

1. **Environmental Quality Board**
2. **Proposed Permanent Rules Relating to Wind Siting**
3. **4401.0100 PURPOSE.**
4. This chapter provides for the consideration of applications for site permits for large
5. wind energy conversion systems by the Minnesota Environmental Quality Board. This
6. chapter is intended to provide for the siting of large wind energy conversion systems in
7. an orderly manner compatible with environmental preservation, sustainable
8. development, and the efficient use of resources.
9. **4401.0200 DEFINITIONS.**
10. Subpart 1. **Scope.** As used in this chapter, the following terms have the meanings
11. given them.
12. Subp. 2. **Associated facilities.** "Associated facilities" means facilities, equipment
13. machinery, and other devices necessary to the operation and maintenance of a large
14. wind energy conversion system, including access roads, collector and feeder lines, and
15. substations.
16. Subp. 3. **Board.** "Board" means the Minnesota Environmental Quality Board.
17. Subp. 4. **Chair.** "Chair" means the individual who is the chair of the board.
18. Subp. 5. **Construction.** "Construction" means to begin or cause to begin as part of a
19. continuous program the placement, assembly, or installation of facilities or equipment
20. or to conduct significant site preparation work for installation of facilities or equipment.
21. Entering into binding power purchase contracts or obtaining wind easements from
22. property owners or gathering wind data is not construction.
23. Subp. 6. **Draft site permit.** "Draft site permit" means a document prepared by the
24. chair that indicates a preliminary decision to issue a site permit with particular terms
25. and conditions.

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1. Subp. 7. EQB. "EQB" means the entire agency, including the board and the staff.
2. Subp. 8. EQB Monitor. "EQB Monitor" means the biweekly bulletin published by the
3. EQB.
4. Subp. 9. Large wind energy conversion system or LWECS. "Large wind energy
5. conversion system" or "LWECS" means a combination of wind energy conversion
6. systems with a combined nameplate capacity of 5,000 kilowatts or more.
7. Subp. 10. Person. "Person" means an individual, partnership, joint venture, private or
8. public corporation, association, firm, public service company, cooperative, political
9. subdivision, municipal corporation, government agency, public utility district, or any
10. other entity, public or private, however organized.
11. Subp. 11. Power purchase agreement. "Power purchase agreement" means a legally
12. enforceable agreement between two or more persons where one or more of the
13. signatories agrees to provide electrical power and one or more of the signatories agrees
14. to purchase the power.
15. Subp. 12. Site permit. "Site permit" means a document issued by the board
16. authorizing a person or persons to construct a large wind energy conversion system
17. under the terms and conditions specified in the document.
18. Subp. 13. Small wind energy conversion system or SWECS. "Small wind energy
19. conversion system" or "SWECS" means a combination of wind energy conversion
20. systems with a combined nameplate capacity of less than 5,000 kilowatts.
21. Subp. 14. Wind energy conversion system or WECS. "Wind energy conversion
22. system" or "WECS" means a device such as a wind charger, windmill, or wind turbine
23. and associated facilities that converts wind energy to electric energy.
24. **4401.0300 PERMIT REQUIREMENT.**
25. Subpart 1. LWECS. No person may construct an LWECS without a site permit from
26. the board. No person may commence construction of an LWECS until the board has
27. issued a site permit for the LWECS.

