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Environmental Quality Board

STATEMENT OF NEED AND REASONABLENESS

In the Matter of Proposed Revisions of Minnesota Rule Chapters 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, and 4410.4600

Revisor Number ID: RD-04157

The *State Register* notice, this Statement of Need and Reasonableness (SONAR) and the proposed rule will be available during the public comment period at the Environmental Quality Board (EQB) website http://www.eqb.state.mn.us

Alternative Format:

Upon request, this document can be made available in an alternative format.
To make a request, contact Erik Cedarleaf Dahl at the Environmental Quality Board,
520 Lafayette Road North, St. Paul, MN 55155; telephone 651-757-2364; or e-mail erik.dahl@state.mn.us

Notice Regarding the Excerpted Language in this SONAR:

The EQB has excerpted language from the draft rules and included those excerpts in this SONAR at the point that the reasonableness of each provision of the rules is discussed. This was done to assist the reader in connecting the rule language with its justification. However, there may be slight discrepancies between the excerpted language and the rule amendments as they are proposed. The EQB intends that the rule language published in the *State Register* at the time the rules are formally proposed is the rule language that is justified in this SONAR.

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Acronyms or abbreviations

Administrative Procedures Act	APA
Administrative Law Judge	ALJ
Chapter	ch.
Code of Federal Regulations	CFR
Department of Agriculture	MDA
Department of Natural Resources	DNR
Department of Transportation	MnDOT
Environmental Assessment Worksheet	EAW
Environmental Impact Statement	EIS
Environmental Quality Board	EQB or Board
Local Governmental Unit	LGU
Minnesota Environmental Policy Act	MEPA
Minnesota Rules	Minn. Rules
Minnesota Statutes	Minn. Stat.
Minnesota Management and Budget	MMB
Minnesota	MN
Minnesota Association of Townships	MAT
National Environmental Policy Act	NEPA
Office of Administrative Hearings	OAH
Pollution Control Agency	PCA
Public Utilities Commission	PUC
Responsible Governmental Unit	RGU
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Statement of Need and Reasonableness	SONAR
Soil and Water Conservation District(s)	SWCD
Watershed Management Organization(s)	WMO
Wetland Conservation Act	WCA

I. Introduction and background

A. Introduction

The Environmental Quality Board (EQB or Board) is proposing amendments to rules relating to environmental review. This rulemaking will amend rules governing mandatory categories for environmental assessment worksheets (EAW) and environmental impact statements (EIS), definitions to support those categories, responsible governmental unit (RGU) determinations, and categories of exemptions from environmental review. (Revisor's ID Number R-04157)

In this rulemaking the EQB is also addressing two previously initiated rulemaking efforts.

- Rules relating to silica sand projects. These amendments include the mandatory categories related to mining facilities, transfer facilities, processing facilities and storage facilities related to silica sand projects. These amendments will adopt the threshold levels for silica sand projects established by the Minnesota Legislature through Laws of Minnesota 2013, Chapter 114, Article 4, Section 92. In 2014, the EQB began rulemaking to address silica sand projects (Revisor's ID Number RD-4305).
- Rules relating to Recreational trails. These amendments include thresholds for different types of recreational trails that require preparation of an EAW. In the 2015 Minnesota legislative session, Laws of Minnesota 2015, Chapter 4, Article 5, Section 33, the Minnesota Legislature passed legislation changing the EAW thresholds applicable to motorized trails. In 2015, the EQB began rulemaking to address Recreational trails projects. (Revisor's ID Number RD-4381).

This Statement of Need and Reasonableness (SONAR)explains the need for and reasonableness of proposed amendments to the environmental review rules, specifically Minnesota Rules (Minn. R.) part(s) 4410.0200, 4410.0500, 4410.4300, 4410.4400, and 4410.4600 and satisfies the requirements of Minnesota Statutes (Minn. Stat.) section (§) 14.131 and Minn. R. part 1400.2070.

B. Background

In 1969, the United States Congress enacted the National Environmental Policy Act, creating a program for assessing the environmental impacts of Federal actions. In 1973, Minnesota followed suit and passed the Minnesota Environmental Policy Act (MEPA). MEPA established the State's Environmental Review program and created the Environmental Quality Board to govern and implement its requirements. The Environmental Quality Board consists of a Governor's representative acting as chair, nine state agency heads, and eight citizen members (one citizen member from each congressional district).

EQB Member Agencies:

- Board of Water and Soil Resources
- Department of Administration
- Department of Agriculture
- Department of Commerce
- Department of Employment and Economic Development
- Department of Health
- Department of Natural Resources
- Department of Transportation
- Pollution Control Agency

The MEPA environmental review process was designed to investigate public or private projects that have the potential to significantly impact the environment. The process is intended to disclose information to

project proposers, decision-makers and the public through a systematic process and works in conjunction with permits and other approvals.

Environmental review is mandatory for projects that meet certain thresholds. Each mandatory category assigns a responsible governmental unit (RGU) to conduct environmental review and uses a standard form. Mandatory review can either be in the form of an Environmental Assessment Worksheet (EAW) or an Environmental Impact Statement (EIS). The types of projects subject to these environmental review requirements are generally referred to as the mandatory EAW categories (441.4300) and mandatory EIS categories (4410.4400). The lists of projects that are exempt for these requirements are referred to as "exemptions categories" or sometimes just "exemptions."

Mandatory categories rulemaking

In 2012, the Minnesota Legislature, under the Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3, directed the EQB, the Pollution Control Agency (PCA), the Department of Natural Resources (DNR), and the Department of Transportation (DOT) to review mandatory categories. Part of the review included an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances. This review resulted in the Mandatory Environmental Review Categories Report (Report: Exhibit #1); finalized by the EQB, PCA, DNR, and the DOT on February 13, 2013.

Additionally, 2015 Special Session Law, Chapter 4, Article 3, Section 2 direct the EQB to work on activities that streamline the environmental review process. The changes proposed in the mandatory categories rulemaking include amendments to the mandatory EAW, EIS and exemption categories, and their supporting definitions. The amendments are based on the Report while focusing on streamlining environmental review by balancing regulatory efficiency and environmental protection.

Silica sand projects rulemaking

In 2013, the Minnesota Legislature set new, temporary, thresholds for when environmental review of silica sand projects must occur. The interim mandatory categories for silica sand projects are listed under Minn. Stat. § 116C.991 and were established in accordance with Laws of Minnesota 2013, chapter 114, article 4, section 105.

In the same section of the 2013 laws, the Legislature directed the EQB to amend its environmental review rules adopted under Minn. Stat. 116D to address silica sand projects. The legislation allowed the EQB, through its rulemaking process, to determine "whether the requirements should be different for different geographic areas of the state." The rulemaking was exempted from Minn. Stat. section 14.125; however, the interim thresholds for silica sand projects would remain in place until July 1, 2015.

The EQB initiated the silica sand project rulemaking (R-04157) in 2014 with the formation of the Silica Sand Advisory Panel. The public engagement and technical input generated by this group is identified in the Public Participation section II. of this SONAR.

In 2015, the Minnesota Legislature updated Minn. Stat. 116.991 Laws of Minnesota 2015, Chapter 4, Article 4, Section 121, by removing the July 1, 2015 deadline and instead requiring environmental review until rules are adopted.

> *116C.991 ENVIRONMENTAL REVIEW; SILICA SAND PROJECTS.*
>
> *(a) Until ~~July 1, 2015~~ a final rule is adopted pursuant to Laws 2013, chapter 114, article 4, section 105, paragraph (d), an environmental assessment worksheet must be prepared for any silica sand project that meets or exceeds the following thresholds,.....*

The EQB determined that it would conduct rulemaking (R-04157) to adopt the original 2013 thresholds for environmental review of silica sand projects, as set by the Legislature. In 2017, Laws of Minnesota 2017, Chapter 93, article 1, Section 105 the Legislature made silica sand rulemaking optional. The EQB determined that because there is a continuing potential for significant environmental effects from silica sand projects in Minnesota it is needed and reasonable to have the mandatory category thresholds for silica sand project within the environmental review Mandatory Category rules.

Sec. 105.

RULES; SILICA SAND.

(a) The commissioner of the Pollution Control Agency ~~shall~~ may adopt rules pertaining to the control of particulate emissions from silica sand projects. The rulemaking is exempt from Minnesota Statutes, section 14.125.

(b) The commissioner of natural resources shall adopt rules pertaining to the reclamation of silica sand mines. The rulemaking is exempt from Minnesota Statutes, section 14.125.

(c) By January 1, 2014, the Department of Health shall adopt an air quality health-based value for silica sand.

(d) The Environmental Quality Board ~~shall~~ may amend its rules for environmental review, adopted under Minnesota Statutes, chapter 116D, for silica sand mining and processing to take into account the increased activity in the state and concerns over the size of specific operations. The Environmental Quality Board shall consider whether the requirements of Minnesota Statutes, section 116C.991, should remain part of the environmental review requirements for silica sand and whether the requirements should be different for different geographic areas of the state. The rulemaking is exempt from Minnesota Statutes, section 14.125.

Recreational trails projects rulemaking

To conform to the 2015 legislative directive (below), the EQB is amending Minn. R. 4410.4300, subpart 37. The legislation directing the specific environmental review threshold and authorizing the changes to the EAW thresholds for motorized trails reads:

Minn. Laws 2015, ch. 4, section 33. *RULEMAKING; MOTORIZED TRAIL ENVIRONMENTAL REVIEW.*

a. The Environmental Quality Board shall amend Minnesota Rules, chapter 4410, to allow the following without preparing a mandatory environmental assessment worksheet:

1. constructing a Recreational trails less than 25 miles long on forested or other naturally vegetated land for a recreational use;

2. adding a new motorized recreational use or a seasonal motorized recreational use to an existing motorized Recreational trails if the treadway width is not expanded as a result of the added use; and

3. designating an existing, legally constructed route, such as a logging road, for motorized Recreational trails use.

b. The board may use the good cause exemption rulemaking procedure 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.

A summary of the good-cause rulemaking for the recreational trails category as well as the two judge's orders is available in **Exhibit #3**.

II. Public participation and stakeholder involvement

The EQB took the following steps to develop the draft rules, notify interested parties about the draft rules, and to solicit their input on rule language:

The EQB provided the statutorily required notifications to the public.

A. Three Request for Comments were published in the *State Register*:

- July 22, 2013
- November 9, 2015
- October 24, 2016

B. The EQB has a self-subscribing rule-specific mailing list at: https://www.eqb.state.mn.us/contact which EQB used to send rule-related information to interested and affected parties.

C. The EQB sent a GovDelivery notice and a notice the *EQB Monitor* encouraging interested and affected parties to register to receive rulemaking information via the self-subscribing rule-specific mailing list.

D. The EQB established a rule-specific webpage: https://www.eqb.state.mn.us/content/eqb-mandatory-categories-rulemaking, which was used to disseminate rule-related information to interested and affected parties. (Prior to combining the silica sand projects rulemaking and the Recreational trails projects rulemaking with the mandatory categories rulemaking, each rulemaking had a rule-specific webpage. After the rulemakings were combined, all webpages directed viewers to the mandatory categories webpage for rulemaking information.)

E. As part of the earlier silica sand rulemaking project, the EQB conducted the following activities to engage and inform interested parties and to provide the opportunity to register for future GovDelivery notices regarding this rule.

- EQB staff traveled to eighteen local governments around the State of Minnesota (every county with silica sand facilities) to interview local government staff on issues related to silica sand and the implementation of the potential rules.
- EQB sent out a survey (https://www.eqb.state.mn.us/sites/default/files/documents/Sand%20survey%20for%20LGU%27s%20April%2015%20EQB.pdf). on preliminary silica sand rule concepts to counties, cities and townships in Minnesota via three organizations:
    1) Minnesota Association of Counties (18 Counties)
    2) Minnesota Association of Cities
    3) Minnesota Association of Townships (745 Townships)

  The survey was utilized to receive feedback on and refine rule concepts, designated RGUs, and to develop the discussion of need and reasonable in the SONAR.
- EQB released a preliminary draft of the proposed silica sand rule language on September 5, 2014 and presented the preliminary draft of the proposed rules to the Board at the public board meeting on September 17, 2014. This was an opportunity to provide an informal comment on the EQB rules.

- EQB staff presented an updated preliminary draft of the proposed rules to the EQB Board on November 18, 2015. This was another opportunity to provide an informal comment on the EQB rules and process.
- A Silica Sand Rulemaking Advisory Panel (SSRAP) was created:
    - An application process selected SSRAP members. A November 2013 request for interest in a silica sand rule advisory panel (advisory panel) was released by PCA and DNR.
    - The focus of the advisory panel was to provide feedback and advise PCA, DNR and EQB on issues related to rule language, economic and environmental impacts and administrative elements of rules.
    - A 15-member advisory panel was established representing public and private statewide interests. Membership included citizens, industries and local government.

Local government representatives
Keith Fossen, Hay Creek Township
Allen Frechette, Scott County
Kristi Gross, Goodhue County and Minnesota Association of County Planning and Zoning Administrators
Beth Proctor, Lime Township
Lynn Schoen, City of Wabasha
Citizen representatives
Jill Bathke, resident of Hennepin County
Katie Himanga, resident of Lake City
Jim McIlrath, resident of Goodhue County
Vince Ready, resident of Winona County
Kelley Stanage, resident of Houston County
Industry representatives
Doug Losee, Unimin Corp.
Tom Rowekamp, IT Sands LLC
Aaron Scott, Fairmount Minerals
Brett Skilbred, Jordan Sands and Industrial Sand Council
Tara Wetzel, Mathy Construction and Aggregate and Ready Mix Association

- On January 13, 2014, PCA produced a media release announcing the membership of the advisory panel. Examples of media coverage include:
  - CBS Local, January 13, 2014: Minn. names member of Silica Sand Advisory Panel.
  - St. Paul, Pioneer Press, January 13, 2014: Minnesota: Silica sand advisory panel appointed.
  - Mankato Free Press, January 13, 2014: Three from area named to silica rulemaking panel.
- On January 28, 2014, DNR announced, via GovDelivery to 727 subscribers, the date of the first SSRAP meeting.
- The advisory panel met 12 times between January 2014 and February 2015.
  - Staff from Management Analysis & Development facilitated these meetings.
  - SSRAP meetings were open to the public.
  - All but the first meeting was held in Oronoco, MN, a central location for members of the panel and potentially affected persons.
  - All but the first meeting was recorded via WebEx, which allowed the public to remotely observe SSRAP meetings.

- WebEx recordings of each meeting were posted viewing on the Environmental Quality Board's website: (https://www.eqb.state.mn.us/content/silica-sand-rule-advisory-panel). Meeting handouts and presentation slides are also available on this web page.

F. The EQB hosted informational meetings regarding the mandatory categories rulemaking, open to the public, but specifically focused on implications to LGUs. These meetings were held on March 18, 21, and 22, 2016, at the EQB offices in St. Paul, MN and via WebEx (which offers audio and visual interactions with participants from any location with internet access).

- EQB staff have presented information regarding the rulemaking to groups that have made the request:
  - The Association of Minnesota Counties Annual Meeting on June 3, 2016.
  - The Board of Water and Soil Resources: Drainage Work Group on July 14, 2016.
- The EQB released a preliminary draft of the proposed rule language on June 20, 2016 and provided an informal comment period through August 5, 2016. EQB sent a GovDelivery notice to interested parties as well as posted preliminary language on the EQB rulemaking web page and sought informal comment. Informal comments were reviewed.
- On June 28, 2016, the EQB hosted a Mandatory Categories Rulemaking Open House and Workshop at the EQB offices in St. Paul, MN and via WebEx (which offers audio and visual interactions with participants from any location with internet access).
- EQB staff presented preliminary rule concepts to the Environmental Rules Advisory Panel (ERAP) in June 2017.

G. EQB staff presented a preliminary draft of the proposed rule language at the August 15, 2018 public EQB meeting. The minutes from the Board meeting are available at EQB's website here: https://www.eqb.state.mn.us/content/eqb-mandatory-categories-rulemaking

H. EQB staff presented the draft proposed rules language at the September 19, 2018 public EQB meeting. The minutes from the Board meeting are available at EQB's website here: https://www.eqb.state.mn.us/content/eqb-mandatory-categories-rulemaking

I. The notifications required under Minn. Stat. ch. 14 will be provided at the time the amendments are proposed. The EQB intends to publish a dual notice for the proposed amendments in the *State Register* and to provide additional notice of its activities to all parties who have registered their interest in receiving such notice. Details of this notice plan are provided in section VII of this SONAR.

III. Statutory authority

The Board's statutory authority to adopt the rule amendments is given in the Minnesota Environmental Policy Act, Minn. Stat. 116D.04, subdivisions 2a(b) and 5a (Exhibit #4) and Minn. Stat. 116C.04 (Exhibit #4). Under these provisions, the Board has the necessary statutory authority to adopt the proposed rules amendments. In particular, Minn. Stat. 116D.04, subdivision 2a(b) (Exhibit #4) directs the Board to establish mandatory categories for EAWs, EISs and exemptions by rule.

This rulemaking will also include the adoption of Silica sand project thresholds in accordance with the authority provided in Laws of Minnesota 2013, Chapter 114, Article 4, Section 91. The Board's authority to establish thresholds for different types of Recreational trails that require preparation of an EAW is established in the 2015 legislative session, Laws of Minnesota 2015, Chapter 4, Article 5, Section 33.

IV. Statement of general need

Minn. Stat. ch. 14 requires the EQB to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the EQB must not be arbitrary or capricious in proposing rules. However, to the extent that need and reasonableness are separate, "need" has come to mean that a problem exists that requires administrative attention, and "reasonableness" means that the solution proposed by the EQB is appropriate. The basis of the need for this rule is described here; reasonableness, both general and specific, is addressed in the Reasonableness section below.

The proposed amendments to Minn. R. ch. 4410 are needed to:

A. Fulfill the recommendations found in the 2013 Mandatory Environmental Review Categories Report (Report) (Exhibit #1).
B. Streamline environmental review through both technical and housekeeping changes.
C. Adopt thresholds specific to Silica sand projects and to amend thresholds specific to Recreational trails as directed by the Minnesota Legislature in 2013 and 2015.

The desired outcome is to make environmental review more efficient by adding clarity and specificity and thereby reducing ambiguous or confusing application of the environmental review rules. The proposed changes are needed, both to increase certainty for project proposers, RGUs and the public, and to assure that certain proposed projects are receiving environmental review.

Need to fulfill the recommendations of the interagency 2013 Report. The Report proposed changes to the mandatory EAW, EIS and exemption categories, and their supporting definitions. These proposed changes came from those state agencies and LGUs that have extensive experience in the day-to-day application of the rule.

Need to streamline environmental review. Many of the proposed rule amendments are technical and housekeeping changes to the existing rules, which reflect the changes to corresponding Minnesota rules and statutes. The proposed rule amendments include updates to the thresholds in EAW and EIS categories to reflect the EQB's experience in applying the process. These changes are needed because the majority of the EAW and EIS categories were established in the 1980's and 1990's and do not reflect the modern regulatory system or project types. Rule updates are needed to keep the rules relevant and more easily understood by project proposers, RGUs and citizens.

The need for these amendments is further supported by the 2015 Minnesota Legislature which set aside funding for EQB to "streamline the environmental review." There is a need to provide consistency with other state rules and statutes to reduce delay and confusion for project proposers, RGUs and the public by clearly establishing whether the environmental review rules must be applied.

Furthermore, the proposed changes need to address updates to the definitions and project specific terminology to better reflect changes in the corresponding regulatory programs. These definitions and terms are used by project proposers, RGUs and the public while working on environmental review. The proposed amendments are needed to provide clear and consistent rules that will clarify the environmental review process.

Need to adopt thresholds for silica sand projects and recreational trails. The substantive amendments include, as directed by the Minnesota Legislature in 2013 and 2015, establishing new thresholds specific to silica sand projects and amending existing thresholds specific to Recreational trails. Silica sand thresholds are needed to address the potential for significant environmental effects from silica sand projects in Minnesota. The amendments to the Recreational trail thresholds are needed to fulfill threshold language directed by the Legislature.

V. Reasonableness of the amendments

A. General reasonableness

Minn. Stat. ch. 14 requires the EQB to explain the facts establishing the reasonableness of the proposed rule amendments. "Reasonableness" means that there is a rational basis for the proposed action.

Legislative directive. These amendments are generally reasonable because in three separate instances the MN legislature has requested that these changes be made.

In 2013, the EQB, along with other state agencies, completed the Mandatory Environmental Review Categories Report (Report), directed by the 2012 Minnesota legislature (Laws of Minnesota for 2012, Chapter 150, Article 2, Section 3). The Report provided an analysis of whether the mandatory categories should be modified, eliminated, or unchanged, based on their relationship to existing permits or other federal, state, or local laws or ordinances.

- Pursuant to a legislative charge to support environmental review efficiency and streamline the environmental review process, (2015 Special Session Law, Chapter 4, Article 3, Section 2), the EQB is updating MN Rules ch. 4410 in this rulemaking. Specifically, the proposed amendments focus on streamlining:
    - mandatory EAW and EIS categories that were identified in the 2013 Report; and
    - categories identified by the public during rulemaking comment periods.

- The proposed amendments also include legislatively directed changes, as follows:
    - changes to the recreational trails mandatory categories include specific, required language, and
    - changes to categories related to silica sand were the result of recommendations from a stakeholder engagement initiative and Legislative thresholds.

The proposed amendments are generally reasonable to draw clear lines as to when environmental review is necessary – by adding specificity to the definitions, the project types and thresholds in order to provide clarity to the stakeholders as to whether environmental review is required.

Non-substantive changes. The proposed technical and housekeeping changes to the EAW and EIS categories, which reflect the changes to corresponding Minnesota rules and statutes, are reasonable to update outdated aspects of the rules. Other changes to EAW and EIS categories' thresholds are reasonably based on the many years of rule application and experience from the practitioners.

B. Specific reasonableness

Throughout this section, to distinguish the rule amendments from the justification, the rules are indented. Amendments to the existing rules are shown by ~~strike~~ for deletion and underlining for new language. The rules are presented in the order that the existing rules now appear in chapter 4410.

1. Part 4410.0200, subpart 1b. Acute hazardous waste.

Acute hazardous waste. "Acute hazardous waste" has the meaning given in part 7045.0020.

Justification.

Currently, Minn. Rules ch. 4410 does not define acute hazardous waste. Providing a definition is reasonable to determine if environmental review is required for a proposed project. The proposed definition is consistent with the definition of the term in other rules (Minn. Rules 7045.0020) and helps the public with review when environmental review documents and permits are co-noticed.

2. Part 4410.0200, subpart 5a. Auxiliary lane.

Auxiliary lane. "Auxiliary lane" means the portion of the roadway that:

A. adjoins the through lanes for purposes such as speed change, turning, storage for turning, weaving, and truck climbing; and

B. supplements through-traffic movement.

Justification.

Auxiliary lane is a new definition. The term is not currently defined in chapter 4410, but is now used in the mandatory EAW categories for highway projects (4410.4300 subpart 22). The addition of this definition helps RGUs identify the types of roads that are not included in the threshold calculation.

The proposed definition of "auxiliary lane" is generally consistent with the MnDOT Road Design Manual (Section 4-3.02) and the 2011 American Association of State Highway Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets. (Chapter 1076). This AASHTO publication is known in the industry as the "Green Book." Minnesota standards and policies adhere closely to policies established by AASHTO. Numerous AASHTO publications provide background on accepted highway design practices and provide guides on details not covered in the DOT manual and provide further in-depth explanation of road design concepts. (Section 18.01)

Both the MnDOT Manual and the AASHTO Green Book include the phrase "and other purposes" in the definition of "auxiliary lane." This phrase has been excluded from the definition of auxiliary lane proposed for part 4410.0200, subpart 5a because it is vague. Because a reasonable reader will not know what "other purposes" refers to, it is reasonably omitted from the proposed rule. The proposed definition of auxiliary lane is limited to just the lanes listed in the definition; i.e., speed change, turning, storage for turning, weaving, and truck climbing. The change is reasonable e to clarify the types of auxiliary lanes that would be included in the exclusion for ease of administration and interpretation.

The term "passing lanes," a type of auxiliary lane identified in the definition used by MnDOT and the AASHTO Green Book, is not included in the proposed amendment to the definition of auxiliary lane. Passing lanes are not considered "auxiliary lanes," and are included as lanes in the two-mile threshold because passing lanes can be considered and constructed as one project. Passing lanes can continue for

several miles in length when the lanes are staggered, a situation that occurs particularly in the rural areas of Minnesota. As provided in the definition, auxiliary lanes serve specific purposes for shorter distances and are typically constructed within the existing right-of-way in urban settings.

3. Part 4410.0200, subpart 9b. Compost facility.

~~Compost facility~~. "Compost facility" has the meaning given in part 7035.0300.~~means a facility use to compost or co-compost solid waste, including:~~

~~a) Structures and processing equipment used to control drainage or collect and treat leachate; and~~

~~b) Storage areas for incoming waste, the final product, and residuals resulting from the composting process.~~

Justification.

Replacing the current definition with a reference to an existing definition provides greater clarity and consistency in determining if environmental review is required for a proposed project. Referencing other applicable State regulatory requirements (Minn. Rule 7035.0300) in the definition ensures that Minn. Rules ch. 4410 will stay current when other applicable State regulatory requirements are updated. Using the same terms as other applicable regulatory requirements helps the public with review when environmental review documents and permits are co-noticed.

The current definition of compost facility in Minn. rule 7035.0300 is: "*Compost facility" means a site used to compost or cocompost solid waste, including all structures or processing equipment used to control drainage, collect and treat leachate, and storage areas for the incoming waste, the final product, and residuals resulting from the composting process.*

4. Part 4410.0200, subpart 36a. Hazardous material.

Hazardous material. "Hazardous material" has the meaning given in Code of Federal Regulations, title 49, section 171.8.

Justification.

Minn. Rules ch. 4410 does not define hazardous material. The reference to the federal definition provides greater clarity in determining if environmental review is required for a proposed project. Referencing other applicable State regulatory requirements in the definition (Code of Federal Regulations, title 49, section 171.8) ensures that Minn. Rules ch. 4410 will stay current when other applicable State regulatory requirements are updated. Using the same terms as other applicable regulatory requirements helps the public with review, when environmental review documents and permits are co-noticed

The current definition of hazardous waste in the Code of Federal Regulations, title 49, section 171.8, is*: Hazardous waste, for the purposes of this chapter, means any material that is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR part 262.*

5. **Part 4410.0200, subpart 40b. Institutional facility.**

Institutional facility. "Institutional facility" means a land-based facility owned or operated by an organization having a governmental, educational, civic, or religious purpose such as a school, hospital, prison, military installation, church, or other similar establishment or facility.

Justification.

The term "institutional facility" is not defined in Minn. Rules ch. 4410, nor Minnesota law. The proposed definition is the same as Code of Federal Regulations CFR 60.3078 and is reasonable for consistency with how the term is currently used in other applicable regulatory requirements. This definition is used in the mandatory EAW and EIS categories for Industrial, commercial, and institutional facilities 4410.4300 subpart 14 (EAW) and 4410.4400 subpart 11 (EIS).

In addition to being consistent with the federal definition, the proposed definition reflects the common understanding and use of the term. The change reasonably provides greater specificity in Minnesota Rule 4410.0200, and ensures consistent application of the terms across federal and Minnesota state rules.

6. **Part 4410.0200, subpart 43. Local governmental unit.**

Local governmental unit. "Local governmental unit" means any unit of government other than the state or a state agency of the federal government or a federal agency. ~~It~~ Local governmental unit includes watershed districts established ~~pursuant~~ according to Minnesota Statutes, chapter 103 D, soil and water conservation districts, watershed management organizations, counties, towns, cities, port authorities, housing authorities, and the Metropolitan Council. ~~It~~ Local governmental unit does not include courts, school districts, and regional development commissions.

Justification.

The term local governmental unit is used throughout Minn. Rules ch. 4410. The term is most often used to determine which units of government are authorized to prepare and approve environmental review documents. It was unclear whether soil and water conservations districts and watershed management organizations could be considered responsible governmental units, with the authority to prepare and approve environmental documents required under Minn. Rules ch. 4410. The addition of soil and water conservation districts and watershed management organizations to this subpart does not make this subpart a comprehensive list of local governmental units. The change implements the common understanding of the terms and eliminates any confusion.

7. **Part 4410.0200, subpart 52a. Mixed municipal solid waste land disposal facility.**

Mixed municipal solid waste land disposal facility. "Mixed municipal solid waste land disposal facility" has the meaning given in part 7035.0300.

Justification.

Minn. Rules ch. 4410 does not define "mixed municipal solid waste land disposal facility." The proposed definition provides greater clarity in determining if environmental review is required for a proposed project. Referencing an existing definition (Minn. Rule 7035.0300) ensures that Minn. Rules ch. 4410 will

stay current when other applicable State regulatory requirements are updated. Using similar terminology with other applicable regulatory requirements helps the public with review when environmental review documents and permits are co-noticed.

The current definition of mixed municipal solid waste land disposal facility in Minn. Rule 7035.0300 is: *"Mixed municipal solid waste land disposal facility" means a site used for the disposal of mixed municipal solid waste in or on the land.*

8. Part 4410.0200, subpart 59a. Petroleum refinery.

Petroleum refinery. "Petroleum refinery" has the meaning given in Minnesota Statutes, section 115C.02, subpart 10a.

Justification.

Minn. Rules ch. 4410 does not define Petroleum refinery. The definition provides greater clarity in determining if environmental review is required for a proposed project. Referencing other applicable State regulatory requirements in the definition (Minn. Stat., section 115C.02, subpart 10a) ensures that Minn. Rules ch. 4410 will stay current, when other applicable State regulatory requirements are updated. Using similar terminology with other applicable regulatory requirements helps the public with review, when environmental review documents and permits are co-noticed.

The current definition of petroleum refinery in Minn. Stat., section 115C.02, subpart 10a is: *"Petroleum refinery" means a facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oil, lubricants, or other products through distillation of petroleum or through redistillation, cracking, or reforming of unfinished petroleum derivatives. "Petroleum refinery" includes fluid catalytic cracking unit catalyst regenerators, fluid catalytic cracking unit incinerator-waste heat boilers, fuel gas combustion devices, and indirect heating equipment associated with the refinery.*

9. Part 4410.0200, subpart 71a. Refuse-derived fuel.

Refuse-derived fuel. "Refuse-derived fuel" has the meaning given in Minnesota Statutes, section 115A.03, subdivision 25d.

~~**Refuse-derived fuel.** "Refuse-derived fuel" means the product resulting from techniques or processes used to prepare solid waste by shredding, sorting, or compacting for use as an energy source.~~

Justification.

Replacing the current definition with the statutory definition (Minn. Stat. section 115A.03, subdivision 25d) from the Waste Management Act provides greater clarity in determining if environmental review is required for a proposed project. Using similar terminology with other applicable regulatory requirements helps the public with review, when environmental review documents and permits are co-noticed.

The current definition of refuse derived fuel in Minnesota Statutes, section 115A.03, subdivision 25d is: *"Refuse-derived fuel" means a product resulting from the processing of mixed municipal solid waste in a manner that reduces the quantity of noncombustible material present in the waste, reduces the size of*

waste components through shredding or other mechanical means, and produces a fuel suitable for combustion in existing or new solid fuel-fired boilers.

10. Part 4410.0200, subpart 82a. Silica sand.

Silica sand. "Silica sand" has the meaning given in Minnesota Statutes, section 116C.99, subdivision 1.

Justification.

This change reflects statutory language in 116C.99, which defines silica sand. By incorporating the definition and reference into Minn. Rules 4410.0200. The addition of Minn. Rule 4410.0200, subpart 82a. Silica sand, is established to incorporate the definition found at Minn. Stat. 116C.99, subdivision 1, paragraph (d) which states:

"'Silica sand' means well-rounded, sand-sized grains of quartz (silicon dioxide), with very little impurities in terms of other minerals. Specifically, the silica sand for the purposes of this section is commercially valuable for use in the hydraulic fracturing of shale to obtain oil and natural gas. Silica sand does not include common rock, stone, aggregate, gravel, sand with a low quartz level, or silica compounds recovered as a by-product of metallic mining."

11. Part 4410.0200, subpart 82b. Silica sand project.

Silica sand project. "Silica sand project" has the meaning given in Minnesota Statutes, section 116C.99, subdivision 1.

Justification.

This change reflects statutory language in 116C.99, which defines silica sand project. The addition of Minn. Rule 4410.0200, subpart 82b. Silica sand project; is established to incorporate the definition found at Minn. Stat. 116C.99, subdivision 1, paragraph (e) which states:

"'Silica sand project" means the excavation and mining and processing of silica sand; the washing, cleaning, screening, crushing, filtering, drying, sorting, stockpiling, and storing of silica sand, either at the mining site or at any other site; the hauling and transporting of silica sand; or a facility for transporting silica sand to destinations by rail, barge, truck, or other means of transportation."

12. Part 4410.0200, subpart 93. Wetland.

Wetland. "Wetland" has the meaning given wetlands in ~~U.S. Fish and Wildlife Service Circular No. 39 (1971 edition)~~ Minnesota Statutes, section 103G.005, subdivision 19

Justification.

The proposed change to the definition (Minn. Stat. section 103G.005, subdivision 19) aligns the current usage and understanding of the terms. The current definition for "wetlands" in Minn. Rule 4410.0200 was written in 1982 and does not reflect state rule or statutes that were specifically written for wetlands. Referencing other applicable State regulatory requirements in the definition ensures that Minn. Rules ch. 4410 will stay current,

when other applicable State regulatory requirements are updated. Using similar terminology with other applicable regulatory requirements helps the public with review, when environmental review documents and permits are co-noticed.

The current definition of wetland in Minn. Stat. section 103G.005, subdivision 19 is: (*a) "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:*

(1) have a predominance of hydric soils;

(2) are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) under normal circumstances support a prevalence of such vegetation.

(b) For the purposes of regulation under this chapter, the term wetlands does not include public waters wetlands as defined in subdivision 15a.

13. Part 4410.0500, subpart. 4. RGU for EAW by order of EQB.

If the EQB orders an EAW pursuant to part 4410.1000, subpart 3, item C, the EQB shall, at the same time, designate the RGU for that EAW.

Justification.

The amendment to this subpart is reasonable to correct a spelling error. The letter "E" was inadvertently left off "EQB" when originally published.

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14. Part 4410.0500, subpart 6. Exception.

Exception. Notwithstanding subparts 1 to 5, the EQB, or EQB chair, may designate ~~within five days of receipt of the completed data portions of the EAW,~~ a different RGU for the project if ~~the EQB determines~~ the designee has greater expertise in analyzing the potential impacts of the project.

Justification.

The requirement for "within five days of receipt of the completed data portions of the EAW" is removed because project proposers often work with the RGU to determine what type of information is needed. Removing the requirement to have a complete data submittal before the RGU designation process is complete, will ensure that parties are identified early in the process and work together in the EAW development process. The EQB, or EQB chair, will identify what information is required. Additionally, it is reasonable to eliminate the five day time limit because it is inconsistent with the operation of the EQB Board. The EQB uses its regularly scheduled monthly Board meeting to process requests to designate a different RGU. The process under the current rule can take as long as 45-days to complete; therefore, it is not possible for the EQB to meet the timeline designated in the current rule.

The addition of extending the ability to designate a different RGU to the EQB chair is reasonable because it allows the request to be processed more efficiently. This change will allow flexibility for making non-controversial decisions, and does not prevent anyone from making a request for the full Board to consider the decision. All requests to designate a different RGU will be published in the EQB Monitor for one week prior to approval, which will give any Board member on behalf of the public, an opportunity to request a full review by the Board.

15. Part 4410.4300, subpart 2. Nuclear fuels and nuclear waste.

Nuclear fuels and nuclear waste. Items A to F designate the RGU for the type of project listed:

A. For construction or expansion of a facility of the storage of high level nuclear waste, other than an independent spent-fuel storage installation, the EQB ~~shall be~~ is the RGU.

Justification.

For the nuclear fuels and nuclear waste mandatory EAW category, the proposed change includes the addition of the words "other than an independent spent-fuel storage installation" This amendment removes these types of projects from the mandatory requirement to prepare an EAW. Independent spent-fuel storage installations are statutorily required to prepare a mandatory EIS Minn. Stat. 116C.83, subdivision 6, paragraph (b))

"An environmental impact statement is required under chapter 116D for a proposal to construct and operate a new or expanded independent spent-fuel storage installation. The commissioner of the Department of Commerce shall be the responsible governmental unit for the environmental impact statement."

The addition of "other than an independent spent-fuel storage installation" to item A clarifies the fact that independent spent-fuel storage installation projects are not subject to the mandatory requirement to prepare an EAW but are in fact subject to the requirement for an EIS. In this rulemaking the EQB is proposing to amend Minn. Rule ch. 4410.4400, subpart 2, which governs nuclear fuels, is to reflect the statutory requirement for independent spent-fuel storage installations to prepare an EIS.

The addition of "other than independent spent-fuel storage installation" is reasonable to make this rule consistent with Minn. Stat. 116C.83, subdivision 6. The EQB retains RGU status for preparation of an EAW for non-independent spent-fuel storage installation high-level nuclear waste storage facilities.

16. Part 4410.4300, subpart 3. Electric-generating facilities.

Electric-generating facilities.

Items A through D designate the RGU for the type of project listed:

A. For construction of an electric power generating plant and associated facilities designated for or capable of operating at a capacity of ~~between~~ 25 megawatts ~~and 50 megawatts, the EQB shall be the RGU~~ or more but less than 50 megawatts and for which an air permit from the PCA is required, the PCA is the RGU.

B. For construction of an electric power generating ~~plants~~ plant and associated facilities designed for and capable of operating at a capacity of 25 megawatts or more but less than 50 megawatts ~~or more. Environmental review shall be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.~~and for which an air permit from the PCA is not required, the local governmental unit is the RGU.

C. For construction of an electric power generating plant and associated facilities designed for and capable of operating at a capacity of 50 megawatts or more, the PUC is the RGU,

environmental review must be conducted according to parts 7849.1000 to 7849.2100 and chapter 7850.

D. For construction of a wind energy conversion system, as defined in Minnesota Statutes section 216F.01, designed for and capable of operating at a capacity of 25 megawatts or more, the PUC is the RGU and environmental review must be conducted according to chapter 7854.

Justification.

This subpart has been divided into 3 sections to clarify and expand on the existing requirements. The proposed amendment to item A changes the RGU from the EQB to the PCA for certain types of electric-generating facilities, (those that are a certain size and that require a PCA air permit). This is a reasonable change because the PCA, through the permitting process, will have more knowledge of the facility and more experience with the types of processes and pollutants involved.

The proposed amendment to item B changes the RGU from the EQB to the LGU for certain types of electric-generating facilities, (those that are a certain size and that do not require a PCA air permit). This is reasonable change because such facilities typically utilize a renewable resource in a non-combustion process (e.g., solar panels). These plants are well suited to be evaluated by LGUs because LGUs have more permitting authority over the project as a whole.

The amendments to item C clarify the existing requirement in the last sentence of subpart 3. The current rule does not specifically identify the PUC as having the responsibility for environmental review for facilities over 50 megawatts but, through application of the cited rules, MN rules parts 7849.1000 to 7849.2100 and chapter 7850 it is the RGU. It is reasonable to make that clarification in new item C. Item D is added to designate the PUC as the RGU for construction of wind energy conversion systems designed for and capable of operating at a capacity of 25 megawatts or more. These types of systems were not previously addressed in this rule and the PUC is reasonably assigned as the RGU based on their approval authority over the project as a whole and their expertise for evaluating these project types

These changes to the RGU for specific types of facilities are consistent with Minn. R. 4410.0500, RGU Selection Procedures.

17. Part 4410.4300, subpart 4. Petroleum refineries.

For expansion of an existing petroleum refinery ~~facility~~ that increases ~~it's~~ the refinery's capacity by 10,000 ~~or more~~ barrels per day or more, the PCA ~~shall be~~ is the RGU

Justification.

Changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

18. Part 4410.4300, subpart 5. Fuel conversion facilities.

Fuel conversion facilities.

A. Subitems (1) and (2) ~~Items A and B~~ designate the RGU for the type of project listed:

(1) ~~A.~~ For construction of a new fuel conversion facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 25,000 dry tons or more per year of input, the PCA ~~shall be~~ is the RGU.

(2) ~~B.~~ For construction ~~or expansion~~ of a new fuel conversion facility for the production of alcohol fuels ~~which~~ that would have the capacity ~~or would increase it's capacity by~~ to produce 5,000,000 ~~or more~~ gallons or more per year of alcohol ~~produced~~, the PCA ~~shall be~~ is the RGU.

B. A mandatory EAW is not required for projects described in Minnesota Statutes, section 116D.04, subdivision 2a, paragraph (b).

Justification.

The addition of the phrase "new fuel conversion" to subitems (1) and (2) more clearly identifies the type of facilities for which environmental review must be considered. The addition of "new" in subitem (1) and (2), and the deletion of "or expansion" and "or would increase its capacity by" from subitem (2) makes clear that the construction at existing facilities is not included in this EAW category, per language passed by the Minnesota Legislature in 2011 and found in Minn. Stat. 116D.04, subdivision 2a paragraph (b).

