



Reviewing Petitions: A Procedural Guide for Local RGUs

The Environmental Quality Board (EQB) draws together the Governor's Office, five citizens and the heads of 9 state agencies in order to develop policy, create long-range plans and review proposed projects that would significantly influence Minnesota's environment. The Board staff is housed in the State and Community Services Division of the Department of Administration.

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This document is not intended as a substitute for Environmental Quality Board rules and should be used in conjunction with the rule provision parts 4410.1000 to 4410.1700. Copies of the rules are available from Minnesota's Bookstore, www.minnesotasbookstore.com, 651-297-3000 or 800-657-3757, or at the Revisor of Statutes homepage at www.revisor.leg.state.mn.us. Further information about the environmental review process is available in the Guide to Minnesota Environmental Review Rules, also located on the EQB website. Upon request, this document will be made available in an alternate format, such as Braille, large print or audiotape. For TTY, contact Minnesota Relay Service at 800-282-5077 and ask for the Minnesota Environmental Quality Board.

Updates and corrections to this document and all its accompanying links, forms, or examples will be posted on the EQB homepage at <http://www.eqb.state.mn.us/review.html>.

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By the end of this document, you will learn:

- How to determine whether a project is exempt from environmental review.
- The tasks required to process a citizens' petition for environmental review.
- About the letters and notices the RGU is required to prepare/distribute when processing an environmental review petition.
- Any applicable deadlines in making petition decisions and distributing letters/notices.

Overview - Processing a Petition

Here's an overall summary of the steps involved in processing a petition for environmental review:

Steps 1-2	Preliminary steps
Steps 3-5	Determine whether the project is mandatory or exempt
Steps 6-7	Gather procedural information
Steps 8	Follow-up with the project proposer
Steps 9	Investigate the project and its potential environmental effects
Steps 10-12	Reach an informed decision
Step 13	Notify required parties

Step 1 – Verify the RGU designation is appropriate

The same day that the Responsible Governmental Unit (RGU) receives a citizen petition, staff officials should review its contents and verify that their organization is the appropriate RGU. The RGU is the organization with the most authority to approve or deny the project.

When EQB staff receive a petition, they review its contents and determine the most likely RGU for the project based on the project's size, type and location. Circumstances can change or new information can emerge, however, that may lead the designated RGU to determine that another governmental unit may have the most

authority to approve or deny the project. If local government staff officials believe this situation applies to a project for which they received a petition, they should contact the EQB for additional information. The EQB's phone number, E-mail

Helpful Tip

If a local government would ordinarily be the RGU for a project but has issued all necessary permits and approvals, an RGU staff representative should contact EQB staff for information and assistance. MN Rule 4410.0500 subpart 3 states, "The EQB chair or designee shall not designate as the RGU any governmental unit which has already made its final decisions to grant all permits or approvals required from it to construct the project." In these situations, EQB staff will attempt to identify another organization with a permit or approval decision yet to issue and that could be designated the RGU for the project.

and address are available on the EQB web site, www.eqb.state.mn.us.

Step 2 – Contact the project proposer

Once RGU staff confirm that their local government is the appropriate RGU, they should contact the project proposer. While citizen petitioners are required to notify the project proposer in writing that a petition has been filed, it is important that RGU staff also contact the proposer and let them know the petition has been received and is under consideration. RGU staff may not have very much information at this point in time (or even know how the environmental review process works), but this



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step gives the project proposer notice that a petition decision is required.

RGU staff may want to consider saying:

“This is [name] from [organization name]. I am calling to inform you that we received a citizen petition for environmental review today for your project. We are in the process of reviewing the petition and environmental review requirements at this time, and will contact you again within a few days with additional information. In the meantime, you need to know a prohibition is in effect on the project, and we cannot issue any permitting or other local government approvals until we first make a decision about the citizen petition. We appreciate your patience during this process and would suggest you check out the EQB web site at www.eqb.state.mn.us for more information about the environmental review process if you have questions.”

Step 3 – Determine whether the project requires a mandatory EAW

In the environmental review rules, there are criteria established that make EAWs mandatory for many types of projects. These criteria are called “mandatory thresholds” and are listed in Minnesota Rule 4410.4300. If a project’s size is above the mandatory threshold for its category, then environmental review becomes mandatory (required).

