

# Environmental Review: EIS scoping changes

## Rule summary and justification memo

### Introduction

#### Purpose of rulemaking

In 2025, the Minnesota legislature passed Laws of Minnesota 2025, 1st Spec. Sess., Chapter 1, Article 6, related to environmental permitting reform. Section 5 of that session law directed the Environmental Quality Board (EQB) to amend parts of the environmental review rules (Minn. R. ch. 4410) related to “scoping” an environmental impact statement (EIS). Specifically, the Legislature directed changes to the scoping process for projects triggering mandatory EISs – namely that an environmental assessment worksheet (EAW) not be required for scoping and that a deadline for completion of a scoping process be added.

#### Use of good cause exempt procedures

The Legislature, in directing that the rules be changed, allowed the EQB to use the “good cause” exempt rulemaking process under Minnesota Statutes, section 14.388, subdivision 1, clause (3), to adopt the rule amendments, a process applicable where the agency is incorporating specific changes set forth in applicable statutes when no interpretation of law is required.

#### Overview of scoping in statutes governing environmental review

Under Minn. Stat. § 116D.04, the EQB has the authority to promulgate rules to implement the Minnesota Environmental Policy Act (MEPA), and specifically the environmental review program.

Under Minn. Stat. § 116D.04, subd. 5a, the EQB was directed to promulgate rules establishing a scoping process in conformance with Minn. Stat. § 116D, subd. 2a, paragraph h. That paragraph states:

*An early and open process must be used to limit the scope of the environmental impact statement to a discussion of those impacts that, because of the nature or location of the project, have the potential for significant environmental effects. The same process must be used to determine the form, content, and level of detail of the statement as well as the alternatives that are appropriate for consideration in the statement. In addition, the permits that will be required for the proposed action must be identified during the scoping process. Further, the process must identify those permits for which information will be developed concurrently with the environmental impact statement. The board shall provide in its rules for the expeditious completion of the scoping process. The determinations reached in the process must be incorporated into the order requiring the preparation of an environmental impact statement.*

Pursuant to this authority, the EQB established rules governing the scoping process for environmental impact statements. The EQB’s existing rule is Minn. R. part 4410.2100 (“EIS Scoping Process”). The existing rule (Minn. R. 4410.2100, subp. 2) requires an EAW to act as “the basis for the scoping process” for all EISs. It then then defines how scoping decisions receive comment and provides deadlines for Responsible Governmental Units (RGUs) to complete the scoping process.

The 2025 legislation directed EQB to remove the requirement to complete a scoping EAW for EISs that are mandatory under Minn. R. 4410.4400 or other applicable law.

## Projects That Require Scoping

Under existing rules, an EIS must be prepared prior to project approval when it is “mandatory” under Minn. R. 4410.2000, subp. 2. A project is “mandatory” because it meets or exceeds the thresholds of any of the mandatory EIS categories listed in Minn R. 4410.4400.

Under Minn. R. 4410.2000, subp. 3 (A), an EIS may be prepared because the RGU decides an EIS is necessary after the preparation of an EAW based on the criteria in Minn. R. 4410.1700, subp. 7 (“discretionary EIS”).

An EIS may also be prepared when the RGU and proposer of the project agree that an EIS should be prepared, a process described in Minn R. 4410.2000, subp. 3 (B) (“voluntary” EIS).

Finally, the legislature may enact a statute that mandates an EIS for a particular project that is not described in EQB’s rules.

## Scoping Process

The existing EIS scoping process in rule (Minn R. 4410.2100) requires that all projects that will be the subject of an EIS have an EAW filed with the RGU for scoping.<sup>1</sup> For projects where it is known that an EIS will be prepared – because they fall within a mandatory EIS category, an EIS process has been agreed upon by the RGU and proposer, or other law requires an EIS using the Minn. R. 4410 procedures – the EAW is used solely as a scoping document.

For a discretionary EIS project, the EAW already exists because it provided the basis for the RGU’s decision to move forward with an EIS. For mandatory and voluntary EISs, the RGU prepares the EAW and circulates it along with a draft scoping decision document.

The existing rule defines the deadlines for RGUs to complete the scoping process. These deadlines changed based on whether the EIS was mandated by law, had been ordered following publication of an EAW, or was agreed upon by the RGU and proposer. The deadlines also varied based on whether the RGU is a board or other body meeting on a periodic basis (Minn. R. 4410.2100, subps. 3 and 4).

