

March 24, 2026

**VIA EFILING ONLY**

Anne Kealing  
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Attorney General's Office  
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**Re: *In the Matter of the Exempt Permanent Rules Relating to Scoping Documents for Environmental Review*  
CAH 21-9008-41465; Revisor RD-4798**

Dear Anne Kealing:

Enclosed herewith and served upon you please find the **ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.388 AND MINN. R. 1400.2400.**

Pursuant to Minn. R. 1400.2400. subp. 4a, the Minnesota Environmental Quality Board may resubmit the rule and accompanying materials to the Administrative Law Judge for review. The Minnesota Environmental Quality Board may also request, pursuant to Minn. R. 1400.2400, subp. 5, that the Chief Administrative Law Judge reconsider the disapproval of the rules **within five working days of receiving the Judges' decision.**

If you have any questions, please contact William Moore at (651) 361-7893, at [william.t.moore@state.mn.us](mailto:william.t.moore@state.mn.us) or via fax at (651) 539-0310.

Sincerely,

  
CARA HUNTER  
Legal Assistant

Enclosures

cc: Ryan Inman  
Legislative Coordinating Commission  
Representative Jim Nash  
Representative Ginny Klevorn  
Senator Tou Xiong

STATE OF MINNESOTA  
COURT OF ADMINISTRATIVE HEARINGS

In the Matter of the Exempt Permanent  
Rules Relating to Scoping Documents for  
Environmental Review

**ORDER ON REVIEW  
OF RULES UNDER  
MINN. STAT. § 14.388  
AND MINN. R. 1400.2400**

This matter came before Administrative Law Judge Kimberly Middendorf upon the application of the Minnesota Environmental Quality Board (EQB) for a legal review under Minn. Stat. § 14.388 (2024).

On March 10, 2026, the EQB filed documents with the Court of Administrative Hearings seeking review and approval of the above-entitled rules under Minn. Stat. § 14.388 and Minn. R. 1400.2400 (2025). The EQB filed its reply to public comments on March 20, 2026, and the record closed on that date.

Based upon a review of the EQB's written submissions and the public comments, and for the reasons set out in the Memorandum which follows below,

**IT IS HEREBY DETERMINED:**

1. Pursuant to 2025 Minn. Laws 1st Spec. Sess. ch. 1, Art. 6, § 5, the Minnesota Legislature mandated certain specific changes in Minnesota Rules and authorized the Board to implement those changes by invoking the good cause exemption to the rulemaking procedures as provided by Minn. Stat. § 14.388, subd. 1(3). The following proposed rules were adopted in compliance with the legislature's directive and with the procedural requirements of Minn. Stat. ch. 14 (2024), and Minn. R. ch. 1400 (2025):

Minn. R. 4410.0200, subp. 24  
Minn. R. 4410.0200, subp. 77a  
Minn. R. 4410.1000, subp. 1  
Minn. R. 4410.1000, subp. 2  
Minn. R. 4410.2100, subp. 2(A)  
Minn. R. 4410.2100, subp. 3(C)  
Minn. R. 4410.2100, subp. 5  
Minn. R. 4410.2800, subp. 1a(A)  
Minn. R. 4410.6200, subp. 1(e)  
Minn. R. 4410.6500, subp. 1(A)

2. The following proposed rules exceed the 2025 Minn. Laws 1st Spec. Sess. ch. 1, Art. 6, § 5 good cause exemption and are not exempt from rulemaking

procedures. These rules were not adopted in compliance with the legislature's directive or with the procedural requirements of Minn. Stat. ch. 14, and Minn. R. ch. 1400:

Minn. R. 4410.2100, subp. 2(B), (C)  
Minn. R. 4410.2100, subp. 3(A), (B)  
Minn. R. 4410.3100, subp. 4  
Minn. R. 4410.3610, subp. 5a(B)

**IT IS HEREBY ORDERED:**

1. The proposed rules Minn. R. 4410.0200, subp. 24; Minn. R. 4410.0200, subp. 77a; Minn. R. 4410.1000, subp. 1; Minn. R. 4410.1000, subp. 2; Minn. R. 4410.2100, subp. 2(A); Minn. R. 4410.2100, subp. 3(C); Minn. R. 4410.2100, subp. 5; Minn. R. 4410.2800, subp. 1a(A); Minn. R. 4410.6200, subp. 1(e); and, Minn. R. 4410.6500, subp. 1(A), are **APPROVED**.

