  
17 of the applicable EIS threshold, by means of the procedures of parts 4410.1200 to  
18 4410.1700 instead of the procedures of parts 4410.2000 to 4410.2800. If the RGU  
19 determines that this stage requires preparation of an EIS under part 4410.1700, it may be  
20 reviewed through a separate EIS or through an EIS that also covers later stages of the  
21 project.

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

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

1 [For text of items A to D, see M.R.]

2 [For text of subps 15 to 19, see M.R.]

3 Subp. 20. **Wetlands and ~~protected~~ public waters**. For projects that will eliminate a  
4 ~~protected public water or protected public waters wetland~~, the local government unit  
5 shall be the RGU.

6 [For text of subps 21 to 25, see M.R.]

7 **4410.4600 EXEMPTIONS.**

8 [For text of subpart 1, see M.R.]

9 Subp. 2. **Standard exemptions.** The following projects are standard exemptions:

10 [For text of items A to C, see M.R.]

11 D. projects for which a substantial portion of the project has been completed and  
12 an EIS would not influence remaining ~~implementation or~~ construction; and

13 E. projects for which environmental review has already been ~~initiated under the~~  
14 ~~prior rules~~ completed or for which environmental review is being conducted pursuant  
15 to part 4410.3600 or 4410.3700.

16 [For text of subps 3 to 18, see M.R.]

17 Subp. 19. **Animal feedlots.** The activities in items A to ~~E~~ D are exempt.

18 A. Construction of an animal feedlot facility with a capacity of less than 1,000  
19 animal units or the expansion of an existing animal feedlot facility to a total cumulative  
20 capacity of less than 1,000 animal units, if all of the following apply:

21 (1) the feedlot is not in an environmentally sensitive location listed in part  
22 4410.4300, subpart 29, item B;

23 (2) the application for the animal feedlot permit includes a written commitment  
24 by the proposer to design, construct, and operate the facility in full compliance with  
25 PCA feedlot rules; and

1           (3) the county board holds a public meeting for citizen input at least ten  
2 business days prior to the PCA or county issuing a feedlot permit for the facility, unless  
3 another public meeting for citizen input has been held with regard to the feedlot facility  
4 to be permitted.

5           B. The construction of an animal feedlot facility of less than 300 animal units or the  
6 expansion of an existing facility by less than 100 animal units, no part of either of which  
7 is located within a shoreland area; delineated flood plain; state or federally designated  
8 wild and scenic rivers district; the Minnesota River Project Riverbend area; the  
9 Mississippi headwaters area; an area within a drinking water supply management area  
10 designated under chapter 4720 where the aquifer is identified in the wellhead protection  
11 plan as vulnerable to contamination; or 1,000 feet of a known sinkhole, cave, resurgent  
12 spring, disappearing spring, Karst window, blind valley, or dry valley.

13           B. C. The construction or expansion of an animal feedlot facility with a resulting  
14 capacity of less than 50 animal units regardless of location.

15           C. D. The modification without expansion of capacity of any feedlot of no more  
16 than 300 animal units if the modification is necessary to secure a Minnesota feedlot  
17 permit.

18   [For text of subps 20 to 27, see M.R.]

19           **4410.5200 EQB MONITOR PUBLICATION REQUIREMENTS.**

20           Subpart 1. **Required notices.** Governmental units are required to publish notice of the  
21 items listed in items A to P R in the EQB Monitor, except that this part constitutes a  
22 request and not a requirement with respect to federal agencies.

23           A. When a project has been noticed pursuant to item D, separate notice of  
24 individual permits required by that project need not be made unless changes in the  
25 project are proposed that will involve new and potentially significant environmental  
26 effects not considered previously. No decision granting a permit application for which

1 notice is required to be published by this part shall be effective until 30 days following  
2 publication of the notice.

3 [For text of subitems (1) to (4), see M.R.]

4 (5) ~~For special local need registration for pesticides, Minnesota Statutes, section~~  
5 ~~18A.23, and parts 1505.0870 to 1505.0930, the MDA is the permitting authority.~~

6 [For text of items B to O, see M.R.]

7 P. Notice of the availability of a draft alternative urban areawide review document.

8 Q. Notice of the adoption of a final alternative urban areawide review document.

9 R. Notice of other actions that the EQB may specify by resolution.

10 [For text of subps 2 and 3, see M.R.]

11 **4410.5600 COST AND DISTRIBUTION.**

12 [For text of subpart 1, see M.R.]