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1. Subp. 2. **SW ECS.** A site permit from the board is not required to construct an SW ECS.
2. Nothing in this chapter precludes a local governmental unit from establishing
3. requirements for the siting and construction of an SW ECS.
4. Subp. 3. **Expansion of existing system.** No person may expand an existing LW ECS
5. by any amount or expand an SW ECS to exceed 5,000 kilowatts without a site permit
6. from the board. A new project is considered an expansion of an existing WECS if the
7. new WECS is within five miles of any turbine in the existing WECS, both projects are
8. under common ownership, and the new WECS is proposed less than three years after
9. the existing WECS commenced operation. Two WECS are under common ownership if
10. the proposer of the new project, or a principal of the proposer, has an ownership or
11. other financial interest in the existing WECS, although two projects are not under
12. common ownership solely because the same person provided equity financing for both
13. projects.
14. **4401.0400 FILING OF APPLICATION FOR SITE PERMIT.**
15. Subpart 1. **Number of copies.** A person seeking a site permit for an LW ECS shall file
16. three copies of the application for the site permit with the EQB for review prior to
17. acceptance of the application.
18. Subp. 2. **Electronic copy.** A person filing an application for a site permit for an
19. LW ECS shall provide the EQB with an electronic version of the application suitable for
20. posting on the EQB Web page. An applicant may request the chair to waive this
21. requirement completely or for part of the application if an electronic version of the
22. application is difficult or expensive for the applicant to obtain.
23. Subp. 3. **Proprietary information.** An applicant for a site permit for an LW ECS may
24. certify, according to the Minnesota Government Data Practices Act or other applicable
25. law, that certain information in the application is trade secret information or other
26. protected data or information that is not available to the public. The board shall

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1. determine if the certified data or information satisfies the requirements for the protected
2. classification and shall advise the applicant of the board's determination before
3. releasing any certified data or information. An applicant may withdraw its application
4. if the board determines that the data or information is not entitled to the protected
5. classification. The EQB shall ensure that data or information that is entitled to a
6. protected classification is used and disclosed only according to applicable law.
7. **4401.0450 CONTENTS OF SITE PERMIT APPLICATION.**
8. **Subpart 1. Applicant. An applicant for a site permit must provide the following**
9. **background information regarding the applicant:**
10. **A. letter of transmittal signed by an authorized representative or agent of the**
11. **applicant;**
12. **B. the complete name, address, and telephone number of the applicant and any**
13. **authorized representative;**
14. **the signature of the preparer of the application if prepared by an agent or**
15. **consultant of the applicant;**
16. **D. the role of the permit applicant in the construction and operation of the LWECs;**
17. **E. the identity of any other LWECs located in Minnesota in which the applicant, or**
18. **a principal of the applicant, has an ownership or other financial interest;**
19. **the operator of the LWECs if different from the applicant; and**
20. **the name of the person or persons to be the permittees if a site permit is issued.**
21. **Subp. 2. Certificate of need or other commitment.**
22. **A. The applicant shall state in the application whether a certificate of need for the**
23. **system is required from the Minnesota Public Utilities Commission and, if so, the**
24. **anticipated schedule for obtaining the certificate of need. The board shall not issue a site**
25. **permit for an LWECs for which a certificate of need is required until the applicant**

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1. obtains the certificate, although the board may process the application while the
2. certificate of need request is pending before the Public Utilities Commission.
3. B. The board may request the Public Utilities Commission to determine if a
4. certificate of need is required for a particular LWECS for which the board has received a
5. site permit application.
6. C. If a certificate of need is not required from the Public Utilities Commission, the
7. applicant shall include with the application a discussion of what the applicant intends to
8. do with the power that is generated. If the applicant has a power purchase agreement or
9. some other enforceable mechanism for sale of the power to be generated by the LWECS,
10. the applicant shall, upon the request of the chair, provide the EQB with a copy of the
11. document.
12. Subp. 3. **State policy.** The applicant shall describe in the application how the
13. proposed LWECS project furthers state policy to site such projects in an orderly manner
14. compatible with environmental preservation, sustainable development, and the efficient
15. use of resources.
16. Subp. 4. **Proposed site.** The applicant shall include the following information about
17. the site proposed for the LWECS and any associated facilities:
18. A. the boundaries of the site proposed for the LWECS, which must be delineated
19. on a United States Geological Survey Map or other map as appropriate;
20. B. the following characteristics of the wind at the proposed site:
21. (1) interannual variation;
22. (2) seasonal variation;
23. (3) diurnal conditions;
24. (4) atmospheric stability, to the extent available;
25. (5) turbulence, to the extent available;