RGU staff should consult the EQB document, “A Guide to the Environmental Review Rules,” for a complete list of the mandatory thresholds for environmental review. If RGU staff officials determine that a petition pertains to a project for which an EAW will be mandatory, they should notify the petitioners’ representative and the EQB of their findings. The RGU should then proceed through the steps of preparing an EAW as required by the environmental review rules.

Step 4 – Determine whether the project is exempt from environmental review

If the project does not require a mandatory EAW, RGU staff should determine whether the project is exempt from the environmental review rules. Environmental review rules and procedures can apply to any action or project that meets all the

- The action or project must involve the physical manipulation of the environment, directly or indirectly.
- The action or project must involve at least one governmental approval, one form of governmental financial assistance, or be conducted by a government unit.
- Action or project approval and construction must take place in the future; that is, projects already constructed or those with all required governmental approvals are not subject to further review unless an expansion is proposed.
- The project is not subject to any of the

The term “governmental action” refers to activities including projects conducted, permitted, assisted, financed, regulated or approved by federal, state and/or local governmental units.

The term “permit” means a permit, lease, license, certificate or other entitlement for use or permission to act that may be granted or issued by a governmental unit, or the commitment to issue or the issuance of a discretionary contract, grant, subsidy, loan or other form of financial assistance by a governmental unit.

The term “governmental unit” applies to local government units such as watershed districts, counties, towns, cities, port authorities, housing authorities and the Metropolitan Council with the exception of courts, school districts and regional development



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criteria listed below. If the project does not meet these criteria, it is considered exempt and cannot be petitioned for environmental review.

Step 5 – Conduct the required procedures for exempt projects (if necessary)

If the project is exempt from environmental review according to the criteria listed earlier in this guide, RGU staff must, in writing, document the reason for the exemption and notify the petitioners' representative and EQB of their conclusions.

Most of the time, a final decision on whether the project is exempt from environmental review will need to go before the local government's board/council for consideration. Whether or not to bring

Helpful Tip

The fact that no application has been filed on a project or that no action has been requested on the project does not mean the petition can be ignored or that an organization designated by the EQB is not the appropriate RGU.

If a local government would ordinarily be the RGU for the project, and/or it expects an application/approval decision would be required at some future time, it should keep the petition on file. A citizen petition for environmental review remains in effect for one year from the date that the petition was received.

Local government staff must then notify the petitioners' representative and the EQB that, while it cannot act on a petition because no permit application has been filed, the petition will remain in effect for one year and apply to any proposed project for which the nature and location is substantially similar to the project identified in the petition.

the issue before the local government board/council is based on local decision-making procedures and ordinances, not by any requirements listed in the environmental review rules.

Step 6 – Identify the local government's decision-making authority

RGU staff should then identify the authority in their organization that can make environmental review decisions (e.g., granting or denying the petition). This varies from one local government to another, but in most cases it will be the board/council. The authority for making environmental review decisions is determined by the local government's procedures/ordinances, not by state environmental review rules, and anyone making environmental review decisions other than the governing body must have a delegated authority to do so. This information will be helpful when notifying the project proposer of environmental review requirements as well as the RGU's policies and procedures regarding petitions for environmental review.

Step 7 – Prepare a draft timetable of events

Next, RGU staff should estimate a date by which their organization can be expected to make a final decision regarding the petition. The decision date is usually determined according to the local government board/council meeting schedule. RGU staff should allow enough time to determine the merits of the issues presented in the petition and prepare required documentation.

It may be useful for RGU staff to outline an anticipated schedule in written form, just in case the project proposer or other local government staff have questions on the petition's status. The timeline should not be considered a guarantee but is just meant to be a planning and information tool for the project proposer, RGU staff, the board/council, etc.

According to MN Rules, RGUs must make a decision on whether an EAW is needed (as a result of a petition) within 15 business days. In the event the decision-making authority of an RGU is a board/council, the board/council has the option of granting itself an additional 15 days to make



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a decision – bringing the total to 30 days. In the event an RGU staff person has been delegated as the decision-making authority of the RGU, they also have the opportunity for a 15 day extension, but, according to the rules, they cannot grant it themselves and must request the extension from the EQB.

Step 8 – Follow-up with the project proposer

Once RGU staff have reviewed the petition and determined a likely decision date, it should again contact the project proposer (preferably within 1-2 days of receiving petition) and explain the anticipated decision-making process. RGU staff should once again inform the proposer that, according to environmental review rules, a prohibition is automatically placed on project approvals and construction when environmental review is requested by a citizen petition.

The project proposer should know that the prohibition will be lifted automatically if the petition is denied but will continue if the local government orders an EAW.