Item B is reasonably added to align with the requirements passed by the Minnesota Legislature in 2011 (Minn. Stat. 116D.04, subdivision 2a, paragraph (b)), which deals exclusively with the expansion of fuel conversion facilities:

> "A mandatory environmental assessment worksheet shall not be required for the expansion of an ethanol plant, as defined in section 41A.09, subdivision 2a, paragraph (b), or the conversion of an ethanol plant to a biobutanol facility or the expansion of a biobutanol facility as defined in section 41A.15, subdivision 2d, based on the capacity of the expanded or converted facility to produce alcohol fuel, but must be required if the ethanol plant or biobutanol facility meets or exceeds thresholds of other categories of actions for which environmental assessment worksheets must be prepared. The responsible governmental unit for an ethanol plant or biobutanol facility project for which an environmental assessment worksheet is prepared shall be the state agency with the greatest responsibility for supervising or approving the project as a whole."

The addition of item B provides greater clarity, specificity and efficiency in determining if environmental review is required for a proposed project.

Other changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

19. Part 4410.4300, subpart 6. Transmission lines.

Transmission lines. ~~For construction of a transmission line at a new location with a nominal capacity of between 70 kilovolts and 100 kilovolts with 20 or more miles of its length in Minnesota, the EQB shall be the RGU.~~ For construction of a high-voltage transmission ~~lines~~ line and associated facilities, as defined in part 7850.1000 ~~designed for and capable of operating at a~~

~~nominal voltage of 100 kilovolts or more~~, the PUC is the RGU. Environmental review ~~shall~~ must be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.

Justification.

Changes to the mandatory EAW category for transmission lines include the deletion of the requirement for mandatory environmental review of transmission lines between 70 kilovolts and 100 kilovolts (kV). The EQB, which was the designated RGU, suggested the change because those types of transmission lines are not typically constructed in Minnesota. If a future need for these transmission lines were identified, the PUC could order a discretionary review or the public could submit a petition, if they believe the project may have the potential for significant environmental effects. The addition of the phrase "the PUC is the RGU" to this subpart makes clear that the PUC is the RGU for transmission line projects.

However, high-voltage transmission line projects are still required to be reviewed. The amendments reasonably add a reference to and existing definition of "high voltage transmission line" or "HVTL." Referencing other applicable State regulatory requirements in the definition ensures that Minn. Rules ch. 4410 will stay current, when other applicable State regulatory requirements are updated. Using similar terminology with other applicable regulatory requirements helps the public with review, when environmental review documents and permits are co-noticed.

20. Part 4410.4300, subpart 7. Pipelines.

Pipelines. ~~Items A to D designate the RGU for the type of project listed:~~

~~A. For routing of a pipeline, greater than six inches in diameter and having more than 0.75 miles of its length in Minnesota, used for the transportation of coal, crude petroleum fuels, or oil or their derivates, the EQB shall be the RGU.~~

~~B. For the construction of a pipeline for distribution of natural or synthetic gas under a license, permit, right, or franchise that has been granted by the municipality under authority of Minnesota Statutes, section 216B.36, designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than:~~

~~(1) five miles if the pipeline will occupy streets, highways, and other public property; or~~
~~(2) 0.75 miles if the pipeline will occupy private property; the EQB or the municipality is the RGU.~~

~~C. For construction of a pipeline to transport natural or synthetic gas subject to regulation under the federal Natural Gas Act, United States Code, title 15, section 717, et. seq., designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than:~~
~~(1) five miles if the pipeline will be constructed and operated within an existing right-of-way; or~~

~~(2) 0.75 miles if construction or operation will require new temporary or permanent right-of-way;~~

~~the EQB is the RGU. This item shall not apply to the extent that the application is expressly preempted by federal law, or under specific circumstances when an actual conflict exists with applicable federal law.~~

~~D. For construction of a pipeline to convey natural or synthetic gas that is not subject to regulation under the federal Natural Gas Act, United States Code, title 15, section 717, et seq.; or to a license, permit, right, or franchise that has been granted by a municipality under authority of Minnesota Statutes, section 216B.36; designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than 0.75 miles, the EQB is the RGU.~~

~~Items A to D do not apply to repair or replacement of an existing pipeline within an existing right-of-way or to a pipeline located entirely within a refining, storage, or manufacturing facility.~~

For construction, as defined in Minnesota Statutes, section 216G.01, subdivision 2, of a pipeline, as defined in Minnesota Statutes, section 216G.01, subdivision, 3 or 216G.02, subdivision 1, the PUC is the RGU. Environmental review must be conducted according to Minnesota Rules, chapter 7852 and Minnesota Statutes, chapter 216G.

Justification.

Items A through D are reasonably replaced by a reference to Minn. Stat. chapter 216G.01 and 216G.02. This statute is more recent than the existing language, and is specifically written to address pipelines in the state. Minn. Stat. 216G.01, subdivision 2 and 3 deals exclusively with the construction of a pipeline:

> "Subd. 2. Construction. "Construction" means any clearing of land, excavation, or other action that would adversely affect the natural environment of a pipeline route but does not include changes needed for temporary use of a route for purposes other than installation of a pipeline, for securing survey or geological data, for the repair or replacement of an existing pipeline within the existing right-of-way, or for the minor relocation of less than three-quarters of a mile of an existing pipeline.
>
> Subd. 3. Pipeline. "Pipeline" means a pipeline located in this state which is used to transport natural or synthetic gas at a pressure of more than 90 pounds per square inch, or to transport crude petroleum or petroleum fuels or oil or their derivatives, coal, anhydrous ammonia or any mineral slurry to a distribution center or storage facility which is located within or outside of this state. "Pipeline" does not include a pipeline owned or operated by a natural gas public utility as defined in section 216B.02, subdivision 4."

The statutory language changed how the EAW category is applied to pipeline projects and identifies a different RGU for the environmental review of pipeline projects. The statute also includes new thresholds for when environmental review must be completed for pipeline projects.

Replacing the current requirements with a citation to the statutory requirements and existing rules provides greater clarity and consistency in determining if environmental review is required for a proposed project. Referencing applicable statutes and rules ensures that Minn. Rules ch. 4410 will stay current, when other applicable State regulatory requirements are updated. Using the same terminology helps the public with review, when environmental review documents and permits are co-noticed.

21. Part 4410.4300, subpart 8. Transfer facilities.

Transfer facilities. Items A ~~and B~~ to C designate the RGU for the type of project listed:

A. For construction of a new facility which is designed for or capable of transferring 300 tons or more of coal per hour or with an annual throughput of 500,000 tons of coal from one mode of transportation to a similar or different mode of transportation; or the expansion of an existing facility by these respective amounts, the PCA ~~shall be~~ is the RGU.

B. For construction of a new facility or the expansion by 50 percent or more of an existing facility for the bulk transfer of hazardous materials with the capacity of 10,000 or more gallons per transfer, if the facility is located in a shoreland area, a delineated ~~flood plain~~ floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the PCA ~~shall be~~ is the RGU.

C. The PCA is the RGU for a silica sand project that:

(1) is designed to store or is capable of storing more than 7,500 tons of silica sand; or
(2) has an annual throughput of more than 200,000 tons of silica sand.

Justification.

The changes to item A provide clarity and consistency with item B, which also addresses "new" facilities. The addition of item C aligns with the thresholds found at Minn. Stat. 116C.991, section a, paragraph (2). The interim mandatory categories for silica sand projects are listed under Minn. Stat. § 116.991 and were established as provided by Laws of Minnesota 2013, chapter 114, article 4, section 105:

1) excavates 20 or more acres of land to a mean depth of ten feet or more during its existence. The local government is the responsible governmental unit; or
2) is designed to store or is capable of storing more than 7,500 tons of silica sand or has an annual throughput of more than 200,000 tons of silica sand and is not required to receive a permit from the Pollution Control Agency. The Pollution Control Agency is the responsible governmental unit.
b) In addition to the contents required under statute and rule, an environmental assessment worksheet completed according to this section must include:
1) a hydrogeologic investigation assessing potential groundwater and surface water effects and geologic conditions that could create an increased risk of potentially significant effects on groundwater and surface water;
2) for a project with the potential to require a groundwater appropriation permit from the commissioner of natural resources, an assessment of the water resources available for appropriation;
3) an air quality impact assessment that includes an assessment of the potential effects from airborne particulates and dust;
4) a traffic impact analysis, including documentation of existing transportation systems, analysis of the potential effects of the project on transportation, and mitigation measures to eliminate or minimize adverse impacts;
5) an assessment of compatibility of the project with other existing uses; and
6) mitigation measures that could eliminate or minimize any adverse environmental effects for the project.

In 2015, the Minnesota Legislature updated Minn. Stat. 116.991 Laws of Minnesota 2015, Chapter 4, Article 4, Section 121, by removing the July 1, 2015 date and changed the language to :

> *116C.991 ENVIRONMENTAL REVIEW; SILICA SAND PROJECTS.*
>
> *(a) Until ~~July 1, 2015~~ a final rule is adopted pursuant to Laws 2013, chapter 114, article 4, section 105, paragraph (d)…*

The EQB determined that it would permanently adopt the original 2013 thresholds for when environmental review of silica sand projects must occur, as set by the Legislature, in the Mandatory categories rulemaking, R-04157. The EQB has discontinued that rulemaking and is addressing those requirements in the proposed rules.

In 2017, Laws of Minnesota 2017, Chapter 93, article 1, Section 105 was updated to read:

Sec. 105.RULES; SILICA SAND.

(a) The commissioner of the Pollution Control Agency ~~shall~~ may adopt rules pertaining to the control of particulate emissions from silica sand projects. The rulemaking is exempt from Minnesota Statutes, section 14.125.

(b) The commissioner of natural resources shall adopt rules pertaining to the reclamation of silica sand mines. The rulemaking is exempt from Minnesota Statutes, section 14.125.

(c) By January 1, 2014, the Department of Health shall adopt an air quality health-based value for silica sand.

(d) The Environmental Quality Board ~~shall~~ may amend its rules for environmental review, adopted under Minnesota Statutes, chapter 116D, for silica sand mining and processing to take into account the increased activity in the state and concerns over the size of specific operations. The Environmental Quality Board shall consider whether the requirements of Minnesota Statutes, section 116C.991, should remain part of the environmental review requirements for silica sand and whether the requirements should be different for different geographic areas of the state. The rulemaking is exempt from Minnesota Statutes, section 14.125.

In 2017, the Legislature changed the language from “shall” to “may” amend EQB rules for environmental review. The EQB determined that the potential for significant environmental effects persists in relation to silica sand projects in Minnesota and it would be to the public’s benefit to have the mandatory category threshold within the environmental review Mandatory Category rules, 4410.4300.

The proposed change clarifies that processing, transloading and storage of silica sand have the potential for causing environmental impacts relating to land use, transportation, noise, facility lights, air quality, recreation, economic, and water quality and water quantity. For economic reasons, transloading, processing and storage facilities may be very large-scale, which in some cases may increase the potential for environmental impacts including fugitive dust emissions, transportation related issues and water pollution issues.

The proposed rules are in response to environmental issues identified at these sites, which have increased as a result of increased demand for silica sand. The proposed language will provide clarity for the public, RGUs and project proposers for the types of projects that require an EAW.

The proposed change reflects the 2013 legislative thresholds for projects. The thresholds are 200,000 tons of annual throughput and 7,500 tons for storage piles. These thresholds indicate a legislative intent that these types of operations have the potential for significant environmental effects, and therefore warrant

environmental review. Proposed item C addresses the potential for air emissions related to silica sand facility operations. Silica sand dust may be emitted during mining, handling, transferring, open storage piles and transport at a silica sand transloading or processing facility. Transloading or processing at a mine or standalone facility may include the storage of silica sand or the transfer of raw materials into trucks or railcars for transport. Depending on how a processing, transloading or mining operation is configured, the proximity of businesses, residences— including sensitive populations – older, asthmatics, young children from inhalation or aspiration of particles can be directly related to its potential for environmental and health effects related to air quality.

Proposed item C establishes a throughput threshold of 200,000 tons or more of silica sand annually and a facility designed to store 7,500 tons or more of silica sand. The throughput threshold is reasonable because it was developed on the basis that the legislature determined the threshold level of 200,000 tons or more of annual throughput on a silica sand project requires environmental review due to the potential for significant environmental effects. The storage threshold is reasonable on the basis that the legislature determined 7,500 tons or more of storage was an appropriate and necessary threshold due to the potential for significant environmental effects related to air quality and transportation related issues.

The proposed thresholds are also reasonable based on a 2015, EQB survey of LGUs throughout the state of Minnesota. The survey is available on EQB's website: https://www.eqb.state.mn.us/sites/default/files/documents/Sand%20survey%20for%20LGU%27s%20April%2015%20EQB.pdf). The survey recorded responses from 11 counties, 13 cities and 70 townships (94 total responses). The survey recorded 66% (59) respondents agreeing with the 200,000-ton throughput threshold and 7,500-ton storage threshold, and 71% (63) agreed that the Minnesota Pollution Control Agency (PCA) should be the RGU.

Potential environmental effects at a silica sand facility may relate to air quality, noise and safety issues associated with truck traffic transporting the sand to and from the facility. The figure of 200,000 tons per mine per year converts to approximately 7,692 loaded trucks per year (15,385 total trips). This yearly figure converts to approximately 148 loaded trucks per week, and 296 total (loaded and empty) total truck trips per week. Much depends on operating hours to determine how many trucks per day and per hour. If a 6-day work week is used as an example (several MN/WI facilities are operating this way), this would be approximately 25 loaded trucks per day, and approximately 50 total trips per day from a facility.

The PCA has been designated as the RGU in compliance with Minn. Rules ch, 4410.0500, and considering the following:

- The regional scale that silica sand processing and transloading facilities encompass, and their potential for significant environmental effects encompass (air quality, transportation, water quality/quantity). Silica sand processing facilities often work as a hub and spoke system where the processing facility is the hub and neighboring and distant mines transport the silica sand resource to the processing facility where it is processed for the specified end use. Thus, the potentially significant environmental effects from a processing and/or storage and/or transloading facility are likely to be regional and the PCA, the state agency with authority over outdoor air and water quality and the environment, is best positioned to assess these potential impacts.
- The key characteristics of processing and transloading facilities which have the potential for significant environmental effects are air quality and water quality, which are incredibly complicated and which PCA has unique expertise to best assess the potential impacts.
- Permitting authority rests with the PCA for air permits and water discharge permits for processing and transloading facilities.

- If a silica sand facility proposes to process or transload sand from offsite, it is likely to be a larger facility and require more transportation infrastructure, a larger water appropriation (for the processing), and due to a larger size, it may have the potential to have increased significant environmental effects.
- The legislature determined the PCA was the appropriate RGU when it developed and established the statutory language.
- The EQB surveyed 94 LGUs in Minnesota and 71% (63) agreed that the Minnesota Pollution Control Agency (PCA) should be the RGU.

22. Part 4410.4300, subpart 10. Storage facilities.

Storage facilities. Items A to ~~C~~H designate the RGU for the type of project listed:

A. For construction of a new facility designed for or capable of storing more than 7,500 tons of coal or with an annual throughput of more than 125,000 tons of coal; or the expansion of an existing facility by these respective amounts, the PCA ~~shall be~~ is the RGU.

B. For construction of a new major facility, as defined in Minn. Rule ch. 7151.1200, subpart 22, ~~on a single site designated for or capable of storing 1,000,000 gallons or more of hazardous materials~~, that results in a designed storage capacity of 1,000,000 gallons or more of hazardous materials, the PCA ~~shall be~~ is the RGU.

C. For expansion of an existing major facility, as defined in Minn. rule chapter 7151.1200, subpart 22, with a designed storage capacity of 1,000,000 gallons or more of hazardous materials, when the expansion adds a net increase of 1,000,000 gallons or more of hazardous materials, the PCA is the RGU.

D. For expansion of an existing facility that has less than 1,000,000 gallons in total designed storage capacity of hazardous materials, when the net increase in designed storage capacity results in 1,000,000 gallons or more of hazardous materials, the PCA is the RGU.

E. For construction of a new facility designed for or capable of storing on a single site 100,000 gallons or more of liquefied natural gas, as defined in Minnesota Statutes, section 299F.56, subdivision 14, or synthetic gas, ~~or anhydrous ammonia~~ as defined in Minnesota Statutes, section 216B.02, subdivision 6b, the ~~PCA shall be~~ PUC is the RGU, except as provided in item G.

F. For construction of a new facility designed for or capable of storing on a single site 100,000 gallons or more of anhydrous ammonia, the MDA is the RGU, except as provided in item G.

G. For construction of a new facility designed for or capable of storing on a single site 100,000 gallons or more of a combination of liquefied natural gas, as defined in Minnesota Statutes, section 299F.56, subdivision 14, synthetic gas, as defined in Minnesota Statutes, section 216B.02, subdivision 6b, or anhydrous ammonia, the PUC is the RGU.

H. The PCA is the RGU for a silica sand project that:

(1) is designed to store or is capable of storing more than 7,500 tons of silica sand; or
(2) has an annual throughput of more than 200,000 tons of silica sand.

Justification.

Item A is amended to clarify that the first clause applies to "new" facilities. The Office of the Revisor has suggested changing "shall be" to "is."

For items B and C, adding the term "major" facility resolves a long standing problem when trying to determine whether a facility meets the threshold of this subpart. The addition of the clarifying language is reasonable because it assists project proposers, the public, and the RGU to consistently determine whether a new facility requires a mandatory environmental review. The definition clearly identifies which components of a site must be considered in determining whether the project meets mandatory thresholds.

Item B only refers to the construction of a new major facility, while item C establishes a separate threshold for the expansion of an existing facility. In consultation with the PCA, the RGU for this EAW category, the separation of these activities – construction of a new facility and expanding an existing facility, is reasonable to better reflect the types of projects that have historically been addressed in this category.

Item C addresses the expansion of existing major facilities rather than the construction of new major facilities as discussed in item B. The separation of the two activities, building a new major facility and expanding an existing major facility is reasonable, to eliminate the inconsistent application of the threshold.

Nothing in the current subpart addresses increases in volume as a result of expansion. Using the term "net" increase in new items C and D helps add clarification when facilities are proposing to add or remove storage areas. The environmental review process considers the entire property or contiguous properties when factoring in net increase.

The new item D adds clarification that environmental review is required when the expansion of an existing facility with less than 1,000,000 gallons has a net increase in designed storage capacity of 1,000,000 gallons or more of hazardous materials, and designates the PCA as the RGU.

Items E, F and G are expansions of existing item E and address liquid natural gas, synthetic gas, and anhydrous ammonia. Item E is amended to expand existing rule language to cross reference to already existing definitions of liquefied nature gas and synthetic gas and also to identify a more appropriate RGU. The proposed change removes the PCA as the RGU and assigns the PUC as the RGU.

The re-assignment of the PUC as the RGU in each of these items is reasonable because the PUC is the regulatory authority for these liquids. Historically a single threshold was established for multiple substances– liquefied natural gas, synthetic gas and anhydrous ammonia were all contained in the same item with the PCA as the RGU. However, the PCA has no approval authority of any of the substances. The PUC regulates liquefied natural gas and synthetic gas, making them the more appropriate RGU. Similarly, the PCA does not regulate anhydrous ammonia, but the MDA does and is the more appropriate RGU. While the thresholds have not changed, the RGU has changed. Additionally in item G, the RGU with the greatest approval authority over the project is identified as the PUC. This change is consistent with other parts of Minn. Rules ch. 4410 and is consistent with the regulatory system around each substance.

The new threshold item H, is established to align with the thresholds found at Minn. Stat. 116C.991, section a, paragraph (2) as provided by Laws of Minnesota 2015, Chapter 4, Article 4, Section 121, which states:

"(a) Until a final rule is adopted pursuant to Laws 2013, chapter 114, article 4, section 105, paragraph (d), an EAW must be prepared for any silica sand project that meets or exceeds the following thresholds, unless the project meets or exceeds the thresholds for an environmental impact statement under rules of the Environmental Quality Board and an environmental impact statement must be prepared:

(2) is designed to store or is capable of storing more than 7,500 tons of silica sand or has an annual throughput of more than 200,000 tons of silica sand and is not required to receive a permit from the PCA. The PCA is the RGU."

Item H is identical to Minn. Rules 4410.4300, subpart 8, item C. The purpose of its inclusion in the Storage facilities mandatory EAW category is to ensure a project proposer or RGU is aware of the threshold if silica sand facility is developed that just includes storage. The justification for the need and reasonableness for this category and thresholds is described above in the justification section for Minnesota Rules 4410.4300, subpart 8, item C.

23. Part 4410.4300, subpart 12. Nonmetallic mineral mining.

Nonmetallic mineral mining. Items A to ~~C~~ D designate the RGU for the type of project listed:

Item A [unchanged]

B. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will extract 40 or more acres of land to a mean depth of ten feet or more during its existence, the local ~~government~~ governmental unit ~~shall be~~ is the RGU.

Item C [unchanged]

D. For development of a silica sand project that excavates 20 or more acres of land to a mean depth of ten feet or more during the project's existence, the local governmental unit is the RGU.

Justification.

In item B, the term "government" is replaced with the term "governmental", to provide consistency with how this term is used in other parts of this chapter. This change ensures consistent application of terms throughout Minn. Rules ch. 4410. The term "shall be" is reasonably changed to "is at the recommendation of the Office of the Revisor.

Item D follows the intent of the interim rules the 2013 and 2015 legislature set forth in Minn. Stat. § 116C.991, paragraph (a), clause (1), which state:

"(a) Until July 1, 2015, an environmental assessment worksheet must be prepared for any silica sand project that meets or exceeds the following thresholds, unless the project meets or exceeds the thresholds for an environmental impact statement under rules of the Environmental Quality Board and an environmental impact statement must be prepared:

(1) excavates 20 or more acres of land to a mean depth of ten feet or more during its existence. The local government is the RGU; or…"

The addition of item D is reasonable because the extraction, mining, and ancillary features associated with extraction and mining of silica sand deposits have the potential for significant environmental effects relating to land use, transportation, noise, air quality, water quality and vibrations.

Activities and features associated with the extraction and mining processes and mine area land disturbance directly relate to the need for environmental review due to the potential for significant environmental effects caused by these activities. Specifically, the activities include truck transport of the silica sand from the mine site, which has the potential to result in increased traffic impacts, road degradation, increased noise, safety concerns and increased dust. Mine area activities also include permanent landscape alterations caused by removing overburden to access the silica sand resources and permanent landscape alterations from removing the silica sand resources from the site. The landscape alterations have the potential to change the way-of-life in a community in which these facilities are located. This change in the way-of-life may be characterized as the loss of a notable land feature from an area's viewshed or the disruption of the character of a place due to mine area activities. Additional activities and features associated with the extraction and mining process that have the potential to change the way-of-life include lights, noise, and hours of operation. In 2015, EQB completed a survey of LGUs throughout the state of Minnesota. The survey is available on EQB's website: https://www.eqb.state.mn.us/sites/default/files/documents/Sand%20survey%20for%20LGU%27s%20April%2015%20EQB.pdf). Survey respondents stated that non-metallic mining causes disruption to traffic flows in an area, noise, odor, dust and have a significant impact on area residents way-of-life.

Mine activities and features with the potential for significant environmental effects include: clearing the mine site, removal of vegetation, compaction, stripping, grading, grubbing, filling, storing materials, settling ponds, berms, constructed buildings associated with mine activities, haul roads and refuse piles.

Proposed item D is reasonable because the Minnesota Legislature set the threshold at 20-acre and the mean depth of 10-feet or more, indicating a legislative intent and concern that a silica sand project that excavates 20-acres or more to a mean depth of 10 feet has the potential for significant environmental effects, and therefore warrants environmental review.

Item D establishes the LGU as the RGU. The 2015 survey of LGUs throughout the state recorded responses from 11 counties, 13 cities and 70 townships. The survey recorded 56% (49) respondents agreeing with the 20 acre mine threshold and 77% (69) agreed that the LGU should be the RGU.

It is reasonable to designate the LGU as the RGU because:

- Mines are a land-use issue. LGUs have the greatest authority for supervising and permitting authority over land-use and projects in their community; LGUs have local knowledge and expertise regarding what is appropriate for their community and quality of life; thus it is necessary to involve the LGU and reasonable to designate it as the RGU.
- LGUs are in a better position to understand and protect the unique local resources that the local community deems valuable. LGUs have access to local insights and have a strong incentive to ensure that all risks of silica sand mining are mitigated.
- The environmental review program has a historic precedent to identify LGUs as the RGU because they have the greatest approval authority over a project via a land use permit.

Based on the potential for environmental impacts at existing and proposed silica sand mine sites it is reasonable to require environmental review on silica sand mine sites larger than the proposed threshold.

24. Part 4410.4300, subpart 14. Industrial, commercial, and institutional.

Industrial, commercial, and institutional. Items A and B designate the RGU for the type of project listed, except as provided in items C and D:

A. For construction of a new or expansion of an existing warehousing or light industrial facility equal to or in excess of the following thresholds, expressed as gross floor space, the local governmental unit ~~shall be~~ is the RGU:

(1) unincorporated area, 150,000 square feet;
(2) third or fourth class city, 300,000 square feet;
(3) second class city, 450,000 square feet; and
(4) first class city, 600,000 square feet.

B. For construction of a new or expansion of an existing industrial, commercial, or institutional facility, other than a warehousing or light industrial facility, equal to or in excess of the following thresholds, expressed as gross floor space, the local ~~government~~ governmental unit ~~shall be~~ is the RGU:

(1) unincorporated area, 100,000 square feet;
(2) third or fourth class city, 200,000 square feet;
(3) second class city, 300,000 square feet; and
(4) first class city, 400,000 square feet.

Justification.

During the EQB rulemaking in 1982, the words "square feet" were inadvertently omitted from item A of this subpart, but were included in item B. They term is reasonably added to item A to eliminate any question regarding which units of measurement must be used.

The term "government" is replaced with the term "governmental," to provide consistency with how this term is used in other parts of this chapter. This change ensures consistent application of Minn. Rules ch. 4410.

25. Part 4410.4300, subpart 16. Hazardous waste.

Hazardous waste. Items A to D designate the RGU for the type of project listed:

A. For construction of a new or expansion of ~~a~~ an existing hazardous waste disposal facility the PCA ~~shall be~~ is the RGU.

B. For construction of a new facility for hazardous waste storage, ~~processing facility with a capacity of 1,000 or more kilograms per month~~ or treatment that is generating or receiving 1,000 kilograms or more per month of hazardous waste or one kilogram or more per month of acute hazardous waste, the PCA ~~shall be~~ is the RGU.

C. For expansion of an existing facility for hazardous waste storage ~~processing facility storage~~ or treatment~~,~~ that increases ~~it's~~ the facility's capacity by ten percent or more, the PCA ~~shall be~~ is the RGU.

D. For construction or expansion of a facility that sells hazardous waste storage services to generators other than the owner and operator of the facility or construction of a facility at

which a generator's own hazardous wastes will be stored for a time period in excess of 90 days, if the facility is located in a water-related land use management district, or in an area characterized by soluble bedrock, the PCA ~~shall be~~ is the RGU.

Justification.

The changes to the mandatory EAW category for hazardous waste in items A, B and C clarify that the term "construction" is referring to a new facility and "expansion" applies to an existing facility.

In items B and C, the word "processing" is removed, as the term is confusing when applied to hazardous waste treatment. The terms "storage" and "treatment" are defined in Minn. R. pt. 7045.0020 and are used by the regulatory authority when permitting hazardous waste facilities. Removing the term "processing facility" and using hazardous waste "storage" or "treatment," aligns the environmental review rules with the language in other State rules. Using the same terminology also helps the public with review when environmental review documents and permits are co-noticed.

In item B, the term "acute hazardous waste" was added to the category as there are two types of hazardous waste collected at storage and treatment facilities, "acute" and "non-acute. "and the threshold currently does not differentiate between the two. Technical experts at the PCA recommended that the category provide a separate, smaller, volume threshold for acute hazardous waste because acutewastes are more toxic, therefore posing more risk to human health and the environment at smaller exposure amounts.

The threshold volume of one kilogram (kg) was chosen to align with the Federal hazardous waste laws that regulate hazardous waste. Generating 1 kg of acute hazardous waste per month is regulated under the hazardous waste program equivalently to businesses generating 1000 kg per month of non-acute hazardous waste.

26. Part 4410.4300, subpart 17. Solid waste.

Solid waste. Items A to G designate the RGU for the type of project listed:

A. For construction of a mixed municipal solid waste land disposal facility for up to 100,000 cubic yards of waste fill per year, the PCA is the RGU.

B. For expansion by 25 percent or more of ~~previous~~ previously permitted capacity of a mixed municipal solid waste land disposal facility ~~-~~for up to 100,000 cubic yards of waste fill per year, the PCA is the RGU.

C. For construction or expansion of a mixed municipal solid waste transfer station for 300,000 or more cubic yards per year, the PCA is the RGU.

D. For construction or expansion of a mixed municipal solid waste energy recovery facility, or incinerator~~,~~ or ~~the utilization~~ use of an existing facility for the combustion of mixed municipal solid waste or refuse-derived fuel, with a permitted capacity of 30 tons or more ~~tons~~ per day of input, the PCA is the RGU.

E. For construction or expansion of a mixed municipal solid waste compost facility~~,~~ or a refuse-derived fuel production facility with a permitted capacity of 50 tons or more ~~tons~~ per day of input, the PCA is the RGU.

F. For expansion by at least ten percent but less than 25 percent of ~~previous~~ previously permitted capacity of a mixed municipal solid waste land disposal facility for 100,000 cubic yards or more of waste fill per year, the PCA is the RGU.

Justification.

The addition of the term "land" in items A, B and F aligns the terms with other applicable State rules. Using the same terminology with other applicable regulatory requirements helps the public with review, when environmental review documents and permits are co-noticed

Adding the terms "permitted:" and "previously permitted" adds greater clarity for identifying the correct capacity to the applicable threshold.

27. Part 4410.4300, subpart 18. Wastewater system.

Wastewater system. Items A to ~~C~~F designate the RGU for the type of project listed:

A. For expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of any part of that system by 1,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with a capacity less than 20,000,000 gallons per day~~ or for expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of any part of that system by 2,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with the capacity of 20,000,000 gallons or greater,~~ the PCA is ~~shall be~~ the RGU.

B. ~~For expansion or reconstruction of an existing municipal or domestic wastewater treatment facility which results in an increase by 50 percent or more and by at least 200,000 gallons per day of its average wet weather design flow capacity, or construction of a new municipal or domestic wastewater treatment facility with an average wet weather design flow capacity of 200,000 gallons per day or more, the PCA shall be the RGU.~~

C. ~~For expansion or reconstruction of an existing industrial process wastewater treatment facility which increases its design flow capacity by 50 percent or more and by at least 200,000 gallons per day or more, or construction of a new industrial process wastewater treatment facility with a design flow capacity of 200,000 gallons per day or more, 5,000,000 gallons per month or more, or 20,000,000 gallons per year or more, the PCA shall be the RGU. This category does not apply to industrial process wastewater treatment facilities that discharge to a publicly-owned treatment works or to a tailings basin reviewed pursuant to subpart 11, item B.~~

B. For expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of any part of that system by 2,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with the capacity of 20,000,000 gallons per day or greater, the PCA is the RGU.

C. ~~B.~~ For expansion or ~~reconstruction~~ modification of an existing municipal or domestic wastewater treatment facility ~~which~~ that results in an increase by 50 percent or more and

by at least 200,000 gallons per day of ~~it's~~ the facility's average wet weather design flow capacity, the PCA is the RGU.

D. For construction of a new municipal or domestic wastewater treatment facility with an average wet weather design flow capacity of 200,000 gallons per day or more, the PCA ~~shall be~~ is the RGU.

E. For expansion or ~~reconstruction~~ modification of an existing industrial process wastewater treatment facility ~~which~~ that increases ~~it's~~ the facility's design flow capacity by 50 percent or more and by at least 200,000 gallons per day or more ~~or~~, the PCA is the RGU.

F. For construction of a new industrial process wastewater treatment facility with a design flow capacity of 200,000 gallons per day or more, 5,000,000 gallons per month or more, or 20,000,000 gallons per year or more, the PCA ~~shall be~~ is the RGU. This category does not apply to industrial process wastewater treatment facilities that discharge to a ~~publicly-owned~~ publicly owned treatment works or to a tailings basin reviewed ~~pursuant~~ according to subpart 11, item B

Justification.

The requirements in former items A, B and C have been revised for clarity as follows: the requirements in former item A are now addressed in items A and B; the requirements in former item B are now addressed in items C and D; and, the requirements in former item C are now addressed in items E and F.

In new items C and E, the deletion of the term "reconstruction" and the addition of the term "modification" corrects a long-standing problem. The word "reconstruction" causes confusion as it implies the existing municipal wastewater treatment facility is being rebuilt instead of modified. It is more accurate to use the term "modification," as proposers are more likely to add on new components, or significantly alter a portion of a wastewater treatment facility in order to increase treatment capacity. This proposed change will have a positive impact by preventing delays in the environmental review process.

The term "modification" does not include movement of the discharge outfall to a different location. The movement of discharge pipe and outfall to another location – such as different location of the same receiving water, a different receiving water, or different on land or subsurface disposal location, is not considered a modification and results in the need for an EAW. A new wastewater treatment facility includes:

- construction that replaces an existing wastewater treatment facility, or
- construction of a wastewater treatment facility or new discharge outfall location, where one did not exist before.

The 1986 EQB SONAR language indicated "the work will increase [treatment] capacity," and therefore the change in language follows the intent of the 1986 EQB SONAR.

28. Part 4410.4300, subpart 20. Campgrounds and RV parks.

Campgrounds and RV parks.
For construction of a seasonal or permanent recreational development, accessible by vehicle, consisting of 50 or more sites, or the expansion of such a facility by 50 or more sites, the local ~~government~~ governmental unit ~~shall be~~ is the RGU.

Justification.

The term "government" is replaced with the term "governmental," to provide consistency with how this term is used in other parts of Minn. Rules 4410. The change ensures consistent application of Minn. Rules ch. 4410.

29. Part 4410.4300, subpart 20a. Resorts, campgrounds, and RV parks in shorelands

Resorts, campgrounds, and RV parks in shorelands.
The local ~~government~~ governmental unit is the RGU for construction or expansion of a resort or other seasonal or permanent recreational development located wholly or partially in shoreland, accessible by vehicle, of a type listed in item A or B:

Justification.

The term "government" is replaced with the term "governmental", to provide consistency with how this term is used in other parts of Minn. Rules 4410. The change ensures consistent application of Minn. Rules ch. 4410.

30. Part 4410.4300, subpart 21. Airport projects.

Airport projects. Items A and B designate the RGU for the type of project listed:

A. For construction of a paved, new airport runway, the DOT, local governmental unit, or the Metropolitan Airports Commission ~~shall be~~ is the RGU.

B. For construction of a runway extension that would upgrade an existing airport runway to permit usage by aircraft over 12,500 pounds that are at least three decibels louder than aircraft currently using the runway, the DOT, local ~~government~~ governmental unit, or the Metropolitan Airports Commission shall be the RGU. The RGU ~~shall be~~ is selected according to part 4410.0500, subpart 5.

Justification.

The term "government" is replaced with the term "governmental", to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410.

31. Part 4410.4300, subpart 22. Highway projects.

Highway projects. Items A to C designate the RGU for the type of project listed:

A. For construction of a road on a new location over one mile in length that will function as a collector roadway, the DOT or local ~~government~~ governmental unit ~~shall be~~ is the RGU.

B. For construction of additional ~~travel~~ through lanes or passing lanes on an existing road for a length of ~~one~~ two or more miles, exclusive of auxiliary lanes, the DOT or local ~~government~~ governmental unit ~~shall be~~ is the RGU.

C. For the addition of one or more new interchanges to a completed limited access highway, the DOT or local ~~government~~ governmental unit ~~shall be~~ is the RGU.

Justification.

The primary changes to the mandatory EAW category for highway projects are the change of "travel" lane to "through" lane, excluding "auxiliary lanes" but including "passing lanes," and extending the threshold length of through lanes from one to two miles. Auxiliary lanes is a new term in the rules as further defined in part 4410.0200, subpart 5a.

With the introduction of the term "auxiliary lane", the DOT proposes changing the term "travel lane" to "through lane." This change is necessary to clarify the types of lanes used in road design projects. A review of 1982 SONAR does not indicate why the phrase "travel lane" was chosen. Because the term has not been previously defined, this rulemaking is an opportunity to update the rule with terminology that is commonly used today.

Types of traffic lanes are described in the MnDOT Road Design Manual (MnDOT Manual). http://roaddesign.dot.state.mn.us/ See Chapter 4, section 4-3.0. As described in section 4-3.0 "travel lanes" is the overall umbrella term for lanes and then a subset of travel lanes is "through lanes" and "auxiliary lanes." Because the rule will now include the term "auxiliary lane," it is necessary to clarify the lane terminology and separate out both through lane and auxiliary lane. Managed lanes, such as bus lanes, value- priced lanes, and high occupancy vehicle (HOV) lanes are considered standard higher speed through lanes to provide optimum transportation services and fully utilize the capacity of congested highways in urban areas. Often times these types of lanes are accomplished by using existing highway facilities. The definition of "auxiliary lane" is consistent with the *DOT Road Design Manual* (Section 4-3.02) and the *2011 American Association of State Highway Transportation Officials* (AASHTO) and *A Policy on Geometric Design of Highways and Streets* (Chapter 1076).

Auxiliary lanes are excluded from the threshold because these types of lanes are typically short distances and as such, have a minimal effect on the impact of the project. Auxiliary lanes are most often used to:

A. Comply with the principle of lane balance.
B. Comply with capacity requirements in the case of adverse grades.
C. Accommodate speed changes.
D. Accommodate weaving**.**
E. Accommodate traffic pattern variations at interchanges.
F. Accommodate maneuvering of entering and exiting traffic.
G. Simplify traffic operations by reducing the number of lane changes." (MnDOT Manual 6-1.05.04)

AASHTO explains that, generally, auxiliary lanes are used preceding median openings and are used at intersections preceding right- and left-turning movements. Auxiliary lanes may also be added to increase capacity and reduce crashes at an intersection. In many cases, an auxiliary lane may be desirable after completing a right-turn movement to provide for acceleration, maneuvering, and weaving. Auxiliary lanes can serve as a useable shoulder for emergency use or off-tracking vehicles or both. Auxiliary lanes are also used for deceleration and storage of vehicles while waiting to turn. Auxiliary lanes are used to balance the traffic load and maintain a uniform level of service on the highway. They facilitate the positioning of drivers at exits and the merging of drivers at entrances. (Green Book, 9-124-127, 10-76, 10-79)

Also, the threshold will increase from one mile to two miles. The 1982 SONAR does not specifically state why one mile was chosen (https://www.leg.state.mn.us/archive/sonar/SONAR-00003.pdf); however, comments made by the public in 1982 rulemaking provided that: "A one mile threshold for additional travel lanes is also too restrictive. Five or ten miles … would be more reasonable." (December 1, 1981

Comment by John Voss, Planning consultant, Urban Planning and Design, Inc.). As the designated RGU, the DOT conducted a 10-year historical data review of projects that completed an EAW for this subpart and found that projects between 1 mile and 2 miles did not have the potential for significant environmental effects. Project files and comments received were reviewed to determine whether potential environmental effects were identified that would not have otherwise been mitigated by a permit or other required governmental approvals. Based on that data review, the DOT determined that it is reasonable to increase the threshold from one mile to two miles.

The term "government" is replaced with the term "governmental," to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410.

32. Part 4410.4300, subpart 25. Marinas.

Marinas. For construction or expansion of a marina or harbor that results in a 20,000 or more square foot total or a 20,000 or more square foot increase of water surface area used temporarily or permanently for docks, docking, or maneuvering of watercraft, the local ~~government~~ governmental unit is the RGU.

Justification.

The term "government" is replaced with the term "governmental", to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410.

33. Part 4410.4300, subpart 26. Stream diversion.

Stream diversion. For a diversion, realignment, or channelization of any designed trout stream, or affecting greater than 500 feet of natural watercourse with a total drainage area of ten or more square miles unless exempted by part 4410.4600, subpart 14, item E, or 17, the DNR or local ~~government~~ governmental ~~shall be~~ is the RGU.

Justification.

The proposed change to the stream diversion mandatory EAW category includes adding the DNR as a possible RGU .Minn. Rule 4410.4300, subpart 26 assigns the RGU to only the LGU. However, there are circumstances where DNR is the more appropriate RGU due to having similar or greater approval of the project as a whole, in addition to possibly having greater expertise in analyzing the potential impacts. Some examples of these types of projects may include stream habitat restoration projects and floodplain management projects.

The current rule assigns the LGU to be the RGU for these projects, who may not have the natural resources expertise or approval authority related to floodplain management, erosion control, water quality, fisheries habitat, wildlife habitat, recreation, and aesthetics. There exists great variation across local governments regarding the technical/scientific expertise necessary to evaluate these projects. The addition of "DNR or" allows the DNR to be the designated RGU, when their expertise and approval authorities are appropriate. LGUs can work with the DNR to determine the most appropriate RGU to accurately assess these projects and related impacts.

Under the change, the LGU and DNR will confer early in the EAW process for the RGU determination. If it is unclear which unit of government is the designated RGU, then under Minn. Rules part 4410.0500,

subpart 5. B. (2) the question will be submitted to the EQB chairperson for a determination, based upon which governmental unit has greatest responsibility for supervising or approving the project or has greater expertise that is relevant for the environmental review.

The term "government" is replaced with the term "governmental", to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410.