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1. (6) extreme conditions;
2. (7) speed frequency distribution;
3. (8) variation with height;
4. (9) spatial variations; and
5. (10) wind rose, in eight or more directions;
6. C. other meteorological conditions at the proposed site, including the temperature,
7. rainfall, snowfall, and extreme weather conditions; and
8. D. the location of other wind turbines in the general area of the proposed LWECS.
9. Subp. 5. **Wind rights.** The applicant shall include in the application information
10. describing the applicant's wind rights within the boundaries of the proposed site.
11. Subp. 6. **Design of project.** The applicant shall provide the following information
12. regarding the design of the proposed project:
13. A. a project layout, including a map showing a proposed array spacing of the
14. turbines;
15. B. a description of the turbines and towers and other equipment to be used in the
16. project, including the name of the manufacturers of the equipment;
17. C. a description of the LWECS electrical system, including transformers at both
18. low voltage and medium voltage; and
19. D. a description and location of associated facilities.
20. Subp. 7. **Environmental impacts.** An applicant for a site permit shall include with the
21. application an analysis of the potential impacts of the project, proposed mitigative
22. measures, and any adverse environmental effects that cannot be avoided, in the
23. following areas:
24. A. demographics, including people, homes, and businesses;

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1. B. noise;
2. C. visual impacts;
3. D. public services and infrastructure;
4. E. cultural and archaeological impacts;
5. F. recreational resources;
6. G. public health and safety, including air traffic, electromagnetic fields, and
7. security and traffic;
8. H. hazardous materials;
9. I. land-based economics, including agriculture, forestry, and mining;
10. J. tourism and community benefits;
11. K. topography;
12. L. soils;
13. M. geologic and groundwater resources;
14. N. surface water and floodplain resources;
15. O. wetlands;
16. P. vegetation;
17. Q. wildlife; and
18. R. rare and unique natural resources.
19. The analysis of the environmental impacts required by this subpart satisfies the
20. environmental review requirements of chapter 4410 and Minnesota Statutes, chapter
21. 116D. No environmental assessment worksheet or environmental impact statement shall
22. be required on a proposed LWECS project.
23. **Subp. 8. Construction of project.** The applicant shall describe the manner in which
24. the project, including associated facilities, will be constructed.

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1. Subp. 9. **Operation of project.** The applicant shall describe how the project will be
2. operated and maintained after construction, including a maintenance schedule.
3. Subp. 10. **Costs.** The applicant shall describe the estimated costs of design and
4. construction of the project and the expected operating costs.
5. Subp. 11. **Schedule.** The applicant shall include an anticipated schedule for
6. completion of the project, including the time periods for land acquisition, obtaining a
7. site permit, obtaining financing, procuring equipment, and completing construction.
8. The applicant shall identify the expected date of commercial operation.
9. Subp. 12. **Energy projections.** The applicant shall identify the energy expected to be
10. generated by the project.
11. Subp. 13. **Decommissioning and restoration.** The applicant shall include the
12. following information regarding decommissioning of the project and restoring the site:
13. A. the anticipated life of the project;
14. B. the estimated decommissioning costs in current dollars;
15. C. the method and schedule for updating the costs of decommissioning and
16. restoration;
17. D. the method of ensuring that funds will be available for decommissioning and
18. restoration; and
19. E. the anticipated manner in which the project will be decommissioned and the site
20. restored.
21. Subp. 14. **Identification of other permits.** The applicant shall include in the
22. application a list of all known federal, state, and local agencies or authorities, and titles
23. of the permits they issue that are required for the proposed LWECS.
24. **4401.0460 ACCEPTANCE OF APPLICATION.**
25. Subpart 1. **Action by chair.** Within 30 days after receipt of an application for a site