13 Subp. 2. **Distribution.** ~~The EQB may further provide at least one copy to the Print~~  
14 ~~Communications Division for the mailing of the EQB Monitor to any person,~~  
15 ~~governmental unit, or organization if so requested. The EQB may assess reasonable~~  
16 ~~costs to the requesting party. Ten copies of each issue of the EQB Monitor, however,~~  
17 ~~shall be provided without cost to the Legislative Reference Library, ten copies to the~~  
18 ~~State Law Library, and at least one copy to designated EQB depositories Monitor may~~  
19 ~~be published by electronic means, including by posting at the EQB Internet Web site and~~  
20 ~~by electronic mail to persons who have registered with the EQB to receive the EQB~~  
21 ~~Monitor.~~

22 **4410.6100 DETERMINING EIS ASSESSED COST.**

23 Subpart 1. **Proposer and RGU agreement.** Within 30 days after the EIS preparation  
24 notice RGU's scoping decision has been ~~published~~ issued, the RGU shall submit to the  
25 EQB proposer a written draft cost agreement signed by the proposer and the RGU. The

1 agreement shall include the EIS estimated cost and a brief description of the tasks and  
2 the cost of each task to be performed by each party in preparing and distributing the  
3 EIS. Those items identified in part 4410.6200 may be used as a guideline in determining  
4 the EIS estimated cost. ~~If an agreement cannot be reached, the RGU or~~ The proposer  
5 shall so notify the EQB may request changes in the cost agreement. If, within 30 days  
6 after the proposer receives the draft cost agreement, the RGU and proposer have not  
7 signed a cost agreement, either party may refer the matter to the EQB according to part  
8 4410.6410. If the RGU and proposer sign the cost agreement, the RGU shall submit a  
9 copy to the EQB.

10 [For text of subps 4 and 5, see M.R.]

#### 11 4410.6200 DETERMINING EIS COST.

12 Subpart 1. **EIS cost inclusions.** In determining the reasonable cost of preparing and  
13 distributing an EIS, the following items shall be included:

14 A. the cost of the RGU's staff time including direct salary and fringe benefit costs,  
15 unless the RGU elects to waive these costs;

16 [For text of items B and C, see M.R.]

17 D. indirect costs of the RGU not to exceed the RGU's normal operating overhead  
18 rate, unless the RGU elects to waive these costs;

19 [For text of items E and F, see M.R.]

20 [For text of subps 2 to 5, see M.R.]

#### 21 4410.6500 PAYMENT OF EIS COST.

22 Subpart 1. **Schedule of payments.** The proposer shall make all cash payments to the  
23 RGU according to the following schedule:

24 A. The proposer shall pay the RGU for the full cost estimated by the RGU to be  
25 necessary for the scoping of the EIS not later than the date of submission by the

1 proposer of the completed data portions of the scoping EAW or within five days of  
2 issuance of a positive declaration. The RGU shall not proceed with the scoping process  
3 until this payment is made. Upon issuance of the scoping decision, the RGU shall  
4 provide the proposer with a written accounting of the scoping expenditures. If the  
5 payment made by the proposer exceeds the expenditures, the balance shall be credited  
6 against the cash payments required from the proposer for preparation of the draft EIS. If  
7 the RGU's reasonable expenditures for scoping exceed the cash payment received, the  
8 proposer shall pay the balance before the RGU commences preparation of the draft EIS.

9 [For text of items B to D, see M.R.]

10 Subp. 6. **Prohibition on state agency permits until notice of final payment.** Upon  
11 receipt of final payment from the proposer, the RGU shall promptly notify the EQB of  
12 ~~receipt of final payment, unless the EIS cost is in dispute under part 4410.6410. Upon~~  
13 ~~notice of receipt of the final payment by the proposer, the EQB shall notify each state~~  
14 ~~agency having a possible governmental permit interest in the project that the final~~  
15 ~~payment has been received.~~

16 Other laws notwithstanding, a state agency shall not issue any governmental permits  
17 for the construction or operation of a project for which an EIS is prepared until the  
18 required cash payments of the EIS assessed cost for that project or that portion of a  
19 related actions EIS have been paid in full.

20 **REPEALER.** Minnesota Rules, part 4410.0200, subpart 1a, is repealed.

# Office of the Revisor of Statutes

## Administrative Rules



**TITLE:** Proposed Permanent Rules Relating to Environmental Review Program

**AGENCY:** Environmental Quality Board

**MINNESOTA RULES:** Chapter 4410

The attached rules are approved for  
publication in the State Register

Cindy K. Maxwell

Cindy K. Maxwell  
Senior Assistant Revisor