34. Part 4410.4300, subpart 27. Wetlands and public waters.

~~Wetlands and~~ Public waters, public water wetlands and wetlands. Items A and B designate the RGU for the type of project listed:

A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetlands except for those to be drained without a permit ~~pursuant~~ according to Minnesota Statutes, chapter 103G, DNR or the local ~~government~~ governmental unit ~~shall be~~ is the RGU.

B. For projects that will ~~change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more~~ cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated ~~flood plain~~ floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local ~~government~~ governmental unit ~~shall be~~ is the RGU.

Justification.

Item A currently assigns the RGU to only the LGU. However, there are circumstances where the DNR is the more appropriate RGU, because the DNR may have similar or greater approval authority of the project as a whole. In some cases, the DNR may also have greater expertise in analyzing the potential impacts. Some examples of these types of projects may include wetland or stream habitat restoration projects, and floodplain management projects. In item A, the term "government" is replaced with the term "governmental", to provide consistency with how this term is used in other parts of Minn. Rules 4410.

The current language in item B does not consider the Wetland Conservation Act (WCA), as WCA was enacted into law after the establishment of mandatory requirements for wetland under Minnesota Rule Chapter 4410.4300 Subpart 27. B (1982). WCA was implemented into Laws of the State of Minnesota in 1991 to regulate those wetlands not inventoried by DNR as Public Waters or Public Water Wetlands.

The current rule assigns the LGU to be the RGU for these projects, who may not have the natural resources expertise or approval authority related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. There is variation across local governments regarding the technical/scientific expertise necessary to evaluate these projects. The addition of "DNR or" to item A is added for the situations where the DNR has expertise and approval authorities. LGUs can work with the DNR to determine the most appropriate RGU to accurately assess these projects and related impacts.

The existing SONAR for designation of LGU as RGU identifies that these type of projects typically are associated with land use developments and thus the LGU is the appropriate RGU. The DNR has been added as a possible RGU for the types of projects that are not associated with land use development, and/or where LGUs sometimes have very little regulatory oversight.

Under the change, the LGU and DNR will confer early in the EAW process for the RGU determination. If it is unclear which unit of government is the designated RGU, then under Minn. Rules part 4410.0500, subpart 5. B. (2) the question will be submitted to the EQB chairperson for a determination based greatest responsibility for supervising or approving the project or has expertise that is relevant for the environmental review.

Item B references "the course, current, or cross section" of a wetland. These terms are used to define an alteration to a public waters and public water wetlands found in Minn. Rule part 6115.0170, subpart 2. This portion of item B will be removed and replaced with the WCA description found in Minn. Rule part 8420.0111, subpart 32, which more accurately defines an "impact" as a loss in the quantity, quality, or biological diversity of wetland associated with projects that will partially or wholly drain, fill, or excavate wetlands. The proposed change is needed and reasonable as it reflects the current regulatory provisions under WCA and aligns state rules and statutes.

Item B references "40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres." The EQB has found that this criterion is confusing for LGUs, the RGUs for this item, to apply. Furthermore, the criteria has no association with the WCA, which generally does not distinguish wetland functions and values based on type or size. Rather, the purpose of the WCA is to achieve no net loss in quantity, quality, and biological diversity of Minnesota's existing wetlands as described in Minn. Rule 8420.0100, subpart 1. As a result, the type of wetlands has been removed, which reflects the current regulatory provisions under WCA and aligns state rules and statutes.

The existing requirement of 2.5 acres defines the size criteria for DNR public water wetlands in incorporated areas – see Minn. Stat. 103G.005, subdivision 15a. This size specification also has no specific implication in WCA. Wetlands regulated under WCA include a variety of areas and types and the jurisdictional boundary is not labeled by a specific area. Consequently in consultation with the Board of Water and Soil Resources (BWSR) staff, DNR and PCA staff, the equation of "40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres" currently found in the rule has been removed and replaced with a threshold of "1 acre." The proposed change to one acre reflects the lowest possible size threshold established by the current rule. All of these changes are needed to better reflect the changes that have occurred to wetland programs in the state since the original 1982 EAW category was written. The criteria incorporate more recent WCA standards or clarify existing thresholds in environmental review rules.

In item B., the term "government" is replaced with the term "governmental", to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410.

35. Part 4410.4300, subpart 28. Forestry.

Forestry. Items A and B designate the RGU for the type of project listed:

A. For harvesting of timber for commercial purposes on public lands within a state park, a historical area, a wilderness area, a scientific and natural area, a wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or a critical area that does not have an approved plan under Minnesota Statutes, section 86A.09 or 116G.07, the DNR ~~shall be~~ is the RGU.

B. For a clearcutting of 80 or more contiguous acres of forest, any part of which is located within a shoreland area and within 100 feet of the ordinary high water mark of the lake or river, the DNR ~~shall be~~ is the RGU.

Justification.

Changes to this subpart include state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

36. Part 4410.4300, subpart 30. Natural areas.

Natural areas. For projects resulting in ~~the~~ permanent physical encroachment of lands within a national park, a state park, a wilderness area, state lands and water within the boundaries of the Boundary Waters Canoe Area, or a scientific and natural areas~~, or state trail corridor~~ when the encroachment is inconsistent with laws applicable to or the management plan prepared for the recreational unit, the DNR or local ~~government~~governmental unit ~~shall be~~ is the RGU.

Justification.

The more recent addition of a recreational trails category, (Minn. Rules part 4410.4300, subpart 37), was developed to be a more precise measure for determining if a trail project may have the potential for environmental effects than inconsistency with state trail master plan revisions. There was no mandatory recreational trails category when the rule was enacted.

Eliminating the state trail provision is appropriate because it is unlikely that a project inconsistent with the state trail master plan would be authorized by DNR to encroach on a state trail corridor. An unintended consequence of the existing rule language is that revisions to state trail master plans can be interpreted as a "project" under Minnesota Rules 4410.0200. This interpretation results in these plan revisions requiring environmental review under the Recreational trails mandatory category if the master plan revisions propose to add new recreational uses, regardless of length, type or size

The Recreational Trails category was developed in part to serve this purpose and provides clear thresholds for when designating uses would require environmental review. The current rule assumes state trails have statutory boundaries and defined corridors similar to other outdoor recreation units. State trails do not have statutory boundaries and may or may not identify a corridor. If a state trail master plan only identifies a search corridor, it is not practical or appropriate to evaluate other proposed projects that fall within the identified search corridor. This is especially true if the trail has not been built yet, or the trail has been built but does not identify the route to construct. For situations where a new state trail is authorized, or changes in designated use(s) are proposed through a master plan amendment, this must be considered against the recreation trails mandatory EAW criteria found in Minn. Rules part 4410.4300, subpart 37.

The category was adopted to allow for the review of non-DNR projects that are proposed within established recreation units, particularly those projects that may be inconsistent or incompatible with the recreational purposes or management plan of the unit. The DNR proposed the category to ensure the agency had the chance to review projects in conflict with the management plan. The most likely situation would be a private development proposal on an inholding within a state park, not a state trail. Prior to

legislative action in 2003, Recreational trails were not identified as exhibiting impacts that may be potentially significant.

The current rule was adopted to ensure review of projects that conflict with approved master plans for outdoor recreation units. Designation of these facilities includes preparation of a master plan for the unit. These plans may vary according to the characteristics of the area and purposes for designation. The category requires review for projects that conflict with approved master plans for outdoor recreation units.

37. Part 4410.4300, subpart 31. Historical places.

For the destruction, in whole or part, or the moving of a property that is listed on the National Register of Historic Places or State Register of Historic Places, the permitting state agency or local governmental unit ~~of government shall be~~ is the RGU, except this does not apply to projects reviewed under section 106 of the National Historic Preservation Act of 1966, United States Code, title ~~16~~ 54, section ~~470~~ 306108, or the federal policy on lands, wildlife and waterfowl refuges, and historic sites pursuant to United States Code, title 49, section 303, or projects reviewed by a local heritage preservation commission certified by the State Historic Preservation Office pursuant to Code of Federal Regulations, title 36, sections 61.5 and 61.7. This subpart does not apply to a property located within a designated historic district if the property is listed as "noncontributing" in the official district designation or if the State Historic Preservation Office issues a determination that the property is noncontributing.

Justification.

Changes to this subpart include state of MN Revisor's Office recommendations to improve clarity for interpreting the rule and corrections to references for the most recent applicable Code of Federal Regulations (COF, title 54, section 306108).

38. Part 4410.4300, subpart 36. Land use conversion, including golf courses.

A. For golf courses, residential development where the lot size is less than five acres, and other projects resulting in the permanent conversion of 80 or more acres of agricultural, native prairie, forest, or naturally vegetated land, the local ~~government~~governmental unit ~~shall be~~ is the RGU, except that this subpart does not apply to agricultural land inside the boundary of the Metropolitan Urban Service Area established by the Metropolitan Council.

B. For projects resulting in the conversion of 640 or more acres of forest or naturally vegetated land to a different open space land use, the local ~~government~~ governmental unit ~~shall be~~ is the RGU.

Justification.

The term “government” is replaced with the term “governmental”, to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410.

39. Part 4410.4300, subpart 36a. Land conversions in shoreland.

A. For a project proposing a permanent conversion that alters 800 feet or more of the shoreline in a sensitive shoreland area or 1,320 feet or more of shoreline in a nonsensitive shoreland area, the local governmental unit is the RGU.

B. For a project proposing a permanent conversion that alters more than 50 percent of the shore impact zone if the alteration measures at least 5,000 square feet, the local governmental unit is the RGU.

C. For a project that permanently converts 20 or more acres of forested or other naturally vegetated land in a sensitive shoreland area or 40 or more acres of forested or other naturally vegetated land in a nonsensitive shoreland area, the local governmental unit is the RGU.

Justification.

This mandatory category was added as part of EQB rulemaking that ended in 2009. The category was intended to apply to development activities that result in increased water runoff and loss of aquatic habitat. However, projects proposing habitat and shoreline restoration also often involve the "alteration" of shoreline as discussed by the 2009 SONAR. However, restoration activities typically do not have the negative long-term water quality and aquatic habitat impacts that are associated with shoreland conversion projects and alterations resulting from development activities, which was the original intent in developing the category.

Some of the challenges with this subpart may have been that the title identifies land conversions, but items A and B do not reference land conversion, but instead reference alterations. Per Minn. Stat. 645.49, headnotes printed in boldface type are not considered part of the statute. Therefore, the addition of "permanent conversion" meant to provide clarity about what was intended by this subpart and provide consistency with the term "permanent conversion" as it is used throughout Minnesota Rules chapter 4410.

It is important to note that this clarification does not exempt public water restoration projects from environmental review, but will likely prevent environmental review from being mandatory in this category. A governmental unit may still order discretionary environmental review in response to a citizen petition of if the governmental unit determines a project may have the potential for significant environmental effects.

40. Part 4410.4300, subpart 37. Recreational trails.

Recreational trails. If a project listed in items A to F will be built on state-owned land or funded, in whole or part, by grant-in-aid funds administered by the DNR, the DNR or the LGU is the RGU. For other projects, if a governmental unit is sponsoring the project, in whole or in part, that governmental unit is the RGU. If the project is not sponsored by a unit of government, the RGU is the local governmental unit. For purposes of this subpart, "existing trail" means an established corridor in current legal use.

A. Constructing a trail at least ~~ten~~ 25 miles long on forested or other naturally vegetated land for a recreational use ~~other than snowmobiling or cross-country skiing~~, unless exempted

by part 4410.4600, subpart 14, item D~~, or constructing a trail at least 20 miles long on forested or other naturally vegetated land exclusively for snowmobiling or cross-country skiing~~.

B. Designating at least 25 miles of an existing trail for a new motorized recreational use other than snowmobiling. When designating an existing motorized trail or existing corridor in current legal use by motor vehicles, the designation does not contribute to the 25-mile threshold under this item. When adding a new recreational use or seasonal recreational use to an existing motorized recreational trail, the addition does not contribute to the 25-mile threshold if the treadway width is not expanded as a result of the added use.

In applying items A and B, if a proposed trail will contain segments of newly constructed trail and segments that will follow an existing trail but be designated for a new motorized use, an EAW must be prepared if ~~the sum~~ total length ~~of the quotients obtained by dividing the length~~ of the newly constructed and newly designated ~~trail by 25 miles, equals or exceeds one~~ segments is at least 25 miles.

C. Paving ten or more miles of an existing unpaved trail, unless exempted by part 4410.4600, subpart 27, item B or F. Paving an unpaved trail means to create a hard surface on the trail with a material impervious to water.

D. Constructing an off-highway vehicle recreation area of 80 or more acres, or expanding an off-highway vehicle recreation area by 80 or more acres, on agricultural land or forested or other naturally vegetated land.

E. Constructing an off-highway vehicle recreation area of 640 or more acres, or expanding an off-highway vehicle recreation area by 640 or more acres, if the land on which the construction or expansion is carried out is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities such as mineral mining.

F. Some recreation areas for off-highway vehicles may be constructed partially on agricultural naturally vegetated land and partially on land that is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities. In that case, an EAW must be prepared if the sum of the quotients obtained by dividing the number of acres of agricultural or naturally vegetated land by 80 and the number of acres of land that is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities by 640, equals or exceeds one.

Justification.

The current rule change to item A. and B. is necessary to fulfill a directive by the Legislature to update environmental review rules to allow certain trails to be built or designated without requiring environmental review.

Changes to items A – B will fulfill the Legislative directive to update rule language with statutory language:

> *Minn. Laws 2015, ch. 4, section 33. RULEMAKING; MOTORIZED TRAIL ENVIRONMENTAL REVIEW.*

(a) The Environmental Quality Board shall amend Minnesota Rules, chapter 4410, to allow the following without preparing a mandatory environmental assessment worksheet:

(1) constructing a Recreational trails less than 25 miles long on forested or other naturally vegetated land for a recreational use;

(2) adding a new motorized recreational use or a seasonal motorized recreational use to an existing motorized Recreational trails if the treadway width is not expanded as a result of the added use; and

(3) designating an existing, legally constructed route, such as a logging road, for motorized Recreational trails use.

(b) The board may use the good cause exemption rulemaking procedure 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.

Under the Revisor ID Number R-4381, the EQB used the good cause exemption rulemaking procedure to adopt rules in accordance with the above Minn. Laws from the 2015 legislative session in November 2015. The proposed rules were not approved. In addition, in February 2016, the EQB again submitted the proposed rules for adoption. The proposed rules were not adopted. The rulemaking under Revisor ID Number R-4381 has been incorporated into this rulemaking.

Administrative Law Judge Barbara J. Case's Order on Review (OAH 82-9008-32965) it is stated that the phrases "legally constructed route" and "logging road" were, "…impermissibly vague if it is so indefinite that one must guess at its meaning. A rule must establish a reasonably clear policy or standard to control and guide administrative officers so that the rule is carried out by virtue of its own terms and not according to the whim and caprice of the officer. This language is impermissibly vague and therefore unconstitutional."

The current changes to A. and B. will fulfill the intent of the 2015 legislation by utilizing commonly understood language for trails and motorized corridors while maintaining the integrity of the intent of the legislation—to allow trails to be constructed or designated without requiring an EAW or environmental review. By including the changes in the mandatory category section, as "exclusions" instead of in the "exemptions" category of Minn R. ch. 4410, citizens and stakeholders can still petition if a project presents the potential for significant environmental effects. The threshold changes to A. and B. are necessary and reasonable because the 2015 Legislature determined there was potential for significant environmental effects at the proposed threshold levels.

41. Part 4410.4400, subpart 2. Nuclear fuels.

Nuclear fuels. Items A to ~~D~~ E designate the RGU for the type of project listed:

A. For the construction or expansion of a nuclear fuel or nuclear waste processing facility, including fuel fabrication facilities, reprocessing plants, and uranium mills, the DNR ~~shall be~~ is the RGU for uranium mills; otherwise, the PCA ~~shall be~~ is the RGU.

B. For construction of a high-level nuclear waste disposal site, the EQB ~~shall be~~ is the RGU.

C. For construction or expansion of an independent spent-fuel storage installation, the Department of Commerce is the RGU.

D. For construction of an away-from-reactor, facility for temporary storage of spent nuclear fuel, the ~~Public Utilities Commission~~ PUC is ~~shall be~~ the RGU.

E. For construction of a low-level nuclear waste disposal site, the MDH ~~shall be~~ is the RGU.

Justification.

The addition of item C, "For construction of an independent spent-fuel storage installation, the Department of Commerce is the RGU" reflects Minn. Stat. 116C.83, subdivision 6, paragraph (b) which states:

> "An environmental impact statement is required under chapter 116D for a proposal to construct and operate a new or expanded independent spent-fuel storage installation. The commissioner of the Department of Commerce shall be the responsible governmental unit for the environmental impact statement."

The addition of item C makes this rule subpart consistent with Minn. Stat. 116C.83, subdivision 6. The addition of item C clarifies that for a specific type of storage facility for high-level nuclear waste, an independent spent fuel storage installation, the Minnesota Legislature has directed that the Minnesota Department of Commerce prepare an EIS.

Other changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

42. Part 4410.4400, subpart 3. Electric-generating facilities.

Electric-generating facilities. For construction of a large electric power generating plant, as defined in Minnesota Statutes, section 216E.01, subdivision 5, the PUC is the RGU. Environmental review ~~shall~~ must be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.

Justification.

The addition of "as defined in Minnesota Statutes, section 216E.01, subdivision 5," provides greater clarity in determining if environmental review is required for a proposed project. The RGU is not designated in the current rule.

The current rule does not define or reference large electric-power generating facilities, which leads to confusion and unnecessary interpretation when determining whether a mandatory EIS is required for a proposed project. This subpart now has an RGU designation. The change aligns State environmental review rules with the other applicable MN statutes for greater continuity and efficiency.

43. Part 4410.4400, subpart 4. Petroleum refineries.

Petroleum refineries. For construction of a new petroleum refinery facility, the PCA ~~shall be~~ is the RGU.

Justification.

Need and Reasonableness: Changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

44. Part 4410.4400, subpart 5. Fuel conversion facilities.

Fuel conversion facilities. Items A and B designate the RGU for the type of project listed:

A. For construction of a new fuel conversion facility for ~~the conversion of~~ converting coal, peat, or biomass sources to gaseous, liquid, or solid fuels if ~~that~~ the facility has the capacity to ~~utilize~~ use 250,000 dry tons or more per year of input, the PCA ~~shall be~~ is the RGU.

B. For construction of a new or expansion of ~~a~~ an existing fuel conversion facility for the production of alcohol fuels ~~which~~ that would have or would increase ~~it's~~ the facility's capacity by 50,000,000 gallons or more per year of alcohol produced if the facility will be in the seven-county Twin Cities metropolitan area or by 125,000,000 gallons or more per year of alcohol produced if the facility will be outside the seven-county Twin Cities metropolitan area, the PCA ~~shall be~~ is the RGU.

C. A mandatory EIS is not required for projects described in Minnesota Statutes, section 116D.04, subdivision 2a, paragraph (c).

Justification.

The addition of the term "new fuel conversion" facility to items A and B more clearly identifies the type of facilities for which environmental review must be considered. The addition of item C aligns with the language passed by the Minnesota Legislature and found in Minn. Stat. 116D.04, subdivision 2a, paragraph (c). Other changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

The changes provide greater clarity in determining if environmental review is required for a proposed project. The addition of item C aligns with the language passed by the Minnesota Legislature and found in Minn. Stat. 116D.04, subdivision 2a, paragraph (c), which deals exclusively with the expansion of fuel conversion facilities:

> "(c) A mandatory environmental impact statement is not required for a facility or plant located outside the seven-county metropolitan area that produces less than 125,000,000 gallons of ethanol, biobutanol, or cellulosic biofuel annually, or produces less than 400,000 tons of chemicals annually, if the facility or plant is: an ethanol plant, as defined in section 41A.09, subdivision 2a, paragraph (b); a biobutanol facility, as defined in section 41A.15, subdivision 2d; or a cellulosic biofuel facility. A facility or plant that only uses a cellulosic feedstock to produce chemical products for use by another facility as a feedstock is not considered a fuel conversion facility as used in rules adopted under this chapter."

45. Part 4410.4400, subpart 6. Transmission lines.

Transmission lines. For construction of a high-voltage transmission line and associated facilities, as defined in part 7850.1000, the PUC is the RGU. Environmental review ~~shall~~ must be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.

Justification.

The addition of the phrases "construction of a high-voltage" and "as defined in part 7850.1000" clarifies the definition of "associated facilities" and "high-voltage transmission line." The addition of the phrase "the PUC is the RGU" to this subpart makes clear that the PUC is the RGU for transmission line projects.

The definition ensures consistency for determining whether transmission lines and associated facilities require environmental review, as the definition clearly identifies which components of a site must be considered in determining whether the project means mandatory thresholds.

46. Part 4410.4400, subpart 8. Metallic mineral mining and processing.

Metallic mineral mining and processing. Items A ~~to C~~ and B designate the RGU for the type of projected listed:

~~A. For mineral deposit evaluation involving the extraction of 1,000 tons or more of material that is of interest to the proposer principally due to its radioactive characteristics, the DNR shall be the RGU.~~

A. For construction of a new facility for mining metallic minerals or for the disposal of tailings from a metallic mineral mine, the DNR ~~shall be~~ is the RGU.

B. For construction of a new metallic mineral processing facility, the DNR ~~shall be~~ is the RGU.

Justification.

The existing rule envisioned the potential for projects involving extraction of radioactive minerals to occur. Bulk samples are taken to evaluate the mineral characteristics and economic feasibility of the materials. These actions were elevated to a mandatory EIS category because of the increased potential for adverse environmental impacts and human health impacts. The 1,000-ton threshold was adopted as a feasible threshold to provide a level of concern for significant adverse environmental impacts. This amount is near the limit of the amount of ore commonly analyzed in deposit evaluations.

The existing rule is unnecessary because this type of action is not being proposed. Although thought to be possible when originally enacted, the rule is now obsolete given little or no expected radioactive mineral extraction in Minnesota.

Eliminating the current rule is appropriate when there is little or no potential for actual projects that fit the rule to be proposed. The category has no history of revisions and DNR staff are not aware of ever conducting an EIS for this type of project.

According to the DNR Division of Lands and Minerals, exploration for uranium has not occurred in Minnesota since the 1970s. It is also believed that future radioactive mineral exploration is unlikely to occur in Minnesota. It should be noted that although the mandatory EIS category is proposed to be eliminated, if future exploration were to occur, an EAW would be mandatory under Minn. Rules part

4410.4300, subpart 11A. If such extraction of radioactive minerals were proposed, such exploration could be subject to preparation of an EIS if a positive declaration is made, or preparation of a discretionary EIS is volunteered, both under Minn. Rules part 4410.2000, subpart 3.

The amendment will have a positive effect by eliminating a rule for which the likelihood of the action being proposed is minimal. If such a project were proposed, it would be subject to mandatory EAW preparation under Minn. Rules part 4410.4300, subpart 11A. An EIS would be required if the project were determined to have the potential for significant environmental effects under Minn. Rules part 4410.1700, subpart 7.

47. Part 4410.4400, subpart 9. Nonmetallic mineral mining.

Nonmetallic mineral mining.
Items A to C designate the RGU for the type of project listed:

A. For development of a facility for the extraction or mining of peat which will utilize 320 acres of land or more during its existence, the DNR ~~shall be~~ is the RGU.

B. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 160 acres of land or more to a mean depth of ten feet or more during its existence, the local ~~government~~ governmental unit ~~shall be~~ is the RGU.

Justification.
The term government is replaced with the term governmental, to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410.

48. Part 4410.4400, subpart 11. Industrial, commercial, and institutional facilities.

Industrial, commercial, and institutional. Items A and B designate the RGU for the type of project listed, except as provided in items C and D:

A. For construction of a new or expansion of an existing warehousing or light industrial facility equal to or in excess of the following thresholds, expressed as gross floor space, the local governmental unit is the RGU:

(1) unincorporated area, 375,000 square feet;
(2) third or fourth class city, 750,000 square feet;
(3) second class city, 1,000,000 square feet; and
(4) first class city, 1,500,000 square feet.

B. For construction of a new or expansion of an existing industrial, commercial, or institutional facility, other than a warehousing or light industrial facility, equal to or in excess of the following thresholds, expressed as gross floor space, the local ~~government~~ governmental unit ~~shall be~~ is the RGU:

(1) unincorporated area, 250,000 square feet;
(2) third or fourth class city, 500,000 square feet;

(3) second class city, 750,000 square feet; and
(4) first class city, 1,000,000 square feet.

Justification.

During the EQB rulemaking in 1982, the words "square feet" were omitted from item A of this subpart, but were included in item B. In order to eliminate any question regarding which units of measurement must be used in applying item A, the EQB is adding the words "square feet" to this subpart.

The term "government" is replaced with the term "governmental", to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410.

49. Part 4410.4400, subpart 12. Hazardous waste.

Hazardous waste. Items A to C designate the RGU for the type of project listed:

C. For construction of expansion of a facility for hazardous waste ~~processing facility~~ storage, or treatment, if the facility is located in a water-related land use management district, or in an area characterized by soluble bedrock, the PCA ~~shall be~~ is the RGU.

Justification

The word "processing" is confusing when applied to hazardous waste treatment, as the terms "storage" and "treatment" are more often used by the regulatory authority when permitting hazardous waste facilities.

Removing the term "processing facility" and using hazardous waste "storage" or "treatment," aligns the environmental review rules with the language in other State rules. Using similar terminology also helps the public with review when environmental review documents and permits are co-noticed.

50. Part 4410.4400, subpart 13. Solid waste.

Solid waste. Items A to E designate the RGU for the type of project listed:

A. For construction of a mixed municipal solid waste land disposal facility for 100,000 cubic yards or more of waste fill per year, the PCA is the RGU.

B. For construction or expansion of a mixed municipal solid waste land disposal facility~~,~~ in a water-related land use management district~~,~~ or in an area characterized by soluble bedrock, the PCA is the RGU.

C. For construction or expansion of a mixed municipal solid waste energy recovery facility, or incinerator~~,~~ or ~~the utilization~~ use of an existing facility for the combustion of mixed municipal solid waste or refuse-derived fuel, with a permitted capacity of 250 tons or more ~~tons~~ per day of input, the PCA is the RGU.

D. For construction or expansion of a mixed municipal solid waste compost facility~~,~~ or a refuse-derived fuel production facility when the construction or expansion results in a facility with a permitted capacity of 500 tons or more ~~tons~~ per day of input, the PCA is the RGU.

E. For expansion by 25 percent or more of previous capacity of a mixed municipal solid waste land disposal facility for 100,000 cubic yards or more of waste fill per year, the PCA is the RGU.

Justification.

The addition of the term "land" in items A through E allows the environmental rule language to align with other applicable State regulatory requirements. This change provides greater clarity, specificity and efficiency for determining if environmental review is required for a proposed project. In addition, using similar terminology helps the public with review when environmental review documents and permits are co-noticed.

51. Part 4410.4400, subpart 15. Airport runway projects.

For construction of a paved and lighted airport runway of 5,000 feet of length or greater, the DOT or local ~~government~~ governmental unit ~~shall be~~ is the RGU.

Justification.

The term "government" is replaced with the term "governmental", to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410. Other changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

52. Part 4410.4400, subpart 16 Highway projects.

For construction of a road on a new location, which is four or more lanes in width and two or more miles in length, the DOT or local ~~government~~ governmental unit ~~shall be~~ is the RGU.

Justification.

The term "government" is replaced with the term "governmental", to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410. Other changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

53. Part 4410.4400 subpart. 19. Marinas.

For construction of a new or expansion of an existing marina, harbor, or mooring project on a state or federally designated wild and scenic river, the local ~~government~~ governmental unit ~~shall be~~ is the RGU**.**

Justification

The term "government" is replaced with the term "governmental", to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410. Other changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

54. Part 4410.4400, subpart 20. Wetlands and public waters.

~~Wetlands and~~ Public waters, public water wetlands. For projects that will eliminate a public water or public water wetland, the DNR or the local ~~government~~ governmental unit ~~shall be~~ is the RGU.

Justification.

The current rule assigns the RGU to only the LGU when there are circumstances where DNR has greater expertise in analyzing the potential impacts. The 1982 SONAR identifies these resources as significant, pursuant to the DNR's inventory program. The elimination of such resources would have significant local and regional impacts. There is variation across local governments regarding the technical/scientific expertise necessary to evaluate these projects.

Under the change, the LGU and DNR will to confer early in the process for the RGU determination. If it is unclear which unit of government is the appropriate designated RGU, then under Minn. Rules part 4410.0500, subpart 5. B. (2) the question will be submitted to the EQB chairperson, for a determination based greatest responsibility for supervising or approving the project or has expertise that is relevant for the environmental review.

The term "government" is replaced with the term "governmental", to provide consistency with how this term is used in other parts of Minn. Rules 4410. This change ensures consistent application of Minn. Rules ch. 4410. Other changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

55. Part 4410.4400, subpart 25. Incineration of wastes containing PCBs.

~~Incineration of~~ Incinerating wastes containing PCBs. For ~~the incineration of~~ incinerating wastes containing ~~PCB's~~ PCBs for which an EIS is required by Minnesota Statutes, section 116.38, subdivision 2, the PCA ~~shall be~~ is the RGU**.**

Justification.

Changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

56. Part 4410.4600, subpart 10. Industrial, commercial, and institutional facilities.

Industrial, commercial, and institutional facilities. The following projects are exempt:

B. ~~The~~ Construction of a warehousing, light industrial, commercial, or institutional facility with less than 4,000 square feet of gross floor space, and with associated parking facilities designed for 20 vehicles or ~~less, is exempt~~ fewer.

C. Construction of a new parking facility for ~~less~~ fewer than 100 vehicles if the facility is not located in a shoreland area, a delineated ~~flood plain~~ floodplain, a state or federally

designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area ~~is exempt~~.

Justification .

Changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

57. Part 4410.4600, subpart 12. Residential development.

Residential development. The following projects are exempt:

A. Construction of a sewered residential development, of:
   (1) ~~less~~ fewer than ten units in an unincorporated area~~,~~;
   (2) ~~less~~ fewer than 20 units in a third or fourth class city~~,~~;
   (3) ~~less~~ fewer than 40 units in a second class city~~,~~; or
   (4) ~~less~~ fewer than 80 units in a first class city, no part of which is within a shoreland area, a delineated ~~flood plain~~ floodplain state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, is exempt.

B. Construction of less than ten residential units located in shoreland, provided all land in the development that lies within 300 feet of the ordinary high water level of the lake or river, or edge of any wetland adjacent to the lake or river, is preserved as common open space.

C. Construction of a single residence or multiple residence with four dwelling units or ~~less~~ fewer and accessory appurtenant structures and utilities ~~is exempt~~.

Justification.

Changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

58. Part 4410.4600, subpart 14. Highway projects.

Highway projects. The following projects are exempt:

A. Highway safety improvement projects ~~are exempt~~.

B. Installation of traffic control devices, individual noise barriers, bus shelters and bays, loading zones, and access and egress lanes for transit and paratransit vehicles ~~is exempt~~.

C. Modernization of an existing roadway or bridge by resurfacing, restoration, or rehabilitation that may involve ~~the acquisition of~~ acquiring minimal amounts of right-of-way ~~is exempt~~.

D. Roadway landscaping~~,~~ and construction of bicycle and pedestrian lanes, paths, and facilities within an existing right-of-way ~~are exempt~~.

E. Any stream diversion, realignment, or channelization within the right-of-way of an existing public roadway associated with bridge or culvert replacement ~~is exempt~~.

F. Reconstruction or modification of an existing bridge structure on essentially the same alignment or location that may involve ~~the acquisition of~~ acquiring minimal amounts of right-of-way ~~is exempt.~~

Justification.

Revisor's office change to improve clarity for interpreting the rule and adding the word "realignment to make this change to be consistent with part 4410.4300, subpart 26, Stream Diversion. Part 4410.4300, subpart 26 provides as follows:

> Subpart 26. Stream diversion. For a diversion, *realignment*, or channelization of any designated trout stream, or affecting greater than 500 feet of natural watercourse with a total drainage area of ten or more square miles unless exempted by part 4410.4600, subpart 14, item E, or 17, the local government unit shall be the RGU. (Emphasis added)

During the EQB rulemaking in 1997, the EQB amended subpart 26 to add the word "realignment." Prior to the 1997 amendment, part, 4410.4300, subpart 26 and the highway project exemption language in part 4410.4600, subpart 14, item E were consistent. Both subparts referenced stream diversion or channelization for the EAW threshold and the highway project exemption. The 1997 rulemaking did not address the language in part 4410.4600, subpart 14, item E, however, the language regarding the exemption in part 4410.4600, subpart 14, item E, remained in part 4410.4300, subpart 26. Therefore, it appears that the omission of "realignment" in part 4410.4600, subpart 14, item E was overlooked as a cross-reference that should have been updated in 1997 as well. The EQB is now proposing the amendment in part 4410.4600, subpart 14, item E to correct this oversight.

59. Part 4410.4600, subpart 18. Agriculture and forestry.

Agriculture and forestry. The following projects are exempt:

A. Harvesting of timber for maintenance purposes ~~is exempt~~.

B. Public and private forest management practices, other than clearcutting or ~~the application of~~ applying pesticides, that involve less than 20 acres of land~~, are exempt~~.

Justification.

Changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

60. Part 4410.4600, subpart 27. Recreational trails.

Recreational trails. The projects listed in items A to ~~F~~ H are exempt. For purposes of this subpart, "existing trail" means an established corridor in current legal use.

G. Paving a trail located on an abandoned railroad grade retired in accordance with Code of Federal Regulations, title 49, part 1152.

H. Adding a new motorized use to an existing motorized trail or trail segment where the trail is located only on an abandoned railroad grade retired in accordance with Code of Federal Regulations, title 49, part 1152.

Justification.

Recreational trails projects developed on abandoned rail grades have minimal environmental impacts and do not have the potential to result in significant environmental effects. Because these corridors already exist, there is little or no potential for new surface disturbance resulting in permanent cover-type conversion or other impacts. The rail grade is already filled and compressed to withstand the weight of a train, so it seems unlikely that paving and/or motorized use will cause much physical impact. Water crossings are already in place, whether by bridge or culvert. The activities covered by this proposed exemption would have a minimal impact and the environment and warrant being exempted.

The current mandatory categories do not distinguish between abandoned rail grades and other types of surfaces, whether for completely new projects or addition of new uses to existing trails. Utilizing these corridors when available is desirable because impacts have already occurred when the rail line was originally constructed. Little or no environmental effects are anticipated from paving or adding a motorized use to abandoned rail grades, thus warranting an exemption.

The proposed exemptions pertain to projects employing abandoned rail grades for trail siting. As used by railroad companies, "abandon" means to cease operation on a line, or to terminate the line itself. The most frequent type of abandonment is where the track has not been used for two years or more or the track has so little traffic on it that it is clear that the carrier could not be making a profit. "Abandoned," when used with reference to a rail line or right-of-way, means a line or right-of-way where the Surface Transportation Board (STB) or other responsible federal regulatory agency has permitted discontinuance of rail service. The STB's procedures are codified under 49 CFR 1152.

The proposed exemptions will have a positive effect by eliminating from environmental review a specific type of trail development with minimal impact.

For the remaining sections, the changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

61. Part 4410.5200, subpart 1. Required notices.

Required notices. Governmental units are required to publish notice of the items listed in items A to R in the EQB Monitor, except that this part constitutes a request and not a requirement with respect to federal agencies.

A. When a project has been noticed pursuant to item D, separate notice of individual permits required by that project need not be made unless changes in the project are proposed that will involve new and potentially significant environmental effects not considered previously. No decision granting a permit application for which notice is required to be published by this part ~~shall be~~ is effective until 30 days following publication of the notice.

(1) For all public hearings conducted pursuant to water resources permit applications, Minnesota Statutes, chapter 103G, the DBR is the permitting authority.

(2) For notice of public sales of permits for or leases to mine iron ore, copper-nickel, or other minerals on state-owned or administered mineral rights, Minnesota

Statutes, section 93.16~~,~~ and 93.335~~, and 93.351~~, and part 6125.0500, the DBR is the permitting authority.

Justification.

Changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

62. Part 4410.7904, Licensing of Explorers.

LICENSING OF EXPLORERS.

An applicant ~~shall~~ must comply with Minnesota Statutes, section ~~156A.071~~ 103I.601, subdivision 2, and parts 4727.0400 to ~~4727.0900~~ 4727.0860, relating to the regulation of exploratory boring.

Justification.

Changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

63. Part 4410.7906, subpart 2. Content of an application for drilling permit.

Content of an application for drilling permit. An application for a drilling permit ~~shall~~ must be filed by the applicant with the ~~board~~ EQB and ~~shall~~ must include:

C. the applicant's explorer's license, issued under Minnesota Statutes, section ~~156A.071~~ 103I.601, subdivision 2 and parts 4727.0400 to ~~4727.0900~~ 4727.0860;

Justification.

Changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

64. Part 4410.7926. Abandonment of Exploratory Borings.

Pursuant to Minnesota Statutes, section 116C.724, subdivision 2, clause (1), any abandonment, whether temporary or permanent, ~~shall~~ must comply with the state drilling and drill hole abandonment and restoration rules governing exploratory boring under Minnesota Statutes, chapter ~~156A~~ 103I, and part 4727.1000 to ~~4727.1300~~ 4727.1250.

Justification.

Changes reflect the state of MN Revisor's Office recommendations to improve clarity for interpreting the rule.

VI. Regulatory analysis

This part addresses the requirements of Minn. Stat. § 14.131 (a), which compel state agencies to address a number of questions in the SONAR. In some cases, the response will depend on specific amendment being proposed and specific detail will be provided. However, for most of the questions, the EQB's response can

be general and will apply across all of the components of this rulemaking, regardless of the specific amendment being proposed.

A. Description of the classes of person who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

As with the existing rules, the proposed amendments to Minn. Rules 4410.0200, 4410.4300 and 4410.4400 will primarily affect persons who propose to develop projects in Minnesota that have, or may have the potential for significant environmental effects. The greatest economic impact would occur to those proposers whose projects would require an EAW or EIS under the proposed rules but not under existing Minn. Rules ch. 4410 or under other current law/statute.

Most of the changes proposed in this rulemaking with have little to no effect on the cost to proposers or Responsible Government Units (RGU) responsible for environmental review due to the fact that a majority of the changes proposed in this rulemaking are an attempt to align with statute, and provide more clarity and certainty on which types of projects require environmental review for potential proposers and RGUs. Where a specific class will be affected, a discussion is provided below.

All changes proposed in this rulemaking provide the benefit of clarity and certainty for EQB, project proposers, RGUs and citizens. Often, changes to the proposed rules that increase clarity and certainty for EQB, project proposers, and RGUs also reduce costs due to a reduction in process time, the staff time in determination if a project requires environmental review; such as the proposed change under Minn. Rules 4410.0500, subpart 6. Exceptions. Clarity in this subpart should reduce staff time spent determine a project's environmental review status and the appropriate RGU at EQB and thus reduce costs to EQB, project proposers, and RGUs.

1. Regulatory Analysis: Minn. Rules 4410.0200

For the proposed changes to Minn. Rules 4410.0200, EQB expects there to be no change in cost to RGUs, proposers, EQB and citizens. The changes to Minn. Rules 4410.0200, provide benefit to RGUs, proposers and citizens by increasing clarity and aligning definitions with other applicable regulatory requirements will benefit the public, project proposers, RGUs and the EQB with review, when environmental review documents and permits are co-noticed. It is challenging to determine if definitional changes, which provide the benefit of more clarity and certainty for proposers, RGUs and the public, will result in more or less environmental review.

2. Regulatory Analysis: Minn. Rules 4410.4300, subpart 2 Nuclear fuels and Nuclear Waste

For the proposed change in Minn. Rules 4410.4300, subpart 2. Nuclear fuels and Nuclear Waste; EQB expects there to be no change to the number of EAWs or EISs as a result of the change that excludes "independent spent-fuel storage installation." Since this threshold update is already required in statute, EQB does not anticipate there to be any change in costs to proposers or the RGU. This clarification and change was required by the Minnesota Legislature in Minn. Stat. 116C.83, subdivision 6, paragraph (b).

3. Regulatory Analysis: Minn. Rules 4410.4300, subpart 3. Electric-generating facilities

The proposed change for Minn. Rules 4410.4300, subpart 3. Electric-generating facilities, item A., will result in less cost to EQB due to the reduction in process steps by directly referring the responsibility for the proposed project to the Minnesota Pollution Control Agency (PCA) instead of a proposed project coming before the EQB Board and then being referred to the PCA (as usually occurs).

Similarly, the change to Minn. Rules 4410.4300, subpart 3., item B means that proposed projects generating between 25 megawatts and 50 megawatts will be reviewed by the Local Government Unit (LGU) instead of going before the EQB Board and then potentially being referred to a Local Government Unit (LGU). This change is expected to increase costs for LGUs because with this change, LGUs will always be the RGU (the LGU is now designated as the RGU) where in the past, in some cases EQB was the RGU and in some cases the RGU was re-designated. Since 2011, the EQB has records of thirteen projects in this category, of the thirteen projects, one would have been between 25 and 50 megawatts and would have triggered an EAW that would have been conducted by a LGU. To mitigate any EAW costs, local government units have the option of creating a local ordinance to require project proposers to pay the costs of an environmental assessment worksheet.

The change to item C is expected to result in less cost to EQB due to the reduction in process steps by directly referring the proposed project to the Public Utilities Commission (PUC) instead of a proposed project coming before the EQB Board and then being referred to the PUC (as usually occurs).