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1. permit, the chair shall accept, conditionally accept, or reject the application. If the chair
2. conditionally accepts or rejects an application, the chair shall advise the applicant in
3. writing of the deficiencies in the application and the manner in which the deficiencies
4. can be addressed. Upon refiling of a revised application, the chair shall again act on the
5. application within 30 days after receipt.
6. Subp. 2. **Notice of application acceptance.** Within 15 days after chair acceptance of an
7. application, the applicant shall provide notice of the application to the county board,
8. each city council, and each township board in each county where the LWECs is
9. proposed to be located and shall publish notice of the application in a newspaper of
10. general circulation in each county. Failure to give this notice or a delay in providing this
11. notice constitutes cause to reject an application or delay a decision by the board. The
12. chair may elect to give this notice in lieu of requiring the applicant to provide the notice.
13. Subp. 3. **Additional copies.** Upon acceptance of the application by the chair, the chair
14. shall advise the applicant of how many additional copies of the application to submit to
15. the EQB. The applicant shall also provide a copy of the accepted application to the
16. Public Utilities Commission, the Minnesota Historical Society, and to each landowner
17. within the boundaries of the proposed LWECs site. The applicant shall also provide a
18. copy to the office of each regional development commission of a development region, the
19. auditor of each county, and the clerk of each city and township in which the LWECs
20. is to be located. Each county auditor, city clerk, and township clerk shall retain the
21. application and make it available for public inspection upon request. The applicant shall
22. maintain a list of all persons to whom copies of the application are provided.
23. **4401.0470 PUBLIC ADVISOR.**
24. Upon acceptance of an application for a site permit, the chair shall designate a staff
25. person to act as the public advisor on the project. The public advisor shall be available
26. to answer questions from the public about the permitting process. The public advisor
27. shall not give legal advice or other advice that may affect the legal rights of the person

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1. being advised, and the public advisor shall not act as an advocate on behalf of any
2. person.
3. **4401.0500 PRELIMINARY DETERMINATION AND DRAFT SITE PERMIT.**
4. Subpart 1. Preliminary determination. Within 45 days after acceptance of the
5. application by the chair, the chair shall make a preliminary determination whether a
6. permit may be issued or should be denied. If the preliminary determination is to issue a
7. permit, the chair shall prepare a draft site permit for the project. The draft site permit
8. must identify the person or persons who will be the permittee, describe the proposed
9. LWECS, and include proposed permit conditions.
10. Subp. 2. Effect of draft site permit. A draft site permit does not authorize a person to
11. construct an LWECS. The board may change the draft site permit in any respect before
12. final issuance or may deny the site permit.
13. **4401.0550 PUBLIC PARTICIPATION.**
14. Subpart 1. Public notice. Upon preparation of a draft site permit, the EQB shall
15. provide public notice of the draft site permit. The public notice must include the
16. following:
17. A. the name and address of the applicant for the site permit;
18. B. a concise description of the proposed LWECS project;
19. C. the location where a copy of the site permit application may be reviewed and
20. how a copy of the application may be obtained;
21. D. a statement of the availability of the draft site permit;
22. E. the name of the public advisor and how the public advisor may be contacted to
23. obtain more information;
24. F. the time and place of a public information meeting;
25. G. a statement that during the comment period any person may submit comments

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1. to the board on the draft site permit, a statement of the dates on which the comment
2. period commences and terminates, and a statement that any person may request a
3. contested case hearing on the matter; and
4. H. a brief description of the anticipated procedures for reaching a final decision on
5. the permit application.
6. **Subp. 2. Distribution of public notice.** The EQB shall publish the notice in a
7. newspaper in each county in which the proposed LWECS is to be located. The EQB shall
8. also mail the public notice to those persons known to the EQB to be interested in the
9. proposed LWECS project, including governmental officials in each county in which the
10. LWECS is proposed to be located. The EQB shall also publish notice in the EQB
11. Monitor.
12. **Subp. 3. Public comments on draft site permit.** The EQB shall afford the public a
13. minimum of 30 days after publication of the draft site permit notice in the EQB Monitor
14. to submit written comments to the EQB. The chair may extend the public comment
15. period if necessary to afford the public adequate time to review the application and
16. other pertinent information in order to formulate complete comments on the draft site
17. permit and the project.
18. **Subp. 4. Public information meeting.** The EQB shall hold at least one public
19. information meeting in a convenient location in the vicinity of the proposed LWECS
20. project. The EQB shall give the public at least ten days' notice of the public information
21. meeting. The public information meeting must be held more than ten days prior to the
22. end of the public comment period on the draft site permit. The chair shall extend the
23. comment period if necessary to meet this requirement.
24. **Subp. 5. Contested case hearing.**
25. A. Any person may request in writing that a contested case hearing be held on an
26. application for a site permit for a proposed LWECS project. The contested case hearing

