

1982

The Statement of Need and Reasonableness
for
Minnesota Environmental Quality Board
Proposed Environmental Review Program Rules

This Statement of Need and Reasonableness will utilize the following format for a paragraph-by-paragraph discussion of the proposed rules:

- I. Authority
- II. History of Environmental Review in Minnesota
- III. 1980 Amendments to the Minnesota Environmental Policy Act
- IV. Rule Drafting Process in Preparation of these Proposed Rules
- V. Substantive Discussion of the Proposed Rules

A. Introduction to the Rules

1. Introduction to Chapter

a. Introduction to Section

- (1) Statement of Rule as proposed
- (2) Discussion of Proposed Rule including:

(a) An explanation of the origin of the provision;

(b) Explanation of how the provision differs from the existing rule, if applicable;

(c) Statement of the need for this provision;

(d) Statement relating to reasonableness of the provision, including a discussion of alternative methods of addressing the need;

(e) Brief discussion of any public comment or controversy relating to the provision, if applicable.

VI. Information on Procedures for Providing Comment

NOTE: Definitions and abbreviations used in the proposed rules are incorporated in this Statement of Need and Reasonableness.

expense on projects for which a quality draft EIS has been prepared and serves as an incentive for producing quality draft EISs. This requirement was not included in the current rules.

Subparagraph three lists those persons that must receive a copy of the final EIS. Under the current rules the EQB is required to develop and maintain a distribution list of those persons that must receive copies of the final EIS. That list is not a part of the current rules. The total number of persons mandated by the EQB distribution list is approximately 35. Under the proposed rules this list is incorporated within the rules. The total number of persons mandated by the proposed list is approximately 20. The EQB will continue to maintain a list of addresses for these persons.

Subparagraph three incorporates all persons on the distribution list who receive copies of the entire draft EIS. This list incorporates persons closely involved with the project and persons with responsibilities relating to the implementation of the state environmental review program. Justification for the inclusion of these persons is incorporated in the justification relating to 6 MCAR § 3.031 E.3.

This subparagraph also mandates the submission of a copy of the final EIS to those persons that submitted substantive comments on the draft EIS. Submission of substantive comments is deemed to indicate sufficient interest in the activity to warrant receipt of the final EIS to facilitate review of the RGU's response to the comments. Other persons expressing an interest in reviewing a copy of the final EIS should be supplied with a copy within reasonable constraints. Public review of the final EIS is needed to enable public input relating to the determination of adequacy of the final EIS.

Subparagraph four notes that the copy of the final EIS submitted to the EQB staff, pursuant to the distribution requirements of subparagraph three, serves as notice to EQB staff to publish notice of availability of the final EIS in the EQB Monitor. This provision eliminates the necessity of a separate notification requirement. This notice provision is the same under the current rules.

Subparagraph five delineates the requirement that the RGU provide a press release, relating to the notice of availability of the final EIS and the opportunity to comment on its adequacy, to a local newspaper. This requirement is for the purpose of facilitating local comment on the proposed activity. The current rules have a similar publication requirement.

Subparagraph six outlines the content requirements for the notice of availability as published in the EQB Monitor and the local newspaper. This subparagraph is included to assure that uniform and adequate information be made available to interested persons. This content requirement is similar to the content requirement of the notice pursuant to the current rules.

6 MCAR § 3.031 G. Determination of Adequacy.

1. The RGU shall make the determination of adequacy on the final EIS unless notified by the EQB, within 60 days after publication of the preparation notice in the EQB Monitor, that the EQB will make the determination. In making the decision to intervene in the determination of adequacy, the EQB shall consider:
 - a. A request for intervention by the RGU;
 - b. A request for intervention by the proposer of the action;
 - c. A request for intervention by interested parties;
 - d. The ability of the RGU to address complex issues of the EIS; and

- e. Whether the action is multi-jurisdictional.
- 2. Interested persons may submit written comments on the adequacy of the final EIS to the RGU or the EQB, if applicable, at any time prior to the final determination of adequacy.
- 3. The determination of adequacy of the final EIS shall be made at least ten days after publication in the EQB Monitor of the notice of availability of the final EIS.
- 4. The determination of adequacy of the final EIS shall be made within 280 days after the preparation notice was published in the EQB Monitor unless the time is extended by consent of the parties or by the Governor for good cause.
- 5. The final EIS shall be determined adequate if it:
 - a. Addresses the issues raised in scoping so that all questions for which information can be reasonably obtained have been answered;
 - b. Provides responses to the substantive comments received during the draft EIS review concerning issues raised in scoping; and
 - c. Was prepared in substantial compliance with the procedures of the act and these rules.
- 6. If the RGU or the EQB determines that the EIS is inadequate, the RGU shall have 60 days in which to prepare an adequate EIS. The revised EIS shall be circulated in accord with 6 MCAR § 3.031 F. 3.
- 7. The RGU shall notify all persons receiving copies of the final EIS pursuant to 6 MCAR § 3.031 F. 3. of its adequacy decision within five days of the adequacy decision. Public notice of the decision shall be published in the EQB Monitor.