The change to item D is expected to result in less cost to EQB due to the reduction in process steps by directly referring the proposed project to the Public Utilities Commission (PUC) instead of a proposed project coming before the EQB Board and then being referred to the PUC.

4. Regulatory Analysis: Minn. Rules 4410.4300, subpart 4. Petroleum refineries

The proposed rule language change for Minn. Rules 4410.4300, subp. 4. Petroleum refineries, EQB expects there to be no change to cost for EQB, proposers or RGU.

5. Regulatory Analysis: Minn. Rules 4410.4300, subpart 5. Fuel conversion facilities.

EQB expects the changes to items A and B, which add the phrase “new fuel conversion” to reduce costs to the proposer and RGU. The clarity of specifying “new fuel conversion” will help a proposer and RGU more effectively and efficiently determine if a proposed project should undergo environmental review and complete an EAW.

The change to item B, that deletes “or expansion” from the mandatory category is expected to reduce the number of EAWs in this category—thus reducing the cost for proposers and RGU (in this case, the PCA). The additional change to item B, that deletes “or would increase its capacity by…” and changes it to “a capacity” provides more certainty on when a new fuel conversion facility should undergo environmental review.

Finally, the proposed change to item C is expected to provide more clarity and certainty to proposers, RGUs and citizens when determining which projects in this category must undergo mandatory environmental review. This change aligns with Minnesota Statutes 116D.04, subdivision 2a, paragraph (b) and thus there is no actual change to the mandatory category. environmental review. The additional language in item c, helps the proposer, RGU and citizens more easily access the statutory language by its inclusion in 4410.4300.

6. Regulatory Analysis: Minn. Rules 4410.4300, subpart 6. Transmission lines.

The proposed change to Minn. Rules 4410.4300, subpart 6. Transmission lines, is expected to have minimal effect on the cost to proposers, RGUs or citizens of Minnesota. The changes to this category are a language alignment of rule language with already existing Minnesota Rule and statutory language. Inclusion of Minnesota Rule references of the "high-voltage transmission lines" definition will provide more ease of access for proposers, citizens and RGUs and EQB expects no change to cost for EQB, RGUs, proposers, or citizens.

The additional change to subpart 6, the change of the RGU from EQB to PUC should reduce costs for EQB, because EQB will no longer need to re-designate the RGU for a proposed Transmission line project. Per Minn. Rules, 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600; environmental review for a proposed high-voltage transmission line project must be conducted by the PUC as required by Minn. Stat., section 216B.243 or 216B.2425.

7. Regulatory Analysis: Minn. Rules 4410.4300, subpart 7. Pipelines.

The proposed change to Minn. Rules 4410.4300, subpart 7. Pipelines, is expected to increase clarity and efficiency in processing proposed pipeline projects. The deletion of all the current mandatory category language and the introduction of new language will provide clarity to proposers, EQB, citizens, and the RGU through simplification of the threshold determination. EQB expects this change to reduce costs for EQB because it will no longer need to re-designate the Public Utilities Commission the RGU. The change aligns with and incorporates Minn. Stat. 216G and Minn. Rules 7852, which directs how environmental review is conducted. This incorporation of statute into rule will increase ease of access to all relevant statutory and rule requirements for the proposer, RGU and citizen when determining the environmental review process.

8. Regulatory Analysis: Minn. Rules 4410.4300, subpart 8. Transfer facilities.

The proposed rule language change to Minn. Rules 4410.4300, subpart 8. Transfer facilities. Item C. is an incorporation of existing statutory language and is expected to have no effect on the cost to EQB, RGUs, citizens or proposers due to the fact that these environmental review threshold requirements are already in affect through statute (Minn. Stat. 116C.991).

9. Regulatory Analysis: Minn. Rules 4410.4300, subpart 10. Storage facilities.

The proposed rule language change to Minn. Rules 4410.4300, subpart 10. Storage facilities. Item A. is a simple readability change and should have no effect on the cost to EQB, RGUs, citizens or proposers.

The proposed rule language change to Item B is a change that should provide more clarity through defining "new major facility" (Minn. Rule 7151.1200) and "hazardous materials" (CFR, title 49, section 171.8) to help the RGU, proposer and citizens more easily determine when a facility is required to conduct a mandatory Environmental Assessment Worksheet. These changes should benefit the proposer, RGUs, EQB and citizens by clarifying what a "new major facility" is and what "hazardous materials" are through other, already established, Minnesota rules and Federal codes. All other changes for item B are for readability and should have no effect on costs.

The proposed rule language for Minn. Rules 4410.4300, subpart 10. Storage facilities, item C, is completely new and will likely increase costs for the RGU and proposers due to the fact that more Environmental Assessment Worksheets will be completed. This cost increase will be bore by the Minnesota Pollution Control Agency (PCA) and proposers and will not affect costs for small municipalities. EQB has no record of any projects of this type being proposed in the last 10 years.

The proposed rule language for item D may increase costs for the RGU and proposers due to the fact that more Environmental Assessment Worksheets may be completed because the threshold related to "expansion". This cost increase will be bore by the Minnesota Pollution Control Agency (PCA) and proposers, and will not affect costs for small municipalities. It is unknown how much this change may cost for proposers or the RGU because it is new and it is unclear to EQB how many projects may occur in the future.

The proposed rule language for item E. will increase clarity through incorporating statutory definitions of "liquefied natural gas" (Minn. Stat. 299F.56) and "synthetic natural gas" (Minn. Stat. 216B.02) into the new proposed rule language. These definitions will provide more clarity for proposers, RGU and the EQB by incorporating the already established definitions from statute. The proposed change that deletes the PCA as the RGU and adds the Public Utilities Corporation (PUC) as the RGU aligns with statute and PUC's jurisdictional authority and expertise. This change should reduce time and costs for the EQB, because now the EQB will not need to re-designate the RGU to the PUC for the proposed project.

The proposed rule change to item F, which aligns a mandatory category with an agency that already has oversight over anhydrous ammonia, Minnesota Department of Agriculture (MDA), provides a benefit to the PCA and EQB, by eliminating their role as an RGU, but may increase costs to MDA. Changing the RGU to MDA may increase costs for proposers and MDA by increasing the level of scrutiny of proposals. This change will benefit all Minnesotans because anhydrous ammonia facilities will undergo environmental review by a state agency that already tracks the location and size of these facilities.

The proposed rule language for item G will increase clarity through incorporating statutory definitions of "liquefied natural gas" (Minn. Stat. 299F.56) and "synthetic natural gas" (Minn. Stat. 216B.02) into the new proposed rule language. These definitions should provide more clarity for proposers, RGU and EQB by incorporating the already established definitions from statute.

The proposed change that deletes the PCA as the RGU and adds the Public Utilities Corporation (PUC) as the RGU aligns with statute and PUC's jurisdictional authority and expertise. This change should reduce time and costs for the PCA and the EQB because now the EQB will not need to re-designate the RGU to the PUC for the proposed project.

The proposed rule language for item H is an incorporation of existing statutory language and is expected to have no effect on the cost to EQB, RGUs, citizens or proposers due to the fact that these statutory requirements are already in effect. Including this change into 4410.4300 rule language will benefit proposers and the RGU by making it easier to know when a proposed project requires environmental review.

10. Regulatory Analysis: Minn. Rules 4410.4300, subpart 12. Nonmetallic mineral mining.

The proposed rule language change to Minn. Rules 4410.4300, subpart 12. Nonmetalic mineral mining, is an incorporation of existing statutory language (Minn. Stat. 116C.991) and is expected to have no effect on the cost to EQB, RGUs, citizens or proposers due to the fact that this threshold is already in effect through statute. Including this change into 4410 rule language (where proposers and RGUs look when determining if environmental review is required) will benefit proposers and the RGU by making it easier to know when a proposed project requires environmental review.

11. Regulatory Analysis: Minn. Rules 4410.4300, subpart 14. Industrial, commercial and institutional facilities.

The proposed rule language change to Minn. Rules 4410.4300, subpart 14. Industrial, commercial and institutional facilities, is a readability change (adding "square feet") and will have no effect on cost or the number of EAWs in the State of Minnesota. Readability will benefit proposers when determining if a proposed project requires environmental review.

12. Regulatory Analysis: Minn. Rules 4410.4300, subpart 16. Hazardous waste.

The proposed rule language change to Minn. Rules 4410.4300, subpart 16. Hazardous waste. Item A, is a change that adds additional clarity to "new" and "existing". This change should have no effect in costs for proposers, the RGU or the EQB.

Much of the proposed rule language change to Minn. Rules 4410.4300, subpart 16. Hazardous waste. Item A and B adds additional clarity. The clarity changes (wording, "new", etc.) should have no effect in costs for proposers, the RGU or the EQB. The deletion of "with a capacity of 1,000 or more kilograms per month" and the change to "is generating or receiving 1,000 kilograms or more per month," may increase or reduce the costs to proposers of potential projects because now the mandatory threshold is not just about a site's "capacity" but about how much a site "generates" or "receives." This equates to a threshold change and may require proposers of potential projects to undergo environmental review now where they were not required in the past.

The proposed change of "one kilogram or more per month of acute hazardous waste" is also a threshold change and may increase costs for proposers of potential projects to undergo environmental review now where they we're not required in the past. This change may also increase costs for the RGU (PCA) due to additional environmental review of proposed projects that would now be required to conduct a mandatory environmental review. This category has many unknowns because no projects have been proposed in the last ten years and there is no indication there would be any new projects in future years. This cost increase will be bore by the Minnesota Pollution Control Agency (PCA) and proposers and will not affect costs for small

municipalities. It is unknown how much this change may cost for proposers or the RGU because it is new and it is unclear to EQB how many projects may occur in the future.

The proposed rule language change to Minn. Rules 4410.4300, subpart 16. Hazardous waste. Item C adds additional clarity. The clarity changes should have no effect in costs for proposers, the RGU or the EQB.

13. Regulatory Analysis: Minn. Rules 4410.4300, subpart 17. Solid waste.

The proposed rule language change to Minn. Rules 4410.4300, subpart 17. Solid waste. Item A, provides more clarity by incorporating "land" into the category to clarify that this is for locations on the land with solid waste. This change should have no effect on costs for proposers, the RGU (PCA) or the EQB.

The proposed rule language change to Minn. Rules 4410.4300, subpart 17. Solid waste. Item B, adds words that provide more clarity in what the threshold is for this mandatory category. This change may or may not increase costs for proposers and the RGU. This change will benefit proposers, the RGU and citizens by having certainty of how to measure the mandatory threshold.

The proposed rule language change to Minn. Rules 4410.4300, subpart 17. Solid waste. Item D, E and F, provides more clarity by increasing readability of the category. This category assumes similar changes to B, E and F, which all add in the word "permitted". Including "permitted" into the category should provide more clarity for RGUs, proposers and citizens. It is unknown if this change will increase or decrease costs for proposers, the RGU or the EQB. Currently the threshold is related to the "capacity" of a site which EQB assumes would be the "permitted capacity" and thus there should be no change to the number of environmental reviews required. The word "permitted" is incorporated to provide more clarity that the threshold is derived from that which is permitted not a "potential" or "designed" capacity.

14. Regulatory Analysis: Minn. Rules 4410.4300, subpart 18. Wastewater system.

The proposed change to Minn. Rules 4410.4300, subpart 18. A, provides more clarity by increasing readability of the category by splitting "A" into two parts: "A" and "B". The thresholds do not change and thus EQB expects there to be no change in cost to RGUs, EQB, proposers, or citizens.

The proposed change to Minn. Rules 4410.4300, subpart 18. C, by adding "modification" may increase the number of EAWs due to more clarity and specificity in the mandatory category. It is unknown if costs will increase for proposers and RGUs due to more EAWs. It is unknown if this category was applied when a project "modified" a wastewater treatment plant or if they only completed an EAW when they "reconstructed" a wastewater plant.

The proposed change to Minn. Rules 4410.4300, subpart 18, D. EQB expects there to be no cost changes to RGUs, project proposers, or citizens, due to the fact that this is a simple language clarification change.

The proposed change to Minn. Rules 4410.4300, subpart 18. E, by adding "modification" may increase the number of EAWs due to more clarity and specificity in the mandatory category. It is unknown if costs will increase for proposers and RGUs due to more EAWs. It is unknown if this

category was applied when a project "modified" a wastewater treatment plant or if they only completed an EAW when they "reconstructed" a wastewater plant.

The proposed change to Minn. Rules 4410.4300, subpart 18, F. EQB expects there to be no cost changes to RGUs, project proposers, or citizens, due to the fact that this is a simple language clarification change.

15. Regulatory Analysis: Minn. Rules 4410.4300, subparts 20, 20a, 21.

The proposed change to Minn. Rules 4410.4300, subpart. 20., 20a and 21. EQB expects there to be no cost changes to RGUs, project proposers, or citizens, due to the fact that this is a simple language clarification change.

16. Regulatory Analysis: Minn. Rules 4410.4300, subpart 22. Highway projects.

The proposed change to Minn. Rules 4410.4300, subpart 22. Highway Projects. EQB expects there to be less cost to EQB, project proposers and RGUs due to the fact that there will be less EAWs due to the increase in threshold (from 1-mile to 2-miles).

17. Regulatory Analysis: Minn. Rules 4410.4300, subparts 25, 30, 31, 36.

The proposed changes to Minn. Rules 4410.4300, subparts 25, 30, 31, 36, are expected to be no change to costs for EQB, project proposers and RGUs.

18. Regulatory Analysis: Minn. Rules 4410.4300, subpart 26. Stream diversion.

The proposed change to Minn. Rules 4410.4300, subpart 26 that allows for either the "DNR or LGU" to be the RGU may or may not reduce costs for a proposed project. It is likely to reduce costs and time for the proposer due to the reduction in EQB process of re-designation if an LGU wants the DNR to be the RGU for a project (this occurs often).

19. Regulatory Analysis: Minn. Rules 4410.4300, subpart 27. Wetlands and public waters.

The proposed changes to Minn. Rules 4410.4300, subpart 27. Wetlands and Public waters. changes the title of the category for readability. This will have no effect on costs for proposers, the RGU, EQB or citizens.

The proposed change to item A, may or may not reduce costs for a proposed project. It is likely to reduce costs and time for the proposer due to the reduction in EQB process of re-designation if an LGU wants the DNR to be the RGU for a project (this occurs often).

The proposed change to Minn. Rules 4410.4300, subpart 27, item B, may increase costs for project proposers that trigger this mandatory threshold. The proposed language change incorporates "impact", defines it through existing Minnesota Rule (Minn. Rule 8420.0111). The deletion of "change or diminish the course, current, or cross-section of 40 percent or more of five or more acres of types 3 through 8 wetlands of 2.5 acres or more" and the replacement with "cause an impact" simplifies the determination of if a project crosses the mandatory threshold and thus

requires environmental review. From this perspective, the simplification in language will reduce costs for the RGU and potentially the project proposer due to the renewed ease of determining if a project requires environmental review. Although, the change in "cause an impact" of "one or more acre or wetland" may increase costs for project proposers that impact wetlands with a proposed project due to clarity and removal of a confusing formula and replacement with a simple threshold. This may mean more Environmental Assessment Worksheets (EAW) will be required and thus increase costs for proposers and RGUs. All other changes to item B are for readability and will have no effect on cost.

20. Regulatory Analysis: Minn. Rules 4410.4300, subpart 30. Natural Areas.

Most of the proposed changes to Minn. Rules 4410.4300, subp. 30. Natural Areas. are for readability and will have no effect on cost for the RGU or proposers. The deletion of "state trail corridor," will likely reduce costs for the RGU due to no mandatory Environmental Assessment Worksheet being required (in this category) on proposed projects in state trail corridors.

21. Regulatory Analysis: Minn. Rules 4410.4300, subpart 31. Historical places.

The proposed changes to Minn. Rules 4410.4300, subpart 31 is a housekeeping change and is expected to have no change to costs for EQB, project proposers and RGUs.

22. Regulatory Analysis: Minn. Rules Part 4410.4300, subpart 36. Land use conversions, including golf courses.

The proposed changes to Minn. Rules 4410.4300, subpart 36 is a housekeeping change and is expected to have no change to costs for EQB, project proposers and RGUs.

23. Regulatory Analysis: Minn. Rules Part 4410.4300, subpart 36a. Land conversions in shoreland.

The addition of "permanent conversion" meant to provide clarity about what was intended by this subpart and provide consistency with the term "permanent conversion" as it is used throughout Minnesota Rules chapter 4410. The proposed language is expected to have little effect on the costs for EQB, project proposers and the RGU, LGUs.

24. Regulatory Analysis: Minn. Rules 4410.4300, subpart 37. Recreational Trails.

The proposed change at MInn. Rules 4410.4300, subp. 37. Recreational Trails. EQB expects there to be less cost to EQB due to clarity and certainty on if a project is required to undergo mandatory environmental review—or if it is excluded via Legislatively directed language, Minn. Laws 2015, ch. 4, section 33.

25. Regulatory Analysis: Minn. Rules 4410.4400.

All the proposed changes to Minn. Rules 4410.4400 are expected to have little to no change in projected costs for EQB, proposers or RGUs due to the language changes being for readability (clarity), alignment with statute, and minor grammatical updates.

26. Regulatory Analysis: Minn. Rules 4410.4600.

All the proposed changes to Minn. Rules 4410.4600, are expected to have little to no change in projected costs for EQB, proposers or RGUs due to the language changes being for readability (clarity), alignment with statute, and minor grammatical updates.

27. Regulatory Analysis: Minn. Rules 4410.5200

All changes to Minn. Rules 4410.5200 are expected to have little to no change in projected costs for EQB, proposers or RGUs due to the language changes being for readability (clarity), alignment with statute, and minor grammatical updates.

28. Regulatory Analysis: Minn. Rules 4410.7904, 4410.7906, 4410.7926.

All changes to Minn. Rules 4410.7904, 4410.7906, 4410.7926 are expected to have little to no change in projected costs for EQB, proposers or RGUs due to the language changes being for readability (clarity), alignment with statute, and minor grammatical updates.

B. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The proposed rule amendments clarify practices and mandatory EAW and EIS category thresholds already in place for the statewide environmental review program, therefore the proposed rule amendments are unlikely to result in a significant increase in costs to the state. Costs associated with the implementation of the existing rules includes EQB staff time and staff resources to provide technical assistance to citizens, project proposers and RGUs around the state. One goal of the proposed rules is to reduce EQB staff time needed to process requests to designate different RGUs and to determine whether projects meet the mandatory EAW and EIS category thresholds. Moreover, project proposers and RGUs will benefit from those same time and cost savings.

Other state agencies and many local governmental units are RGUs and therefore responsible for overseeing the completion of the environmental review process, often in the form of an EAW or EIS. Those agencies and local governmental units may incur some additional costs or reduction in costs because the rule amendments clarify mandatory EAW and EIS category thresholds and therefore there may be some projects that require environmental review that had not previously been captured by the threshold. Nevertheless, most of the changes proposed in this rulemaking are intended to make environmental review clearer and easier to understand and apply, so any increase or decrease in costs as a result of this rule should be nominal. Please refer to Section A. above for more details on which categories may result in increased costs for other agencies due to RGU change or other proposed language changes.

C. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The vast majority of the proposed rule amendments are technical changes and to align state rule with state statutes and in doing so, gaining efficiencies for all classes of people affected by these rules. Consequently, the only straightforward method for making technical and statutory changes to the rules is through rulemaking.

D. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.

The alternative of not conducting this rulemaking was considered. However, this would not achieve the goal of the proposed rules, including clarifying the rules, keeping the rules up to date with state statute language and technical changes, and streamlining the rules. Therefore, not amending the existing rules was rejected by the EQB in favor of the proposed rule amendments.

Moreover, EQB's alternatives were limited, particularly for changes related to recreational trails, a rulemaking directed by the Minnesota state legislature. The proposed changes could not be addressed through agency policy, development of guidance or internal rule interpretation.

E. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

The potential or probable costs are discussed in detail in item A. of this section. Environmental review costs are project and RGU dependent. Costs are wide ranging and difficult to ascertain since the complexity and location of a proposed project plays a significant factor in determining costs for affected parties.

F. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

The potential or probable costs or consequences of not adopting the proposed rules are discussed in detail in item A. of this section. Environmental review costs are project and RGU dependent. Costs are wide ranging and difficult to ascertain since the complexity and location of a proposed project plays a significant factor in determining costs for affected parties. The consequences of not adopting these rules is that environmental review reviews will continue to not align with Statute, will be unclear and difficult to read and comprehend for proposers, LGUs, RGUs and citizens.

G. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

It is possible for a given project to require review of its environmental impacts under requirements of the NEPA as well as the MEPA. The federal process prescribes environmental documents similar to state EAWs and EISs and uses processes similar in general outline although different in details to the Minnesota process under chapter 4410. Almost always, it is public projects such as highways, water resources projects, or wastewater collection and treatment that require such dual review. In the few cases where dual review is needed, specific provisions in the environmental review rules provide for joint state-federal review with one set of environmental documents to avoid duplication of effort. These provisions, found in part 4410.1300, which provides that a federal Environmental Assessment document can be directly substituted for a state EAW document and part 4410.3900, which provides for joint state and federal review in general. Neither or these provisions will be affected by the proposed amendments.

H. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

Minn. Stat. § 14.131 defines "cumulative effect" as "the impact that results from incremental impact of the proposed rule in addition to the other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time."

These is no cumulative effect of the rule with other federal and state regulations related to environmental review. The 4410 rules cover the process, definitions, mandatory thresholds for EAW and EIS and exclusions and have no relation to federal and state regulations because environmental review is not a regulation per se, it is an exercise in fact finding and due diligence to develop a project that will not have the potential for significant environmental effects.

VII. Notice plan

Minn. Stat. § 14.131 requires that an Agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule, or explain why these efforts were not made.

The EQB utilizes a self-subscription service for interested and affected parties to register to receive rule related activities at the EQB. Each EQB rule projects has a page on the EQB's website and rulemaking information include status, timelines and drafts can be found on the rulemaking webpage.

A. Notice

The EQB published notice requesting comments on planned rule amendments to Minn. R. ch. 4410. The notice was placed on the EQB's rulemaking webpage. Three Request for Comments were published in the State Register:

a. July 22, 2013 - The Request for Comments closed on August 23, 2013 at 4:30pm.
b. November 9, 2015 - The Request for Comments closed on December 31, 2015 at 4:30pm.
c. October 24, 2016 - The Request for Comments closed on November 28, 2016 at 4:30pm.

On November 9, 2015, the EQB sent messages to the following audiences: MN Cities; MN Townships and members of the Association of Minnesota Counties. The message was sent via email and noticed in the EQB Monitor. All recipients were invited to visit the EQB webpage to use the self-subscription service and sign up for notification on topics of interest to them. Listed topics include rulemaking projects.

1. Minn. Stat. § 14.14, subdivision 1a. On the date the Notice is published in the State Register, the EQB intends to send an electronic notice with a hyperlink to electronic copies of the Notice, SONAR, and proposed rule amendments to all parties who have self-subscribed to the EQB rulemaking distribution lists for the purpose of receiving notice of rule proceedings. The EQB will also distribute an electronic notice with a hyperlink to electronic copies of the Notice, SONAR, and proposed rule amendments in the next available EQB Monitor.

Additionally, the EQB intends to send an electronic notice with a hyperlink to electronic copies of the Notice, SONAR, and the proposed rule amendments to the following organizations:

Name	Contact	Email
Association of MN Counties	Jennifer Berquam, Environment & Natural Resources Policy Analyst	
League of MN Cities	Craig Johnson, Intergovernmental Relations Representative	cjohnson@lmc.org
MN Association of Townships (MAT)		
Center for Environmental Advocacy	Kathryn Hoffman	khoffman@mncenter.org
MN Chamber of Commerce	Tony Kwilas	tkwilas@mnchamber.com
MN Solid Waste Administrators Association	Troy Freihammer, SWA President	Troy.Freihammer@co.stearns.mn.us
Metropolitan Council	Leisa Thompson, MCES General Manager	leisa.thompson@metc.state.mn.us

A copy of the Notice, proposed rule amendments and SONAR will be posted on the EQB's rulemaking webpage: https://www.eqb.state.mn.us/content/eqb-mandatory-categories-rulemaking

Pursuant to Minn. Stat. § 14.14, subdivision 1a, the EQB believes its regular means of notice, including publication in the State Register, EQB Monitor and on the EQB's rulemaking webpage, will provide adequate notice of this rulemaking to persons interested in or regulated by these rules.

Minn. Stat. § 14.116. The EQB intends to send a cover letter with a hyperlink to electronic copies of the Notice, SONAR, and the proposed rule amendments to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule amendments, as required by Minn. Stat. § 14.116. The timing of this notice will occur at least 33 days before the end of the comment period because it will be delivered via U.S. Mail.

This statute also states that if the mailing of the notice is within two years of the effective date of the law granting the agency authority to adopt the proposed rules, the agency must make reasonable efforts to send a copy of the notice and SONAR to all sitting House and Senate legislators who were chief authors of the bill granting the rulemaking. This does not apply because no bill was authored within the past two years granting rulemaking authority.

Minn. Stat. §14.111. If the rule affects agricultural land, Minn. Stat. § 14.111 requires an agency to provide a copy of the proposed rule changes to the Commissioner of Agriculture no later than 30 days before publication of the proposed rule in the State Register. This rule is expected to impact the Minnesota Department of Agriculture (MDA). The rule changes will be submitted to the Commissioner of the Department of Agriculture with a cover letter notifying the MDA of the changes.

VIII. Additional notice plan

Minn. Stat. § 14.14 requires that in addition to its required notices:

> "each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication."

The Environmental Quality Board (EQB) considered these statutory requirements governing additional notification and as detailed in this section, intends to fully comply with them. In addition, as described in Section 2, Public participation and stakeholder involvement, the EQB has made reasonable efforts, thus far, to notify and involve the public and stakeholders in the rule process, including various meetings and publishing the RFC.

The EQB intends to request that the Office of Administrative Hearings review and approve the Additional Notice Plan, pursuant to Minn. R. 1400.2060. The EQB's plan to notify additional parties includes the following:

1. Publish its Notice of Intent to Adopt Rules on the EQB's webpage at https://www.eqb.state.mn.us/content/eqb-mandatory-categories-rulemaking.

2. Provide specific notice to tribal authorities. The EQB maintains a list of the 12 federally recognized tribes in Minnesota. The EQB will send specific electronic notice to the designated tribal contact person of Minnesota's tribal communities. The notice will be sent on or near the day the proposed rule amendments are published in the State Register, and will have a hyperlink to the webpage where electronic copies of the Notice of Intent to Adopt Rules, proposed rule amendments, and SONAR can be viewed.

3. Provide specific notice to associations related to responsible governmental units (RGUs), environmental groups, other industry associations that may be affected by the proposed rules. The notice will be sent to the following associations and groups on or near the day the proposed rule amendments are published in the State Register, and will have a hyperlink to the webpage where electronic copies of the Notice, proposed rule amendments, and SONAR can be viewed.

    - Metro Cities - Association of Metropolitan Municipalities
    - Association of Minnesota Counties
    - Coalition of Greater Minnesota Cities
    - League of Minnesota Cities
    - Metropolitan Council
    - Minnesota Association of Small Cities
    - Minnesota Chamber of Commerce
    - Minnesota City/County Management Association
    - Minnesota Center for Environmental Advocacy
    - Minnesota Environmental Partnership
    - Sierra Club North Star Chapter
    - PCA Environmental Justice Advisory Group
    - PCA Environmental Justice List serve
    - Environmental Justice Advocates of Minnesota (EJAM)
    - The Alliance Advancing Regional Equity
    - Minnesota Farm Bureau
    - Minnesota Farmers Union
    - Minnesota Corn Growers Association

- Minnesota Association of Wheat Growers
- Minnesota Land Improvement Contractors Association
- Red River Watershed Management Board
- Minnesota Soybean Growers Association
- Minnesota Pollution Control Agency
- Minnesota Industrial Sand Council
- Minnesota Public Utilities Commission
- Minnesota Department of Commerce
- Minnesota Department of Natural Resources

Note: some members of these associations may already subscribe to receive GovDelivery notices.

4. Providing an extended comment period to allow additional time for the review of the proposed revisions. The EQB intends to provide more than the minimum 30-day comment period prior to the hearings and to request that the administrative law judge provide the maximum allowed post-hearing comment period.

5. Email the Notice of Intent to Adopt Rules; the proposed rules; links to the SONAR and any additional documents related to the rulemaking; to persons on the EQB's broader email list, the "EQB Monitor".
    - The EQB Monitor is a weekly publication announcing environmental review documents, public comment periods and other actions of the Environmental Quality Board. The EQB Monitor is published every Monday at 8:00 am.

6. The EQB believes that by following the steps of this Additional Notice Plan, and its regular means of public notice, including early notification of the GovDelivery mail list for this rulemaking and the broader "EQB Monitor" email list, publication in the State Register, and posting on the EQB's webpages, the EQB will adequately provide additional notice pursuant to Minn. Stat. § 14.14, subd. 1a.

IX. Performance-based rules

Minn. Stat. §14.002 requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of an agency's regulatory objectives while allowing maximum flexibility to regulated parties and to an agency in meeting those objectives.

The goal of the environmental review program is to obtain useful information about potential environmental effects of proposed projects and how they can be avoided or mitigated. The structure of the rules promotes flexibility for units of government in obtaining this information. The rules specify the types of information that are needed, but the RGU chooses how it will obtain the information. Except for one of the proposed amendments, which will streamline RGU determinations early in the environmental review process, the present rulemaking does not substantially affect the procedures of environmental review. Rather it makes minor adjustments to the thresholds at which review is required. Furthermore, environmental review is not a regulatory program, and hence the EQB has no "regulatory objectives" in this rulemaking.

X. Consult with MMB on local government impact

As required by Minn. Stat. § 14.131, the EQB will consult with Minnesota Management and Budget (MMB). The EQB will do this by sending MMB copies of the documents that are sent to the Governor's office for review and approval on the same day the EQB sends them to the Governor's office. The Agency will do this before publishing the Notice of Intent to Adopt/Dual Notice/Notice of Hearing. The documents will include - the Governor's Office Proposed Rule, and SONAR Form, the proposed rules; and the SONAR. The EQB will submit a copy of the cover correspondence and any response received from MMB to the Office of Administrative Hearing (OAH) at the hearing or with the documents it submits for Administrative Law Judge (ALJ) review (Exhibit #5).

XI. Impact on local government ordinances and rules

Minn. Stat. § 14.128, subdivision 1, requires an agency to determine whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule. The EQB has determined that the proposed amendments will not have any effect on local ordinances or regulations.

XII. Costs of complying for small business or city

Minn. Stat. § 14.127, subds. 1 and 2 require an agency to "determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed $25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees."

The EQB determined that the cost of complying with the proposed rules in the first year after the rules take effect may or may not exceed $25,000 for any small business or small city. The Board has made this determination based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis section of this SONAR. The potential or probable costs of adopting the proposed rules are discussed in detail in item A. of this section. In general, local units of government prepare approximately two-thirds of the total environmental review documents each year, and eighty-percent of the total projects are reviewed using the EAW process.

It is difficult to assess the potential cost of an individual project and/or categories of projects. The overall project costs can vary based on the adequacy of the data submitted to the RGU, the complexity of the project, the project's location and proximity to sensitive resources, and the level of controversy. Because the EQB delegates the authority to prepare and approve environmental documents, they do not have reliable historic project data. EQB staff attempted to better understand the RGU costs of preparing these environmental documents through survey questions, but did not receive substantive responses. According to 2017 survey (Exhibit 2) data collected, the average cost for environmental review for RGUs was $35,960, with a range of $200 to $75,000 (Exhibit #2). It is worth noting there was a small sample size related to RGU costs and a large range reported.

Additionally, EQB staff reached out to several local governments and state agencies who are RGUs for projects that require environmental review. According to these RGUs, the cost for EAWs ranged from $1,500 to $368,600. An example project, is the Lilydale Regional Park Master Plan EAW. The EAW for this project was estimated to cost between $18,889 and $28,058. Another example is a more complex project, CHS Field in St. Paul, MN. The estimated proposed cost for the EAW for this project was $368,600. Another set of example of estimated EAW costs, from Scott County, for three mining projects ranged

from $17,000-$53,000. Scott County also provided an estimate cost for an EIS for a mining project, this estimate was $232,000 for a completed EIS.

To mitigate any EAW costs, local government units have the option of creating a local ordinance to require project proposers to pay the costs of an environmental assessment worksheet.

XIII. Authors and SONAR exhibits

A. Authors

- Denise Wilson, Planning Director, Environmental Review, Environmental Quality Board
- Erik Cedarleaf Dahl, Planning Director, Environmental Quality Board

B. SONAR exhibits

Exhibits are located at the end of this document.

XIV. Conclusion

In this SONAR, the EQB has established the need for and the reasonableness of each of the proposed amendments to Minn. Rules ch. 4410. The EQB has provided the necessary notifications and in this SONAR documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules. The EQB will comply with Minn. Stat. 14.131 and 14.23 and submit the SONAR to the Legislative Reference when the EQB mails out the Dual Notice.

Based on the forgoing, the proposed amendments are both needed and reasonable.

11/13/18
Date

David Frederickson, Chair
Environmental Quality Board

XV. SONAR exhibits

1. Mandatory Categories Report (2013)
2. 2017 Survey Results RGUs and Project Proposers Debrief
3. Recreational Trails Legal Review of Previous Efforts
    (a) Judge's Order: December 2, 2015
    (b) Judge's Order: February 16, 2016
4. EQB Statutory Authority
5. MMB Letter

XVI. References

Minnesota Department of Transportation. Road Design Manual. 2018. http://roaddesign.dot.state.mn.us/. Section 4-3.0, 4-4(8), 6-1.05.04, 18.01.

Transportation Officials (AASHTO). A Policy on Geometric Design of Highways and Streets. American Association of State Highway 2011. Section 8-35, 9-124-127, 10-76, 10-79)

Voss, John. Mandatory Categories Statement of Needs and Reasonableness. December 1, 1982, Minnesota Environmental Quality Board. 1982.

Environmental Quality Board
in Cooperation With
Department of Transportation
Department of Natural Resources
Pollution Control Agency
and With the Assistance of
Department of Commerce and
Department of Agriculture

Mandatory Environmental Review Categories

January 2013

Prepared In Response to
Minnesota Laws 2012
Chapter 150—S.F. No. 1567
Article 2, Section 3

Table of Contents

Mandatory Environmental Review Categories

Purpose of Report

This report was prepared in response to the Minnesota Legislature's 2012 amendment of Minnesota Statutes Chapter 116D, known as the Minnesota Environmental Policy Act (MEPA). This statutory amendment directs specific state agencies to examine the categories for mandatory environmental review that were created by Minnesota Rules 4410. The amendment was as follows:

> LAWS of MINNESOTA for 2012
> CHAPTER 150–S.F.No. 1567
> ARTICLE 2
>
> Sec. 3. Minnesota Statutes 2010, section 116D.04, is amended by adding a subdivision to read:
>
> Subd. 5b. Review of environmental assessment worksheets and environmental impact statements. By December 1, 2012, and every five years thereafter, the Environmental Quality Board, Pollution Control Agency, Department of Natural Resources, and Department of Transportation, after consultation with political subdivisions, shall submit to the governor and the chairs of the house of representatives and senate committees having jurisdiction over environment and natural resources a list of mandatory environmental assessment worksheet and mandatory environmental impact statement categories for which the agency or a political subdivision is designated as the responsible government unit, and for each worksheet or statement category, a document including:
>
> (1) intended historical purposes of the category;
>
> (2) whether projects that fall within the category are also subject to local, state, or federal permits; and
>
> (3) an analysis of whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances.

History of Environmental Review in Minnesota

A brief history is necessary in order to understand the purposes of the environmental review program. The program was established in 1973 by Minnesota Statute 116D, otherwise known as the Minnesota Environmental Policy Act (MEPA). This statute created the environmental review program for the state and required the preparation of rules for the program (Minnesota Rules 4410). Specific authority for the Environmental Quality Board (EQB) to promulgate rules relating to the mandatory categories is granted under Minn. Statute 116D.04, Subd. 2a.(a) and Subd. 5a.

Rulemaking, including rule amendments, must follow a process that is defined in Minn. Statute 14, the Administrative Procedure Act. The process requires public notification of the rulemaking and the proposed rule changes must be made available for public review and comment. Comments are considered and decisions made for the final version of the rules. Though an agency prepares the draft rules, the process is overseen by the Office of Administrative Hearings. The statute requires an open public process for preparing and amending agency rules.

The statute also requires that a rule amendment proposal include a Statement of Need and Reasonableness (SONAR), which explains the reasons for proposed rule changes. The SONAR also discusses such things as who will be affected, alternative methods for achieving the purpose of the rule amendment, and other points listed in statute.

The following excerpt from the SONAR prepared in 1982 will help understand the historical purposes of the environmental review program overall.

Excerpt from 1982 Statement of Need and Reasonableness (SONAR)

I. AUTHORITY

These rules are proposed to implement the 1980 amendments to the Minnesota Environmental Policy Act, Minn. Stat. Ch. 116D. Existing rules 6 MCAR § 3.021 through 3.032 are deleted in their entirety and are replaced by proposed rules 6 MCAR §§ 3.021 through 3.041. Existing rules 6 MCAR §§ 3.033 through 3.047 are amended to become 6 MCAR §§ 3.042 through 3.054. These sections contain minor revisions as indicated. Rules 6 MCAR §§ 3.055 and 3.056 replace the existing rule 6 MCAR § 3.025 G.

Specific authority to promulgate rules relating to the Environmental Review Program is granted under Minn. Stat. § 116D.04, subd. 5 (a) and Minn. Stat. § 116D.045. General rule-making authority is given the Environmental Quality Board in Minn. Stat. § 116C.04 and Minn. Stat. § 116D.

II. HISTORY OF ENVIRONMENTAL REVIEW IN MINNESOTA

The concept of environmental review was spawned in the late 1960s with the developing environmental conscience. Its purpose was to implement environmental protection as a matter of public policy and to utilize the Environmental Impact Statement (EIS) as a planning tool in the decision-making process. Environmental review does not of itself make decisions; rather it provides necessary information to governmental units which they can utilize to make environmentally sensitive decisions in the best interests of the public. It has a further purpose in allowing the public to participate in decisions that affect them. The intent is to prevent environmental degradation by wise and informed decisions.

Minnesota's Environmental Review Program was established by the Minnesota Environmental Policy Act (MEPA) of 1973. Companion legislation, found at Minn. Stat. ch. 116c, established the Minnesota Environmental Quality Board (EQB). Rules implementing the process were promulgated in 1974 and remained in effect until 1977. Under the initial process all decision-making authority was centralized in the EQB. The EQB decided on a case-by-case basis which projects were major actions with the potential for significant environmental effects.

In 1977 the Environmental Review Program Rules were amended to incorporate recommendations based on the history of the first three years of the program. The most significant change was the decentralization of the process by allowing local and state agencies to assume more authority in decisions on the need for EISs for proposed projects under their jurisdiction. The agency that had the most approval authority over a project was required to prepare an Environmental Assessment Worksheet (EAW) to determine whether the project warranted an EIS. Decisions made by the responsible agencies were subject to review and reversal by the EQB. These rules are currently in effect for the Environmental Review Program and are referred to throughout this Statement as the "current rules".

During the 1979-80 legislative session, the EQB, a business group, and an environmental group submitted proposals to the legislature for revisions to MEPA. The EQB staff was given these three proposals and told to work out a compromise. The staff drew elements from each of the three proposals, the new Council on Environmental Quality regulations, and existing processes in other states, and developed compromise legislation. This draft legislation was submitted to the legislature and served as the basis for amendments to MEPA which became law on April 3, 1980.

III. 1980 AMENDMENTS TO THE MINNESOTA ENVIRONMENTAL POLICY ACT

The main elements of the amended MEPA include:

1. Further decentralization of decision-making authority to allow local units of government and permitting state agencies to make final administrative decisions regarding the need for and adequacy of environmental review. The EQB retains the authority to make rules governing the environmental review process, however, the EQB may intervene only at specified times during the process. Local and state agency administrative decisions may no longer be appealed to the EQB. Appeals must be filed directly in district court.

2. Establishment of specific thresholds for projects and impacts that will automatically require preparation of an EAW or EIS to assure greater predictability in the process. Categories of projects which are exempt from environmental review were also required.

3. Establishment of strict time limits for the preparation and review of environmental documents.

4. Encouragement of citizen participation early in the process of environmental review to promote a non-adversarial process. The agency responsible for preparing the EAW must submit the EAW for a 30 day public review and comment period. The final decision on the need for an EIS is not made until after public comment has been received.

5. Establishment of a relaxed process of citizen initiation of environmental review to enable citizen involvement early in the process to promote non-adversarial interaction on controversial projects.

6. Provision for flexible content requirements for EISs. An early and open scoping process is established as the first step in EIS preparation. Through this process, only the relevant issues are analyzed in the EIS. This provides for a shorter, more timely and less expensive document that is more relevant and useable for decision makers.

7. Provision for alternative forms of environmental review. The intent is to allow environmental review to proceed in the most timely, cost effective manner as long as the alternative process meets base criteria.

Analysis of Mandatory Categories

To comply with Minnesota Laws 2012 Ch. 150, Art. 2, Sec. 3, several state agencies analyzed the categories for mandatory environmental review that are established by Minn. Rules 4410. The Department of Transportation, Department of Natural Resources, and the Pollution Control Agency examined the categories for which they are the designated Responsible Governmental Unit (RGU). The statute does not assign a specific agency to address categories designating the local governmental unit—political subdivisions of the state—as the RGU, so EQB staff took on the responsibility to analyze those categories.

