

REQUEST FOR COMMENTS

**Proposed Amendment to Rules Governing the Environmental Review Program,
Minnesota Rules, chapter 4410:
Amendment of part 4410.4300, subpart 15, Mandatory EAW Category for Air Pollution,
With Respect to Greenhouse Gas Emissions**

Pursuant to Minn. Stat., sec. 14.101 and Minn. R. 1400.2050, the Minnesota Environmental Quality Board (EQB) hereby requests comments on a potential amendment to administrative rules governing Minnesota's environmental review program.

Subject of Rules. The EQB is considering amending the existing rules governing the Environmental Review program to clarify how greenhouse gases (GHGs) are to be treated under the Air Pollution mandatory EAW category, at part 4410.4300, subpart 15. This subpart requires preparation of an EAW "for construction of a stationary source facility that generates 250 tons or more per year, or modification of a stationary source facility that increases generation by 250 tons or more per year, of any single air pollutant after installation of air pollution control equipment." The Minnesota Pollution Control Agency (MPCA) is assigned responsibility for preparing all EAWs under this category.

The Environmental Review program rules do not define "air pollutant." In practice the MPCA has applied this mandatory category to substances permitted as air pollutants under the federal Clean Air Act. (The MPCA issues Clean Air Act permits for facilities in Minnesota.) In the past, GHGs have not been issued permits. However, in response to a U.S. Supreme Court ruling in a lawsuit in 2007, the U.S. Environmental Protection Agency (EPA) has recently issued a regulation under which GHG emissions will be covered by Clean Air Act permits under certain circumstances beginning in January 2011. For Minnesota, the permits will be issued by the MPCA. The permits will cover GHG emissions of at least 75,000 tons per year or 100,000 tons per year, depending on other factors, of carbon dioxide equivalents (carbon dioxide equivalents is a way of accounting for the differing potencies of the various GHGs). These levels are much higher than the permitting thresholds that apply to other air pollutants, which are 100 or 250 tons per year, depending on circumstances, and are intended to cover only the largest types of GHG emitting facilities, such as power plants and refineries.

The new EPA regulation raises the question of whether GHG emissions will also be subject to the State's mandatory EAW category for air pollutants, and if so, whether the existing 250 tons per year threshold is appropriate for GHG emissions. The EQB is now soliciting comments about these questions and related matters.

To date, the EQB staff has identified the following possible options for amending the rules with respect to these issues:

- Explicitly exclude GHGs from application of the Air Pollution category by defining the term “air pollutant” in a manner that excludes GHGs.
- Explicitly include GHGs under the category by defining the term “air pollutant” in a manner that includes GHGs.
- Subdivide the Air Pollution category into two items: one item applying to air pollutants other than GHGs, with the same threshold (250 tons per year) as the existing category; and a new item B that would apply specifically to GHGs, with an appropriate threshold (or multiple thresholds) which would be higher than the existing 250 tons per year threshold. The threshold(s) specific to GHGs would likely be chosen to correspond to one of the permitting threshold(s) in the EPA regulations as mentioned above, e.g., 75,000 or 100,000 tons per year of carbon dioxide equivalent emissions, but could be set at some other number.

The EQB is not contemplating changing the responsibility for preparing EAWs under this category to any unit of government other than the MPCA. The EQB presumes that if it amends the rules to apply to GHGs its amendment would apply to the same GHGs as the EPA regulation and would also measure emissions in terms of carbon dioxide equivalents.

Persons Affected. The proposed amendments may specifically affect project proposers whose projects emit GHGs. Since many projects emit relatively large amounts of carbon dioxide, one of the GHGs, depending upon the option chosen by the EQB and the specific threshold quantity chosen (if a numerical threshold is chosen) it is possible that many developers could be directly affected by the proposed rule amendment. On the other hand, if the EQB chooses an option that excludes coverage of GHGs under the Air Pollution mandatory category or sets a threshold in the range of the permitting thresholds in EPA’s recent regulation (i.e., 75,000 or more tons per year), no or only the largest emitters would be affected. Nationally, EPA projects that about 900 additional new or expanding facilities per year will require permits due to the impending coverage of GHGs; this implies that in Minnesota something in the range of 10 -25 projects per year may be affected if the EQB adopts EAW thresholds similar to the EPA’s permitting thresholds. Among governmental units, the proposed amendments will directly affect the MPCA, since the MPCA will be responsible for preparing whatever EAWs are required under the amendment.

Statutory Authority. *Minnesota Statutes*, sections 116D.04 & 116D.045, establish the Environmental Review Program and authorize the EQB to adopt administrative rules governing its operation. Specifically, section 116D.04, subdivision 2a (a) directs the EQB to “by rule establish categories of actions for which EISs and EAWs shall be prepared as well as categories of actions for which no environmental review is required.”

Public Comment. Interested persons or groups may submit comments or information on possible rule amendments in writing or orally until Wednesday, November 3, 2010.

Rule Drafts. The EQB has not yet prepared a draft of the proposed amendments. The options for the amendment being considered are described above.

Agency Contact Person. Written or oral comments, questions, requests to be appointed to an advisory group, requests to receive the preliminary draft of the proposed amendments, or requests for more information on these possible amendments to rules should be directed to:

Jon Larsen
Environmental Quality Board
300 Centennial Building
658 Cedar Street
St. Paul, MN 55155
Telephone: 651/201-2477
Fax: 651/296-3698
E-mail: jon.larsen@state.mn.us
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.

Dated: _____

9-28-10



Gene Hugoson, Chair
Environmental Quality Board