

May 5, 2026

The Honorable Judge Kimberly J. Middendorf
Court of Administrative Hearings
600 Robert Street N
Saint Paul, MN 55155

Re: Amendment to Rules Relating to Environmental Review, Governing Scoping of Mandatory Environmental Impact Statements, Minn. R. 4410; Revisor's ID Number R-04978, CAH Docket No. 21-9008-41465

Dear Judge Middendorf:

The Environmental Quality Board (EQB) has carefully reviewed your March 24, 2026, Order on Review of Rules. Per Minn. R. 1400.2400, subp. 4a, EQB has made changes to the disapproved portions of the proposed rules and is resubmitting the rule for your review.

The changes made are as follows:

Proposed Minn. R. 4410.2100, subp. 2(B)

- You approved the proposed amendments to subpart 2A. With regard to subpart 2B, EQB proposes to clarify the language to differentiate the scoping process for an environmental impact statement (EIS) that is mandatory under rule or under other applicable law (and subject to the new legislative directive regarding the option to use a scoping document in lieu of a “scoping” environmental assessment worksheet (EAW)) and voluntary environmental impact statements, which were not within the legislative mandate requiring EQB to provide the scoping document option. Under the new language, an EAW is required for scoping a voluntary EIS.

Proposed Minn. R. 4410.2100, subp. 2(C)

- The language has been restored to what is currently in the rule. (The only changes are to the structure of the subpart and items, as approved by the Revisor of Statutes.)

Proposed Minn. R. 4410.2100, subp. 3(A), (B)

- You disapproved EQB's references to “scoping documents” as overly broad, as a scoping document cannot be used in all cases noted under Minn. R. 4410.2100. The EQB has revised these two items to refer to the notice of availability of the “EAW or scoping document.” Since the schedule is the same for both a mandatory EIS (where a scoping document may be used) and a voluntary EIS (where an EAW is required), EQB believes this additional clarity addresses your concern.

Proposed Minn. R. 4410.3100, subp. 4

- You disapproved this language as exceeding the legislature's grant of authority allowing the use of a scoping document to initiate a mandatory EIS. EQB has revised this item in line with the changes made to Minn. R. 4410.2100, subp. 3(A), (B), to ensure that the language is not too broad and recognizes that there are times when an EAW is required. The language now allows an application for a variance following the filing of an EAW or a scoping document where allowed under Minn. R. 4410.2100, subp 2. The EQB believes that this clarification will preserve the original scope of the rule, while effectuating the

goal of the legislature in allowing scoping documents to be used in lieu of an EAW for a mandatory EIS. Eliminating the “scoping document” option would force project proposers undertaking a mandatory EIS to use an EAW rather than a scoping document to trigger the opportunity for a variance application, even though they would otherwise be free to use a scoping document when scoping an EIS.

Minn. R. 4410.3100, subp. 4, establishes a process for a project proposer to obtain a variance to the prohibitions on starting a project (“taking any action within the meaning of ‘construction’”) or making final governmental decisions when an EAW or an EIS is required. When this part was originally drafted, an EAW was defined as “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 initiate the scoping process for an EIS.*” Minn. R. 4410.0200, subp. 24 (emphasis added). Based on this definition, EQB interprets the variance rule to allow a project proposer to obtain a variance applicable to either form of environmental review, EAW or EIS, with the *timing* of the application turning on the publication of the EAW, including an EAW being used to scope an EIS.

As described in EQB’s initial justification document, the SONAR language from the adoption of the variance rule supports EQB’s interpretation of the existing rule; it describes the EAW requirement as the “starting time” for variance requests.¹ Similarly, the language in Minn. R. 4410.3100, subp. 6 speaks to granting a variance if the construction sought “would not have the effect of eliminating from consideration any prudent alternatives or mitigation measures likely to be presented in an EIS.” This language demonstrates that rule’s intent was that proposers must apply for a variance from an EIS *at the time of scoping*, i.e., when the scoping EAW is prepared or—now—when the scoping document is prepared.

This proposed rule change ensures that proposers can request a variance when a scoping document is used in the EIS process, and not just when an EAW is used. This proposed language is reasonable because, as noted above, a failure to make this change works against the substantive policy the Legislature has enacted, as any proposer using the legislatively mandated option of “scoping document” would not be able to avail themselves of the variance procedures provided by Minn R. 4410.3100, subp. 7.

Minn. R. 4410.3610, subp. 5a(B)

EQB is no longer proposing changes to this rule part.

Sincerely,



Catherine Neuschler
Executive Director

Attachments:

RD4978, dated 4/21/26

Revised proposed Order Adopting Rules

Equal Opportunity Employer

¹ See the [SONAR](#) for the update to the environmental review rules completed in 1982, beginning on page 89.