The EIS scoping procedures (Minn R. 4410.2100, subp. 5) remain the same for all projects regardless of how the EIS is initiated. Rule directs the RGU to accept written comments during the scoping period suggesting issues for scoping or comments on the scoping EAW. The RGU is required to hold a public meeting to review the scope of the EIS where interested persons may comment. The scoping process terminates when the RGU issues its final decision regarding the scope of the EIS (Minn R. 4410.2100, subp. 6). The scoping decision must contain at a minimum:

- A. *the issues to be addressed in the EIS;*
- B. *time limits for preparation, if they are shorter than those allowed by parts 4410.0200 to 4410.6500;*
- C. *identification of the permits for which information will be gathered concurrently with EIS preparation;*
- D. *identification of the permits for which a record of decision will be required;*

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<sup>1</sup> Note that the Public Utility Commission’s process for energy infrastructure projects covered under Minn. Stat., Ch. 216 has a separately prescribed process for EIS scoping, one which already does not rely on an EAW. That process is not the subject of this rulemaking.

- E. alternatives that will be addressed in the EIS;
- F. identification of potential impact areas resulting from the project itself and from related actions which shall be addressed in the EIS; and
- G. identification of necessary studies requiring compilation of existing information or the development of new data that can be generated within a reasonable amount of time and at a reasonable cost.

## Historical development of existing rule

The EIS scoping process uses public input to help the RGU decide what impacts and alternatives will be covered by the EIS and the extent of effort and depth of analysis to be devoted to each topic. The process was introduced in the 1980 MEPA amendments; prior to this addition there were no formal procedures mandating scoping for the preparation of a mandatory EIS or an EIS agreed upon by the RGU and proposer.

The [1982 Statement of Need and Reasonableness \(SONAR\)](#) provides background and justification for the subsequent amendment to the rules that added the requirement for an EAW, the most basic and most used environmental review document, to serve as the basis to begin the scoping process for an EIS.

As noted in the SONAR, the scoping process was established as a first step in EIS preparation so that only relevant issues are analyzed in the EIS, providing a shorter, more timely and less expensive document that is more relevant and usable for decision makers. The 1982 SONAR authors noted that the introduction of a similar scoping process in the federal National Environmental Policy Act (NEPA) process demonstrated a reduction in the size and cost of the EIS and increased EIS usefulness. Minnesota's scoping process was modeled after existing scoping processes in the Council of Environmental Quality's NEPA regulations and the State of Massachusetts' environmental review program.

There have been no amendments to the rule requiring the use of the EAW as a scoping document since its addition in 1982.

## Legislative directive

Laws of Minnesota 2025, 1st Spec. Sess., Chapter 1, Article 6, Sec. 5, requires that the EQB undertake rulemaking to make changes to the scoping process for mandatory environmental impact statements (those that are being prepared because a project triggers a threshold listed in Minn. R. 4410.4400 or where an "applicable law" requires an EIS). That section reads:

**SCOPING ENVIRONMENTAL ASSESSMENT WORKSHEET NOT REQUIRED FOR PROJECTS THAT REQUIRE A MANDATORY ENVIRONMENTAL IMPACT STATEMENT.**

*(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.*

## Proposed Rules

The session law eliminated the requirement for a new EAW to be created for scoping an EIS mandated by rule or by law.<sup>2</sup> The legislation did not eliminate the scoping process required by Minn. Stat. § 116D.04, subd. 5a. Projects are still required to undergo a scoping process but EQB rules must now allow RGUs to provide the information needed for scoping in a document other than an EAW. These mandatory EISs are distinct from projects that proceed to an EIS after the completion of an EAW (discretionary EIS). Discretionary EIS projects, for which an EAW already exists, were not the subject of the legislation.

In drafting the rules, the EQB staff removed the requirement for the scoping EAW for mandatory EIS projects and instead referenced the need to provide a “scoping document,” a term used in the 2025 legislation with regard to the notice deadline. The “scoping document” may be a scoping EAW or another document containing the information necessary for scoping. The legislation did not prohibit the use of an EAW for scoping (using the phrase “does not need” and not “is prohibited” or “must not be used”). The proposed rules continue to allow an EAW to be used for scoping because many RGUs are used to relying on the EAW form (provided by the EQB as described in Minn. R. 4410.1300) as the scoping document and may wish to continue that practice.

The EQB also proposes to include the new 280-day deadline alongside the existing deadlines currently found in the rule.