The EQB is designated as the RGU for the categories for nuclear waste facilities, power generating facilities, electrical transmission lines, and pipelines. However, these categories were altered significantly by the statutory transfer of siting and routing authority to the Public Utilities Commission. Because the Department of Commerce administers the review and analysis of siting, routing, and certificate of need applications and also conducts the environmental review required for the Public Utilities Commission's decisions in those matters, Commerce staff provided the majority of the review of those categories. Similarly, because all releases of genetically engineered organisms have been agriculturally-related, the Dept. of Agriculture provided the analyses for those categories.

These analyses reviewed rule amendment SONARs prepared in 1982, 1986, 1988, 1997, 2003, 2004, 2005, and 2007. Some amendments occurred to reflect amendments to the MEPA statute. Others occurred based on experience over time, whether in response to particular issues that arose or a need to clarify the rules. (Amendments under the "good cause" provisions of statute were not examined because they simply reflect statutory changes and thus do not have reasoning behind the changes explained in a SONAR.)

Each agency performed the review of its categories. While the agencies consulted on the work and the present similar information, the reports differ in some aspects. For example, in the MnDOT table the recommendations column has separate EAW and EIS discussions. In the local government table, the EAW and EIS categories themselves are shown separately but the historical purpose, potential permits, and recommendations are combined unless specifically indicated. These differences are due to the types of projects, the agencies' roles, and the format of the information found in past SONARS.

Permits, Approvals, Laws, Ordinances Applicable to Projects

The legislation requires the analysis to address "whether projects that fall within the category are also subject to local, state, or federal permits". Recommendations for amending the category are to be based on the "relationship to existing permits or other federal, state, or local laws or ordinances".

This element of the analysis is extremely complex several reasons. First, it is important to understand that an environmental review is not a decision document: a project does not "pass" or "fail" an environmental review. In contrast, a permit is a decision document: either a project meets the requirements and a permit is issued, or the permit is not issued. On some projects, the environmental review provides a basis of information for preparing permits and approvals. On other projects, permit information will be fundamental for the analyses performed for the environmental review document. Permits and environmental review are different tools. It is not true that they duplicate the same function.

Second, many of the mandatory categories are very broad. For example the category for "industrial, commercial, and institutional facilities" covers a very broad spectrum: retail, warehousing, heavy manufacturing, schools, hospitals, etc. A shopping mall and a steel manufacturing facility will have some common types of environmental impacts. However, the traffic generation, lighting, noise, air emissions, stormwater runoff, water usage, and wastewater discharges will differ greatly. Because of those differences, the specific permits or approvals that might be involved will vary greatly. It is impossible to create a definitive list of every permit that applies to every type of project in this and other categories.

Third, both state and local government units issue many project permits and approvals: thousands each year across the state. In contrast, relatively few environmental reviews are prepared. An environmental review examines all potential impacts, consolidating information in one document. A specific permit often focuses on one type of impact such as air emissions. This is one of the important purposes of environmental review compared to permits.

Fourth, different local governments have different permit/approvals that apply to projects. What might be required in one county will not reflect requirements in another county. Fifth, local governmental units frequently have very different levels of experience and expertise for project review and approval. The local permits or approvals often do not consider the entire project, nor do they consider all potential effects on the community and the environment.

In summary, there is no one-size-fits-all permit, approval, or ordinance for projects within a single mandatory category. The variation in possibilities is extensive. Thus, it is impossible to create a definitive list of the permits/approvals/ordinances/laws that will apply and the relationships to environmental reviews. The tables do not pretend to do so. Instead, the tables attempt to list examples of that might be applicable with the caveat that it will depend on the specific project and location in the state as well as the mandatory category for that project type.

Amending the Mandatory Categories: Rulemaking

The agencies arrived at a number of recommendations regarding potential amendments to the mandatory categories. The recommendations are summarized below and listed with more detail in the tables in the appendices. EQB intends to initiate the rulemaking process to open the process for public dialogue and comments on the mandatory thresholds. The EQB plans to publish a notice of its intent to initiate the process in early 2013.

This rulemaking process will be conducted in accordance with the statute that governs agency rulemaking and amendment. Rulemaking according to the statute ensures public accountability, access, and participation. In fact, these are stated as important purposes of how the rulemaking process is designed. The purposes of the statute are as follows:

CHAPTER 14
ADMINISTRATIVE PROCEDURE

14.001 STATEMENT OF PURPOSE.

The purposes of the Administrative Procedure Act are:

(1) to provide oversight of powers and duties delegated to administrative agencies;

(2) to increase public accountability of administrative agencies;

(3) to ensure a uniform minimum procedure;

(4) to increase public access to governmental information;

(5) to increase public participation in the formulation of administrative rules;

(6) to increase the fairness of agencies in their conduct of contested case proceedings; and

(7) to simplify the process of judicial review of agency action as well as increase its ease and availability.

In accomplishing its objectives, the intention of this chapter is to strike a fair balance between these purposes and the need for efficient, economical, and effective government administration. The chapter is not meant to alter the substantive rights of any person or agency. Its impact is limited to procedural rights with the expectation that better substantive results will be achieved in the everyday conduct of state government by improving the process by which those results are attained.

Summary of Recommendations

RGU: Local Governmental Unit Mandatory Category Number, Title	recommendation	page number
4410.4300 EAW CATEGORY. Subp. 14. Industrial, commercial, and institutional facilities. 4410.4400 EIS CATEGORY. Subp. 11. Industrial, commercial, and institutional facilities.	Consider possible change in thresholds, but this merits very careful examination. Clarification of language may be productive for A. and B., definitely for C. and D.	A 5
4410.4300 EAW CATEGORY. Subp. 19. Residential development. 4410.4400 EIS CATEGORY. Subp. 14. Residential development.	Consider possible change in thresholds in larger cities with comprehensive and environmental planning expertise, but this merits very careful examination because of the variation in expertise among local governments.	A 7
4410.4300 EAW CATEGORY .Subp. 32. Mixed residential and industrial-commercial projects. 4410.4400 EIS CATEGORY. Subp. 21. Mixed residential and commercial-industrial projects.	Consider possible change in thresholds for communities with comprehensive plans that include specified elements, but this merits very careful examination. The variation in expertise, sophistication, interest, and effectiveness in planning and regulatory methods across local governments remains. The diversity of projects also continues. The threshold quantities were controversial in 1982 and there's little reason to believe this has changed.	A 16
4410.4300 EAW CATEGORY. Subp. 36. Land use conversion, including golf courses.	Consider possible change to threshold quantity. Consider possible clarification of language for project type.	A 17
4410.4300 EAW CATEGORY. Subp. 36a. Land conversions in shoreland.	Review intent and consider clarifying language.	A 18
RGU: Department of Transportation Mandatory Category Number, Title	**recommendation**	**page number**
4410.4300 EAW CATEGORY. Subp. 22. Highway projects.	"B. For construction of additional travel lanes on an existing road for a length of one or more miles…," threshold should be increased from 1 mile to 2 miles.	B 2
RGU: Environmental Quality Board Mandatory Category Number, Title	**recommendation**	**page number**
4410.4300 EAW CATEGORY. Subp. 2. Nuclear fuels and nuclear waste. 4410.4400 EIS CATEGORY. Subp. 2. Nuclear fuels and nuclear waste.	There may be overlap between 4410.4300 Subp. 2.A. and 4410.4400, Subp. 2.C. This should be examined.	C 1
4410.4300 EAW CATEGORY. Subp. 3. Electric generating facilities. 4410.4400 EIS CATEGORY. Subp. 3. Electric generating facilities.	Initiate discussion on RGU for EAW on facilities under 50 MW other than Large Wind energy Conversion Systems.	C 1
4410.4300 EAW CATEGORY. Subp. 7. Pipelines 4410.4400 EIS CATEGORY. Subp. 24. Pipelines.	Based on review by the Dept. of Commerce, the category should be reviewed to confirm if all pipelines are addressed with Minn. Rules 7852.	C 2

RGU: Department of Natural Resources **Mandatory Category Number, Title**	**recommendation**	**page number**
4410.4300 EAW CATEGORY Subp. 28 B. Forestry	Eliminate this mandatory EAW category.	D 5
4410.4300 EAW CATEGORY. Subp. 30. Natural areas	· The DNR believes it is unlikely an inconsistent project would encroach on a state trail corridor and therefore recommends deleting state trail corridors from the category. · Clarification could be considered regarding how this category applies when master plan revisions (that are subject to a public review process) are proposed.	D 5
4410.4300 EAW CATEGORY. Subp. 37 B. Recreational trails	Consider modifications regarding how miles of new types of motorized trail use are calculated. Also consider not counting new motorized uses on abandoned rail grades toward Item 37B threshold.	D 9
4410.4300 EAW CATEGORY. Subp. 37 C. Recreational trails	Maintain this EAW category, but provide an exemption for paving trails on abandoned railroad grades.	D 10
RGU: Pollution Control Agency **Mandatory Category Number, Title**	**recommendation**	**page number**
4410.4300 EAW CATEGORY. Subp 5. Fuel Conversion Facilities.	Recommend review of definition of biomass in EQB Rules to ensure consistency with term as used in other rules or statutes.	E 2
4410.4300 EAW CATEGORY. Subp. 8. Transfer Facilities.	A review of the use of coal and peat is suggested as it relates to Subpart A.	E 4
4410.4300 EAW CATEGORY. Subp. 16. Hazardous Waste.	· Suggested language changes to reflect current permit language · Suggest rule change - work with DNR to add sediment cleanups at Superfund or other remediation program sites as exemptions to Subp. 27 (wetlands and public waters)	E 9
4410.4300 EAW CATEGORY. subp. 17. Solid Waste 4410.4400 EIS CATEGORY Subp. 13. Solid Waste	EAW and EIS : · Category language should be changed to reflect current permitting process · Future review of landfill projects may be accomplished by means of an alternative environmental review or AUAR-like process. · Transfer facilities should be reviewed for possible elimination. No change to the remainder of the subparts.	E 10

Wastewater Systems 4410.4300 Subp. 18	Review for possible change in requirements for expansion of WWTF. Review for possible addition to the category for the following items. The following wastewater is not currently being addressed: · Utility wastewater (cooling tower blowdown, reject, etc.) NOT associated with an industrial wastewater classified as process wastewater under the federal regulations should be considered for review. · Waste streams resulting from the removal of pollutants or "impurities" from water being used for either industrial or drinking water should be considered for review. · Water Treatment Plant Residual (backwash, reject, etc.) from a domestic water treatment plant should be considered for review.	E 13

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APPENDIX A

LOCAL GOVERNMENT RGU CATEGORIES

EQB staff sent out a draft table to select representatives of local governmental units including counties and municipalities in both Greater Minnesota and the Metropolitan Area. These units were selected to include experience with a broad range of mandatory categories. Recognizing that this focused method does not capture all possible experiences or perspectives, it was chosen because of limitations on time and on EQB staff resources. Input addressed specific categories as well as the environmental review program overall.

Input was received from staff from the following:

Crow Wing County	City of Bloomington
Kandiyohi County	City of Hugo
Scott County	
Sherburne County	
Washington County	

General statements are included here first. Category-specific input is listed in the table in the respective mandatory categories.

<u>General Input from a Metro county</u>:

I have been coordinating the preparation of environmental reviews for private projects located within the townships in (the county) since the mid 1980s. Most of the projects triggering a mandatory EAW were for residential developments or golf courses triggered by Subparts 19, 36 or gravel mining triggered by Subpart 12B. The EAWs provide answers to questions often resulting in proposed mitigation and eventually becoming conditions for plats, conditional or interim use permits. Without the knowledge gathered by the preparation of an EAW it would be difficult to identify and justify many of the conditions that we need to place on such permits to protect the environment or public health and safety. Since such projects are normally just dealt with by land use planners who lack the understanding for many of the technical environmental issues those issues would likely not have been noted before approval was recommended by staff to the Planning Commission and County Board. In the past unrecognized impacts became costly for local officials to address. Some examples we have observed with developments that were approved before environmental reviews were required include lack of planning and funding for necessary road improvements, failure to recognize flooding impacts and establish storm water drainage infrastructure and easements, incompatible land uses resulting in later complaints for odor, noise, and air pollution. Recognizing this we have worked closely with planners, traffic engineers, township officials, soil and water conservation staff and other experts as needed for each environmental review we prepare. Our approach has evolved into a County-coordinated team approach involving townships and even adjacent city officials in addition to state and

federal officials (when appropriate) who meet, review the issues and approve drafts before they are released for comment. Following comments, the responses to comments are prepared by staff and then reviewed and edited by the team. In this way, we build rapport, understanding and trust among all affected jurisdictions. The meetings are open for observance by interested parties as well.

I have no suggestions for changing the thresholds associated with triggers for environmental review. I generally feel that the thresholds are appropriate and have weathered the test of time. Though, some of the categories are more associated with municipal development than with the unsewered areas we deal with.

The EAW process has been streamlined somewhat in recent years to enable completion by the project proposer in response to complaints by affected groups that the process was taking too long. Since we had always worked with a project proposer to prepare a draft EAW we haven't seen much change from our perspective. The projects that seem to run into the biggest problems are those where the proponents' own consultants fail to communicate effectively with the (proposer's) development team or to advise them of major obstacles they are likely to encounter or even worse, downplay such obstacles leaving the proponent with false expectations.

I also did not add to your permits column. I got the impression that if permits are required then perhaps an environmental review is not as important. This might be the case if every local jurisdiction had the advantages of technically knowledgeable staff in the issues related to a permit but most local permits are land use permits with open-ended conditions attached. The MPCA, DNR and MDH, MNDOT have such expertise for issues related to the permits they issue for air quality, water quality, ground water and traffic, but local jurisdictions mostly do not and they are concerned about these issues whether or not there are state permits involved. In most cases separate state permits are not involved, but even when they are, these permits are limited to address issues for which rules have been written. When rules have not kept pace with changing developments valid concerns may not be addressed. An example is the recent growth of silica sand mining and processing. Arguably, the MPCA Air Quality rules are lacking in their ability to address silica dust effectively. Local land use permits can still do this regardless of the lack of rules. Even when rules exist, like the state noise rules, they don't address impacts such as impulse noise and nuisance sounds or wildlife disturbance that may be important local area concerns. So, I didn't feel that listing potential permits was appropriate, since it might give some people (who lack a technical appreciation for the scope of rules) the false impression that environmental reviews were redundant and not important if permits were otherwise required anyway.

The historical purpose sections in your table for some of the subparts suggest justification because such projects are often "controversial". Controversy or the lack of it shouldn't be a determining factor for conducting an environmental review, but rather the purpose should be to obtain a better understanding of the potential impacts associated with projects that have the potential to result in adverse impact to improve decisions. Controversy can be totally unrelated to the questions associated with an environmental review and often is borne out of fear of the unknown.

The environmental review process has been tinkered with for various reasons over the years. Some changes were beneficial to improving the process and some appeared to be politically motivated to satisfy powerful interests. For example, the environmental review process was significantly compromised in 2005, with passage of legislation that transferred the environmental review process away from the EQB and to the Public Utilities Commission for things like crude oil pipelines. The first project to evade a proper environmental review was the MinnCan pipeline by Koch Industries, a project that arguably instigated the change in the rules in 2005. Recognizing that the first major pipeline constructed in Minnesota since the EQB rules went into effect crossed through the center of Minnesota and through three rapidly developing metropolitan counties did not receive one comment from a State Agency as part of the so-called environmental review process is indicative of the failure of the environmental review process conducted by the PUC. Crude oil is not even a PUC regulated commodity and crude oil pipelines are certainly not a public utility, but rather a private commodity conveyance system that has wrongfully been afforded the power of eminent domain.

The failure of the environmental review process for the MinnCan pipeline suggests the need for a reversal of the politically inspired decision to short circuit the environmental review process and restore to the EQB the responsibility of conducting environmental reviews for crude oil pipelines and for any other private transmission or conveyance systems for which rates are not regulated by the PUC.

One change that might also be considered is more logistical, considering the current role the MPCA has been given in regard to administering the EQB rules. Many smaller governmental units lack the experienced staff needed to tackle an environmental review. The result has either been review documents that have been completely prepared by the developer's consultants and then simply signed by unwitting local officials or have resulted in long preparatory times frustrating the developers. I would suggest that the MPCA field officers become familiar with the environmental review process and provide hands on assistance to local units guiding them through the process of preparing an environmental review document. This would also help engage the MPCA in the process as well.

Many of the EAWs we have distributed for comment receive only a cursory review by the state agencies if any. Local units of government rely on the expertise at the state level that they lack locally. When that doesn't happen, the process sometimes isn't even worth doing. Often we have had to badger state agencies to respond to environmental reviews when we recognize concerns but lack the expertise, or political support to weigh in on them. On some recent environmental reviews with significant environmental issues, after pestering state agencies we have received belated comments that we then had to acknowledge despite the end of the official comment period or try to incorporate into conditions in a land use permit. This has created problems for the official record when challenged by the developer. We recognize the lack of resources environmental agencies face now, but as environmental impacts become more critical to identify and prevent as population grows, failure in this regard can have significant consequences.

General Input from a Metro suburb:

The difference between cities of the first class and cities of the second class is blurring. Many cities of the second class are fully developed now. Recommend merging these into one category, using the thresholds for cities of the first class.

In *general, there is a lot of duplication in review related to storm water:*

- *City Comprehensive Stormwater Management Plan requirements*
- *Grading, drainage, utility, and erosion control plans approved by the City Engineer*
- *Watershed District requirements*
- *National Pollutant Discharge Elimination System (NPDES) requirements – facilitated by MPCA*

There can also be some duplication when it comes to sanitary sewer and watermain review:

- *Grading, drainage, utility, and erosion control plans approved by the City Engineer (reviewed by Utilities)*
- *MPCA Sanitary Sewer Extension Permit (dual review by Metropolitan Council)*
- *MDH Watermain Permit*

From a PW (public works) perspective, it seems that everything PW related in an EIS/EAW is covered in other parts of the City review process. We have conditions and City code requirements that ensure that environmental issues are covered before the development is constructed. That being said, for a larger project, staff have found the preliminary environmental review helpful. For smaller projects, less helpful.

Mandatory Categories Analysis

The following table includes:

- All mandatory categories for an environmental assessment worksheet (EAW) and environmental impact statement (EIS) for which the responsible government unit is a local government (political subdivision).
- Intended historical purposes of the category: summaries of reasons for past rule amendments.
- Examples of possible local, state, or federal permits to which projects may or may not be subject.
- Recommendations regarding whether the mandatory category should be modified, eliminated, or unchanged. This column also input from local governments specific to a category.

LOCAL GOVERNMENT (Political Subdivisions): Prepared by EQB

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
4410.4300 MANDATORY EAW CATEGORY. Subp. 12. **Nonmetallic mineral mining.** Items A to C designate the RGU for the type of project listed: A. For development of a facility for the extraction or mining of peat which will result in the excavation of 160 or more acres of land during its existence, the DNR shall be the RGU. B. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 40 or more acres of land to a mean depth of ten feet or more during its existence, the **local government unit** shall be the RGU. C. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 20 or more acres of forested or other naturally vegetated land in a sensitive shoreland area or 40 acres of forested or other naturally vegetated land in a nonsensitive shoreland area, the **local governmental unit** shall be the RGU.	page 127 OF 1982 SONAR This category area was proposed because of the potential for significant effects on ground and surface water quality and quantity, air quality, land use, and the local and state economy. Other local and state regulations relating to these activities do not necessarily deal with the full spectrum of potential impacts. Environmental review would facilitate multi-agency coordination. This category area is subdivided into categories relating to peat and categories relating to aggregate minerals because the impacts relating to these activities differ. The extraction of peat resources has the potential for causing environmental impacts relating to land use, air quality, water quality, mining and drainage. Peat mining activities tended to be of small scale and for the purpose of marketing the peat as a horticultural product or as a briquet fuel. Peat mining was expected to be extremely controversial if proposals developed to utilize the resource for other energy uses. Data based on actual development of these resources on a broad scale is limited. The threshold levels of 160 acres for a mandatory EAW and 320 acres for a mandatory EIS coincided with Department of Natural Resources policy as set forth in the Minnesota Permit Program Policy Recommendations. In the previous rules the 320 acre threshold for an EAW for nonmetallic resources would have applied to peat extraction. The extraction of aggregate resources has the potential for causing environmental impacts relating to land use, transportation, noise, air quality, water quality and vibrations. Proposed activities are frequently in or near populated areas and therefore tend to be controversial. The threshold levels of 40 acres to a ten foot depth ·for a mandatory EAW and 160 acres to a ten foot depth for a mandatory EIS were developed pursuant to the public participation process and on the basis of the history of environmental review for these activities. A previous rule was not specific as to the degree of mining required to trigger the threshold. If a lesser area is actually developed, the entire parcel of land would still be included in the measurement. Petitions have been received for environmental review on facilities as low as 10 acres. pages 42 and 52 of 2007 SONAR: The clauses for projects in shoreland areas were added in 2007 due to concern over lakeshore development. (See Subp. 19a.)	**Local government:** -Comprehensive plan amend if the community has a plan. -Rezoning if the community has zoning. -Subdivision/platting approval. -Conditional Use Permit or a local mining permit. -Site plan approval. -Grading/drainage/erosion control plan. -Wetlands mitigation plan. -Road access permit on local road. -Building permits for structures. **State:** -Water appropriation permit -Permit to mine (Reclamation permit) -Land lease -NPDES/SDS permit -Clean Water Act 401 certif. -Driveway permit (Mn/DOT) if state highway. **Federal**: -Clean Water Act 404 permit (wetlands)	Great variation remains across local governments in expertise, sophistication, interest, and effectiveness in planning and regulatory methods. Judging from the enormity of the frac sand mining issue, and the number of citizen petitions regarding proposed frac sand mines received in 2012, it would be premature to alter this category now. No consensus on changes is evident. Recommendation: No change to this category. *INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:* · *Threshold for an EAW could be raised to something over the current 40 acres: ultimately through our conditional use permit process we rely on input from state agencies, and often there are state permits required.* · *Keep this unchanged.* · *Companies have done projects in phases with just enough years in between to avoid doing the EAW process. Category should be amended to solve this issue.* · *Keep this unchanged.*
4410.4400 MANDATORY EIS CATEGORY. Subp. 9. **Nonmetallic mineral mining.** Items A to C designate the RGU for the type of project listed: A. For development of a facility for the extraction or mining of peat which will utilize 320 acres of land or more during its existence, the DNR shall be the RGU. B. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 160 acres of land or more to a mean depth of ten feet or more during its existence, **the local government unit** shall be the RGU. C. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 40 or more acres of forested or other naturally vegetated land in a sensitive shoreland area or 80 or more acres of forested or other naturally vegetated land in a nonsensitive shoreland area, the **local governmental unit** is the RGU.			
4410.4300 MANDATORY EAW CATEGORY. Subp. 14. **Industrial, commercial, and institutional facilities.** Items A and B designate the RGU for the type of project listed, except as provided in items C and D: A. For construction of a new or expansion of an existing warehousing or light industrial facility equal to or in excess of the following thresholds, expressed as gross floor space, the **local governmental unit** shall be the RGU: (1) unincorporated area, 150,000; (2) third or fourth class city, 300,000; (3) second class city, 450,000; (4) first class city, 600,000. B. For construction of a new or expansion of an existing industrial, commercial, or institutional facility, other than a warehousing or light industrial facility, equal to or in excess of the following thresholds, expressed as gross floor space, the **local government unit** shall be the RGU: (1) unincorporated area, 100,000 square feet; (2) third or fourth class city, 200,000 square feet;	page 130 OF 1982 SONAR This category area is proposed because of the potential for significant impacts on water quality, air quality, solid waste generation, hazardous waste generation, transportation, land use, demographic and economic impacts on local economies. The spectrum of impacts is diverse and the regulation of the impacts varies in effectiveness with the units of government responsible. This type of project tends to be controversial, as witnessed by the number of projects previously subjected to environmental review. The diversity of projects precludes fine tuning of categories further. Thresholds relating to the operational size of the facility relative to the size of the local community are used. The basic theory is that the larger the facility, the greater the output and the greater the potential for local societal and environmental disruption. Square footage thresholds were set at relatively high levels (i.e., not likely to be proposed) for the EIS category and at moderate levels for the EAW category to allow discretion of the RGU in evaluating the merit of the other variables. The actual quantitative thresholds proposed were the subject of considerable controversy through the public meeting process used in preparation of these rules. Although these thresholds do not represent consensus, they do represent a negotiated workable threshold.	**Local government:** -Comprehensive plan amend if the community has a plan. -Rezoning if the community has zoning. -Subdivision/platting approval. -Conditional Use Permit. -Site plan approval. -Wetlands mitigation plan. -Building permits for structures. **State:** -Driveway permit (Mn/DOT) if state highway. **Federal:** -Clean Water Act 404 permit (wetlands)	Great variation remains across local governments in expertise, sophistication, interest, and effectiveness in planning and regulatory methods. The diversity of projects also continues. The threshold quantities were controversial in 1982 and there's little reason to believe this has changed. Recommendation: Consider possible change in thresholds, but this merits very careful examination. Clarification of language may be productive for A. and B., definitely for C. and D. *INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:* · *Keep this unchanged.*

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
(3) second class city, 300,000 square feet; (4) first class city, 400,000 square feet. C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2 to 10, 12, 13, 15, or 17, for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EAW. If the project meets or exceeds the thresholds specified in any other subpart as well as that of item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1. D. This subpart does not apply to projects for which there is a single mandatory category specified in subparts 2 to 13, 16, 17, 20, 23, 25, 29, or 34, or part 4410.4400, subparts 2 to 10, 12, 13, 17, or 22, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an EAW must be determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.	pages 9 and 14 of 1986 SONAR: The amendment adding C. and D. was intended to make explicit in the rules how to interpret the general mandatory categories for industrial, commercial, and institutional projects. This amendment was needed to avoid confusion about how this category should applied in two types of situations: (1) where the project consists of several components, some of which may be of types for which mandatory EAW categories have been established; and (2) where the project is of an industrial, commercial or institutional nature, but of a single specific type for which there is a mandatory EAW category. page 39 of 1988 SONAR: The category was separated into two types of projects, distinguishing "warehousing or light industrial facility" from others. The rationale was that traffic generation was the greatest impact, and warehousing and light industry generated less traffic than other types of industrial, commercial, and institutional projects. Therefore, the thresholds could be higher for warehousing and light industry.		· *Eliminate this category for both EAW and EIS (comprehensive plan establishes the use, local planning and project reviews are enough).* · *Use higher thresholds for all, not separate and lower thresholds for 'other than warehouse or light industrial'.* · *Improve language to clarify whether the threshold refers to the addition only or the total square footage of the building after the addition (existing plus addition).*
4410.4400 MANDATORY EIS CATEGORY. Subp. 11. **Industrial, commercial, and institutional facilities.** Items A and B designate the RGU for the type of project listed, except as provided in items C and D: A. For construction of a new or expansion of an existing warehousing or light industrial facility equal to or in excess of the following thresholds, expressed as gross floor space, the **local governmental unit** is the RGU: (1) unincorporated area, 375,000; (2) third or fourth class city, 750,000; (3) second class city, 1,000,000; (4) first class city, 1,500,000. B. For construction of a new or expansion of an existing industrial, commercial, or institutional facility, other than a warehousing or light industrial facility, equal to or in excess of the following thresholds, expressed as gross floor space, the **local government unit** shall be the RGU: (1) unincorporated area, 250,000 square feet; (2) third or fourth class city, 500,000 square feet; (3) second class city, 750,000 square feet; (4) first class city, 1,000,000 square feet. C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 10, 12, 13, 15, or 17, or part 4410.4300, subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29 for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EIS. If the project meets or exceeds the thresholds specified in any other subparts as well as those in item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1. D. This subpart does not apply to projects for which there is a single mandatory category specified in subparts 2 to 10, 12, 13, 17, or 22, or part 4410.4300, subparts 2 to 13, 16, 17, 20, 23, 25, 29, or 34, regardless of whether the project in question meets or exceeds any threshold specified in those subparts.			

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
In those cases, the need for an EIS or an EAW must be determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.			
4410.4300 MANDATORY EAW CATEGORY. Subp. 19. **Residential development.** An EAW is required for residential development if the total number of units that may ultimately be developed on all contiguous land owned or under an option to purchase by the proposer, except land identified by an applicable comprehensive plan, ordinance, resolution, or agreement of a **local governmental unit** for a future use other than residential development, equals or exceeds a threshold of this subpart. In counting the total number of ultimate units, the RGU shall include the number of units in any plans of the proposer; for land for which the proposer has not yet prepared plans, the RGU shall use as the number of units the product of the number of acres multiplied by the maximum number of units per acre allowable under the applicable zoning ordinance or, if the maximum number of units allowable per acre is not specified in an applicable zoning ordinance, by the overall average number of units per acre indicated in the plans of the proposer for those lands for which plans exist. If the total project requires review but future phases are uncertain, the RGU may review the ultimate project sequentially in accordance with part 4410.1000, subpart 4. If a project consists of mixed unattached and attached units, an EAW must be prepared if the sum of the quotient obtained by dividing the number of unattached units by the applicable unattached unit threshold, plus the quotient obtained by dividing the number of attached units by the applicable attached unit threshold, equals or exceeds one. The **local governmental unit** is the RGU for construction of a permanent or potentially permanent residential development of: A. 50 or more unattached or 75 or more attached units in an unsewered unincorporated area or 100 unattached units or 150 attached units in a sewered unincorporated area; B. 100 unattached units or 150 attached units in a city that does not meet the conditions of item D; C. 100 unattached units or 150 attached units in a city meeting the conditions of item D if the project is not consistent with the adopted comprehensive plan; or D. 250 unattached units or 375 attached units in a city within the seven-county Twin Cities metropolitan area that has adopted a comprehensive plan under Minnesota Statutes, section 473.859, or in a city not located within the seven-county Twin Cities metropolitan area that has filed with the EQB chair a certification that it has adopted a comprehensive plan containing the following elements: (1) a land use plan designating the existing and proposed location, intensity, and extent of use of land and water for residential, industrial, agricultural, and other public and private purposes; (2) a transportation plan describing, designating, and scheduling the location, extent, function, and capacity of existing and proposed local public and private transportation facilities and services; (3) a sewage collection system policy plan describing, designating, and scheduling the areas to be served by the public system, the existing and planned capacities of the public system, and the standards and conditions under which the installation of private sewage treatment systems will be permitted; (4) a capital improvements plan for public facilities; and	page 141 OF 1982 SONAR: This category area is proposed because of the potential for significant impacts on land use, demographic and economic impacts on local economies, transportation facilities, wildlife habitat and water quality. Additional concerns are generated because of increased potential for secondary development fostered by increased population and human activity. The spectrum of impacts is diverse and the regulation of the impacts varies in effectiveness with the units of government responsible. This type of project tends to be controversial, as witnessed by the number of projects previously subjected to environmental review. The diversity of projects precludes fine tuning of categories further. Thresholds relating the number of residential dwellings to the size of the local community were used. This measure was used because larger communities are more likely to be ab1e to provide social and economic services to accommodate a greater population increase; therefore, the societal and environmental disruption per capita increase is likely to be lower. Thresholds were set at relatively high levels (i.e., not likely to be proposed) for the EIS categories and at moderate levels for the EAW categories to allow discretion by the RGU in evaluating the merit of all variables. The 1982 SONAR included separate thresholds for projects in shoreland, floodplain, or wild and scenic river areas if the community had not adopted ordinances for those areas. The category for developments near water resources was further tied to whether or not the local governmental unit has complied with existing regulations. Those that have are presumed to have incorporated adequate environmental protection measure and are therefore subject to the same threshold as developments in upland areas. Those that have not are subject to more stringent thresholds. In actual application developments in shoreland areas are most likely to be involved. All Minnesota counties have adopted shoreland ordinances; therefore, all developments in unincorporated areas actually would have the same measure applied. Approximately 50 of Minnesota's approximately 850 cities have adopted shoreland ordinances. Approximately 150 more cities will have adopted ordinances within the next biennium. This schedule will cover almost all cities likely to have proposed developments of sizes exceeding this threshold. Communities that feel they may be adversely impacted may develop ordinances ahead of the DNR schedule. Therefore, the use of this measurement for developments near water resources is projected to have relatively minimal long range impact in relation to the number of projects subject to environmental review. The actual quantitative thresholds proposed were the subject of considerable controversy through the public meeting process used in preparation of these rules. Although these thresholds do not represent consensus, they do represent a negotiated workable threshold. pages 47 and 63 of 1988 SONAR: Added the beginning passage to avoid circumvention of the rules by segmenting of larger projects into smaller increments. Means of addressing mixed residential projects (attached and unattached units in one project) also are added. In addition, the rule was amended to raise the thresholds for cities with approved comprehensive plans. The existence of comprehensive plans, which anticipate development and allow a city to plan for it, increases a city's capacity to absorb growth without serious environmental or social disruption. Also added that when a project crosses the mandatory EIS threshold, an initial stage up to ten percent of the project could be reviewed with an EAW. This was intended to recognize the uncertainty of the ultimate size of a project, and that it may be unreasonable to delay it all for the length of time	**Local government:** -Comprehensive plan amend if the community has a plan. -Rezoning if the community has zoning. -Subdivision/platting approval. -Conditional Use Permit. -Site plan approval. -Wetlands mitigation plan. -Building permits for structures. **State:** -Driveway permit (Mn/DOT) if state highway. **Federal:** -Clean Water Act 404 permit (wetlands)	Great variation remains across local governments in expertise, sophistication, interest, and effectiveness in planning and regulatory methods. The diversity of projects also continues. The threshold quantities were controversial in 1982 and they continue to be. However, in communities with expertise and extensive planning experience, the thresholds are worth examining. Recommendation: Consider possible change in thresholds in larger cities with comprehensive and environmental planning expertise, but this merits very careful examination because of the variation in expertise among local governments. *INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:* · *Number of units in unsewered unincorporated area could be increased, perhaps 100 for EAW.* · *(though have not done EAW or EIS for residential)have had a couple residential developments approach the current thresholds: based on working through those projects, I am comfortable with current thresholds* · *Although a good exercise for review, I don't think other agencies pay much attention to this category for all the work put into it.* · *Threshold of 50 lots is too low to bother with.* · *Eliminate this category for both EAW and EIS (comprehensive plan establishes the use, local planning and project reviews are enough).* · *For EIS category, change to 250+ units in unsewered unincorporated area.* · *Clarify language regarding C. and D. What triggers the EAW: when development plan is submitted or when Comprehensive Plan amendment application is submitted? If Comprehensive Plan amendment submitted and approved, then project is consistent, thus avoiding the lower threshold. Is this the intent?*

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
(5) an implementation plan describing public programs, fiscal devices, and other actions to be undertaken to implement the comprehensive plan, and a description of official controls addressing the matters of zoning, subdivision, private sewage systems, and a schedule for the implementation of those controls. The EQB chair may specify the form to be used for making a certification under this item.	needed for an EIS.		
4410.4400 MANDATORY EIS CATEGORY. Subp. 14. **Residential development.** An EIS is required for residential development if the total number of units that the proposer may ultimately develop on all contiguous land owned by the proposer or for which the proposer has an option to purchase, except land identified by an applicable comprehensive plan, ordinance, resolution, or agreement of a local governmental unit for a future use other than residential development, equals or exceeds a threshold of this subpart. In counting the total number of ultimate units, the RGU shall include the number of units in any plans of the proposer; for land for which the proposer has not yet prepared plans, the RGU shall use as the number of units the product of the number of acres multiplied by the maximum number of units per acre allowable under the applicable zoning ordinance, or if the maximum number of units allowable per acre is not specified in an applicable zoning ordinance, by the overall average number of units per acre indicated in the plans of the proposer for those lands for which plans exist. If the total project requires review but future phases are uncertain, the RGU may review the ultimate project sequentially in accordance with part 4410.2000, subpart 4. The RGU may review an initial stage of the project, that may not exceed ten percent of the applicable EIS threshold, by means of the procedures of parts 4410.1200 to 4410.1700 instead of the procedures of parts 4410.2000 to 4410.2800. If the RGU determines that this stage requires preparation of an EIS under part 4410.1700, it may be reviewed through a separate EIS or through an EIS that also covers later stages of the project. If a project consists of mixed unattached and attached units, an EIS must be prepared if the sum of the quotient obtained by dividing the number of unattached units by the applicable unattached unit threshold, plus the quotient obtained by dividing the number of attached units by the applicable attached unit threshold, equals or exceeds one. The **local governmental unit** is the RGU for construction of a permanent or potentially permanent residential development of: A. 100 or more unattached or 150 or more attached units in an unsewered unincorporated area or 400 unattached units or 600 attached units in a sewered unincorporated area; B. 400 unattached units or 600 attached units in a city that does not meet the conditions of item D; C. 400 unattached units or 600 attached units in a city meeting the conditions of item D if the project is not consistent with the adopted comprehensive plan; or D. 1,000 unattached units or 1,500 attached units in a city within the seven-county Twin Cities metropolitan area that has adopted a comprehensive plan under Minnesota Statutes, section 473.859, or in a city not located within the seven-county Twin Cities metropolitan area that has filed with the EQB chair a certification that it has adopted a comprehensive plan containing the following elements: (1) a land use plan designating the existing and proposed location, intensity, and extent of use of land and water for residential, industrial, agricultural, and other public and private purposes; (2) a transportation plan describing, designating, and			

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
scheduling the location, extent, function, and capacity of existing and proposed local public and private transportation facilities and services; (3) a sewage collection system policy plan describing, designating, and scheduling the areas to be served by the public system, the existing and planned capacities of the public system, and the standards and conditions under which the installation of private sewage treatment systems will be permitted; (4) a capital improvements plan for public facilities; and (5) an implementation plan describing public programs, fiscal devices, and other actions to be undertaken to implement the comprehensive plan, and a description of official controls addressing the matters of zoning, subdivision, private sewage systems, and a schedule for the implementation of the controls. The EQB chair may specify the form to be used for making a certification under this item.			
4410.4300 MANDATORY EAW CATEGORY. Subp. 19a. **Residential development in shoreland outside of the seven-county Twin Cities metropolitan area.** A. The **local governmental unit** is the RGU for construction of a permanent or potentially permanent residential development located wholly or partially in shoreland outside the seven-county Twin Cities metropolitan area of a type listed in items B to E. For purposes of this subpart, "riparian unit" means a unit in a development that abuts a public water or, in the case of a development where units are not allowed to abut the public water, is located in the first tier of the development as provided under part 6120.3800, subpart 4, item A. If a project is located partially in a sensitive shoreland area and partially in nonsensitive shoreland areas, an EAW must be prepared if the sum of the quotient obtained by dividing the number of units in the sensitive shoreland area by the applicable sensitive shoreland area threshold, plus the quotient obtained by dividing the number of units in nonsensitive shoreland areas by the applicable nonsensitive shoreland area threshold, equals or exceeds one. If a project is located partially in shoreland and partially not in shoreland, an EAW must be prepared if the sum of the quotients obtained by dividing the number of units in each type of area by the applicable threshold for each area equals or exceeds one. B. A development containing 15 or more unattached or attached units for a sensitive shoreland area or 25 or more unattached or attached units for a nonsensitive shoreland area, if any of the following conditions is present: (1) less than 50 percent of the area in shoreland is common open space; (2) the number of riparian units exceeds by at least 15 percent the number of riparian lots that would be allowable calculated according to the applicable lot area and width standards for riparian unsewered single lots under part 6120.3300, subparts 2a and 2b; or (3) if any portion of the project is in an unincorporated area, the number of nonriparian units in shoreland exceeds by at least 15 percent the number of lots that would be allowable on the parcel calculated according to the applicable lot area standards for nonriparian unsewered single lots under part 6120.3300, subparts 2a and 2b. C. A development containing 25 or more unattached or attached units for a sensitive shoreland area or 50 or more unattached or attached units for a nonsensitive shoreland area, if none of the conditions listed in item B is present. D. A development in a sensitive shoreland area that provides permanent mooring space for at least one nonriparian unattached or attached unit. E. A development containing at least one unattached or attached	<u>pages 39 and 43 and 52 of 2007 SONAR</u>: Major impetus was significant change in pattern of lakeshore development: conversion of seasonal cabins into year-round homes, size of new homes, and increasing density of new projects. Shoreland areas once less desirable or difficult to develop being proposed for development often are low-lying and marshy, with shallow water offshore and beds of aquatic vegetation, features that make the areas important to the lake ecology. The number of citizen petitions for lakeshore development was increasing. There was widespread concern about the consequences of poor development on water quality and fish and wildlife habitat caused by poorly functioning onsite septic systems and increased impervious surface runoff that negatively affected water quality. These factors led to the recognition that existing mandatory review categories may not be adequate for the changing conditions. The category does not apply within the Twin City Metro because questions arose whether the common open space and unit density criteria were appropriate to projects located in urbanized areas. (p. 28 of ALJ report May 7, 2009)	**<u>Local government</u>:** -Comprehensive plan amend if the community has a plan. -Rezoning if the community has zoning. -Subdivision/platting approval. -Conditional Use Permit. -Site plan approval. -Grading/drainage/erosion control plan. -Wetlands mitigation plan. -Road access permit on local road. -Building permits for structures. **<u>State</u>:** -Driveway permit (Mn/DOT) if state highway. **<u>Federal</u>:** -Clean Water Act 404 permit (wetlands)	This category was among those specifically created in 2007. Little has changed since then that would merit revisiting this category. <u>Recommendation</u>: No change to this category. *INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:* · *Thresholds are appropriate in shoreland or sensitive area.* · *Eliminate this category (for both EAW and EIS).*

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
unit created by the conversion of a resort, motel, hotel, recreational vehicle park, or campground, if either of the following conditions is present: (1) the number of nonriparian units in shoreland exceeds by at least 15 percent the number of lots that would be allowable on the parcel calculated according to the applicable lot area standards for nonriparian unsewered single lots under part 6120.3300, subparts 2a and 2b; or (2) the number of riparian units exceeds by at least 15 percent the number of riparian lots that would be allowable calculated according to the applicable lot area and width standards for riparian unsewered single lots under part 6120.3300, subparts 2a and 2b. F. An EAW is required for residential development if the total number of units that may ultimately be developed on all contiguous land owned or under an option to purchase by the proposer, except land identified by an applicable comprehensive plan, ordinance, resolution, or agreement of a local governmental unit for a future use other than residential development, equals or exceeds a threshold of this subpart. In counting the total number of ultimate units, the RGU shall include the number of units in any plans of the proposer. For land for which the proposer has not yet prepared plans, the RGU shall use as the number of units the number of acres multiplied by the maximum number of units per acre allowable under the applicable zoning ordinance or, if the maximum number of units allowable per acre is not specified in an applicable zoning ordinance, by the overall average			
4410.4400 MANDATORY EIS CATEGORY. Subp. 14a. **Residential development in shoreland outside of the seven-county Twin Cities metropolitan area.** A. **The local governmental unit** is the RGU for construction of a permanent or potentially permanent residential development located wholly or partially in shoreland outside the seven-county Twin Cities metropolitan area of a type listed in items B to D. For purposes of this subpart, "riparian unit" means a unit in a development that abuts a public water or, in the case of a development where units are not allowed to abut the public water, is located in the first tier of the development as provided under part 6120.3800, subpart 4, item A. If a project is located partially in a sensitive shoreland area and partially in nonsensitive shoreland areas, an EIS must be prepared if the sum of the quotient obtained by dividing the number of units in the sensitive shoreland area by the applicable sensitive shoreland area threshold, plus the quotient obtained by dividing the number of units in nonsensitive shoreland areas by the applicable nonsensitive shoreland area threshold, equals or exceeds one. If a project is located partially in shoreland and partially not in shoreland, an EIS must be prepared if the sum of the quotients obtained by dividing the number of units in each type of area by the applicable threshold for each area equals or exceeds one. B. A development containing 50 or more unattached or attached units for a sensitive shoreland area or 100 or more unattached or attached units for a nonsensitive shoreland area, if any of the following conditions is present: (1) less than 50 percent of the area in shoreland is common open space; (2) the number of riparian units exceeds by at least 15 percent the number of riparian lots that would be allowable calculated according to the applicable lot area and width standards for riparian unsewered single lots under part 6120.3300, subparts 2a and 2b; or (3) any portion of the project is in an unincorporated area.			