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1. request must be filed within the time period established for submitting comments on the
2. draft site permit. The person requesting the public hearing shall include, as part of the
3. request, the issues to be addressed in the hearing and the reasons a hearing is required
4. to resolve those issues.
5. B. The board shall order a contested case hearing if the board finds that the person
6. requesting the contested case hearing has raised a material issue of fact and that holding
7. a hearing would aid the EQB in making a final determination on the permit application.
8. C. The hearing must be conducted according to the rules of the Office of
9. Administrative Hearings.
10. D. For a contested case hearing, the board shall identify the issues to be resolved
11. and limit the scope and conduct of the hearing according to applicable law, due process,
12. and fundamental fairness. Alternatively, the board may request the administrative law
13. judge to identify the issues and determine the appropriate scope and conduct of the hearing
14. according to applicable law, due process, and fundamental fairness.
15. **4401.0600 FINAL SITE PERMIT DECISION.**
16. Subpart 1. **Board action.** Upon completion of the procedures and requirements of this
17. chapter, the matter must be brought to the board for a final decision. If a contested case
18. hearing has been held, the board shall act according to applicable requirements for
19. action in a contested case proceeding. If no contested case hearing has been held, the
20. board shall compile the record that has been created and make a decision on the basis of
21. that record.
22. Subp. 2. **Time limit for decision.** The board shall take final action on the application
23. for a site permit for an LWECs within 180 days after acceptance of an application by the
24. chair, unless the applicant agrees to an extension or the board extends this deadline for
25. cause.
26. Subp. 3. **Determination by board.** The board shall not issue a site permit for an

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1. LWECS unless the board determines that the project is compatible with environmental
2. preservation, sustainable development, and the efficient use of resources, and the applicant
3. has complied with this chapter.
4. Subp. 4. **Conditions.** The board may include in a site permit conditions for turbine
5. type and designs, site layout and construction, and operation and maintenance of the
6. LWECS, including the requirement to restore, to the extent possible, the area affected by
7. construction of the LWECS to the natural conditions that existed immediately before
8. construction of the LWECS and other conditions that the board determines are
9. reasonable to protect the environment, enhance sustainable development, and promote
10. the efficient use of resources.
11. Subp. 5. **Term.** The term of a site permit for an LWECS is 30 years. The board may
12. renew the permit for an appropriate period of time upon request of the permit holder.
13. **4401.0610 EFFECT OF PERMIT.**
14. Subpart 1. **Wind rights.** Nothing in a site permit for an LWECS shall be construed to
15. convey the right to install a wind turbine in an area within the boundaries of the project
16. for which the permittee does not hold the wind rights.
17. Subp. 2. **Other LWECS construction.** Nothing in a site permit for an LWECS shall be
18. construed to preclude another person from seeking a site permit to construct an LWECS
19. in an area within the boundaries of the project covered by the permit if the permittee
20. does not hold exclusive wind rights for the areas.
21. Subp. 3. **Power purchase agreement.** A site permit does not authorize construction of
22. the project until the permittee has obtained a power purchase agreement or some other
23. enforceable mechanism for sale of the power to be generated by the project. If the
24. permittee does not have a power purchase agreement or other enforceable mechanism
25. at the time the permit is issued, the board shall provide in the permit that the permittee
26. shall advise the board when it obtains a commitment for purchase of the power. The