2. The proposed rules Minn. R. 4410.2100, subp. 2(B), (C); Minn. R. 4410.2100, subp. 3(A), (B); Minn. R. 4410.3100, subp. 4; Minn. R. 4410.3610, subp. 5a(B) are **DISAPPROVED**.

Dated: March 24, 2026

  
KIMBERLY MIDDENDORF  
Administrative Law Judge

**NOTICE**

Minn. R. 1400.2400, subp. 4a, provides that when a rule is disapproved, the agency must resubmit the rule to the Administrative Law Judge for review after it has revised the proposed rules. The Administrative Law Judge then has five working days to review and approve or disapprove the rule. Minn. R. 1400.2400, subp. 5, provides that an agency may ask the Chief Administrative Law Judge to review a rule that has been disapproved by a Judge. The request must be made within five working days of receiving the Judge's decision. The Chief Administrative Law Judge must then review the agency's filing and approve or disapprove the rule within 14 days of receiving it.

## MEMORANDUM

On March 10, 2026, the EQB filed with the Court of Administrative Hearings the following documents, requesting the approval of rule changes under the good cause exemption to rulemaking procedures under Minn. Stat. § 14.388:

- (1) A copy of the proposed Rules with Revisor's approval;
- (2) A proposed Order Adopting Rules;
- (3) A copy of the Notice required under Minnesota Statutes, section 14.388, subdivision 2; and
- (4) A Certificate of Mailing, a Certificate of Accuracy of the Mailing List, and a Certificate of Additional Notice.

According to the EQB's Notice, the EQB requests approval of various rule amendments under Minn. Stat. § 14.388, subd. 1(3), which permits an exemption from ordinary rulemaking when warranted to "incorporate specific changes set forth in applicable statutes when no interpretation of law is required."

The EQB stated:<sup>1</sup>

By Laws of Minnesota 2025, 1st Spec. Sess., Chapter 1, Article 6, Section 5, the Minnesota Legislature requires the Environmental Quality Board to amend rules relating to the required scoping process for mandatory environmental impact statements. The Board is using the good cause exemption process under Minnesota Statutes, section 14.388, subd. 1, clause (3), to make the specific change stated in the laws cited above without additional interpretation.

Consequently, the Judge has reviewed the submissions under Minn. Stat. § 14.388, subd. 1(3).

### NOTICE TO INTERESTED PERSONS

Minn. Stat. § 14.388, subd. 1, directs the Court of Administrative Hearings to review the proposed rule changes for legality and to determine whether adequate justification has been provided for use of the good cause exemption. Minn. Stat. § 14.388, subd. 2, requires that an agency proposing to adopt, amend, or repeal a rule under Minn. Stat. § 14.388 must give electronic notice of its intent (in accordance with Minn. Stat. § 16E.07, subd. 3 (2024)); and notice by United States mail or electronic mail to persons who have registered their names with the agency under Minn. Stat. § 14.14, subd. 1a (2024). The notice must be given no later than the date the agency submits the proposed rule to the Court of Administrative Hearings for review of its legality. The notice must include:

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<sup>1</sup> Notice of Submission of Exempt Rules Proposed for Adoption without a Public Hearing to the Court of Administrative Hearings (Notice) (Mar. 6, 2026).

- (1) The proposed rule, amendment or repeal;
- (2) An explanation of why the rule meets the requirements of the good cause exemption under subdivision 1; and
- (1) A statement that interested parties have five business days after the date of the notice to submit comments to the Office of Administrative Hearings.