The project proposer will probably have a lot of questions at this time about how the petition will affect the approval of their proposal, site plan,

Helpful Tip

Some proposers think the “sixty day rule” (MN Statute 15.99) continues to apply to projects that are going through the environmental review process, but this is not the case. RGU staff should inform the project proposer that, because environmental review decisions can often take 30+ days to be reached, environmental review is one of the exceptions to the rule. Essentially, the clock stops ticking on the “sixty day rule” until environmental review has been completed and, once environmental review has been completed, the clock is reset at 60 days.

permits, etc. In the event RGU staff are unfamiliar with the environmental review process, and/or can’t answer some of the project proposer’s questions, they should recommend the proposer look at the EQB web site or contact EQB staff.

For many local governments, environmental review occurs infrequently and it is common for local government staff members to be unsure about procedures or process steps. In addition to the EQB, RGU staff can talk with zoning administrators in other local governments to see how they may have approached the citizen petition decision-making process.

Step 9 – Determine the merits of the issues listed in the petition

Regardless of who will be making the decision on the petition (planning commission, department head, city council, etc.) RGU staff should review the petition contents and make a list of issues that will need to be examined. The list should include not only those issues listed in the petition, but all other environmental impacts that RGU staff believe could reasonably occur from the project.

According to Minnesota environmental review rules, the RGU is required to examine the following issues when determining whether an EAW should be ordered:

“If the evidence presented by the petitioners, proposers, and other persons or otherwise known to the RGU demonstrates that, because of the nature or location of the proposed project, the project may have the potential for significant environmental effects.”

When reaching a decision regarding a petition for environmental review, RGU staff should carefully review Minnesota Rules Chapter 4410 to evaluate whether or not to order an EAW. While not a comprehensive list, some definitions/issues that RGU staff may want to research are the potential



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for significant environmental effects, cumulative effects, mitigation by ongoing public regulatory authority, and the anticipation and control of potential environmental effects.

Step 10 - Prepare a proposed findings of fact

The “findings of fact” is a written document that lists the RGU’s findings regarding issues of fact related to the project, and that were used in reaching an appropriate environmental review decision. In other words, the findings of fact is a summary of the RGU’s factual and legal reasons for reaching its conclusion.

Because citizen petitioners or the project proposer have the ability to appeal environmental review decisions to the county district court in which the project would be located, RGU staff should have their local government attorney review the proposed findings of fact and suggest changes if necessary.

Step 11 - Prepare a draft resolution

In most cases, reaching a decision regarding a citizen petition for environmental review will involve the local government’s council or board. Exceptions to this would be in cases where another local government authority has been delegated decision-making powers for environmental review. Prior to presenting the information before a board/council for a decision, though, RGU staff may want to consult the local government’s attorney when drafting an appropriate resolution.

In cases where the RGU staff are uncertain of how the board/council will vote, two draft resolutions should be prepared; one granting the petition and the other denying the petition.

Step 12 – Reach an official decision

Once the analysis of the project, the proposed findings of fact and the draft resolution are complete, RGU staff should seek appropriate action to deny the petition or order an EAW.

In most cases, this step will involve the local government’s board/council. RGU staff should follow regular procedures for including this decision at one of the board/council meetings, such as listing the item on the meeting agenda, circulating copies of project-related documents, preparing presentation materials, circulating copies of the draft resolution and proposed findings of fact and verifying that the project proposer and any other consultants/engineering staff will be available at the meeting for questions.

Step 13– Preparing the record of decision

The “record of decision” is a record of the RGU’s investigation and includes various elements related to the project and the environmental review decision. The Record of Decision often includes such items as the meeting minutes and the findings of fact.

As suggested with the findings of fact, RGU staff should have their local government attorney review the Record of Decision and suggest changes, if necessary. The attorney will be able to verify that the RGU has legally “covered all the bases.”

Helpful Tip

If an EAW has been ordered, RGU staff will want to schedule a meeting with the project proposer and outline the next steps for preparing the data portions of the EAW. More information on preparing and reviewing EAWs can be found on the EQB’s web site or by contacting EQB staff. The EQB’s phone number, E-mail, and mailing address are available on the EQB web site at www.eqb.state.mn.us.



Step 14 – Notify all required parties of the RGU's decision

Regardless of the decision made on the petition, the RGU must notify the petitioners' representative, the project proposer, and anyone else who requested notification of the RGU's decision within five days of the date of decision.