## Proposed rule amendments

### Overview

The EQB proposes amendments to fulfill the legislative directive by 1) removing the requirement that an EAW be prepared for scoping an EIS for a project that falls under a mandatory environmental impact statement category or where “other law” requires an EIS, and 2) providing that “a scoping process” be completed no later than 280 days after publication of the notice of availability of “a scoping document” in the *EQB Monitor*.

The legislation directed EQB to make changes to Minn. R. 4410.2100. EQB proposes 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.

For drafting simplicity, EQB adopted a definition of “scoping document” because the legislation refers to a “scoping document” but that is not defined in the rule. These changes fall within the scope of the exempt rulemaking and do not constitute an interpretation of law.

### Specific rule changes

#### Definitions and Purpose

The EQB is proposing to change one definition, to add one definition, and to make minor amendments to the rules describing the purpose of an EAW in order to conform the rules with the legislative directive.

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<sup>2</sup> The legislature has, on occasion, required that certain projects complete an environmental impact statement. For example, in 2025 the legislature mandated, through changes to Minn. Stat. § 216G.025, that carbon dioxide pipeline projects be the subject of an EIS before they are permitted. EQB works to incorporate these into the Minn. R. 4410.4400 mandatory categories, but unless given specific authority or direction for exempt or expedited rulemaking, EQB generally times amendment of its rules to occasions when other changes need to be made to reduce the volume of rulemaking projects.

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

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

*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.*

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

#### **4410.0220, Subp. 77a – Definition of Scoping Document**

The 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.*

The legislation used the term “scoping document” regarding the process completion deadline, which is a term used in the existing rule but is not defined. 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.

#### **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*

This change reflects the statutory change making an EAW optional for scoping mandatory EISs. The revised language makes clear that an EAW may, but does not always, serve as the basis for the scoping process.

#### **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](#)~~.*

This amendment reflects the statutory change making an EAW optional for mandatory EISs.

#### **Scoping Process**

The EIS scoping process is laid out primarily in Minn. R. 4410.2100 and this is the rule part that the legislature directed the EQB to change to remove the requirement to prepare a scoping EAW.

#### **Minn. R. 4410.2100, Subpart 1 – Purpose**

The purpose of the scoping process has not changed, and EQB is not proposing any changes to this section.

## **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” can be used. Some re-numbering of this section was necessary to address the application of the new legislation to EISs mandated by rule or law.

### *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.*

The EQB proposes to delete language at the beginning of the subpart that required an EAW to be prepared as a scoping document, but the rules will still allow an EAW to be used as a scoping document if the RGU chooses to do so. The legislation used the words “does not need to be prepared,” but did not prohibit the use of the scoping EAW.

The EQB proposes to make some additional changes to the existing rule to identify when the alternative scoping document option is available, i.e., for EISs directly mandated by rule or other law. The existing rule has text that is split into two sections – the first part applies to projects that trigger a mandatory EIS category or where a voluntary EIS is planned. This part requires a scoping EAW to be drafted and circulated. The second part describes the use of an EAW to decide whether an EIS is necessary and its use to aid in scoping an EIS if one is ordered by the RGU, i.e., a “discretionary” EIS. As noted in the [Statement of Need and Reasonableness](#) for the original rule adoption:

[T]his language was inserted to reemphasize the role of the EAW in relation to the EIS... Subparagraph one notes that, if it is known at the onset that an EIS will be prepared, whether pursuant to mandatory category or voluntarily by the proposer, an EAW must still be prepared. In this situation, however, the EAW functions solely as a scoping document and as a result, the comment period and time for scoping decisions will be abbreviated.

Subparagraph two relates to activities for which it previously has not been determined whether or not an EIS will be prepared. In these situations, the EAW serves first as the basis for deciding the need for an EIS, and secondly (if it is decided that an EIS will be prepared) as the scoping document.

The EQB is proposing to amend this subpart to distinguish between mandatory and voluntary and “discretionary” EISs with regard to the scoping requirement, as mandated by the legislation.

The EQB proposes to create two subitems from the existing language. New Item B will refer to mandatory or voluntary EISs (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 as allowed by the new legislation. The scoping document must include or be accompanied with the draft scoping decision document needed to fulfill the requirements of subpart 6.

As this subpart included voluntary EISs, EQB will include the option for a scoping document for both categories. The proposed language reads:

*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.*

New Item C will 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.

The new subitem will read:

*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.~~*

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

Minn. R. 4410.2100, subp. 3 specifically prescribes the scoping period applicable to projects that are directly completing an 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 this part 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.