According to the documents filed by the EQB, on March 6, 2026, the EQB mailed or emailed notice to the persons and associations who requested that their names be placed on the EQB's rulemaking mailing list, according to their stated preference for receipt of notice.<sup>2</sup> The mailing was also sent to members of the legislature as stated in the EQB's additional notice plan.<sup>3</sup> The Notice explained the use of the good cause exempt process and included the statement that the proposed rules would be submitted to the Court on March 10, 2026, and that parties had five business days thereafter to submit comments. The mailing included the Notice, the proposed rules, and the EQB's memorandum explaining the proposed amendments to the rules. Accordingly, the EQB has established compliance with notice requirements.

## **COMMENTS FROM THE PUBLIC**

The Minnesota Chamber of Commerce (the Chamber) submitted comments, generally in favor of the amendments.<sup>4</sup> WaterLegacy, the Minnesota Center for Environmental Advocacy, the Minnesota Division Izaak Walton League of America, the Minnesota Environmental Partnership, and Northeastern Minnesotans for Wilderness (collectively, the Environmental Organizations) submitted joint comments strongly opposing the amendments.<sup>5</sup> These comments are addressed in detail below.

Two members of the public submitted proposals for strengthening public participation and environmental protection in environmental review processes.<sup>6</sup> Owatonna East Side Corridor Residents shared their experience with the environmental review process related to the proposed Owatonna East Side Corridor (ESC) project in Steele County and a range of well-reasoned suggestions for improving the process.<sup>7</sup> The Judge appreciates the thought and time these commenters clearly put into their comments. The EQB should carefully review these comments and consider them in any future rulemakings.

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<sup>2</sup> Certificate of Mailing (Mar. 6, 2026).

<sup>3</sup> Certificate of Additional Notice (Mar. 6, 2026).

<sup>4</sup> Comment of the Minnesota Chamber of Commerce (Mar. 16, 2026) (Chamber Comment).

<sup>5</sup> Comment of WaterLegacy, the Minnesota Center for Environmental Advocacy, the Minnesota Division Izaak Walton League of America, the Minnesota Environmental Partnership, and Northeastern Minnesotans for Wilderness (Mar. 17, 2026) (EO Comment).

<sup>6</sup> Comment of Melissa Zimmermann (Mar. 17, 2026); Comment of Matthew Sennott (Mar. 17, 2026).

<sup>7</sup> Comment of Owatonna East Side Corridor Residents (Mar. 17, 2026).

## USE OF THE GOOD CAUSE EXEMPTION

The Minnesota Environmental Policy Act, Minn. Stat. § 116D.04, authorizes the EQB to adopt rules governing the Environmental Review Program, including establishment of a process to scope mandatory, discretionary, and voluntary Environmental Impact Statements (EISes). In its present form, Minn. R. 4410.2100 establishes that an environmental assessment worksheet (EAW) serves as the scoping document for each EIS.

In 2025, the Legislature adopted a law titled *Scoping Environmental Assessment Worksheet Not Required for Projects that Require a Mandatory Environmental Impact Statement* (2025 Session Law).<sup>8</sup> The 2025 Session Law reads, in pertinent part, as follows:<sup>9</sup>

(a) The Environmental Quality Board must amend Minnesota Rules, part 4410.2100, as follows:

(1) to provide that an environmental assessment worksheet does not need to be prepared for a project that falls within a mandatory environmental impact statement category under Minnesota Rules, part 4410.4400, or other applicable law; and

(2) to provide that a scoping process undertaken under Minnesota Rules, part 4410.2100, for a project that falls within a mandatory environmental impact statement category must be completed no later than 280 days after publication of the notice of availability of a scoping document in the EQB Monitor.

(b) The board may use the good cause exemption under Minnesota Statutes, section 14.388, subdivision 1, clause (3), to adopt rules under this section, and Minnesota Statutes, section 14.386, does not apply except as provided under Minnesota Statutes, section 14.388.