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
C. A development of 100 or more unattached or attached units for a sensitive shoreland area or 200 or more unattached or attached units for a nonsensitive shoreland area, if none of the conditions listed in item B is present. D. A development creating 20 or more unattached or attached units for a sensitive shoreland area or 40 or more unattached or attached units for a nonsensitive shoreland area by the conversion of a resort, motel, hotel, recreational vehicle park, or campground, if either of the following conditions is present: (1) the number of nonriparian units in shoreland exceeds by at least 15 percent the number of lots that would be allowable on the parcel calculated according to the applicable lot area and width standards for nonriparian unsewered single lots under part 6120.3300, subparts 2a and 2b; or (2) the number of riparian units exceeds by at least 15 percent the number of riparian lots that would be allowable calculated according to the applicable lot area and width standards for riparian unsewered single lots under part 6120.3300, subparts 2a and 2b. E. An EIS is required for residential development if the total number of units that the proposer may ultimately develop on all contiguous land owned by the proposer or for which the proposer has an option to purchase, except land identified by an applicable comprehensive plan, ordinance, resolution, or agreement of a local governmental unit for a future use other than residential development, equals or exceeds a threshold of this subpart. In counting the total number of ultimate units, the RGU shall include the number of units in any plans of the proposer. For land for which the proposer has not yet prepared plans, the RGU shall use as the number of units the number of acres multiplied by the maximum number of units per acre allowable under the applicable zoning ordinance or, if the maximum number of units allowable per acre is not specified in an applicable zoning ordinance, by the overall average number of units per acre indicated in the plans of the proposer for those lands for which plans exist.			
4410.4300 MANDATORY EAW CATEGORY. Subp. 20. **Campgrounds and RV parks.** For construction of a seasonal or permanent recreational development, accessible by vehicle, consisting of 50 or more sites, or the expansion of such a facility by 50 or more sites, the **local government unit** shall be the RGU.	page 144 of 1982 SONAR: Category Area: Recreational Development This category is proposed because recreational developments are typically proposed adjacent to areas with significant natura1 resources. Such development may significantly human activity in sensitive areas. These developments often are very controversial locally and may have significant impacts on local land use. The threshold measure as proposed is designed to exclude wilderness camps accessible only by foot, canoe or plane: facilities usually not located in areas where local controversy is likely. The 50 unit threshold was developed through the public meeting process. It corresponds to the threshold in the current rules for recreational developments in sensitive areas (see next subp.) The alternative of a higher threshold for developments that are not located in shoreland areas, flood plain areas, and wild and scenic river areas was considered but rejected at the request of- representatives of local governmental unit. This alternative was rejected because of the likelihood of local controversy regardless of the proximity to water resources. Projects of this nature may be proposed to facilitate hunting, snowmobiling, hiking, horseback riding, bike riding, etc. These activities may have significant impacts on local land use for the EAW categories to allow discretion by the RGU in evaluating the merit of all variables. PAGE 19 of 1997 SONAR: Caption changed to recognize the specific types of development intend for inclusion in the category. Added “expansion” language to recognize that, given the high natural resource values generally present where these facilities are located, expansion has the same potential for environmental impacts as original construction.	**Local government:** -Comprehensive plan amend if the community has a plan. -Rezoning if the community has zoning. -Subdivision/platting approval. -Conditional Use Permit. -Site plan approval. -Grading/drainage/erosion control plan. -Wetlands mitigation plan. -Road access permit on local road. -Building permits for structures. **State:** -Water appropriation permit. -Driveway permit (Mn/DOT) if state highway. **Federal:** -Clean Water Act 404 permit (wetlands).	Original reasoning still stands. Great variation remains across local governments in expertise, sophistication, interest, and effectiveness in planning and regulatory methods. Recommendation: No change to this category. *INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:* · *Keep this unchanged. Although this type of project would probably require a Conditional Use Permit from the local authority, it is not the type of use a local government unit deals with on a regular basis. It presents many different issues not normally dealt with the by local government.* · *Change threshold to 100 for construction and 100 for expansion.*

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
4410.4300 MANDATORY EAW CATEGORY. Subp. 20a. **Resorts, campgrounds, and RV parks in shorelands.** The **local government unit** is the RGU for construction or expansion of a resort or other seasonal or permanent recreational development located wholly or partially in shoreland, accessible by vehicle, of a type listed in item A or B: A. construction or addition of 25 or more units or sites in a sensitive shoreland area or 50 units or sites in a nonsensitive shoreland area if at least 50 percent of the area in shoreland is common open space; or B. construction or addition of 15 or more units or sites in a sensitive shoreland area or 25 or more units or sites in a nonsensitive shoreland area, if less than 50 percent of the area in shoreland is common open space. If a project is located partially in a sensitive shoreland area and partially in nonsensitive shoreland areas, an EAW must be prepared if the sum of the quotient obtained by dividing the number of units in the sensitive shoreland area by the applicable sensitive shoreland area threshold, plus the quotient obtained by dividing the number of units in nonsensitive shoreland areas by the applicable nonsensitive shoreland area threshold, equals or exceeds one. If a project is located partially in shoreland and partially not in shoreland, an EAW must be prepared if the sum of the quotients obtained by dividing the number of units in each type of area by the applicable threshold for each area equals or exceeds one. **4410.4400 MANDATORY EIS CATEGORY.** Subp. 26. **Resorts, campgrounds, and RV parks in shorelands.** For construction or expansion of a resort or other seasonal or permanent recreational development located wholly or partially in shoreland, accessible by vehicle, adding 100 or more units or sites in a sensitive shoreland area or 200 or more units or sites in a nonsensitive shoreland area, the **local governmental unit** is the RGU. If a project is located partially in a sensitive shoreland area and partially in nonsensitive shoreland areas, an EIS must be prepared if the sum of the quotient obtained by dividing the number of units in the sensitive shoreland area by the applicable sensitive shoreland area threshold, plus the quotient obtained by dividing the number of units in nonsensitive shoreland areas by the applicable nonsensitive shoreland area threshold, equals or exceeds one. If a project is located partially in shoreland and partially not in shoreland, an EIS must be prepared if the sum of the quotients obtained by dividing the number of units in each type of area by the applicable threshold for each area equals or exceeds one.	<u>pages 49 and 55 of 2007 SONAR</u>: This new category was created to parallel Subp. 20 but incorporate the concerns regarding shoreland development as described for Subp. 19a. *Note: Page 144 of 1982 SONAR includes the following:* *"DISCUSSION: Under the current rules, the following category is directly relevant to the recreational development category area:* *Mandatory EAW – 6 MCAR§ 3.024 Construction of a development consisting of "condominium type" campgrounds, mobile home parks, or other semi-permanent residential and/or recreational facilities, any part of which is within a shoreland area (as defined by Minn. Stat. § 105.485 (1974) for floodplain (as defined by the "Statewide Standards and Criteria for Management of Floodplain Areas of Minnesota" exceeding a total of 50 units or, if located in areas other than the above, exceeding a total of 100 units – (Local);"*	**<u>Local government</u>:** -Comprehensive plan amend if the community has a plan. -Rezoning if the community has zoning. -Subdivision/platting approval. -Conditional Use Permit. -Site plan approval. -Grading/drainage/erosion control plan. -Wetlands mitigation plan. -Road access permit on local road. -Building permits for structures. **<u>State</u>:** -Water appropriation permit. -Driveway permit (Mn/DOT) if state highway. **<u>Federal</u>:** -Clean Water Act 404 permit (wetlands).	This category was among those specifically created in 2007. Little has changed since then that would merit revisiting this category. Great variation remains across local governments in expertise, sophistication, interest, and effectiveness in planning and regulatory methods. <u>Recommendation</u>: No change to this category. *INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:* · *Keep this unchanged. Although this type of project would probably require a Conditional Use Permit from the local authority, it is not the type of use a local government unit deals with on a regular basis. It presents many different issues not normally dealt with the by local government.* · *Eliminate this category (for both EAW and EIS).*
4410.4300 MANDATORY EAW CATEGORY. Subp. 21. **Airport projects.** Items A and B designate the RGU for the type of project listed: A. For construction of a paved, new airport runway, the DOT, **local governmental unit**, or the Metropolitan Airports Commission shall be the RGU. B. For construction of a runway extension that would upgrade an existing airport runway to permit usage by aircraft over 12,500 pounds that are at least three decibels louder than aircraft currently using the runway, the DOT, **local government unit**, or the Metropolitan Airports Commission shall be the RGU. The RGU shall be selected according to part 4410.0500, subpart 5. **4410.4400 MANDATORY EIS CATEGORY.** Subp. 15. **Airport runway projects.** For construction of a paved and lighted airport runway of 5,000 feet of length or greater, the DOT or **local government unit** shall be the RGU.	<u>page 145 of 1982 SONAR:</u> This category area is proposed because of the potential for significant impacts related to local and regional land use, local economic and demographic issues, transportation, noise, air quality, and energy. New facilities and expansion of existing facilities to accommodate noisier aircraft are likely to be very controversial. The EAW threshold for a new airport runway in the "key system" existed in the previous rule. The basic qualitative measure applied to these categories is that airports able to accommodate jet aircraft have greatest potential to create significant environmental impacts. Facilities to accommodate jet aircraft must include a runway of 5,000 length or greater. The construction of a new facility to accommodate jet air traffic is proposed as a mandatory EIS threshold. The more likely case is that an existing facility would be expanded from a strictly small aircraft facility to a jet aircraft facility. Similar concerns could arise with runway modifications to allow use by 1arger jet facilities. Such potential expansion is addressed as a mandatory EAW with the need for an EIS discretionary. The 12,500 pound aircraft weight corresponds to a minimal weight for jet aircraft. The three decibel increase corresponds to a noise increase 1000 times the prior noise level. Construction of new facilities for multi-engine, twin engine and single engine aircraft and	**<u>Local government</u>:** -Site plan approval. -Grading/drainage/erosion control plan. -Wetlands mitigation plan. <u>State</u>: See MnDOT analysis of this category in Appendix B. <u>Federal</u>: See MnDOT analysis of this category in Appendix B.	See MnDOT analysis of these categories in Appendix B. *INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:* · *Keep this unchanged: a use that could have potential impacts.* · *Keep this unchanged.*

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
	expansion of these facilities to less than jet aircraft capacity is subject to environmental review on a discretionary basis. The proposed EIS category corresponds to the current EAW threshold. Minnesota has 18 key system airports. Key system airports are airports capable of handling jet aircraft. Minnesota has 73 intermediate system airports (light to medium sized multi-engine aircraft) and 50 landing strip system airports (single and twin engine aircraft). page 19 of 1997 SONAR: In 1997, the rule was amended to require an EAW for all new airport runways.		
4410.4300 MANDATORY EAW CATEGORY. Subp. 22. **Highway projects.** Items A to C designate the RGU for the type of project listed: A. For construction of a road on a new location over one mile in length that will function as a collector roadway, the DOT or **local government unit** shall be the RGU. B. For construction of additional travel lanes on an existing road for a length of one or more miles, the DOT or **local government unit** shall be the RGU. C. For the addition of one or more new interchanges to a completed limited access highway, the DOT or **local government unit** shall be the RGU. **4410.4400 MANDATORY EIS CATEGORY.** Subp. 16. **Highway projects.** For construction of a road on a new location which is four or more lanes in width and two or more miles in length, the DOT or **local government unit** shall be the RGU.	page 146 of 1982 SONAR: This category area is proposed because of the potential for significant impacts related to local and regional land use, local economic and demographic issues, transportation, noise, air quality, energy, water quality, erosion, drainage, water resources, habitat destruction, and construction impacts. New faci1ities and the expansion of existing facilities to accommodate increased traffic are likely to be very controversial. Although the cumulative impact of local roadways is greatest, primary concern is generated by the construction of arterial and collector roadways because they tend to induce secondary development in the area and they accommodate approximately 85% of the total mileage driven by motorists. Arterial roadways are commonly four or more lanes in width. The EIS category at uses this as a qualitative threshold.	Local government: -Grading/drainage/erosion control plan. -Wetlands mitigation plan. -Subdivision/platting approval. State: See MnDOT analysis of this category in Appendix B. Federal: See MnDOT analysis of this category in Appendix B.	See MnDOT analysis of these categories in Appendix B. *INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:* · *Eliminate this category for both EAW and EIS. Local comprehensive plans and Metropolitan Council transportation planning anticipates traffic and land use impacts.*
4410.4300 MANDATORY EAW CATEGORY. Subp. 23. **Barge fleeting.** For construction of a new or expansion of an existing barge fleeting facility, the DOT or **port authority** shall be the RGU. **4410.4400 MANDATORY EIS CATEGORY.** Subp. 17. **Barge fleeting facilities.** For construction of a barge fleeting facility at a new off-channel location that involves the dredging of 1,000 or more cubic yards, the DOT or **port authority** shall be the RGU.	page 149 of 1982 SONAR: This category is proposed because of the potential for significant environmental impacts related to water quality, sedimentation and erosion, recreational use of water resources, commercial transportation, habitat deterioration, and adjacent land use. No single agency is responsible for coordinated programming of proposed activities, therefore, environmental review is necessary. Under the current rules there are no mandatory EAW or exemption categories directly relevant to the barge fleeting category area. Regulation of barge fleeting is not focused with any central agency. Local government comprehensive plans typically do not address the problems and needs of a commercial barge navigation system. Primary problems associated with the environmental impacts center on the effects of dredging and spoil disposal on water quality and habitat disruption for wildlife populations. The EAW category sets forth an all or none threshold relating to the construction or expansion of the capacity of facilities at either on channel or off-channel locations. Dredging for the purpose of maintaining existing capacity would not be included in this category. The all or none threshold is reasonable to facilitate coordination between governmental units involved and to address the impacts related to disturbance of the habitat and operation of the facility in addition to potential dredging impacts. The threshold used for the EIS category centers on off-channel facilities at new locations which entail controversial siting and land use issues. A minimum dredge threshold was set to allow minor or temporary facilities. The threshold was established as a reasonable cut-off pursuant to the public meeting process. No exemptions for this category: coordination between governmental units is needed, and adequate site specific information is usually lacking.	Local government: Site Plan Approval. Possible subdivision/platting review, grading permit, building permit for structures, or conditional use permits (operator facilities) State: See MnDOT analysis of this category in Appendix B. Federal: See MnDOT analysis of this category in Appendix B.	See MnDOT analysis of these categories in Appendix B.

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
4410.4300 MANDATORY EAW CATEGORY. Subp. 25. **Marinas.** For construction or expansion of a marina or harbor that results in a 20,000 or more square foot total or a 20,000 or more square foot increase of water surface area used temporarily or permanently for docks, docking, or maneuvering of watercraft, the **local government unit** shall be the RGU. **4410.4400 MANDATORY EIS CATEGORY.** Subp. 19. **Marinas.** For construction of a new or expansion of an existing marina, harbor, or mooring project on a state or federally designated wild and scenic river, the **local government unit** shall be the RGU.	page 151 of 1982 SONAR: This category area is proposed because of the potential for significant impacts related to water quality, air quality, noise, wildlife habitat, aesthetics, and the use of public resources. The qualitative measure of the thresholds applied to the EAW category is the area of water surface occupied by the facility. This measure most appropriately reflects the total potentia1 for impacts from the facility. The quantitative threshold proposed corresponds to approximately one half acre. Such a facility would accommodate approximately 80 boats. The proposed category is the same as the current rules. This threshold has proven to be reasonable for defining major facilities. Marinas may be constructed in wild and scenic river areas. However, because of the unique character of these areas, the areas are generally inappropriate for marinas. Under the current rules, requests for EISs on marinas have mostly been confined to wild and scenic river systems.	**Local government:** -Comprehensive plan amend if community has a plan. -Rezoning if the community has zoning. -Subdivision/platting approval. -Conditional Use Permit. -Site plan approval. -Grading/drainage/erosion control plan. -Wetlands mitigation plan. -Road access permit on local road. -Building permits for structures. State: work in public waters	Recommendation: No change to this category. *INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:* · *Change threshold to eliminate "results in 20,000 sf total" and only include adding an additional 20,000 sf.*
4410.4300 MANDATORY EAW CATEGORY. Subp. 26. **Stream diversion.** For a diversion, realignment, or channelization of any designated trout stream, or affecting greater than 500 feet of natural watercourse with a total drainage area of ten or more square miles unless exempted by part 4410.4600, subpart 14, item E, or 17, the **local government unit** shall be the RGU.	page 152of 1982 SONAR: This category area is proposed because the alteration of watercourses affects flooding in downstream and adjacent areas, wildlife habitat, fisheries resources, water quality, and area land use. The traditional analysis of flood control and drainage projects usually does not consider broad and long range environmental implications. Environmental review will facilitate a more comprehensive analysis. The qualitative measure applied to the EAW category is restricted to trout streams and natural watercourses because they have significant habitat, recreational, and resource values. Alteration of these watercourses may significantly impact natural drainage. A ten square mile quantitative threshold is applied to make the category administratively feasible and because minor diversion of headwaters watercourses is likely to have minimal flooding and habitat impacts. A ten square mile drainage area corresponds to approximately 6,400 acres. page 20 of 1997 SONAR: "Realignment" is added as an activity that *will* require an EAW. Realignment often means straightening, which has a serious effect on water flows and stream habitat. The 500-foot minimum length was added so that the category would no longer apply to minor stream alterations; this minimum threshold does not apply to trout streams. Experience has 20 shown that stream diversions of less than this length generally have minimal environmental impacts and do not warrant a mandatory EAW requirement.	Local government: -Grading/drainage/erosion control plan. -Wetlands mitigation plan. State: Work in public waters. Federal: Section 404 Clean Water Act by USACOE.	Great variation exists across local governments regarding technical/scientific expertise for potential environmental impacts from projects of this type. Recommendation: No change to this category. *INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:* · *DNR should be the RGU.*
4410.4300 MANDATORY EAW CATEGORY. Subp. 27. **Wetlands and public waters.** Items A and B designate the RGU for the type of project listed: A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit pursuant to Minnesota Statutes, chapter 103G, the **local government unit** shall be the RGU. B. For projects that will change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more, excluding public waters wetlands, if any part of the wetland is within a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the **local government unit** shall be the RGU.	page 153 of 1982 SONAR: This category area is proposed because of the potential for significant impacts related to flood control, erosion control, water quality, wildlife habitat, recreation, and aesthetics. Impacts generated by proposals subject to this category area often are long range and are often manifested at locations removed from the area of immediate impact. Environmental review facilitates a comprehensive view of the potential impacts of these projects. An EIS is required for the elimination of a protected water or protected wetland. This is reasonable because these resources have been determined to be significant pursuant to the DNR's inventory program. The elimination of such resources would have significant local and regional impacts. A quantitative threshold of one acre is set to require an EAW. This is reasonable because an alteration of one acre is likely to affect the total aquatic ecosystem. In addition, impacts of that size are likely to foster additional in the area. Environmental review is reasonable to reduce the possibility of piecemealing the elimination or degradation of the resource.	Local government: -Grading/drainage/erosion control plan. -Wetlands mitigation plan. State: Work in public waters. Federal: Section 404 Clean Water Act by USACOE.	Great variation exists across local governments regarding technical/scientific expertise for potential environmental impacts from projects of this type. Recommendation: No change to this category. *INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:* · *Keep this unchanged: if such large areas are being impacted, EAW should be required to look at the big picture.* · *Eliminate EIS category (EAW category remains).*

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
4410.4400 MANDATORY EIS CATEGORY. Subp. 20. **Wetlands and public waters.** For projects that will eliminate a public water or public waters wetland, the **local government unit** shall be the RGU.			
4410.4300 MANDATORY EAW CATEGORY. Subp. 29. **Animal feedlots.** The PCA is the RGU for the types of projects listed in items A and B unless the **county** will issue the feedlot permit, in which case the **county** is the RGU. However, the county is not the RGU prior to January 1, 2001. A. For the construction of an animal feedlot facility with a capacity of 1,000 animal units or more or the expansion of an existing facility by 1,000 animal units or more if the facility is not in an area listed in item B. B. For the construction of an animal feedlot facility of more than 500 animal units or expansion of an existing animal feedlot facility by more than 500 animal units if the facility is located wholly or partially in any of the following sensitive locations: shoreland; a delineated flood plain, except that in the flood plain of the Red River of the North the sensitive area includes only land within 1,000 feet of the ordinary high water mark; a state or federally designated wild and scenic river district; the Minnesota River Project Riverbend area; the Mississippi headwaters area; or an area within a drinking water supply management area delineated under chapter 4720 where the aquifer is identified in the wellhead protection plan as vulnerable to contamination; or within 1,000 feet of a known sinkhole, cave, resurgent spring, disappearing spring, Karst window, blind valley, or dry valley. The provisions of part 4410.1000, subpart 4, regarding connected actions do not apply to animal feedlots. The provisions of part 4410.1000, subpart 4, regarding phased actions apply to feedlots. With the agreement of the proposers, the RGU may prepare a single EAW to collectively review individual sites of a multisite feedlot proposal.	page 156 of 1982 SONAR: This category is proposed because of the potential for significant environmental impacts relating to ground and surface water quality, odors, and local land use issues. This type of activity is likely to be controversial if the location is in a sensitive area or near residential or recreational developments. Thresholds were amended in 1988. The MEPA statute (116D) was amended in 2003 to exempt feedlots from environmental review if they are under 1,000 animal units or the county holds a public hearing on the project and the project complies with MPCA permit requirements. The exemptions section in the rules was amended accordingly. The result is that few, if any, environmental reviews have local governments RGUs anymore. The MPCA is the RGU for the ones that are prepared.	**Local government:** -Conditional Use Permit. -Grading/drainage/erosion control plan. -Wetlands mitigation plan. State: NPDES/SDS permit, construction stormwater permit, water appropriation permit Federal: NPDES administered by State	Amendment of MEPA in 2003 eliminated most local government environmental reviews. Recommendation: No change to this category. *INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:* · *Not all counties have taken over the feedlot regulations. Local conditional use permit may or may not be required. The EAW process would give all affected (people) the opportunity to comment and larger agencies to review.*
4410.4300 MANDATORY EAW CATEGORY. Subp. 30. **Natural areas.** For projects resulting in the permanent physical encroachment on lands within a national park, state park, wilderness area, state lands and waters within the boundaries of the Boundary Waters Canoe Area, scientific and natural area, or state trail corridor when the encroachment is inconsistent with laws applicable to or the management plan prepared for the recreational unit, the DNR or **local government unit** shall be the RGU.	page 157 of 1982 SONAR: This category is proposed because natural areas are publicly owned properties that have been set aside to preserve significant natural resources for future generations. These are sensitive areas of unique quality which may be significantly impacted by inappropriate development. Environmental review is necessary for these activities to allow public involvement in decisions affecting publicly owned resources. Enabling legislation conferring authority for the designation of these public facilities mandates the preparation of a master management plan for the unit. These plans may vary according to the characteristics of the area and purposes for designation. As a result, the standard of inconsistent with the management plan is proposed. This is the most reasonable method of addressing the diversity among these units.	**Local government:** -Comprehensive plan amend if community has a plan. -Rezoning if community has zoning. -Subdivision/platting approval. -Conditional Use Permit. -Site plan approval. -Grading/drainage/erosion control plan. -Wetlands mitigation plan. -Road access permit on local road. -Building permits for structures. State: Master plan per M.S. 86A.09 Federal: National park or forest management plans.	Great variation exists across local governments regarding technical/scientific expertise for potential environmental impacts from projects of this type. Recommendation: No change to this category from local government perspective, but see MnDNR recommendation for this category in Appendix D. *INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:* · *Perhaps the DNR should be the RGU and not have an option of DNR or local government RGU.* · *Keep this unchanged.*

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
4410.4300 MANDATORY EAW CATEGORY. Subp. 31. **Historical places.** For the destruction, in whole or part, or the moving of a property that is listed on the National Register of Historic Places or State Register of Historic Places, the permitting state agency or **local unit of government** shall be the RGU, except this does not apply to projects reviewed under section 106 of the National Historic Preservation Act of 1966, United States Code, title 16, section 470, or the federal policy on lands, wildlife and waterfowl refuges, and historic sites pursuant to United States Code, title 49, section 303, or projects reviewed by a local heritage preservation commission certified by the State Historic Preservation Office pursuant to Code of Federal Regulations, title 36, sections 61.5 and 61.7. This subpart does not apply to a property located within a designated historic district if the property is listed as "noncontributing" in the official district designation or if the State Historic Preservation Office issues a determination that the property is noncontributing.	page 157 of 1982 SONAR: This category area is proposed because there is very little government authority to protect sites listed on the National Register of Historic Places. The requirement for environmental review prior to the destruction of such facilities is needed to provide the public an opportunity to take part in decisions that may significantly affect the preservation of our national heritage. Historical resources are protectable natural resources under the Minnesota Environmental Rights Act. Approximately 907 sites in Minnesota are currently listed on the National Register. Sites so listed are regarded to be nationally significant resources. These sites are frequently privately owned and there may be little financial incentive for the owner to maintain the site. Public review may produce feasible alternatives to the destruction of the facility. The opportunity to review these alternatives via environmental review is reasonable because of the lack of other forms of regulation. page 21 of 1997 SONAR: The rules were amended to: clarify moving of a building was included; add the State Register of Historic Places; and add two exemptions for federal program review. page 39 of 2005 SONAR: The 2005 rules amendment added two situations where an EAW is not required. The first is when destruction will be reviewed by a certified local heritage preservation commission. The State Historic Preservation Office believes that review by such a commission gives adequate oversight over historic places without preparation of an EAW. To be certified, a local heritage preservation commission applies to SHPO, which reviews the application and local ordinance for consistency with nationwide standards established in the Code of Federal Regulations at the cited locations. The second situation added has to do with the nature of the property proposed for destruction. In some cases, the historic place included on the National or State Register is an entire district rather than a single structure. In such districts, not all the properties actually have or contribute to the historic value of the district.	**Local government:** -Maybe a demolition permit. **State:** **Federal:**	Reasoning of past SONARs still remains sound. Mandatory review by a qualified entity is appropriate: if a historic resource is destroyed, it's gone. Recommendation: No change to this category. *INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:* · *Keep this unchanged: gives other agencies the opportunity to weigh in on local buildings that may be of broader significance than just for local culture.* · *Eliminate this category.*
4410.4300 MANDATORY EAW CATEGORY. Subp. 32. **Mixed residential and industrial-commercial projects.** If a project includes both residential and industrial-commercial components, the project must have an EAW prepared if the sum of the quotient obtained by dividing the number of residential units by the applicable residential threshold of subpart 19, plus the quotient obtained by dividing the amount of industrial-commercial gross floor space by the applicable industrial-commercial threshold of subpart 14, equals or exceeds one. The **local governmental unit** is the RGU. **4410.4400 MANDATORY EIS CATEGORY.** Subp. 21. **Mixed residential and commercial-industrial projects.** If a project includes both residential and commercial-industrial components, the project must have an EIS prepared if the sum of the quotient obtained by dividing the number of residential units by the applicable residential threshold of subpart 14, plus the quotient obtained by dividing the amount of industrial-commercial gross floor space by the applicable industrial-commercial threshold of subpart 11, equals or exceeds one.	page 55 and 66 of 1988 SONAR: A new category created to close a loophole whereby mixed use projects were not covered by either the residential or industrial/commercial/institutional categories.	**Local government:** -Comprehensive plan amend if the community has a plan. -Rezoning if the community has zoning. -Subdivision/platting approval. -Conditional Use Permit. -Site plan approval. -Wetlands mitigation plan. -Building permits for structures. **State:** -Driveway permit (Mn/DOT) if state highway. **Federal:** -Clean Water Act 404 permit (wetlands)	Recommendation: Consider possible change in thresholds for communities with comprehensive plans that include specified elements, but this merits very careful examination. The variation in expertise, sophistication, interest, and effectiveness in planning and regulatory methods across local governments remains. The diversity of projects also continues. The threshold quantities were controversial in 1982 and there's little reason to believe this has changed. *INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:* · *There should be some exception for communities with a comprehensive land use plan. Maybe exempt if mixed use developments are addressed in the land use plan. How a community separates or combines uses is a zoning function.* · *Eliminate this category for both EAW and EIS (comprehensive plan establishes the use, local planning and project reviews are enough).*

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
4410.4300 MANDATORY EAW CATEGORY. Subp. 33. **Communications towers.** For construction of a communications tower equal to or in excess of 500 feet in height, or 300 feet in height within 1,000 feet of any public water or public waters wetland or within two miles of the Mississippi, Minnesota, Red, or St. Croix rivers or Lake Superior, the **local governmental unit** is the RGU.	page 56 in 1988 SONAR: Category created in response to a number of petitions involving communication towers, which apparently were reflective of the increasing number of towers being constructed. Information from the DNR indicates that towers have a high potential for killing night migrating birds. There also was the potential for significant aesthetic impacts. Up until just before this time, the federal FCC prepared an environmental assessment for any tower in excess of 500 feet, but had recently eliminated that procedure. The new rule adopted the former federal threshold. page 22 of 1997 SONAR: added the 300' height in sensitive areas.	**Local government:** -Conditional Use Permit. -Grading/drainage/erosion control plan. -Wetlands mitigation plan. -Site plan approval. -Building permits for structures. -Road access permit local road. **State:** -Driveway permit (Mn/DOT) if state highway. **Federal:**	Reasoning of original SONAR still remains sound. Recommendation: No change to this category.
4410.4300 MANDATORY EAW CATEGORY. Subp. 34. **Sports or entertainment facilities.** For construction of a new sports or entertainment facility designed for or expected to accommodate a peak attendance of 5,000 or more persons, or the expansion of an existing sports or entertainment facility by this amount, the **local governmental unit** is the RGU.	pages 57 and 66 of 1988 SONAR: New category created. A significant number of such facilities had been reviewed since 1982 (horse tracks, amphitheaters, a sports complex, a basketball arena, and a zoo expansion.). Experience demonstrated that environmental review was appropriate. However, existing categories were not well-suited to such facilities. Industrial/commercial/institutional category is based on gross floor space. Experience reviewing sports facilities led to the conclusion that attendance rather than floor space is a better estimator of environmental effects.	**Local government:** -Comprehensive plan amend if community has a plan. -Rezoning if the community has zoning. -Subdivision/platting approval. -Conditional Use Permit. -Site plan approval. -Building permits for structures. **State**: NPDES, highway improvements **Federal**: highway improvements	Reasoning of original SONAR still remains sound. Recommendation: No change to this category. *INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:* · *Keep this unchanged. Activities of such large scale can have more than a local impact and regionally can impact other communities. Also gives a broader group the opportunity to comment.*
4410.4400 MANDATORY EIS CATEGORY. Subp. 22. **Sports or entertainment facilities.** For construction of a new outdoor sports or entertainment facility designed for or expected to accommodate a peak attendance of 20,000 or more persons or a new indoor sports or entertainment facility designed for or expected to accommodate a peak attendance of 30,000 or more persons, or the expansion of an existing facility by these amounts, the local governmental unit is the RGU.			
4410.4300 MANDATORY EAW CATEGORY. Subp. 36. **Land use conversion, including golf courses.** Items A and B designate the RGU for the type of project listed: A. For golf courses, residential development where the lot size is less than five acres, and other projects resulting in the permanent conversion of 80 or more acres of agricultural, native prairie, forest, or naturally vegetated land, the **local government unit** shall be the RGU, except that this subpart does not apply to agricultural land inside the boundary of the Metropolitan Urban Service Area established by the Metropolitan Council. B. For projects resulting in the conversion of 640 or more acres of forest or naturally vegetated land to a different open space land use, the **local government unit** shall be the RGU.	page 54 of 1988 SONAR: The exemption for land within the Metropolitan Urban Service Area was added because the planning policies for the metropolitan area was considered to have adequately addressed the issue of agricultural land conversion. page 22 of 1997 SONAR: The land conversion for golf courses threshold formerly was part of the "forestry and agriculture" category of Subp. 28. Residential development for lots larger than urban size was added as well. The intent was to acknowledge that conversion of land can have environmental effects, not just the number of units as is the measure for the residential category.	**Local government:** -Comprehensive plan amend if community has a plan. -Rezoning if the community has zoning. -Subdivision/platting approval. -Conditional Use Permit. -Site plan approval. -Wetlands mitigation plan. -Road access permit on local road. -Building permits for structures. -Grading/drainage/erosion control plan. **State:** -Water appropriation permit. -Driveway permit if state hwy. **Federal:** -CWA 404 permit	Recommendation: Consider possible change to threshold quantity. Consider possible clarification of language for project type. *INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:* · *Threshold of 80 acres too low for golf courses or residential: could be as few as 30 residential lots. Maybe 160 acres.* · *Language should be clarified. Does conversion to any land use cross the EAW threshold? This may be too broad. Converting from golf course to park or open space should not trigger an EAW.*

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
4410.4300 MANDATORY EAW CATEGORY. Subp. 36a. **Land conversions in shoreland.** A. For a project that alters 800 feet or more of the shoreline in a sensitive shoreland area or 1,320 feet or more of shoreline in a nonsensitive shoreland area, the **local governmental unit** is the RGU. B. For a project that alters more than 50 percent of the shore impact zone if the alteration measures at least 5,000 square feet, the **local governmental unit** is the RGU. C. For a project that permanently converts 20 or more acres of forested or other naturally vegetated land in a sensitive shoreland area or 40 or more acres of forested or other naturally vegetated land in a nonsensitive shoreland area, the **local governmental unit** is the RGU. **4410.4400 MANDATORY EIS CATEGORY.** Subp. 27. **Land conversion in shorelands.** For a project that permanently converts 40 or more acres of forested or other naturally vegetated land in a sensitive shoreland area or 80 or more acres of forested or other naturally vegetated land in a nonsensitive shoreland area, the **local governmental unit** is the RGU.	pages 50 and 55 of 2007 SONAR: As a result of the concerns over shoreland development (see Subp. 19.a.) this threshold was added to parallel the existing Subp. 36 conversion category while focusing on shorelands.	**Local government:** -Comprehensive plan amend if community has a plan. -Rezoning if the community has zoning. -Subdivision/platting approval. -Conditional Use Permit. -Site plan approval. -Grading/drainage/erosion control plan. -Wetlands mitigation plan. -Road access permit on local road. -Building permits for structures. **State:** -Water appropriation permit. -Driveway permit (Mn/DOT) if state highway. -Permit to mine (Reclamation permit). -Clean Water Act 401 certif. **Federal:** -Clean Water Act 404 permit (wetlands).	This category was among those specifically created in 2007. Experience has raised questions about whether the language of the category fully reflects the intent regarding permanent land conversion. Recommendation: Review intent and consider clarifying language. *INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:* · *Keep this unchanged.* · *Eliminate this category for both EAW and EIS.*
4410.4300 MANDATORY EAW CATEGORY. Subp. 37. **Recreational trails.** If a project listed in items A to F will be built on state-owned land or funded, in whole or part, by grant-in-aid funds administered by the DNR, the DNR is the RGU. For other projects, if a **governmental unit is sponsoring** the project, in whole or in part, that governmental unit is the RGU. If the project is not sponsored by a unit of government, the RGU is the **local governmental unit**. For purposes of this subpart, "existing trail" means an established corridor in current legal use. A. Constructing a trail at least ten miles long on forested or other naturally vegetated land for a recreational use other than snowmobiling or cross-country skiing, unless exempted by part 4410.4600, subpart 14, item D, or constructing a trail at least 20 miles long on forested or other naturally vegetated land exclusively for snowmobiling or cross-country skiing. B. Designating at least 25 miles of an existing trail for a new motorized recreational use other than snowmobiling. In applying items A and B, if a proposed trail will contain segments of newly constructed trail and segments that will follow an existing trail but be designated for a new motorized use, an EAW must be prepared if the sum of the quotients obtained by dividing the length of the new construction by ten miles and the length of the existing but newly designated trail by 25 miles, equals or exceeds one. C. Paving ten or more miles of an existing unpaved trail, unless exempted by part 4410.4600, subpart 27, item B or F. Paving an unpaved trail means to create a hard surface on the trail with a material impervious to water. D. Constructing an off-highway vehicle recreation area of 80 or more acres, or expanding an off-highway vehicle recreation area by 80 or more acres, on agricultural land or forested or other naturally vegetated land. E. Constructing an off-highway vehicle recreation area of 640 or more acres, or expanding an off-highway vehicle recreation area by 640 or more acres, if the land on which the construction or expansion is carried out is not	2004 SONAR dedicated exclusively to this category pages 4 & 5: One particular aspect of the controversy over motorized recreational vehicle usage in Minnesota led to this rulemaking (to create this category) in a direct way. When the DNR released its first trail system plans for the three regions of northern Minnesota in 2000 and 2001, citizens petitioned for Environmental Review and filed lawsuits when the DNR, in part, denied the petitions. While the Court of Appeals ruled that only some of the actions in the system plans constituted actual "projects" subject to environmental review, trail planning by the DNR was seriously impeded for several years. This situation brought attention to the fact that the existing Environmental Review program rules did not have any guidance in the form of mandatory review and exemption categories regarding which kinds of trails were subject to review. This realization is a major factor leading to this rulemaking. The legislature in 2003 ordered the EQB to adopt rules providing for threshold levels for environmental review for recreational trails. RGU assignment is consistent with the general principles for RGU assignment in the rules: (1) if a state agency will carry out a project it is the RGU and (2) the RGU is the unit with the greatest responsibility for supervising or approving the project as a whole or has expertise that is relevant for the review. The Department of Natural Resources (DNR) is named as RGU for all trail projects for which it is either the project constructor or the provider of grant-in-aid funds. This gives the DNR a strong degree of authority over the project. In addition, the DNR staff has expertise with the review of recreational trails that is likely to be greater than that available to a local unit of government that would be a sponsor for a grant-in-aid trail. For those projects not constructed by the DNR or involving state grant-in-aid funds, but which will be sponsored by another unit of government, the sponsoring unit will be the RGU; this is consistent with the general principle of RGU assignment.	**Local government:** -Subdivision/platting approval. -Conditional Use Permit. -Grading/drainage/erosion control plan. -Wetlands mitigation plan. -Road access permit on local road. **State:** -Driveway permit (Mn/DOT) if state highway. **Federal:** -Clean Water Act 404 permit (wetlands). -Clean Water Act 401 certif.	The reasoning of the 2004 category SONAR still stands. Recommendation: No change to this category. See DNR comments in Appendix D for additional discussion. *INPUT RECEIVED FROM POLITICAL SUBDIVISIONS:* · *Not clear if environmental review is required for non-motorized trails such as a bicycle trail. Questionable if environmental review is needed for non-motorized trail.* The option to only include trails for motorized uses in the mandatory category was rejected in 2004 because it was recognized that motorized use is not the only reason why recreational trail projects may have environmental impacts.