DISCUSSION: This paragraph is included to provide guidance to the RGU relating to the procedures and standards to be used in making the decision on the adequacy of the final EIS. This paragraph incorporates several significant legislative changes and, therefore, significant changes to the current rules. It also incorporates an increase in definition of the process when compared to the current rules. The change in structure and increase in definition is proposed in an attempt to deal with misunderstandings and questions that have developed during the implementation of the current rules. These changes are further necessitated by the fact that the responsibility for making the decisions on the adequacy of the final EIS has shifted from the EQB to the RGU as a result of the legislative changes. Therefore, clear standards and processes are necessary for uniform implementation of these rules.

Subparagraph one is included to comply with Minn. Stat. § 116D.04 subd. 2a (g). This represents a significant change from the current rules. Under the current rules, the EQB makes all determinations on the adequacy of final EISs. This change is incorporated as a part of the legislative intent to shift responsibility for the implementation of these rules to the unit of government most responsible for the regulation of an activity. The standards for consideration of EQB intervention are included in response to public comment reflecting the fear that the EQB would intervene in all EIS determinations. EQB intervention is most likely to occur only when a documented request for intervention is received. It is anticipated that a request for intervention may be submitted by the RGU in cases where the decision may be extremely controversial locally or where the RGU feels that technical issues are beyond the ability of the RGU to analyze effectively. A request for intervention may also be submitted by the proposer in cases where the RGU is clearly antagonistic to a proposed project and the proposer feels the RGU will not provide an objective appraisal of the

potential impacts or in cases where local opposition to a project may provide undue political influence on the determination. A request for intervention may also be submitted by interested parties in cases where the RGU is clearly in favor of a proposed project and the interested parties feel the RGU will not provide an objective appraisal of the potential impacts or in cases where political influence may have an impact on the determination.

In addition to requests for intervention, the EQB shall consider the abilities of an RGU to effectively analyze the final EIS and projected impacts. There should be some measure of difficulty in the analysis to prevent the use of the EQB merely as a scapegoat for politically sensitive decisions. In addition, multi-jurisdictional cases are more likely to be subjected to EQB intervention. If several governmental units are involved, it is more likely that there will be legitimate differences of opinion on the relative impacts and merits of the activity. If the ultimate decision rests with only the RGU, it is more likely that the EQB will deny intervention and leave complete decision making authority with that unit of government.

Subparagraph two is incorporated to allow all interested persons the right to submit comments relating to the adequacy of the final EIS. If the RGU is making the decision, comments should be submitted directly to it. If the EQB is making the decision, comments should be submitted to the EQB. Under the current rules, interested persons are allowed to submit comments relating to the adequacy of the final EIS.

Subparagraph three is included to provide a waiting period before the determination of adequacy can be made. The purpose of the waiting period is to give interested parties an opportunity to obtain and review the final EIS. It is also a means of discouraging prejudgment of the final EIS by the RGU. The waiting period is limited to ten days because a longer time period would make it difficult for the RGU to comply with the overall statutory time constraints. It should be noted that in reality ten days is approximately 14 days when viewed in light of the definition of days.

Subparagraph four is included to comply with Minn. Stat. § 116D.04 subd. 2a (g). This represents a significant change from the current rules. The 280 day statutory time period is measured from the date of publication of notice of its preparation to the date of its adequacy determination. At the time of notice of publication the RGU should have its consultants and preparation schedule established to enable prompt commencement of preparation. The publication date in the EQB Monitor was selected to enable a predictable date and because publication is free to the RGU. The current rules contain similar publication requirements. The RGU must make an adequacy determination prior to the expiration of the 280 day time clock. This may be either a determination that the EIS is adequate or that the EIS is inadequate. If the EIS is determined adequate, government units have 90 days to make required permit decisions relating to the project, if the information for those permits was gathered concurrently with the information for the EIS pursuant to the scoping process and as noted in discussions relating to 6 MCAR § 3.030 E. 3. c. and 6 MCAR § 3.031 H. If the EIS is determined to be inadequate, the RGU has 60 days in which to correct the inadequacies as noted in the discussion relating to subparagraph six. Provision is provided for unusual cases in which compliance with this schedule is impossible. The legislative intent is to keep this as a rigid time constraint; therefore, the consent of the governor or mutual consent of the affected parties, i.e., the proposer and the RGU, is required. No standard is provided for the governor's decision.

Subparagraph five sets the standard for the adequacy determination by the RGU. The proposed standard is an elaboration upon the standard set forth in the current rules and reflects changes in the legislation relating to scoping. The base standard relates to the requirement that proper procedures, as established by Minn. Stat. ch. 116D and these rules, were followed in the preparation of the EIS and that the issues raised in the scoping process were adequately addressed - including adequate responses to public questions relating to those