Exempt rulemaking is an exceptional procedure and is generally reserved to address emergencies; to adopt court-prescribed or legislative changes; or to make non-substantive changes or clarifications to the existing rules.<sup>10</sup> As the Minnesota Court of Appeals has noted, the abbreviated exempt rulemaking process obviates the public's opportunity to bring to the agency's attention all relevant aspects of the proposed rules, which was intended to enhance the quality of the agency decision.<sup>11</sup> The exempt process has a negative impact on the statutory goal of "increase[ing] public accountability of administrative agencies."<sup>12</sup> Consequently, it should be used sparingly and must be viewed with scrutiny. Rules that are promulgated under Minn. Stat.

<sup>8</sup> 2025 Minn. Laws 1st Spec. Sess. ch. 1, Art. 6, § 5.

<sup>9</sup> 2025 Minn. Laws 1st Spec. Sess. ch. 1, Art. 6, § 5.

<sup>10</sup> See *Jewish Community Action v. Commissioner of Public Safety*, 657 N.W.2d 604, 610 (Minn. Ct. App. 2003); Minn. Stat. § 14.388, subd. 1 (1) – (4).

<sup>11</sup> *Jewish Community Action*, 657 N.W.2d at 610.

<sup>12</sup> *Id.*, citing Minn. Stat. § 14.001(2).

§ 14.388, subd. 1(3) (Clause (3)) may stand as permanent rules. Clause (3) contemplates that administrative rules issued under this exemption must implement the substantive policy the Legislature has announced rather than reflect the agency's choice among policy alternatives. In reviewing the proposed rule amendments, the Judge must determine that the rule amendments strictly implement the Legislature's directive and do not go beyond it.

The Judge reviews proposed exempt rules under Minn. R. 1400.2400. This rule requires that in reviewing a filing, the Judge must decide whether the proposed rule meets the standards of Minn. R. 1400.2100, Items A and D to G, and "whether the agency has established its exemption from rulemaking under Minnesota Statutes, section 14.386 or 14.388."<sup>13</sup> The standards of review Items A and D to G are:

A rule must be disapproved by the judge or chief judge if the rule:

A. was not adopted in compliance with procedural requirements of this chapter, Minnesota Statutes, chapter 14, or other law or rule, unless the judge decides that the error must be disregarded under Minnesota Statutes, section 14.15, subdivision 5, or 14.26, subdivision 3, paragraph (d);

. . .

D. exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by its enabling statute or other applicable law;

E. is unconstitutional or illegal;

F. improperly delegates the agency's powers to another agency, person or group;

G. is not a "rule" as defined in Minnesota Statutes, section 14.02, subdivision 4, or by its own terms cannot have the force and effect of law. . . .<sup>14</sup>

The EQB proposes a number of amendments to its rules. The Board relies exclusively on the 2025 Session Law and its grant of permission to use Clause (3) as its authority for amending certain parts of its rules. The Legislature's grant of rulemaking authority through the good cause exemption process is expressly limited to Minn. R. 4410.2100. The 2025 Session Law, however, does not authorize the Board to amend Minn. R. 4410.2100 in ways that exceed the Legislature's directive. Moreover, to the extent the EQB proposes to amend rules other than Minn. R. 4410.2100, it must establish that the amendment qualifies for the Clause (3) exemption.

As guided by the Legislature, the EQB requests approval of its proposed amendments to its rules under the "good cause exemption" of Minn. Stat. § 14.388, subd. 1(3) (Clause (3)). Minnesota Statutes section 14.388 provides that an abbreviated and streamlined set of procedures for promulgating new rules may be used when "good cause" is present. The Environmental Organizations argue that the EQB has not

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<sup>13</sup> Minn. R. 1400.2400, subp. 3.