Mandatory Categories: Local Government as RGU	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities such as mineral mining. F. Some recreation areas for off-highway vehicles may be constructed partially on agricultural naturally vegetated land and partially on land that is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities. In that case, an EAW must be prepared if the sum of the quotients obtained by dividing the number of acres of agricultural or naturally vegetated land by 80 and the number of acres of land that is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities by 640, equals or exceeds one.			

APPENDIX B: MINNESOTA DEPARTMENT OF TRANSPORTATION CATEGORIES: Prepared by MnDOT

Mandatory Categories: MnDOT as RGU	Intended Historical Purpose	Potential Local, State, or Federal Permits that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
4410.4300 MANDATORY EAW CATEGORY. Subp. 21. **Airport projects.** Items A and B designate the RGU for the type of project listed: A. For construction of a paved, new airport runway, the DOT, local governmental unit, or the Metropolitan Airports Commission shall be the RGU. B. For construction of a runway extension that would upgrade an existing airport runway to permit usage by aircraft over 12,500 pounds that are at least three decibels louder than aircraft currently using the runway, the DOT, local government unit, or the Metropolitan Airports Commission shall be the RGU. The RGU shall be selected according to part 4410.0500, subpart 5.	page 145 of 1982 SONAR: This category area is proposed because of the potential for significant impacts related to local and regional land use, local economic and demographic issues, transportation, noise, air quality, and energy. New facilities and expansion of existing facilities to accommodate noisier aircraft are likely to be very controversial. The EAW threshold for a new airport runway in the "key system" existed in the previous rule. The basic qualitative measure applied to these categories is that airports able to accommodate jet aircraft have greatest potential to create significant environmental impacts. Facilities to accommodate jet aircraft must include a runway of 5,000 length or greater. The construction of a new facility to accommodate jet air traffic is proposed as a mandatory EIS threshold. The more likely case is that an existing facility would be expanded from a strictly small aircraft facility to a jet aircraft facility. Similar concerns could arise with runway modifications to allow use by larger jet facilities. Such potential expansion is addressed as a mandatory EAW with the need for an EIS discretionary. The 12,500 pound aircraft weight corresponds to a minimal weight for jet aircraft. The three decibel increase corresponds to a noise increase 1000 times the prior noise level. Construction of new facilities for multi-engine, twin engine and single engine aircraft and expansion of these facilities to less than jet aircraft capacity is subject to environmental review on a discretionary basis. The proposed EIS category corresponds to the current EAW threshold. Minnesota has 18 key system airports. Key system airports are airports capable of handling jet aircraft. Minnesota has 73 intermediate system airports (light to medium sized multi-engine aircraft) and 50 landing strip system airports (single and twin engine aircraft). page 19 of 1997 SONAR: In 1997, the rule was amended to require an EAW for all new airport runways.	**Local**: Possible subdivision/platting review, grading permit, building permit for structures, or conditional use permits **State**: NPDES Construction General Permit (stormwater pollution prevention during construction) **Federal**: FAA 7460 Notification (height, safety and operational hazards related to airspace)	Zoning issues are all handled at the local level. Stormwater concerns are addressed at the state level with the NPDES Construction permit. At the federal level, the RGU must work with FAA to meet all applicable federal regulations, per the 7460 Notification process (e.g. height restrictions, safety and operational issues). MnDOT, as approved by the FAA, often assists locals with preparation of the **EAW** and related environmental documents on projects where MnDOT is not the RGU. This is an efficiency measure, as locals are unlikely to be familiar with environmental review as it pertains to airport construction, and would otherwise need to hire expensive consultants or train staff for that particular project. This relationship works well for all organizations and there are no recommended changes for this category at this time. The environmental review process is the only process which allows for public input, and will identify potential issues of contamination, historical and cultural significance, community issues (e.g. noise and socio-economics) or cumulative impacts and land use considerations. In the metropolitan area, the Metropolitan Airport Commission (MAC) conducts air quality or noise analyses, if the environmental review identifies an area of concern. In outstate areas, the airport conducts these analyses.
4410.4400 MANDATORY EIS CATEGORY. Subp. 15. **Airport runway projects.** For construction of a paved and lighted airport runway of 5,000 feet of length or greater, the DOT or local government unit shall be the RGU.			Zoning issues are all handled at the local level. Stormwater concerns are addressed at the state level with the NPDES Construction permit. At the federal level, the RGU must work with FAA to meet all applicable federal regulations, per the 7460 Notification process (e.g. height restrictions, safety and operational issues). MnDOT, as approved by the FAA, often assists locals with preparation of the **EIS** and related environmental documents on projects where MnDOT is not the RGU. This is an efficiency measure, as locals are unlikely to be familiar with environmental review as it pertains to airport construction, and would otherwise need to hire expensive consultants or train staff for that particular project. This relationship works well for all organizations and there are no recommended changes for this category at this time. The environmental review process is the only process which allows for public input, and will identify potential issues of contamination, historical and cultural significance, community issues (e.g. noise and socio-economics) or cumulative impacts and land use considerations. In the metropolitan area, the Metropolitan Airport Commission (MAC) conducts air quality or noise analyses, if the environmental review identifies an area of concern. In outstate areas, the airport conducts these analyses.
4410.4300 MANDATORY EAW CATEGORY. Subp. 22. **Highway projects.** Items A to C designate the RGU for the type of project listed: A. For construction of a road on a new location over one mile in length that will function as a collector roadway, the DOT or local government unit shall be the RGU. B. For construction of additional travel lanes on an existing road for a length of one or more miles, the DOT or local government unit shall be the	page 146 of 1982 SONAR: This category area is proposed because of the potential for significant impacts related to local and regional land use, local economic and demographic issues, transportation, noise, air quality, energy, water quality, erosion, drainage, water resources, habitat destruction, and construction impacts. New faci1ities and the expansion of existing facilities to accommodate increased traffic are likely to be very controversia1. Although the cumulative impact of local roadways is greatest, primary concern is generated by the construction of arterial and collector roadways because they tend to induce secondary development in the area and they accommodate approximately 85% of	**Local**: Possible subdivision/platting review, grading permit, building permit for structures, or conditional use permits **State**: NPDES Construction (stormwater pollution prevention	EAW: Different levels of local coordination or permits are necessary, depending on the project proposer, city, county, and watershed where the project is located. Water quality, wetland preservation/mitigation, and construction stormwater issues are addressed through state and federal permits. The environmental review process is the only process which allows for public input, and will identify potential issues of contamination, historical and cultural significance, community issues (e.g. noise and socio-economics) or cumulative impacts and land use

Mandatory Categories: MnDOT as RGU	Intended Historical Purpose	Potential Local, State, or Federal Permits that may (or may not) apply.	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
RGU. C. For the addition of one or more new interchanges to a completed limited access highway, the DOT or local government unit shall be the RGU.	the total mileage driven by motorists. Arterial roadways are commonly four or more lanes in width. The EIS category at uses this as a qualitative threshold.	during construction) Watershed District permit (wetland mitigation, stormwater pollutant restrictions, infiltration requirements, or volume control reductions) , 401 Certification (MPCA authority to review 404 permit applications (per CWA)) **Federal**: USACE Section 10 (work on structures other than bridges or causeways that affect the course, condition, or capacity of navigable waters of the United States) or USACE 404 (regulates the discharge of dredged and fill material into waters of the United States, including wetlands)	considerations. At this time, the only change to the categorical thresholds that MnDOT and the LGUs recommend is that category ***B. For construction of additional travel lanes on an existing road for a length of one or more miles…*** should be increased **from one mile to two miles.** This recommendation is proposed because these operational improvement projects, which are unlikely to induce secondary impacts, are a low risk to those resources not already covered in the existing permit requirements. EAWs in these instances provide little value to the community and environment for the effort and resources they require.
4410.4400 MANDATORY EIS CATEGORY. Subp. 16. **Highway projects.** For construction of a road on a new location which is four or more lanes in width and two or more miles in length, the DOT or **local government unit** shall be the RGU.			EIS: Different levels of local coordination or permits are necessary, depending on the project proposer. Water quality, wetland preservation/mitigation, and construction stormwater issues are addressed through state and federal permits. However, the environmental review process is the only process which allows for public input, and will identify potential issues of contamination, historical and cultural significance, community issues (e.g. noise and socio-economics), cumulative impacts and land use considerations. At this time, MnDOT, in coordination with LGUs do not recommend changes to this categorical threshold
4410.4300 MANDATORY EAW CATEGORY. Subp. 23. **Barge fleeting.** For construction of a new or expansion of an existing barge fleeting facility, the DOT or port authority shall be the RGU.	page 151 of 1982 SONAR: This category area is proposed because of the potential for significant impacts related to water quality, air quality, noise, wildlife habitat, aesthetics, and the use of public resources. The qualitative measure of the thresholds applied to the EAW category is the area of water surface occupied by the facility. This measure ·most appropriately reflects the total potentia1 for impacts from the facility. The quantitative threshold proposed corresponds to approximately one half acre. Such a facility would accommodate approximately 80 boats. The proposed category is the same as the current rules. This threshold has proven to, be reasonable for defining major facilities. Marinas may be constructed in wild and scenic river areas, however, because of the unique character of these areas, the areas are generally inappropriate for marinas. Under the current rules, requests for EISs on' marinas have mostly been confined· to wild and scenic river systems.	**Local**: Site Plan Approval. Possible subdivision/platting review, grading permit, building permit for structures, or conditional use permits (operator facilities) **State**: MNDNR, MPCA and MnDOT (review or permitting of sheet pile at edge of slip) **Federal**: USACE Section 404 permit, FAA Temporary Airspace Permit (for construction cranes) FAA Permanent Airspace Permit (with mapping revisions for cranes and building locations in area) **International**: Boundary Waters Treaty of 1909 (guarantees international navigable waters be free and open)	EAW: Local entities review siting, and permits related to buildings and operational facilities. State and Federal agencies take an interest in work that is done in the water. The international treaty guarantees that international waters remain open for navigational purposes. However, the environmental review process is the only process which allows for public input, and will identify potential issues of contamination, historical and cultural significance, community issues (e.g. noise and socio-economics) or cumulative impacts and land use considerations. MnDOT and the Minnesota Port Authorities agree that the state categorical thresholds are set at a reasonable level, which protects environmental resources, without negatively impacting state commerce.
4410.4400 MANDATORY EIS CATEGORY. Subp. 17. **Barge fleeting facilities.** For construction of a barge fleeting facility at a new off-channel location that involves the dredging of 1,000 or more cubic yards, the DOT or port authority shall be the RGU.			EIS: Local entities review siting, and permits related to buildings and operational facilities. State and Federal agencies take an interest in work that is done in the water. The international treaty guarantees that international waters remain open for navigational purposes. However, the environmental review process is the only process which allows for public input, and will identify potential issues of contamination, historical and cultural significance, community issues (e.g. noise and socio-economics) or cumulative impacts and land use considerations. MnDOT and the Minnesota Port Authorities agree that the state categorical thresholds are set at a reasonable level, which protects environmental resources, without negatively impacting state commerce.

ENVIRONMENTAL QUALITY BOARD CATEGORIES

Mandatory Categories: EQB as RGU **Prepared with assistance of Department of Commerce**	**Intended Historical Purpose**	**Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply**	**Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?**
4410.4300 MANDATORY EAW CATEGORY. Subp. 2. **Nuclear fuels and nuclear waste.** Items A to F designate the RGU for the type of project listed: A. For construction or expansion of a facility for the storage of high level nuclear waste, the EQB shall be the RGU. B. For construction or expansion of a facility for the storage of low level nuclear waste for one year or longer, the MDH shall be the RGU. C. For expansion of a high level nuclear waste disposal site, the EQB shall be the RGU. D. For expansion of a low level nuclear waste disposal site, the MDH shall be the RGU. E. For expansion of an away-from-reactor facility for temporary storage of spent nuclear fuel, the EQB shall be the RGU. F. For construction or expansion of an on-site pool for temporary storage of spent nuclear fuel, the EQB shall be the RGU.	Page 112 of 1982 SONAR: In establishing these categories, nuclear waste was categorized into three main types: high level waste, low level waste, and spent nuclear fuel. In addition, nuclear fuel processing facilities are addressed. Waste facilities are distinguished by whether they are designed for disposal or for temporary storage and by whether the proposal entails construction at a new site or the expansion of an existing facility. These categories are addressed on an all or none basis, i.e. no quantitative thresholds are applied. The basic reason for this is that commercially feasible operations are likely to generate enough waste to be of concern and that even small amounts of nuclear waste are likely to generate significant public concern and could be hazardous. The Minnesota Department of Heath has regulatory authority relating to fissionable materials pursuant to Minn. Stat. § 144.12. The Radioactive Waste Management Act at Minn. Stat. § 116C.71 requires legislative authorization of any radioactive waste management facility. Primary authority relating to the impacts of processing facilities rests with the Pollution Control Agency pursuant to Minn. Stat. § 115.03 and Minn. Stat. § 116.07. Environmental review documents prepared pursuant to these proposed rules would be subject to cooperative state/federal procedures. The U.S. Nuclear Regulatory Commission has jurisdiction over nuclear materials.	Fissionable materials: Minnesota Department of Heath pursuant to Minn. Stat. § 144.12 Minn. Stat. § 116C.72 requires legislative authorization of any radioactive waste management facility. processing facilities: Pollution Control Agency pursuant to Minn. Stat. § 115.03 and Minn. Stat. § 116.07 Environmental review documents prepared pursuant to these proposed rules would be subject to cooperative state/federal procedures. The U.S. Nuclear Regulatory Commission has jurisdiction over nuclear materials.	Any amendment of these categories requires extensive, multiagency analysis because of the complex issues surrounding nuclear waste and the need to protect public health and safety. If an EAW is prepared on a nuclear waste project it is unlikely that there would be a negative declaration (no EIS). Recommendation: There may be overlap between 4410.4300 Subp. 2.A. and 4410.4400, Subp. 2.C. This should be examined. Dept. of Commerce notes: A project with the profile described in 4410.4300 Subp.2.A. (construction or expansion of a storage facility) would actually be a mandatory EIS per Minn. Stat. 116C.83, Subd. 6(b). Environmental review and protection. (a) The siting, construction, and operation of an independent spent-fuel storage installation located on the site of a Minnesota generation facility for dry cask storage of spent nuclear fuel generated solely by that facility is subject to all environmental review and protection provisions of this chapter and chapters 115, 115B, 116, 116B, 116D, and 216B, and rules associated with those chapters, except those statutes and rules that apply specifically to a radioactive waste management facility as defined in section 116C.71, subdivision 7. (b) An environmental impact statement is required under chapter 116D for a proposal to construct and operate a new or expanded independent spent-fuel storage installation. The commissioner of the Department of Commerce shall be the responsible governmental unit for the environmental impact statement. Prior to finding the statement adequate, the commissioner must find that the applicant has demonstrated that the facility is designed to provide a reasonable expectation that the operation of the facility will not result in groundwater contamination in excess of the standards established in section 116C.76, subdivision 1, clauses (1) to (3).
4410.4400 MANDATORY EIS CATEGORY. Subp. 2. **Nuclear fuels and nuclear waste.** Items A to D designate the RGU for the type of project listed: A. For the construction or expansion of a nuclear fuel or nuclear waste processing facility, including fuel fabrication facilities, reprocessing plants, and uranium mills, the DNR shall be the RGU for uranium mills; otherwise, the PCA shall be the RGU. B. For construction of a high level nuclear waste disposal site, the EQB shall be the RGU. C. For construction of an away-from-reactor facility for temporary storage of spent nuclear fuel, the Public Utilities Commission shall be the RGU. D. For construction of a low level nuclear waste disposal site, the MDH shall be the RGU.			
4410.4300 MANDATORY EAW CATEGORY. Subp. 3. **Electric generating facilities.** For construction of an electric power generating plant and associated facilities designed for or capable of operating at a capacity of between 25 megawatts and 50 megawatts, the EQB shall be the RGU. For electric power generating plants and associated facilities designed for and capable of operating at a capacity of 50 megawatts or more, environmental review shall be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.	Page 115 of 1982 SONAR: This category area is proposed because of the need for coordinating public review with relation to the need for and alternatives to generating facilities as well as with relation to the siting of proposed facilities and because of potential significant environmental impacts relating to air quality, energy use and secondary development resulting from these facilities. Environmental impacts likely to be of concern include air pollution, water pollution, thermal pollution, transportation and storage related impacts, and adjacent land use issues. Hydro, alternative fuel, solar or wind powered facilities are likely to be less than 25 megawatts in size. All nuclear facilities would require an EIS. Page 1 of 2003 SONAR: In 1977 language was added to rules to specifically address how environmental review would be conducted on large power plants and high voltage transmission lines: the Minnesota Energy Agency (the predecessor to the Public Utilities Commission) would prepare an Environmental Report when it received an application. A	Permitting is addressed through Minn. Rules 7849, 7850 for projects of 50 MW and larger.	For facilities between 25 MW and 50MW, the EQB is the RGU for an EAW. While EQB can reassign RGU duties per 4410.0500, it's worth considering if the rule should be amended to designate PUC the RGU even if no permitting/approval authority currently exists at PUC. EQB has no permitting authority either. Recommendation: Initiate discussion on RGU for EAW on facilities under 50 MW other than Large Wind energy Conversion Systems. Dept. of Commerce notes: It is important to note for this category that environmental review of Large Wind Energy Conversion Systems over the 5 MW exemption threshold is regulated—as allowed under 4410.3600:Alternative Review—per the MN Wind Siting Act
4410.4400 MANDATORY EIS CATEGORY. Subp. 3. **Electric generating facilities.** For construction of a large electric power generating plant, environmental review shall be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.			

Mandatory Categories: EQB as RGU Prepared with assistance of Department of Commerce	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
	separate Environmental Report would be prepared by the EQB when a permit was applied for from the EQB. The environmental review rules were amended again in 1981 including "Special Rules for Certain Large Energy Facilities" that stated that the Department of Energy, Planning and Development would prepare an Environmental Report for inclusion in the record of the certificate of need hearing, and the EQB would prepare an Environmental Impact Statement when a permit was applied for. In 1986 the rules were amended to recognize that the Public Utilities Commission could request approval from the EQB of an alternative form of review for high voltage transmission lines. No corresponding language was included for large electric power generating plants. In 1990 the EQB again amended parts 4410.7000 to 4410.7500. Some editing was made, and parts 4410.7200 and 4410.7300 were repealed. 4410.7010 to 4410.7050 were renumbered 7849.7010-7090 in 2009.		(216F) and its associated rules (Minn. Rules 7854). For other types of electric generating facilities, neither the PUC, nor Commerce, has any approval authority over projects with a capacity less than 50MW.
4410.4300 MANDATORY EAW CATEGORY. Subp. 6. **Transmission lines.** For construction of a transmission line at a new location with a nominal capacity of between 70 kilovolts and 100 kilovolts with 20 or more miles of its length in Minnesota, the EQB shall be the RGU. For transmission lines and associated facilities designed for and capable of operating at a nominal voltage of 100 kilovolts or more, environmental review shall be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600. **4410.4400 MANDATORY EIS CATEGORY.** Subp. 6. **Transmission lines.** For construction of a high voltage transmission line, environmental review shall be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.	Page 118 of 1982 SONAR: This category area is proposed because of the potential for significant adverse environmental impacts associated with construction, operation, and maintenance of a linear facility, as well as significant social and economic impacts associated with the location of a linear facility. The proposed EAW threshold is set for facilities that exceed 20 miles in length. These facilities frequently traverse more than one county and usually entail greater impact as a function of increased length. The abbreviated EAW format would place little additional burden upon the utility because the information requested would be developed pursuant to their own internal environmental review or pursuant to federal requirements. The EIS threshold proposed is consistent with regulations relating to the routing of transmission lines.	Permitting is addressed through Minn. Rules 7849, 7850 for projects of 100 kilovolts or more.	Recommendation: No change to this category. Dept. of Commerce notes: The utility industry does not construct transmission lines between 70 kV and 100 kV. They construct operate 69kV lines (exempt per 4410.4600), and the next capacity "interval" is 115 kV (which requires the environmental review provided by Minn. Rules 7850.)
4410.4300 MANDATORY EAW CATEGORY. Subp. 7. **Pipelines.** Items A to D designate the RGU for the type of project listed: A. For routing of a pipeline, greater than six inches in diameter and having more than 0.75 miles of its length in Minnesota, used for the transportation of coal, crude petroleum fuels, or oil or their derivates, the EQB shall be the RGU. B. For the construction of a pipeline for distribution of natural or synthetic gas under a license, permit, right, or franchise that has been granted by the municipality under authority of Minnesota Statutes, section 216B.36, designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than: (1) five miles if the pipeline will occupy streets, highways, and other public property; or (2) 0.75 miles if the pipeline will occupy private property; the EQB or the municipality is the RGU. C. For construction of a pipeline to transport natural or synthetic gas subject to regulation under the federal Natural Gas Act, United States Code, title 15, section 717, et. seq., designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than: (1) five miles if the pipeline will be constructed and operated within an existing right-of-way; or (2) 0.75 miles if construction or operation will require new temporary or permanent right-of-way; the EQB is the RGU. This item shall not apply to the extent that the application is expressly preempted by federal law, or under specific circumstances when an actual conflict exists with applicable federal law.	Page 119 of 1982 SONAR: This category area is proposed because of the potential for significant adverse environmental effects during construction as well as during the use of the facility if a leak should develop. These categories are needed because, although a certificate of need must be prepared for large energy facilities, the certificate of need process does not entail a comprehensive assessment of potential environmental impacts. The thresholds were selected to promote consistency with the certificate of need process. Page 37 of 1988 SONAR: Paragraphs A. and B. amended to be consistent with pipeline routing and permitting requirements. The purpose was to ensure environmental review requirements were addressed with the pipeline routing and permitting requirements adopted by 1987 Legislature. This was intended to avoid delay in the routing and permitting process. This effort was intended to be an alternative review process as allowed under 4410.3600 of the environmental review rules.	Permitting is addressed under Minn. Rules 7852.	Recommendation: Based on review by the Dept. of Commerce, the category should be reviewed to confirm if all pipelines are addressed with Minn. Rules 7852. Dept. of Commerce notes: Based on our review of these mandatory categories, we believe that any project matching the description under these subparts would be required to undergo the approved alternative environmental review (per 4410.3600) as regulated by the Pipeline Routing Act (216G) and its associated rules (Chp. 7852) **216G.02 ROUTING OF CERTAIN PIPELINES.** Subdivision 1.**Definition.** For purposes of this section and notwithstanding section 216G.01, subdivision 3, "pipeline" means: (1) pipe with a nominal diameter of six inches or more that is designed to transport hazardous liquids, but does not include pipe designed to transport a hazardous liquid by gravity, and pipe designed to transport or store a hazardous liquid within a refining, storage, or manufacturing facility; or (2) pipe designed to be operated at a pressure of more than 275 pounds per square inch and to carry gas. Subd. 2.**Prohibition.**

Mandatory Categories: EQB as RGU Prepared with assistance of Department of Commerce	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
D. For construction of a pipeline to convey natural or synthetic gas that is not subject to regulation under the federal Natural Gas Act, United States Code, title 15, section 717, et. seq.; or to a license, permit, right, or franchise that has been granted by a municipality under authority of Minnesota Statutes, section 216B.36; designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than 0.75 miles, the EQB is the RGU. Items A to D do not apply to repair or replacement of an existing pipeline within an existing right-of-way or to a pipeline located entirely within a refining, storage, or manufacturing facility.			A person may not construct a pipeline without a pipeline routing permit issued by the Public Utilities Commission unless the pipeline is exempted from the commission's routing authority under this section or rules adopted under this section. A pipeline requiring a permit may only be constructed on a route designated by the commission.
4410.4400 MANDATORY EIS CATEGORY. Subp. 24. **Pipelines.** For routing of a pipeline subject to the full route selection procedures under Minnesota Statutes, section 216G.02, the Public Utilities Commission is the RGU.			

Mandatory Categories: EQB as RGU Prepared with assistance of Department of Agriculture	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
4410.4300 MANDATORY EAW CATEGORY. Subp. 35. **Release of genetically engineered organisms.** For the release of a genetically engineered organism that requires a release permit from the EQB under chapter 4420, the EQB is the RGU. For all other releases of genetically engineered organisms, the RGU is the permitting state agency. This subpart does not apply to the direct medical application of genetically engineered organisms to humans or animals.	The 1991 SONAR for Proposed Permanent Rules Relating to Release of Genetically Engineered Organisms stated: "This new mandatory EAW category is proposed to carry out the statutory mandate of Minn. Stat. S 116C.94 that the board adopt rules to require an EAW for the proposed release of genetically engineered organisms. "The requirement for an EAW for the release of a genetically engineered organism is needed because a number of potentially serious environmental impacts could result from such activities, if not properly conducted. These environmental impacts could include but are not limited to: "(1) genetically engineered organism could be better suited to the environment than natives species and consequently could take over an ecological niche; "(2) genetically engineered organisms could evolve and become more adapted to their environment, resulting in increased competition for native organisms or increased risks to native organisms; and "(3) undesirable traits could be transferred to pests (e.g., insects or weeds) making them more resistant to pesticides or other methods of control."	**Local government:** -none **State:** The EQB issues a release permit unless the Board has authorized an agency with a significant environmental permit. The EQB determined that the MDA had a significant environmental permit for agriculturally-related GEOs, and the MDA adopted rules in 1994 (MN Rules Ch. 1558). To date, all releases of GEOs have been agriculturally-related. The potential exists, however, for non-agriculturally-related GEOs (e.g., genetically-engineered fish). **Federal**: The USDA has jurisdiction over agriculturally-related GEOs. The MDA cooperated with the USDA in regulation of agriculturally-related GEOs.	Recommendation: No change to these categories.
4410.4400 MANDATORY EIS CATEGORY. Subp. 28. **Genetically engineered wild rice.** For the release and a permit for a release of genetically engineered wild rice for which an EIS is required by Minnesota Statutes, section 116C.94, subdivision 1, paragraph (b), the EQB is the RGU.	The 2007 SONAR for Proposed Rules of the Environmental Quality Board Governing the Environmental Review Program stated: "This new subpart establishes a mandatory category for preparation of an EIS for any project proposed in Minnesota that would involve the release and a permit for a release of genetically engineered wild rice. The 2007 session of the Minnesota Legislature enacted a law making this specific requirement (Laws of Minnesota, Chapter 57, Article 1, Section 141). The wording of this category follows the language of the enactment of that session law.		

Mandatory Categories: EQB as RGU Prepared with assistance of Department of Agriculture	Intended Historical Purpose	Example Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply	Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?
	"Currently there are no EIS thresholds for release of any genetically engineered organisms; hence this new category. There is a requirement for an EAW at chapter 4410.4300, subpart35. This is for release of any genetically engineered organism that requires a permit under chapter 4420 or for genetically engineered organisms covered by a significant environmental permit program of a permitting state agency. This new EIS requirement goes beyond that and is specific to genetically engineered wild rice only. "The Minnesota Department of Agriculture has a significant environmental permit program, authorized at Minnesota Statutes 2006, Chapter 18F- Genetically Engineered Organisms. Under that statute, wild rice is specifically named as an Agriculturally Related Organism (chapter 18F.02, Definitions, subdivision 2a). Wild rice is subject to the Department of Agriculture permit program if produced by genetic engineering methods. "A further requirement of Laws of Minnesota, Chapter 57, Article 1, Section 142 applies the requirement to prepare an EIS in essentially all cases. It eliminates the availability of exceptions or exemptions from environmental review to any permit covered by a qualified federal program, or application by an individual permit applicant seeking an exemption from the board or permitting state agency. The requirement for an EIS for the release and a permit for a release of genetically engineered wild rice is uniform."		

APPENDIX D: MINNESOTA DEPARTMENT OF NATURAL RESOURCES CATEGORIES: Prepared by MDNR

Appendix D identifies each category in the environmental review rules (Minnesota Rules, chapter 4410) for which DNR would be the Responsible Governmental Unit (RGU). The Table below identifies those categories for which DNR recommends a change to the current language in Rule. For each category, the current language in Rule and the number of Environmental Assessment Worksheets (EAWs) or Environmental Impact Statements (EISs) completed or in preparation during the past five years are identified. Justification from Statements of Need and Reasonableness (SONAR) was referenced to describe the historical purpose of the category. Permits and other governmental actions associated with DNR-prepared EAWs and EISs were identified, and staff was consulted for recommendation. The following factors were considered in developing staff recommendations:

(1) How have environmental issues associated with our EAWs and EISs related to what's regulated?
(2) What are the regulatory gaps and overlaps?
(3) What is the extent of public review process, beyond that provided by the EAW or EIS?
(4) What is the extent to which regulatory actions are fragmented or unlikely to integrate?
(5) What is the ability of regulations to allow assessment of "project as a whole"?
(6) What new laws, policies, regulations have been promulgated since the category created and do they make the category less necessary?
(7) Is this category still an issue (e.g., radioactive mineral exploration)?
(8) Consider purpose of category and threshold as described in applicable SONAR(s).

Category/Subject	Recommendation	Appendix page #
4410.4300 subp. 28 B Forestry	Eliminate	D5
4410.4300 subp. 30 Natural areas	Modify	D5
4410.4300 subp. 37 B Recreational trails	Modify	D9
4410.4300 subp. 37 C Recreational trails	Modify	D10
4410.4400 subp. 8 A Metallic mineral mining and processing	Eliminate	D11

TABLE D-1: MANDATORY EAW CATEGORIES: MINNESOTA DEPARTMENT OF NATURAL RESOURCES as RGU				
Mandatory EAW Category	**Category Text**	**Intended Historical Purpose (SONAR)**	**Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply**	**Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?**
4410.4300 **Underground Storage** subp. 9 A	Subp. 9. **Underground storage.** Items A and B designate the RGU for the type of project listed: A. For expansion of an underground storage facility for gases or liquids that requires a permit, pursuant to Minnesota Statutes, section 103I.681, subdivision 1, paragraph (a), the DNR shall be the RGU.	(1982) This category is proposed because this type of project is new and largely untested, is very large in scope, has the potential for groundwater contamination and serious human health impacts and is very controversial. Minn. Stat. § 84.57 mandates a permit for the displacement of groundwater by the underground storage of gases or liquids under pressure. The Department of Natural Resources (DNR) is the responsible permitting agency. No specific rules have been promulgated regarding this authority. One facility of this type has been constructed in Minnesota. No EIS was prepared for that facility. The DNR is currently processing a second application. An EIS has been ordered on the proposed facility. The primary environmental effects of concern on this type of project are groundwater quantity and quality impacts. The lack of a formal process for citizen comment further documents the need for environmental review of this type of activity.	**State:** Minnesota Statutes, section 103I.681 Minnesota Rules, part 6115.0130 Minnesota Statutes, chapter 216B Minnesota Rules, Chapter 7851	Summary: Two state projects currently involve underground storage. Both were developed prior to MEPA. Both also require a great deal of ongoing regulatory oversight indicating that potential long-term management and possible environmental and human health consequences of such projects are high. Recommendation: Maintain this EAW category.
4410.4300 **Underground Storage** subp. 9 B	B. For expansion of an underground storage facility for gases or liquids, using naturally occurring rock materials, that requires a permit pursuant to Minnesota Statutes, section 103I.681, subdivision 1, paragraph (b), the DNR shall be the RGU.	(1982) Minn. Stat. § 84.621 mandates a permit for the storage Of gases or liquids, other than water, in natural rock formations underground. These formations could be naturally occurring or the result of the mining of rock material to create a storage site in a rock formation. No facilities of this .type currently are found in Minnesota and no formal proposals have been presented. It is known, however, that the concept of mining rock to create an underground Cavity in the bedrock is being discussed. The purpose of the cavity would .be to potentially store petroleum products. The primary environmental concerns associated with such an activity would be related to groundwater quality and safety concerns. The DNR is the responsible permitting agency for this type of activity. No specific rules have been promulgated regarding this authority. The lack of a formal process for citizen comment further documents the need for environmental review of this type of activity.	**State:** Minnesota Statutes, section 103I.681 Minnesota Rules, part 6115.0130 Minnesota Statutes, chapter 216B Minnesota Rules, Chapter 7851	Summary: Two state projects currently involve underground storage. Both were developed prior to MEPA. Both also require a great deal of ongoing regulatory oversight indicating that potential long-term management and possible environmental and human health consequences of such projects are high. Recommendation: Maintain this EAW category.
4410.4300 **Metallic mineral mining and processing** subp. 11 A	Subp. 11. **Metallic mineral mining and processing.** Items A to C designate the RGU for the type of project listed: A. For mineral deposit evaluation of metallic mineral deposits other than natural iron ore and taconite, the DNR shall be the RGU.	(1982) Mineral deposit evaluation activities have the potential for causing environmental impacts similar to those of mining - but on a smaller scale. This type of mining activity was not specifically addressed in the current rules. Minnesota has had lengthy experience in evaluating the impacts of mineral deposit evaluation and mining of natural iron ore and taconite. These activities are regulated pursuant to the Mineland Reclamation Rules, 6 MCAR § 1.401. This regulation provides adequate review for most natural iron ore and taconite mineral deposit evaluation activities, therefore, this type of activity is excluded from 6 MCAR § 3.038 J.l. and is subject to environmental review on a discretionary basis. Minnesota has had relatively little experience in evaluating the impacts of mining and mineral deposit evaluation of other types of mineral deposits. Such mining is considered most likely in Minnesota for ores of copper, nickel, and uranium. Because of the lack of experience and lack of other regulations related to these mining activities, they are subject to mandatory environmental review.	**State:** Underground injection control permit Dam safety permit Public Waters Work permit Water appropriation permit Permit to mine Approval of reclamation plan Approval of exploration plans on state lands Listed species takings permit Option D registration air permit Construction stormwater general permit Title V construction/operating air permit SDS/NPDES permit State grant award	Summary: A review of recently prepared EAWs indicates that several potential environmental issues, including some that are not directly regulated, were evaluated. Unregulated potential impacts included wildlife habitat effects, native plant community impacts, indirect impacts to surface waters and cumulative effects. No single permit regulates the project as a whole, so environmental review was the only opportunity to analyze effects of the whole project. Permits associated with this category have gaps and overlaps in authority, and many do not include a public review process. Several public comment letters were received on the EAW, including requests for preparation of EISs. Public comments identified substantive environmental concerns and offered monitoring and mitigation recommendations for implementation by the proposer or via ongoing regulatory authority. Recommendation: Maintain this EAW category.
4410.4300 subp. 11 B	B. For expansion of a stockpile, tailings basin, or mine by 320 or more acres, the DNR shall be the RGU.	(1982) At 6 MCAR § 3.038 J.2. an acreage threshold is used for the EAW for expansion of an existing facility. The lesser EAW requirement is provided for expansions because the impacts related to land use, siting, and demographics are reduced and the primary concerns relate to the mitigation of direct physical	**Local:** Conditional use permit Building permit (variance) Burn permit	Summary: Review of a recently prepared EAW indicates that several potential environmental issues, including some that are not directly regulated, were evaluated. Unregulated potential impacts included wildlife habitat effects, native plant community impacts, and cumulative effects to headwater streams. No single permit regulates the project

TABLE D-1: MANDATORY EAW CATEGORIES: MINNESOTA DEPARTMENT OF NATURAL RESOURCES as RGU				
Mandatory EAW Category	**Category Text**	**Intended Historical Purpose (SONAR)**	**Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply**	**Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?**
		impacts. This could be done without an EIS.	Septic system permit **State:** Water appropriation permit Public waters work permit Dam safety permit Permit to mine amendment Approval of reclamation plan Listed species takings permit Construction stormwater general permit SDS permit 401 Certification Well installation permit **Federal:** Section 404 permit	as a whole, so environmental review was the only opportunity to analyze effects of the whole project. Permits associated with this category have gaps and overlaps in authority, and many do not include a public review process. About 200 public comment letters were received, including requests for preparation of EISs. Public comments identified substantive environmental concerns. Recommendation: Maintain this EAW category.
4410.4300 **Metallic mineral mining and processing** subp. 11 C	C. For expansion of a metallic mineral plant processing facility that is capable of increasing production by 25 percent per year or more, provided that increase is in excess of 1,000,000 tons per year in the case of facilities for processing natural iron ore or taconite, the DNR shall be the RGU.	(1982) At 6 MCAR § 3.038 J.3. a percentage expansion figure is used as a threshold for an EAW. The lesser EAW requirement is provided for expansions because the impacts related to siting and demographics are reduced and the primary concerns relate to the mitigation of direct physical impacts. This could be done without an EIS.	**Local:** Building permit Zoning variances Permit for construction in shoreland area **State:** Permit to mine amendment Public waters work permit Listed species takings permit Part 70 operating permit – major modification NPDES/SDS permit Industrial stormwater permit Construction stormwater general permit Storage tank permit Solid waste permit Hazardous waste generator license Radioactive material registration	Summary: The only recent project in this category underwent a joint state-federal EIS, for which the state EIS was discretionary. Experience with this project identified similar issues to those described for 441.4300, subparts 11A and 11B. Recommendation: Maintain this EAW category.
4410.4300 **Nonmetallic mineral mining** subp. 12A	Subp. 12. **Nonmetallic mineral mining.** Items A to C designate the RGU for the type of project listed: A. For development of a facility for the extraction or mining of peat which will result in the excavation of 160 or more acres of land during its existence, the DNR shall be the RGU.	(1982) The extraction of peat resources has the potential for causing environmental impacts relating to land use, air quality, water quality, mining and drainage. Current peat mining activities tend to be of small scale and for the purpose of marketing the peat as a horticultural product or as a briquet fuel. Peat mining is expected to be extremely controversial if proposals develop to utilize the resource for other energy uses. Data based on actual development of these resources on a broad scale is limited. The threshold levels of 160 acres for a mandatory EAW (6 MCAR § 3.038 K.1.) and 320 acres for a mandatory EIS (6 MCAR § 3.039 H.1.) coincide with Department of Natural Resources policy as set forth in the Minnesota Permit Program Policy Recommendations. In the current rules the 320 acre threshold for an EAW for nonmetallic resources would have	**Local:** Conditional use permit Land exchange **State:** Water appropriation permit Permit to mine (Reclamation permit) Land lease Listed species takings permit NPDES/SDS permit 401 certification	Summary: Very few peat mining operations have prepared environmental documents in the last ten years; however DNR has been in communication and has received proposed projects within this same time period. Each of these projects may have had the potential for significant environmental effects and thus environmental review was appropriate. The relationship of these proposals to federal requirements under Section 404 of the Clean Water Act has been difficult. There has been no information or data to indicate that the 160 acre threshold needs revision. Recommendation: Maintain this EAW category

TABLE D-1: MANDATORY EAW CATEGORIES: MINNESOTA DEPARTMENT OF NATURAL RESOURCES as RGU				
Mandatory EAW Category	**Category Text**	**Intended Historical Purpose (SONAR)**	**Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply**	**Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?**
		applied to peat extraction.	Driveway permit (Mn/DOT) **Federal:** 404 permit Loan application	
4410.4300 **Water appropriation and impoundments** subp. 24 A	Subp. 24. **Water appropriation and impoundments.** Items A to C designate the RGU for the type of project listed: A. For a new appropriation for commercial or industrial purposes of either surface water or ground water averaging 30,000,000 gallons per month; or a new appropriation of either ground water or surface water for irrigation of 540 acres or more in one continuous parcel from one source of water, the DNR shall be the RGU.	(1982) Water appropriation may have significant impact upon existing users of the water and the rights of potential users as well as potential water table impacts that may alter entire ecosystems. Water appropriation is regulated by the Department of Natural Resources (DNR) pursuant to 6 MCAR § 1.5050, however, for large projects more comprehensive environmental review is necessary. The proposed categories and thresholds are the same as the current rules with one exception. The threshold for agricultural appropriation is reduced from 640 to 540 acres. This was done to clarify the threshold. The original intent was to cover center pivot irrigation systems capable of irrigating one section (640 acres) of land. However, such a system actually wets approximately 540 acres. The 540 figure was used in response to requests to Clarify the intent of the category. An. acreage measure is used for agricultural appropriations because this measurement is more compatible with the DNR's regulatory system. (1988) *(Earlier versions also required preparation of an EAW if appropriations exceeded 2 mgd; this was eliminated in 1988).* This revision will provide that industrial-commercial projects will be reviewed according to the essential nature of the project, rather than because a water appropriation may be involved as a secondary component of the project. Confusion has arisen in the past between the mandatory category for water appropriations and other mandatory categories for projects which involve large appropriations of water; the most common example has been peat mining projects. Peat mines of less than 160 acres do not require an EAW according to the non-metallic mineral mining categories; however, such projects sometimes must appropriate more than 2 million gallons of water per day over a short period of time, such as periods of heavy rainfall. Deleting the 2 million gallon per day component of the threshold would eliminate confusion of this nature. Projects which appropriate large quantities of water on a continuous basis will still be covered by the 30 million gallon per month threshold.	**Local:** Grade and fill permit Building permit Conditional use permit Land use permit **State:** Water appropriation permit Public water work permit Utility crossing license Permit to appropriate from infested waters Listed species takings permit Construction stormwater general permit Tank registration Air emissions permit **Federal:** 404 permit	Summary: DNR has recently completed an EAW for this category. Potential impacts of highest concern were to resources affected by the discharge of the water, not its appropriation (erosion and water quality impacts). We found that ongoing regulatory authority over those impacts was limited and would not have addressed some likely impacts of the project. Also, most of the required permits do not have a public input process, so provision of public comments occurred only via the EAW. Recommendation: Maintain this EAW category
4410.4300 **Water appropriation and impoundments** subp. 24 B	B. For a new permanent impoundment of water creating additional water surface of 160 or more acres or for an additional permanent impoundment of water creating additional water surface of 160 or more acres, the DNR shall be the RGU.	(1982) The impoundment category at 6 MCAR § 3.038 W.2. utilized a surface area-qualitative measure because this measure is most closely tied to changes in land use. The volume threshold of acre-feet of water was considered but rejected as having a less direct correlation with impacts and as being more difficult to use administratively. This category was restricted to permanent impoundments because temporary impoundments frequently do not last long enough to modify the current land use. The quantitative threshold was reduced from 200 acres as in the current rules to the proposed 160 acres. This measurement is more consistent with conventional land measurement and with other categories proposed relating to permanent conversion of natural and agricultural lands. (1997) In item B language is inserted for clarification to avoid the	N/A	Summary: Although a project has not recently been proposed that would require preparation of an EAW under this threshold, the DNR still believes the issues identified in the 1982 and 1997 SONARs that created this category remain valid. Recommendation: Maintain this EAW category.