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1. board may establish as a condition in the permit a date by which the permittee must
2. obtain a power purchase agreement or other enforceable mechanism or the site permit is
3. null and void.
4. **4401.0620 DELAY IN CONSTRUCTION.**
5. If the permittee has not commenced construction of the project within two years after
6. issuance of the site permit, the permittee must advise the board of the reasons
7. construction has not commenced. In such event, the board may determine whether the
8. permit should be revoked. No revocation of a permit for failure to commence construction
9. may be undertaken except in accordance with part 4401.0700, subpart 4.
10. **4401.0700 SITE PERMIT AMENDMENT OR REVOCATION.**
11. **Subpart 1. New boundary.** Once construction of an LWECs is completed, the
12. permittee shall advise the chair of the completion of the project and the chair shall
13. amend the site permit to specifically define the area authorized for the LWECs. The
14. boundary must be no larger than necessary to allow for efficient operation of the
15. LWECs. If any person objects to the amendment of the permit to reflect the actual
16. boundaries of the project, the chair shall bring the matter to the board for decision in
17. accordance with applicable procedural requirements.
18. **Subp. 2. Permit amendment.** The board may amend a site permit for an LWECs at
19. any time if the board has good cause to do so.
20. **Subp. 3. Permit revocation.** The board may revoke a site permit for an LWECs at any
21. time if the board determines that any of the following has occurred:
22. A. the applicant knowingly made a false statement in the application or in
23. accompanying statements or studies required of the applicant, if a true statement would
24. have warranted a change in the board's findings;
25. the applicant has failed to comply with a material condition or term of the
26. permit;

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1. C. the permitted LWECS endangers human health or the environment and the
2. danger cannot be resolved by modification of the permit or LWECS; or
3. the permittee has violated other laws that reflect an inability of the permittee to
4. comply with the permit.
5. **Subp. 4. Procedure.** The board may initiate action to consider amendment or
6. revocation of a site permit for an LWECS on its own initiative or upon the request of
7. any person. No site permit may be amended or revoked without first providing notice
8. and affording due process to the permit holder.
9. **4401.0800 FEES.**
10. **Subpart 1. Fee requirement.** An applicant for a site permit under Minnesota Statutes,
11. section 116C.694, shall pay an application fee to the EQB. The purpose of the application
12. fee is to cover actual costs necessarily and reasonably incurred in processing an
13. application for a site permit, including, but not limited to, staff time, expenses for public
14. notice and meetings, environmental review, administrative overhead, and legal
15. expenses.
16. **Subp. 2. Determination of EQB budget.** Upon receipt of an application for a site
17. permit, the chair shall estimate the costs the EQB expects to incur in processing the
18. application and establish an estimated budget. If the applicant disagrees with the
19. amount of the estimated budget determined by the chair, the applicant may request
20. that the board determine the appropriate estimated budget.
21. **Subp. 3. Initial payment.** Upon determination of the estimated budget, the applicant
22. shall pay at least 50 percent of the estimated budget to the EQB. The chair shall not
23. process a permit application until the first portion of the fee is submitted. The EQB shall
24. deposit all money received from an applicant for permit fees in a special account.
25. **Subp. 4. Periodic payments.** The remaining costs incurred by the EQB must be paid
26. in periodic payments upon receipt of an invoice from the EQB. The EQB shall not make
27. a final decision on a site permit application if any assessed fees are unpaid.

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1. Subp. 5. **Final accounting.** At the end of the permitting process, including any
2. judicial review of the board's final decision, the EQB shall provide a final accounting to
3. the applicant of the total cost of processing the permit application. The applicant may
4. review all actual costs associated with processing an application and present objections
5. to the board. The applicant shall make the final payment within 30 days of notification,
6. or the EQB shall refund any excess payments within 30 days of the final accounting.