<sup>14</sup> Minn. R. 1400.2100.

established good cause to use the exempt process and all proposed rules must be denied as a result.<sup>15</sup>

In this instance, the Legislature has determined that good cause to amend Minn. R. 4410.2100 is present through its declaration that the “board may use the good cause exemption under Minnesota Statutes section 14.388, subdivision 1, clause (3)”, which in turn states that an agency may avoid the ordinary requirements for rulemaking in order to “incorporate specific changes set forth in applicable statutes when no interpretation of law is required.” To determine otherwise, as the Environmental Organizations argue, would render meaningless the Legislature’s finding of good cause in paragraph b of the 2025 Session Law.<sup>16</sup> However, the Legislature’s finding of good cause is expressly limited to amending Minn. R. 4410.2100. To the extent that the EQB proposes to amend other rules in this rulemaking, good cause must be established independently of the 2025 Session Law.

### **RULE-BY-RULE ANALYSIS**

The 2025 Session Law directed EQB to amend Minn. R. 4410.2100 to make two narrow changes: specifically, that an EAW is not required for a project for which an EIS is mandatory, and to set a deadline of 280 days to complete the scoping process for those projects. In addition, the EQB submits a variety of “additional necessary revisions to effectively implement the changes by correcting and conforming references to scoping EAWs that appear throughout the chapter and to make other similar small changes necessary to conform to part 4410.2100 as amended.”<sup>17</sup> The EQB states “[t]hese changes fall within the scope of the exempt rulemaking and do not constitute an interpretation of law.”<sup>18</sup>

Each rule, and comments pertinent to it, are discussed below.

#### ***4410.0200, Subp. 24 – Definition of EAW***

The EQB is proposing a change to the definition of an EAW. The proposed definition reads:

*Subp. 24. Environmental assessment worksheet. “Environmental assessment worksheet” means a brief document which is designed to set out the basic facts necessary to determine whether an EIS is required for a proposed project ~~or to~~ and may initiate the scoping process for an EIS.*

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<sup>15</sup> EO Comment at 2-3.

<sup>16</sup> See, e.g., *In re the Adopted Exempt Permanent Rule of the Minn. Pollution Control Agency Governing Municipal Effluent Limitations* (CAH 19-9003-34654); *In re the Adopted Exempt Permanent Rule: Terminating Postclosure Care of Solid Waste Disposal Facilities* (CAH 25-9003-40430).

<sup>17</sup> Environmental Review: EIS Scoping Changes, Rule Summary and Justification Memo (Summary) at 4.

<sup>18</sup> Summary at 4.

EQB is proposing this change to clarify that an EAW is not always required to initiate the scoping process for an EIS.<sup>19</sup>

This Subpart is a minor technical change consistent with the directive to amend Minn. R. 4410.2100 and is approved.

#### **4410.0200, Subp. 77a – Definition of Scoping Document**

EQB is proposing to add a definition of a scoping document.

Subp. 77a. Scoping Document. “Scoping document” means a brief document containing information about the proposed project necessary for the EIS scoping decision under part 4410.2100. A scoping document can be an EAW or a different document containing the information necessary for the scoping process.

EQB explains “EQB is proposing to add this definition to simplify incorporation of the legislative directive that an EAW or a different document may be used for a scoping process.”<sup>20</sup>

This definition amends Minn. R. 4410.0200 to make an EAW one type of document under the new definition of “scoping document.” Because the Legislature directed the EQB to amend Minn. R. 4410.2100 to allow the use of a “scoping document” to initiate the mandatory EIS process, but did not define the term, it is within the scope of the rulemaking authority under the 2025 Session Law. This Subpart is approved.

#### **4410.1000, Subp. 1 – Purpose of EAW**

The EQB is proposing a change to language in the rules describing the purpose of an EAW.

*Subpart 1. Purpose of EAW. The EAW is a brief document prepared in worksheet format which is designed to rapidly assess the environmental effects which may be associated with a proposed project. The EAW serves primarily to:*

- A. ~~aid~~ aids in the determination of whether an EIS is needed for a proposed project; and*
- B. may serve as a basis to begin the scoping process for an EIS*

The EQB explains, “[t]his change reflects the statutory change making an EAW optional for scoping mandatory EISs [sic]. The revised language makes clear that an EAW may, but does not always, serve as the basis for the scoping process.”<sup>21</sup>

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<sup>19</sup> Summary at 4.