*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 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 bring 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 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. In addition, EQB is taking this opportunity to correct an existing error in the rules. The requirements for publishing and distributing an EAW in Minn. R. 4410.1500 are described in items A (relating to distribution lists), B (relating to publishing notice in a newspaper and posting on a website), *and* C (relating to a press release). Given that the last sentence of item A of this part refers to the press release, it is appropriate to add the reference to Minn. R. 4410.1500, item C.

The proposed changes to item B change the word “EAW” to “scoping document” to reflect that not all scoping documents are required to be EAWs.

The changes to item C reflect the legislative direction that, for mandatory EISs, the deadline to complete scoping is 280 days after the publication of the notice of availability of the scoping document.

### **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.*

*Governmental units and other persons shall be responsible for participating in the scoping process within the time limits and in the manner prescribed in parts 4410.0200 to 4410.6500.*

**Minn. R. 4410.2100, Subps. 4 and 6 to 12**

EQB does not find that changes to these subparts are needed.

**Other conforming changes**

There 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.”

**4410.2800, Subp 1a - Determination of adequacy**

This proposed change conforms existing language referring to a “scoping EAW.”

*Subp. 1a. Decision by EQB; information needs. If the EQB will be determining the adequacy of the EIS, the RGU shall submit to the EQB the following information within five days of the filing of the final EIS:*

*A. evidence of compliance with distribution requirements for the scoping ~~EAW~~document, draft EIS, and final EIS;*

**4410.3100, Subp 4 – Variance**

This proposed change conforms the existing language to ensure that the proposer may apply for a variance following publication of a scoping document prepared for an EIS when an EAW is not being prepared for review of the project or for scoping.

*Subp. 4. Variance. Construction may begin on a project if the proposer applies for and is granted a variance from subparts 1 and 2. A variance for certain governmental approvals to be granted prior to completion of the environmental review process may also be requested. A variance may be requested at any time after the commencement of the 30-day review period following the filing of an EAW or a scoping document.*

The basic language of the variance process was established in 1982. The SONAR says that the prior rules had, “to a limited degree, provision for a variance within the EIS preparation notice; the current rules did not, however, provide guidance or a set procedure for issuance of a variance.”

The discussion also indicates that the rule “provides a variance procedure to allow limited necessary construction on an activity prior to completion of environmental review. This variance procedure may also cover necessary governmental approvals if such approvals are necessary to allow the construction.” The SONAR also notes that “Most pressure to allow some form of approval or some form of construction is likely to surface during EIS preparation because this is typically a rather long time period.”

Although the variance process has been rarely, if ever, used, the SONAR language makes clear that it was envisioned that the process would be available after the filing of an EAW used for the EIS scoping process. Therefore, this change ensures that a variance may be requested when a scoping document is used in the EIS process.

**4410.3610, Subp 5a, item B – Large AUAR procedures**

This proposed change recognizes that part 4410.2100, subp. 2 will, once amended, refer only to a scoping document. It does not change any requirements for the large AUAR, since the information must only be comparable to that required under Minn. R. 4410.2100, subp. 2.

- A. *Prior to final approval of the order for review pursuant to subpart 3, the RGU must conduct a public process to receive comments about the scope of the review. The RGU shall prepare a draft order for review and distribute and provide notice of its availability in the same manner as for an EAW pursuant to part 4410.1500. The draft order for review must include the information specified in subpart 3 and a description of the specific large project or projects to be included in the review comparable to that of a scoping document ~~EAW~~ pursuant to part 4410.2100, subpart 2.*

**4410.6200, Subp 1, item E – Determining EIS cost**

This proposed change conforms existing language to refer to a scoping document rather than scoping EAW.

*E. the cost of printing and distributing the scoping ~~EAW document~~ and draft scoping decision document, draft EIS and the final EIS and of public notices of the availability of the documents;*

**4410.6500, Subp 1, item A – Paying EIS cost**

This proposed change conforms existing language to refer to a scoping document rather than scoping EAW.

*A. The proposer shall pay the RGU for the full cost estimated by the RGU to be necessary for the scoping of the EIS not later than the date of submission by the proposer of the completed data portions of the scoping ~~EAW document~~ or within five days of issuance of a positive declaration. The RGU shall not proceed with the scoping process until this payment is made. Upon issuance of the scoping decision, the RGU shall provide the proposer with a written accounting of the scoping expenditures. If the payment made by the proposer exceeds the expenditures, the balance shall be credited against the cash payments required from the proposer for preparation of the draft EIS. If the RGU's reasonable expenditures for scoping exceed the cash payment received, the proposer shall pay the balance before the RGU commences preparation of the draft EIS.*