<sup>20</sup> Summary at 5.

<sup>21</sup> Summary at 5.

This amendment is necessary to harmonize this subpart with the Legislature's directive to make an EAW permissive rather than mandatory to initiate the mandatory EIS process. It is within the scope of the rulemaking authority under the 2025 Session Law and is approved.

**4410.1000, Subp. 2 – Mandatory EAW categories**

The EQB is proposing a change to language in the rule requiring an EAW be prepared for any of the EIS categories listed in 4410.4400.

*Subp. 2. **Mandatory EAW categories.** An EAW shall be prepared for any project that meets or exceeds the thresholds of any of the EAW categories listed in part 4410.4300 ~~or any of the EIS categories listed in part 4410.4400.~~*

The EQB explains this amendment is intended to reflect the statutory change making an EAW optional for mandatory EISes. This is a technical change necessary for consistency with the 2025 Session Law and the amendment of Minn. R. 4410.2100. This Subpart is approved.

**Minn. R. 4410.2100, Subp. 2 – Scoping document**

The EQB proposes to change this Subpart to reflect that an EAW is not mandatory for scoping, and that a “scoping document” is sufficient. The proposed amendments to Subpart 2 would break the existing rule into three separate items (A-C).

*Subp. 2. ~~EAW as a~~ **Scoping document.***

*A. All projects requiring an EIS must have ~~an EAW~~ a scoping document filed with the RGU. ~~The An EAW may serve as a shall be the basis for the scoping process~~ document.*

*B. For projects ~~which fall within a mandatory EIS category for which an EIS is mandatory under part 4410.2000, subpart 2 or other applicable law or if a voluntary EIS is planned, the EAW will be used solely as a scoping document. For such projects,~~ under part 4410.2000, subp. 3, item B, the RGU shall prepare and circulate with the EAW a scoping document. The scoping document must include or be accompanied by a draft scoping decision document that addresses the contents specified by subpart 6 to the extent that information is already available. The purpose of the draft scoping decision document is to facilitate the delineation of issues and analyses to be contained in the EIS. The information in a draft scoping decision document shall be considered as preliminary and subject to revision based on the entire record of the scoping process.*

C. If the need for an EIS has not been determined under part 4410.2000, subpart 3, item A, the EAW will have two functions: is the basis for the scoping process and is used A. to identify the need for preparing an EIS pursuant to part 4410.1700; and B. to initiate discussion concerning the scope of the EIS if an EIS is ordered pursuant to part 4410.1700.

The EQB explains Proposed Item A is intended to allow a mandatory EIS project to be initiated by a scoping document as an alternative to an EAW, as directed by the 2025 Session Law.<sup>22</sup>

The Chamber suggests updating the proposed rule language in Minn. R. 4410.2100, Subp. 2, item A to simply read: “All projects requiring an EIS must have a scoping document filed with the RGU,” without including the additional sentence proposed by EQB that reads: “An EAW may serve as a scoping document.”<sup>23</sup>

The EQB believes it is useful to retain the sentence the Chamber views as unnecessary because the “existing rule is longstanding; the proposed change represents a departure from procedures in place for more than forty years.”<sup>24</sup> Although the language could be considered duplicative, because of the new definition of a scoping document, EQB believes it bears repeating within the rule parts that contain the scoping procedures. Most project proposers and responsible governmental units (RGUs) are likely to refer to those procedural rules first, rather than the definitions.<sup>25</sup>

EQB’s proposed amendments to Subpart 2 contained in Proposed Item A are consistent with the Legislature’s directive, are within the legislative finding of good cause under Minn. Stat. § 14.388, and are approved.

The EQB describes proposed Item B as intended to “refer to mandatory or voluntary EISs [sic] (which did not originate from a decision following the completion of an EAW) and note the need to prepare a scoping document which does not need to be an EAW for mandatory or “by law” EISs [sic] as allowed by the new legislation.”<sup>26</sup> Because the existing subpart included voluntary EISes, EQB includes the option for a scoping document for both categories in its amendment.

The Environmental Organizations oppose the proposed amendments to Subpart 2 contained in Item B. The EQB’s proposed exempt rules would amend Minn. R. 4410.2100, subp. 2, item B to remove the requirement for an EAW “if a voluntary EIS is planned.”<sup>27</sup> This proposed amendment clearly and explicitly exceeds the scope of the applicable legislation. The Legislature authorized no changes to scoping if a voluntary EIS is planned.

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<sup>22</sup> Summary at 6.

<sup>23</sup> Comment of the Minnesota Chamber of Commerce (Mar. 16, 2026).

<sup>24</sup> EQB Response to Comments (Response) (Mar. 20, 2026).

<sup>25</sup> *Id.*

<sup>26</sup> Summary at 6.

<sup>27</sup> EO Comment at 4.

The EQB believes that all of its rule amendments respect the existing (and long-standing) rules, which provide that the process for a mandatory EIS and a voluntary EIS are the same.<sup>28</sup> However, by limiting the directive to allow scoping documents to replace EAWs in mandatory EIS matters, the Legislature has required different processes depending on whether the EIS in question is mandatory or not. Allowing use of a scoping document other than an EAW to initiate a voluntary EIS is a substantive change not authorized by the 2025 Session Law. Because the amendments in Item B exceed the scope of the 2025 Session Law, the amendments in Item B are disapproved.

Proposed Item C is intended to “include direction for those projects that are not affected by the new legislation, i.e., those projects for which an EAW will already exist, which are referred to as “discretionary” EISs [sic].”<sup>29</sup> The Amendments in Proposed Item C are similarly objectionable to the Environmental Organizations. They contend that EQB’s proposed amendments in Item C “remove functions of the EAW when the need for an EIS has *not* been determined.”<sup>30</sup> This attempt to alter the discretionary EIS process, the Environmental Organizations argue, clearly and explicitly exceeds the scope of the applicable legislation.<sup>31</sup>

The Legislature authorized no changes to the functions of an EAW except for projects falling within a mandatory EIS category. Because Proposed Item C exceeds the Legislature’s authorization by altering the discretionary EIS process, it is not exempt from rulemaking procedures and is disapproved.

### ***Minn. R. 4410.2100, Subp. 3 – Scoping period***

Minn. R. 4410.2100, subp. 3, establishes the scoping period applicable to projects that are subject to the EIS process because the project meets or exceeds a mandatory category EIS threshold in Minn. R. 4410.4400 or when the project proposer and RGU agree that an EIS is needed. The changes EQB proposes to Subpart 3 are intended to “reflect that an EAW is no longer required for scoping and that a ‘scoping document’ may instead be used to provide information about the proposed project. The changes also reflect the inclusion of the deadline directed by the legislature.”<sup>32</sup>

The proposed Subpart 3 reads:

*Subp. 3. Scoping period. If the EIS is being prepared pursuant to part 4410.2000, subpart 2 or 3, item B, the following schedule applies:*

*A. The 30-day scoping period will begin when the notice of the availability of the EAW scoping document is published ~~in accord with~~ in the same manner as for an EAW under part 4410.1500, items A and B to C. This*

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<sup>28</sup> Response at 2.

<sup>29</sup> Summary at 6-7.

<sup>30</sup> EO Comment at 4.

<sup>31</sup> EO Comment at 4.

<sup>32</sup> Summary at 7.

*notice and press release shall include the time, place, and date of the scoping meeting.*

*B. The RGU shall provide the opportunity for at least one scoping meeting during the scoping period. This meeting shall be held not less than 15 days after publication of the notice of availability of the EAW scoping document. All meetings shall be open to the public.*

*C. A final scoping decision shall be issued within 15 days after the close of the 30-day scoping period and, for an EIS being prepared pursuant to part 4410.2000, subpart 2, no later than 280 days after publication of the notice of availability of a scoping document in the EQB Monitor.*

The EQB explains “The proposed changes to item A add a scoping document as an option and clarify that the scoping document must be made available in the *same manner* as an EAW because scoping documents are no longer required to be EAWs.”<sup>33</sup>

Minn. R. 4410.2000, subpart 3, Item B pertains to a voluntary EIS. The EQB’s claim that “scoping documents are no longer required to be EAWs” is overly broad, as the Legislature authorized use of an alternative scoping document only where an EIS is mandatory. Proposed Subpart 3, Item A, is disapproved. For the same reasons, Proposed Subpart 3, Item B, is disapproved.

The proposed changes to Item C reflect the legislative direction that, for mandatory EISes, the deadline to complete scoping is 280 days after the publication of the notice of availability of the scoping document. Proposed Item C is limited to Minn. R. 4410.2000, subpart 2, and thus implicates only mandatory EISes. This is consistent with the 2025 Session Law and is approved.

#### ***Minn. R. 4410.2100, Subp. 5 – Procedure for scoping***

In this subpart of the rules, EQB is proposing changes to identify that scoping may be done using a scoping document or scoping EAW, reflecting the fact that a scoping EAW is not mandatory.

*Subp. 5. Procedure for scoping. Written comments suggesting issues for scoping or commenting on the EAW scoping document must be filed with the RGU during the scoping period. Interested persons may attend the scoping meeting to exercise their right to comment.*

The proposed amendment to Subpart 5 is within the scope of the Legislature’s directive to amend Minn. R. 4410.2100 to allow documents other than an EAW to initiate the mandatory EIS review process. It is, therefore, approved.

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<sup>33</sup> Summary at 7.

***Minn. R. 4410.2800, .3100, .3610, .6200, and .6500***

The EQB proposes to amend these rules to strike “EAW” from them and replace the term with “scoping document.” According to the EQB, these are “other portions of the rule where EQB needs to make minor conforming changes to address the fact that the scoping process will not always require an EAW to be used as a scoping document. The changes in these rule parts are to add language that ensure the rules refer to a ‘scoping document.’”<sup>34</sup>

Use of the term “scoping document” throughout the scoping rules, exceeds the EQB’s grant of rulemaking authority and requires interpretation of law as well. The legislative authorization is limited to scoping documents for mandatory EIS projects. The EQB then proposes to remove the term “EAW” and replace it with “scoping document” in parts 4410.2800, 4410.3100, 4410.3610, 4410.6200, and 4410.6500.

This substitution of terms does not impact EAW or EIS requirements in Minn. R. 4410.2800, .6200, and .6500. These are conforming amendments that do not change the meaning of these provisions beyond the authorization of the 2025 Session Law. Accordingly, the amendments to Minn. R. 4410.2800, .6200, and .6500 are approved.

Minn. R. 4410.3100, subp. 4, establishes the variance process for scoping decisions. This subpart broadly applies to any project subject to environmental review. The Legislature’s grant of authority is limited to amending rules to allow the use of a scoping document to initiate a mandatory EIS. The EQB’s decision to amend this rule does not implement the substantive policy the Legislature has announced. The EQB has not established good cause to amend this rule under the exempt process. The amendment to Minn. R. 4410.3100, subp. 4, is disapproved.

Minn. R. 4410.3610 pertains to the alternative urban areawide review (AUAR) process. The AUAR process explicitly exempts mandatory EISes in part 4410.4400, subpart 2. The proposed amendment replaces “scoping EAW” with “scoping document.” This proposed amendment clearly and explicitly exceeds the scope of the applicable legislation. The Legislature provided no authority to amend part 4410.3610, and the AUAR process cannot be used to review any project meeting the requirements for a mandatory EIS,<sup>35</sup> which was the sole subject of the 2025 Session Law. The EQB has not established good cause to amend this rule under the exempt process. This amendment requires interpretation and exceeds the boundaries of the good cause exemption of Minn. Stat. § 14.388. Proposed Minn. R. 4410.3610 is disapproved.

**K. J. M.**

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<sup>34</sup> Summary at 7-8.

<sup>35</sup> Minn. R. 4410.3610, subp. 1.