TABLE D-1: MANDATORY EAW CATEGORIES: MINNESOTA DEPARTMENT OF NATURAL RESOURCES as RGU				
Mandatory EAW Category	**Category Text**	**Intended Historical Purpose (SONAR)**	**Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply**	**Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?**
		misinterpretation that small additions to impoundments might be interpreted to require a mandatory EAW once the 160-acre threshold had been passed. It is the size of the addition and not the total size of the impoundment that is the crucial factor.		
4410.4300 **Water appropriation and impoundments** subp. 24 C	C. For construction of a dam with an upstream drainage area of 50 square miles or more, the DNR shall be the RGU.	(1997) In item C, "class II dam" has been deleted since it is a hazard classification and does not relate directly to environmental impacts. In place of "class II" dams has been substituted "dams with an upstream drainage area of at least 50 square miles." This will include many of the class II dams, but will also include some dams of lower hazard classification. It is believed that the watershed size is a better indicator of potential environmental impacts than is hazard classification.	**Local:** Conditional use permit WCA mitigation plan Lake level manipulation application **State**: Public water work permit Dam safety permit WCA mitigation plan (state project) NPDES/SDS permit **Federal:** 404 permit 401 certification (EPA – reservation)	Summary: One EAW has been prepared in recent years under this threshold, but DNR has also prepared 2 other EAWs (one voluntary) for projects that included construction of an outlet control structure. In all cases, there was strong public policy interest in how lake levels would be managed. In some, there were concerns with impacts to fisheries resources to benefit wildlife that were not manageable through ongoing regulatory authority. Other potential impacts were to downstream water quality, shoreline property, access to the lake. In these projects, the EAW was able to assess the project as a whole, while regulatory permits regulated parts of the project and partial impacts, and some key permits did not include a public review process. Recommendation: Maintain this EAW category.
4410.4300 **Forestry** subp. 28 A	Subp. 28. **Forestry.** Items A and B designate the RGU for the type of project listed: A. For harvesting of timber for commercial purposes on public lands within a state park, historical area, wilderness area, scientific and natural area, wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or critical area that does not have an approved plan under Minnesota Statutes, section 86A.09 or 116G.07, the DNR shall be the RGU.	(1982) Harvesting of timber on publicly owned lands is likely to be controversial. Most activities of this nature are· subjected to public review pursuant to the development of a management plan for the area. Environmental review for timber harvesting on public lands not included in such plans is proposed pursuant to 6 MCAR § 3.038 AA.l. It is reasonable to require public review over activities that may significantly alter publicly owned resources. (1997) The caption is proposed to be changed because after the other revisions proposed, this subpart will apply only to forestry activities. Item C is proposed to be moved from this subpart to proposed new subpart 35 that deals with land use conversions. Item D is proposed to be moved from this subpart and reinserted in a modified form at the new subpart 35 dealing with land use conversions.	**State:** Master plan prepared under M.S. 86A.09 Critical Area plan prepared under M.S. 116G.07	Summary: Although a project has not recently been proposed that would require preparation of an EAW under this threshold, the DNR still believes the issues identified in the 1982 and 1997 SONARs that created this category remain valid. Recommendation: Maintain this EAW category.
4410.4300 **Forestry** subp. 28 B	B. For a clearcutting of 80 or more contiguous acres of forest, any part of which is located within a shoreland area and within 100 feet of the ordinary high water mark of the lake or river, the DNR shall be the RGU.	(1982) Clearcutting of timber may be controversial depending on the location of the clearcut. A mandatory EAW is required at 6 MCAR § 3.038 AA. 2. for large clearcutting activities adjacent to water resources. Significant erosion and runoff may result from such activities. The 80 acre quantitative threshold and the 100 foot proximity threshold were established pursuant to· the public meeting process as being reasonable. In practice, clearcuts usually do not exceed 20 to 40 acres. It should be noted that private timber management practices are not subject to this category if they do not require government approval.	**Federal, State, Local:** Timber sale	Summary: Updating of shoreland rules in 1989, passage of the Sustainable Forest Incentive Act in 2001 and implementation of SFI and FSC certification have put additional protections in place so this category is no longer needed. Recommendation: Eliminate this mandatory EAW category.
4410.4300 **Natural areas** subp. 30	**Natural areas.** For projects resulting in the permanent physical encroachment on lands within a national park, state park, wilderness area, state lands and waters within the boundaries of the Boundary Waters Canoe Area, scientific and natural area, or state trail corridor when the encroachment is	(1982) Enabling legislation conferring authority for the designation of these public facilities mandates the preparation of a master management plan for the unit. These plans may vary according to the characteristics of the area and purposes for designation. As a result, the standard of "inconsistent with the management plan" is proposed: This is the most reasonable method of addressing the diversity among these units.	**Local:** Private developments within a recreation unit would be subject to local permits **State:** Master plan prepared under M.S.	Summary: This category requires review for projects that conflict with approved master plans for outdoor recreation units. The category should be retained in the event an inconsistent project is proposed. The most likely situation would be a private development proposal on an inholding within a state park. The DNR believes it is unlikely an inconsistent project would encroach on a state trail corridor and therefore recommends deleting state trail corridors from the category. Clarification could be considered regarding how this category

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Mandatory EAW Category	**Category Text**	**Intended Historical Purpose (SONAR)**	**Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply**	**Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?**
	inconsistent with laws applicable to or the management plan prepared for the recreational unit, the DNR or local government unit shall be the RGU.		86A.09 **Federal:** National Park management plans SNF Management Plan	applies when master plan revisions (that are subject to a public review process) are proposed. Recommendation: delete "…or state trail corridor…"
4410.4300 **Historical places** subp. 31	**Historical places.** For the destruction, in whole or part, or the moving of a property that is listed on the National Register of Historic Places or State Register of Historic Places, the permitting state agency or local unit of government shall be the RGU, except this does not apply to projects reviewed under section 106 of the National Historic Preservation Act of 1966, United States Code, title 16, section 470, or the federal policy on lands, wildlife and waterfowl refuges, and historic sites pursuant to United States Code, title 49, section 303, or projects reviewed by a local heritage preservation commission certified by the State Historic Preservation Office pursuant to Code of Federal Regulations, title 36, sections 61.5 and 61.7. This subpart does not apply to a property located within a designated historic district if the property is listed as "noncontributing" in the official district designation or if the State Historic Preservation Office issues a determination that the property is noncontributing.	(1982) Approximately 907 sites in Minnesota are currently listed on the National Register. Sites so listed are regarded to be nationally significant resources. These sites are frequently privately owned and there may be little financial incentive for the owner to maintain the site if it is located in a high development potential area. Public review may produce feasible alternatives to the destruction of the facility. The opportunity to review these alternatives via environmental review is reasonable because of the lack of other forms of regulation. (1997) Three changes are being proposed to this category. First, "destruction" of a historic property is being clarified to explicitly include being moved to a new location and partial destruction of the physical structure of the place. In practice, the existing category has been interpreted in this way in the past by the Historical Society and the EQB, and it would be beneficial to make this explicit. The logic behind the interpretation is that in some or many cases the historic value of a designated property derives from its association with its locale (e.g., a remaining example of the type of dwelling built by the earliest settlers in a particular place) or from certain features of a building design rather than from the structure as a whole (e.g., certain details of a building facade might be exemplary of a certain architectural style). In these cases, moving the structure or demolishing part of the structure might destroy the historical value of the place without the literal destruction of the property. Second, the scope of this category is being proposed to be expanded to cover places listed on the State Register of Historic Places as well as the National Register. Third, it is being proposed that the EAW requirement not be applied to historic places that undergo historic review under two federal programs. The, first is review under the National. Historic Preservation Act of 1966 (16 U.S.C. 470), section 106; this review is commonly referred to as "section 106" review. The second is review pursuant to 49 U.S.C. 303, federal policy of lands, wildlife and waterfowl refuges, and historic sites; this review is commonly referred to as "section 4f" review. These reviews apply to projects sponsored or assisted by federal agencies, including many highway construction projects. The review of historical resources under these programs is typically more rigorous than would be the case with an EAW, and therefore, requiring projects to undergo both would be redundant. (2006) *(Additional wording added)* The revisions to this category were suggested in discussions about the present category thresholds with the staff of	**State:** Funding for state project Building and electrical permit	Summary: Although DNR is RGU for its own projects in this category, the agency provides no recommendation on this category. DNR defers to the State Historic Preservation Office because of its special expertise with respect to historic sites. Recommendation: None

TABLE D-1: MANDATORY EAW CATEGORIES: MINNESOTA DEPARTMENT OF NATURAL RESOURCES as RGU				
Mandatory EAW Category	**Category Text**	**Intended Historical Purpose (SONAR)**	**Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply**	**Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?**
		the Minnesota Historical Society's State Historic Preservation Office (SHPO). The revisions would add two additional reasons or situations where no EAW would be required prior to the destruction of a property on the National or State registers of Historic Places. The present rules recognize two situations as not requiring preparation of the EAW. These both involve review of historic values through other established federal processes. It is now proposed to add another such situation, namely where the destruction will be reviewed by a certified local heritage preservation commission. The State Historic Preservation Office believes that review by such a commission gives adequate oversight over historic places without preparation of an EAW. To be certified, a local heritage preservation commission applies to SHPO, which reviews the application and local ordinance for consistency with nationwide standards established in the Code of Federal Regulations at the cited locations. The second situation proposed to be added is not a substitute form of review but rather has to do with the nature of the property proposed for destruction. In some cases, the historic place included on the National or State Register is an entire district rather than a single structure. In such districts, not all the properties actually have or contribute to the historic value of the district. A "non-contributing property" is a property located within the boundaries of a designated historic district but which itself is not historic and does not contribute to the historical attributes of the district as a whole. Often, non-contributing properties are buildings constructed many years after the period during which the historic buildings of the district were built. Sometimes these non-contributing properties are identified as being non-contributing in the historic place designation documents, but not always. It is proposed that the destruction of non-contributing properties not require preparation of an EAW if either they are identified as being non-contributing in the designation documents or if the State Historic Preservation Office reviews the matter and issues a determination that the property is non-contributing.		
4410.4300 **Recreational trails** subp. 37	**Recreational trails.** If a project listed in items A to F will be built on state-owned land or funded, in whole or part, by grant-in-aid funds administered by the DNR, the DNR is the RGU. For other projects, if a governmental unit is sponsoring the project, in whole or in part, that governmental unit is the RGU. If the project is not sponsored by a unit of government, the RGU is the local governmental unit. For purposes of this subpart, "existing trail" means an established corridor in current legal use.	(2004) This paragraph prescribes which governmental unit will be the RGU, which stands for "Responsible Governmental Unit," for preparing EAWs for the recreational trails for which review will be required under this subpart. Each mandatory category has an RGU designation listed for it in the appropriate subpart of part 4410.4300. The Department of Natural Resources (DNR) is named as RGU for all trail projects for which it is either the project constructor or the provider of grant-in-aid funds. This assignment is consistent with the general principles for RGU assignment at part 4410.0500 that (1) if a state agency will carry out a project it is the RGU (4410.0500, subp. 1) and (2) the RGU is the unit with the greatest responsibility for supervising or approving the project as a whole or has expertise that is relevant for the review (4410.0500, subp. 5, item B). Where grant-in-aid funds are being supplied to assist with a project the DNR must review and approve the plans for the project prior to entering into the grant agreement. This gives the DNR a strong degree of authority over the project. In addition, the DNR staff has expertise with the review of recreational trails that is likely to be greater than that available to a local unit of government that would be a sponsor for a grant-in-aid trail. Furthermore, assigning all grant-in-aid projects	N/A	

TABLE D-1: MANDATORY EAW CATEGORIES: MINNESOTA DEPARTMENT OF NATURAL RESOURCES as RGU				
Mandatory EAW Category	**Category Text**	**Intended Historical Purpose (SONAR)**	**Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply**	**Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?**
		to the DNR will promote more uniform review of all grant-in-aid projects regardless of where they take place. For those projects not constructed by the DNR or involving state grant-in-aid funds, but which will be sponsored by another unit of government, the sponsoring unit will be the RGU; this is consistent with the general principle of RGU assignment cited as #2 above. For all other projects, the RGU will be the local governmental unit, in keeping with the RGU assignment in other mandatory categories where the permitting responsibility is at the local level. It should be noted that there may be some private trail projects which require no governmental permits, and therefore would not be "governmental actions" under these rules and not be subject to Environmental Review at all.		
4410.4300 **Recreational trails** subp. 37 A	A. Constructing a trail at least ten miles long on forested or other naturally vegetated land for a recreational use other than snowmobiling or cross-country skiing, unless exempted by part 4410.4600, subpart 14, item D, or constructing a trail at least 20 miles long on forested or other naturally vegetated land exclusively for snowmobiling or cross-country skiing.	(2004) Item A would require mandatory preparation of an EAW for the kinds of trails named with the thresholds based on trail length. Item A covers construction of new trails (or extensions of existing trails) which do not follow the alignment of an existing trail. Except for winter uses, the threshold proposed for this category is 10 miles. For the named winter uses, the threshold is proposed to be twice as long, 20 miles, as these uses are generally considered to have lesser potential for environmental impacts due to the fact that frozen soil conditions and snow or ice cover greatly reduce the potential for physical environmental damage. Item A would only apply to trails crossing land that was now forested or otherwise covered with natural vegetation for a distance of at least 10 continuous miles. If a trail was to be partially on naturally vegetated land only the length on such land would be counted. Length was chosen as the primary threshold parameter in order to make the recreational trail categories analogous to the existing categories for linear-type projects, including electrical transmission lines (subp. 6), pipelines (subp. 7), and highways (subp. 22). As stated in the 1982 SONAR, linear projects "usually entail greater impact as a function of increased length." (pg. 119) Although different types of linear projects differ in the extent of their potential for various environmental impacts, generally speaking they all vary in accordance with project length. Specifically for recreational trails, while different types of trails or trail uses vary in their potential for impacts such as ecological damage, runoff and erosion, damage to water resources, and noise, the potential for these impacts will tend to increase with the length of the project simply because, all else being equal, a longer trail has more likelihood of encountering sensitive resources of whatever kind. Another benefit of using length as a surrogate for impact potential is that it is "use neutral." A number of commenters, particularly motorized use organizations, were very concerned about some trail users being "singled out" in the proposed rules, i.e., treated differently than other types of users. Using trail length as the threshold parameter avoids this concern. Finally, length is a basic parameter of trail design that is easy to determine in the early stages of design, promoting an early determination of the need for EAW preparation with accompanying planning efficiency. The thresholds of 10 and 20 miles were chosen for a number of reasons. Most fundamentally, for almost all types of projects covered by the existing mandatory and exemption categories there is a "gap" between the magnitudes of project that are exempt and the smallest projects for which review is mandatory. Following this principle (in the absence of any compelling reasons	**Local:** Permission to cross land Land alteration permit Site permit application WCA mitigation plan **State:** Construction stormwater general permit 401 certification Section 4(f) evaluation Special use permit for highway crossings Lease agreement State grant Public water work permit WCA mitigation plan SNA permit to cross & trail maintenance agreement **Federal:** 404 permit Federal grant	Summary: 4 EAWs have been prepared for projects under this category since the rule came into effect in 2004. Two were for hiking trails, one for a mountain bike trail and one for an OHV trail. Several potential environmental issues, including some that are not directly regulated, were evaluated. Unregulated potential impacts included wildlife habitat effects, wildlife disturbance, and native plant community impacts. No single permit regulates these projects as a whole, so environmental review was the only formal opportunity to analyze effects of the whole project. Permits associated with this category have gaps and overlaps in authority, and many do not include a public review process. Recommendation: Maintain this EAW category.

TABLE D-1: MANDATORY EAW CATEGORIES: MINNESOTA DEPARTMENT OF NATURAL RESOURCES as RGU				
Mandatory EAW Category	**Category Text**	**Intended Historical Purpose (SONAR)**	**Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply**	**Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?**
		not to), the EQB chose to set the mandatory EAW thresholds at some reasonable number of miles, rather than including trails of all lengths (as many commenters had advocated, at least for motorized trails). Further, the most common ratio of the sizes of exemption thresholds to mandatory EAW thresholds among the existing categories is 1:10. Following that reasoning, the proposed threshold of 10 miles for mandatory EAWs for most trails and the numerical exemption thresholds of (less than) 1 mile at items A and C of the proposed exemption categories are reasonable choices. Since snowmobiles and cross-country skiing have a lesser potential for impacts, doubling the threshold to 20 miles is a reasonable choice for those types of trails. Another reason for choosing 10 miles as the basic threshold number is that it makes sense when compared to the thresholds for the other linear-type projects in other subparts. The highway categories have a length threshold of 1 mile, pipelines, either 0.75 or 5 miles depending upon the nature of the product transported and other factors, and transmission lines, 20 miles. Most people would undoubtedly agree that recreational trails in general pose less potential for environmental impacts than most highway or pipeline projects, and somewhat more than electrical transmission line corridors (where there is little activity after construction is completed, little potential for impacts beyond the right-of-way, and less direct physical intrusion by the structures than from a continuous trail surface). One way to check on the reasonableness of proposed thresholds is to compare estimates of how many EAWs would result with the numbers of EAWs prepared due to other existing mandatory categories. The EQB recently examined mandatory EAW records from the 4-year period 2000-2003 to compare one category with another. The data from that analysis showed that during that time 570 EAWs were prepared due to the 35 existing EAW categories, an average of 143 per year. Only 10 of the 35 categories resulted in at least 5 EAWs per year and the median number was 1 EAW per year per category. Using the DNR's estimate from section III.A factor #5 of 3 EAWs per year likely to result from the proposed recreational trail categories, it appears that the number of EAWs likely due to the proposed thresholds would fall roughly mid-pack when compared to all 36 categories.		
4410.4300 **Recreational trails** subp. 37 B	B. Designating at least 25 miles of an existing trail for a new motorized recreational use other than snowmobiling. In applying items A and B, if a proposed trail will contain segments of newly constructed trail and segments that will follow an existing trail but be designated for a new motorized use, an EAW must be prepared if the sum of the quotients obtained by dividing the length of the new construction by ten miles and the length of the existing but newly designated trail by 25 miles, equals or exceeds one.	(2004) Item B covers situations where a governmental unit is proposing a change in authorized uses on an existing trail to allow use by a form of motorized recreational vehicle not previously allowed to use the trail. The threshold is proposed as 25 miles, two and one-half times the main threshold of item A, on the basis that the potential for environmental damage is diminished by the fact that a trail already traverses the route. This category is proposed to exclude the designation of snowmobile use, which instead is proposed for an exemption (see the section later on Exemptions for the rationale). This provision is proposed to deal with the likely common occurrence where a planned trail will include segments of new alignment and also segments with new use designations on existing trails. In such cases, how can it be determined if the mandatory review thresholds are exceeded? The solution proposed is borrowed from existing subparts of 4410.4300. At subparts 19 and 32, residential developments and mixed residential and commercial projects a	**<u>Local</u>:** Approval for bridges Lease amendment **<u>State</u>:** Construction stormwater general permit 401 certification State trail plan amendment State funding Public water work permit WCA mitigation plan **<u>Federal</u>:** 404 permit	Summary: 1 EAW has been prepared for a project under this category since the rule came into effect in 2004. Currently, many trail projects are proposed for State Forest lands that went through the legislatively mandated designation process (2004-2008). Classification of the State Forests with respect to motor vehicle use was pursuant to Minnesota Laws 2003, Chapter 128, Article 1, Section 167, Subdivision 1 (as amended) and Minnesota Rules, part 6100.1950. Trail segments where the proposed type of OHV use is already allowed are not included in the mileage for determining whether the subpart 37A or 37B threshold has been reached or exceeded. In addition, mileage of OHV trails that use existing road corridors outside of state forests is not included in the threshold determination. Although few projects have recently been proposed that would require preparation of an EAW under this threshold, the DNR still believes the issues identified in the 2004 SONAR that created this category remain valid. <u>Recommendation</u>: Retain this EAW category; consider modifications regarding how miles of new types of motorized trail use are calculated. Also consider not counting new motorized uses on abandoned rail grades toward Item 37B threshold.

TABLE D-1: MANDATORY EAW CATEGORIES: MINNESOTA DEPARTMENT OF NATURAL RESOURCES as RGU				
Mandatory EAW Category	**Category Text**	**Intended Historical Purpose (SONAR)**	**Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply**	**Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?**
		similar arithmetic operation is prescribed for determining if review is mandatory. Here is an example of how this method would work: suppose an ATV trail is proposed with a total length of 18 miles, 8 on new alignment and 10 as a designation of an existing snowmobile trail for ATV use. To determine if an EAW is mandatory divide 8 by 10 (quotient = 0.8), and 10 by 25 (quotient = 0.4), then add the quotients (0.8 + 0.4 = 1.2). Since the sum of 1.2 exceeds 1, review is mandatory for this project.		
4410.4300 **Recreational trails** subp. 37 C	C. Paving ten or more miles of an existing unpaved trail, unless exempted by part 4410.4600, subpart 27, item B or F. Paving an unpaved trail means to create a hard surface on the trail with a material impervious to water.	(2004) Item C would require preparation of a mandatory EAW for situations where an existing unpaved trail is upgraded by paving it for a length of at least 10 miles. The rationale is that creating an impervious surface over that length of trail creates sufficient potential for runoff and erosion problems to warrant review. The clause about exemptions is included to clarify that the reconstruction of a paved trail or the construction or rehabilitation of a paved, non-motorized trail within the Twin Cities Metropolitan Regional Park System is exempt, rather than covered by this category if the length exceeds 10 miles.	**Local:** Roadway utility permit WCA mitigation plan **State**: Construction stormwater general permit 401 certification State grant Public water work permit **Federal:** 404 permit Federal grant	Summary: 1 EAW has been prepared for a project under this category since the rule came into effect in 2004. In that project, DNR found that paving on an abandoned railroad grade had minor environmental effects because environmental disturbance in the corridor had already occurred and project-specific disturbance was minimal; and since significant compaction had already occurred. Although few projects have recently been proposed that would require preparation of an EAW under this threshold, the DNR still believes the issues identified in the 2004 SONAR that created this category remain valid. Recommendation: Maintain this EAW category, but provide an exemption for paving trails on abandoned railroad grades.
4410.4300 **Recreational trails** subp. 37 D	D. Constructing an off-highway vehicle recreation area of 80 or more acres, or expanding an off-highway vehicle recreation area by 80 or more acres, on agricultural land or forested or other naturally vegetated land.	(2004) Item D deals with recreation areas for off-highway vehicles. Such areas would include an intensive network of trails as well as special events areas designed especially for various types of off-highway vehicles. Because of the concentrated network of trails, it is appropriate to provide a separate mandatory EAW category for recreation areas, and to base the threshold on acreage rather than trail length. Two thresholds are proposed, one for "undisturbed," naturally vegetated land or agricultural land and another for land that either is not naturally-vegetated or agricultural, or has been previously disturbed to a great extent by human activities. The proposed 80 acre threshold for naturally-vegetated and agricultural areas corresponds with the threshold used in the land use conversion mandatory category at subpart 36, which deals with the permanent conversion of such lands to more intensive human uses.		Summary: No EAWs have been prepared for a project under this category since the rule came into effect in 2004. The DNR still believes the issues identified in the 2004 SONAR that created this category remain valid. Recommendation: Maintain this EAW category.
4410.4300 **Recreational trails** subp. 37 E	E. Constructing an off-highway vehicle recreation area of 640 or more acres, or expanding an off-highway vehicle recreation area by 640 or more acres, if the land on which the construction or expansion is carried out is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities such as mineral mining.	(2004) The most likely disturbed areas to be used for recreation areas are former mine sites, so the rule explicitly lists metallic and non-metallic mining as past human activities making land suitable for the "disturbed" classification. The only existing recreation area for OHVs was established by the DNR on a former mine site near Gilbert and another similar area near Virginia has been authorized but not yet built. For non-naturally-vegetated lands, agricultural, or disturbed lands, a much higher threshold is appropriate and thus 640 acres was chosen; this provides a 1:8 ratio and sets the threshold equal to the common land measure of one section.		Summary: No EAWs have been prepared for a project under this category since the rule came into effect in 2004. The DNR still believes the issues identified in the 2004 SONAR that created this category remain valid. Recommendation: Maintain this EAW category.
4410.4300 **Recreational trails**	F. Some recreation areas for off-highway vehicles may be constructed partially on agricultural naturally vegetated land and partially on land that is not agricultural, is not forested or otherwise naturally vegetated,	(2004) Since it is likely that recreation areas could be proposed on lands subject to both thresholds, the same arithmetic method for determining if review is mandatory as is proposed at items A and B is proposed to be used here as well.	**Local:** Land use zoning approval **State:** Construction stormwater general	Summary: 1 EAW has been prepared for a project under this category since the rule came into effect in 2004. Potential environmental issues, including some that are not directly regulated, were evaluated. Unregulated potential impacts included wildlife habitat effects, wildlife disturbance, native plant community impacts and disturbance of nearby residents. No single permit regulates these types of projects as a whole, so environmental review was

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Mandatory EAW Category	**Category Text**	**Intended Historical Purpose (SONAR)**	**Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply**	**Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?**
subp. 37 F	or has been significantly disturbed by past human activities. In that case, an EAW must be prepared if the sum of the quotients obtained by dividing the number of acres of agricultural or naturally vegetated land by 80 and the number of acres of land that is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities by 640, equals or exceeds one.		permit 401 certification State funding Public water work permit WCA mitigation plan **Federal:** 404 permit	the only opportunity to analyze effects of the whole project. Permits associated with this category have gaps and overlaps in authority, and many do not include a public review process. Recommendation: Maintain this EAW category.

TABLE D-2: MANDATORY EIS CATEGORIES: MINNESOTA DEPARTMENT OF NATURAL RESOURCES as RGU				
Mandatory EIS Category	**Category Text**	**Intended Historical Purpose (SONAR)**	**Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply**	**Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?**
4410.4400 **Underground Storage** subp. 7 A	**Underground storage.** Items A and B designate the RGU for the type of project listed: A. For construction of an underground storage facility for gases or liquids that requires a permit pursuant to Minnesota Statutes, section 103I.681, subdivision 1, paragraph (a), the DNR shall be the RGU.	(1982) This category is proposed because this type of project is new and largely untested, is very large in scope, has the potential for groundwater contamination and serious human health impacts and is very controversial. Minn. Stat. § 84.57 mandates a permit for the displacement of groundwater by the underground storage of gases or liquids under pressure. The Department of Natural Resources (DNR) is the responsible permitting agency. No specific rules have been promulgated regarding this authority. One facility of this type has been constructed in Minnesota. No EIS was prepared for that facility. The DNR is currently processing a second application. An EIS has been ordered on the proposed facility. The primary environmental effects of concern on this type of project are groundwater quantity and quality impacts. The lack of a formal process for citizen comment further documents the need for environmental review of this type of activity.	**State:** Minnesota Statutes, section 103I.681 Minnesota Rules, part 6115.0130 Minnesota Statutes, chapter 216B Minnesota Rules, Chapter 7851	Summary: Two state projects currently involve underground storage. Both were developed prior to MEPA. Both also require a great deal of ongoing regulatory oversight indicating that potential long-term management and possible environmental and human health consequences of such projects are high. Recommendation: Maintain this EIS category.
4410.4400 **Underground Storage** subp. 7 B	B. For construction of an underground storage facility for gases or liquids, using naturally occurring rock materials, that requires a permit pursuant to Minnesota Statutes, section 103I.681, subdivision 1, paragraph (b), the DNR shall be the RGU.	(1982) Minn. Stat. § 84.621 mandates a permit for the storage Of gases or liquids, other than water, in natural rock formations underground. These formations could be naturally occurring or the result of the mining of rock material to create a storage site in a rock formation. No facilities of this .type currently are found in Minnesota and no formal proposals have been presented. It is known, however, that the concept of mining rock to create an underground Cavity in the bedrock is being discussed. The purpose of the cavity would .be to potentially store petroleum products. The primary environmental concerns associated with such an activity would be related to groundwater quality and safety concerns. The DNR is the responsible permitting agency for this type of activity. No specific rules have been promulgated regarding this authority. The lack of a formal process for citizen comment further documents the need for environmental review of this type of activity.	**State:** Minnesota Statutes, section 103I.681 Minnesota Rules, part 6115.0130 Minnesota Statutes, chapter 216B Minnesota Rules, Chapter 7851	Summary: Two state projects currently involve underground storage. Both were developed prior to MEPA. Both also require a great deal of ongoing regulatory oversight indicating that potential long-term management and possible environmental and human health consequences of such projects are high. Recommendation: Maintain this EIS category.
4410.4400 **Metallic mineral mining and**	**Metallic mineral mining and processing.** Items A to C designate the RGU for the type of project listed:	(1982) Extensive evaluation of radioactive deposits has been elevated to a mandatory EIS category pursuant to 6 MCAR § 3.039 G.l. because of the increased potential for adverse environmental impacts and human health impacts. The 1,000 ton threshold was recommended by the DNR as a feasible		Summary: Review of recently prepared EISs indicates that several potential environmental issues, including some that are not directly regulated, were evaluated. Unregulated potential impacts included wildlife habitat effects, native plant community impacts, and cumulative effects to a number of natural resources and environmental concerns such as mercury in fish

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Mandatory EIS Category	**Category Text**	**Intended Historical Purpose (SONAR)**	**Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply**	**Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?**
processing subp. 8 A	A. For mineral deposit evaluation involving the extraction of 1,000 tons or more of material that is of interest to the proposer principally due to its radioactive characteristics, the DNR shall be the RGU.	threshold to indicate a concern for significant adverse environmental impacts. This threshold is near the limit of ore commonly analyzed for evaluation of the deposit.		tissue and wild rice abundance. No single permit regulates the project as a whole, so environmental review was the only opportunity to analyze effects of the whole project. Permits associated with this category have gaps and overlaps in authority, and many do not include a public review process. EISs are commonly joint state-federal. Numerous public comment letters are commonly received. Public comments have often identified substantive environmental concerns and offered recommendations for modification, mitigation and areas needing further evaluation. Recommendation: Maintain this EIS category.
4410.4400 **Metallic mineral mining and processing** subp. 8 B	B. For construction of a new facility for mining metallic minerals or for the disposal of tailings from a metallic mineral mine, the DNR shall be the RGU.	(1982) Metallic mineral mining activities may have the potential for significant impacts on ground and surface water quality and quantity, air quality, land use impacts and demographic impacts that may disrupt the local economy. 6 MCAR § 3.039 G.2. requires a mandatory EIS for all new metallic mineral mining proposals. An all or none threshold is used because these activities must be of an economically feasible scale and that scale would, of necessity, be sufficient to potentially pose the threat of significant impacts.	**Local:** Commercial septic tank permit Building permit Grading permit **State:** Permit to mine Water appropriation permit Public water work permit Dam safety permit Burning permit Listed species takings permit Part 70 operating permit Title V air permit modification Construction stormwater general permit Industrial stormwater permit NPDES/SDS permit 401 certification Waste tire storage permit Storage tank permit Solid waste permit Hazardous waste generator and storage Demolition debris disposal facility permit Radioactive material registration Noncommunity nontransient public water system **Federal:** 404 permit	Summary: Review of recently prepared EISs indicates that several potential environmental issues, including some that are not directly regulated, were evaluated. Unregulated potential impacts included wildlife habitat effects, native plant community impacts, and cumulative effects to a number of natural resources and environmental concerns such as mercury in fish tissue and wild rice abundance. No single permit regulates the project as a whole, so environmental review was the only opportunity to analyze effects of the whole project. Permits associated with this category have gaps and overlaps in authority, and many do not include a public review process. EISs are commonly joint state-federal. Numerous public comment letters are commonly received. Public comments have often identified substantive environmental concerns and offered recommendations for modification, mitigation and areas needing further evaluation. Recommendation: Maintain this EIS category.
4410.4400 **Metallic mineral mining and processing** subp. 8 C	C. For construction of a new metallic mineral processing facility, the DNR shall be the RGU.	(1982) Metallic mineral processing facilities have the potential for significant impacts on ground and surface water quantity and quality, air quality, and demographic impacts that may disrupt the local economy. 6 MCAR § 3.039 G.3. requires a mandatory EIS for all new processing facilities. An all or none threshold is used because these facilities must be of an economically feasible scale and that scale would of necessity, be sufficient to pose the threat of significant impacts.	**Local:** Commercial septic tank permit Building permit Permit for construction in shoreland area Zoning variances **State**: Permit to mine Water appropriation permit Public water work permit	Summary: Review of recently prepared EISs indicates that several potential environmental issues, including some that are not directly regulated, were evaluated. Unregulated potential impacts included wildlife habitat effects, native plant community impacts, and cumulative effects to a number of natural resources and environmental concerns such as mercury in fish tissue and wild rice abundance. No single permit regulates the project as a whole, so environmental review was the only opportunity to analyze effects of the whole project. Permits associated with this category have gaps and overlaps in authority, and many do not include a public review process. EISs are commonly joint state-federal. Numerous public comment letters are commonly received. Public comments have often identified substantive environmental concerns and offered recommendations for modification, mitigation and areas needing further evaluation.

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Mandatory EIS Category	**Category Text**	**Intended Historical Purpose (SONAR)**	**Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply**	**Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?**
			Dam safety permit Burning permit Listed species takings permit Part 70 operating permit Title V air permit modification Construction stormwater general permit Industrial stormwater permit NPDES/SDS permit 401 certification Waste tire storage permit Storage tank permit Solid waste permit Hazardous waste generator and storage Demolition debris disposal facility permit Radioactive material registration Noncommunity nontransient public water system Government loan/grant High Voltage Transmission Line routing permit **Federal:** 404 permit Permit for tower construction next to existing radar	Recommendation: Maintain this EIS category.
4410.4400 **Nonmetallic mineral mining** subp. 9 A	**Nonmetallic mineral mining.** Items A to C designate the RGU for the type of project listed: A. For development of a facility for the extraction or mining of peat which will utilize 320 acres of land or more during its existence, the DNR shall be the RGU.	(1982) The extraction of peat resources has the potential for causing environmental impacts relating to land use, air quality, water quality, mining and drainage. Current peat mining activities tend to be of small scale and for the purpose of marketing the peat as a horticultural product or as a briquet fuel. Peat mining is expected to be extremely controversial if proposals develop to utilize the resource for other energy uses. Data based on actual development of these resources on a broad scale is limited. The threshold levels of 160 acres for a mandatory EAW (6 MCAR § 3.038 K.1.) and 320 acres for a mandatory EIS (6 MCAR § 3.039 H.1.) coincide with Department of Natural Resources policy as set forth in the Minnesota Permit Program Policy Recommendations. In the current rules the 320 acre threshold for an EAW for nonmetallic resources would have applied to peat extraction.	**Local:** Land exchange/purchase lease Permit to divert water (Watershed District) Reassessment of drainage tax Ditch improvements **State:** Permit to mine peat Water appropriation permit Construction stormwater general permit Industrial stormwater permit NPDES/SDS permit 401 certification Above ground storage tank permit Air quality permit Land exchange/purchase/lease **Federal:** 404 permit	Summary: Very few peat mining operations have prepared environmental documents in the last ten years; however DNR has been in communication and has received proposed projects within this same time period. Each of these projects may have had the potential for significant environmental effects and thus environmental review was appropriate. The relationship of these proposals to federal requirements under Section 404 of the Clean Water Act has been difficult. There has been no information or data to indicate that the 320 acre threshold needs revision. Recommendation: Maintain this EIS category
4410.4400	**Water appropriation and impoundments.** For construction of a Class I dam, the DNR shall be the RGU.	(1982) Dam construction and safety is regulated by the ONR pursuant to 6 MCAR § 1.5030. Environmental review is necessary because of the potential for significant property damage and danger to human safety. The ONR	**State:** Dam safety permit Public water work permit	Summary: DNR is currently preparing an EIS under this category. In addition to property damage/loss and human safety, potential significant impacts to fish habitat, river ecology, hydrology, water quality have been identified. Some of these impacts, for example water

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Mandatory EIS Category	**Category Text**	**Intended Historical Purpose (SONAR)**	**Potential Local, State, Federal Permits, Laws, Ordinances that may (or may not) apply**	**Should category be modified, eliminated, or unchanged based on relationship to existing permits or other federal/state/local laws/ordinances?**
Water appropriation and impoundments subp. 18		regulations are based on the comparative impact potential of the dams. The existing DNR dam classifications were used as thresholds for the EIS category at 6 MCAR § 3.039 Q.	Water appropriation permit **Federal:** Federal funding 404/10 approval	quality and fisheries, are not addressed thoroughly in dam safety permitting, which is a dominant regulatory approval for this type of project. State environmental review is also the only available public review process for this type of project. Recommendation: Maintain this EIS category
4410.4400 **Water diversions** subp. 23	**Water diversions.** For a diversion of waters of the state to an ultimate location outside the state in an amount equal to or greater than 2,000,000 gallons per day, expressed as a daily average over any 30-day period, the DNR is the RGU.	(1988) This new category is proposed at the suggestion of the DNR, and is in recognition of the awareness that has been developed in recent years that the state may be faced in the future with the question of whether and under what circumstances it should permit the diversion of water to other parts of the country. Obviously, environmental impacts of any such diversion would be one of the major factors involved in decisions. Since the EIS is the established and recognized tool for examining environmental impacts of alternatives, it would be appropriate to require an EIS as part of the decision-making process for out-of-state diversion proposals. This proposal is also consistent with the intent of the water supply provisions of Minn. Stat., section 105.405, subdivisions 2 and 4. Subdivision 2 requires that prior to the issuance of permits for out-of-state diversions, the DNR must determine that the water remaining in the basin of origin will be adequate to meet the basin's water resources needs throughout the diversion project. Subdivision 4 specifically applies to very large water diversions (over 5,000,000 gallons per day average in any 30-day period) of waters from the Great Lakes basin and requires that prior to the issuance of permits for such diversions, the DNR must notify, solicit comments, and consider the comments and concerns of other states, Canadian provinces, and certain joint U.S.-Canadian study groups. Preparation of an EIS is an appropriate method to provide the information necessary for the DNR to make these determinations. The numerical threshold is based on the recommendation of the DNR. It is proposed as the threshold at which a diversion proposal becomes significant enough to warrant analysis through the EIS process. Because of its statutory authorities over water appropriations and its expertise, the DNR is proposed as the RGU.	**State:** Water appropriation permit M.S. 103G.261(5)(f) M.S. 103G.265 M.S. 103G.801	Summary: Although a project has not yet been proposed that would require preparation of an EIS under this threshold, the DNR still believes the issues identified in the 1988 SONAR that created this category remain valid. Recommendation: Maintain this EIS category.

APPENDIX E: MINNESOTA POLLUTION CONTROL AGENCY CATEGORIES

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
Petroleum Refineries **4410.4300 subp. 4** **EAW Threshold:** **Expansion of an existing petroleum refinery facility that increases its capacity by 10,000 or more barrels per day,** **4410.4400 subp 4** **EIS Threshold:** **Construction of a new petroleum refinery facility,**	(1982) – SONAR **General:** This category area is proposed because of the potential for environmental impacts relating to air pollution, transportation, energy use, toxic discharge, spills, water pollution, and odors resulting from these facilities. **EIS:** The EIS threshold proposed was a part of the EAW threshold of the current rules. It is likely that an EIS would have been prepared on new facilities pursuant to the current procedures because of the expected impacts and the need for environmental review.	**MPCA** Air Emissions Permit NPDES Wastewater Discharge NPDES General Stormwater construction Permit NPDES Stormwater Permit for Industrial Activity Above Ground Storage Tank **MnDOT** Highway Crossing Permit Utility Permit to work in the State Right-of-way **Fire Marshall** Plan Review for Above Ground Storage Tanks **COUNTY** Conditional Use Permit Building Permit **CITY** Conditional Use Permit Permit for Discharge of Industrial Wastewater Plan Review and Approval Building Permit	**EAW: No Changes** **EIS: No Changes** – The issues, concerns and potential impacts outlined in the SONAR are still valid today. Project information and the opportunity to comment are provided to decision makers in multiple jurisdictions. High level of public interest.

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
Fuel Conversion Facilities **4410.4300 subp 5** **EAW Thresholds:** **A. Construction of a facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 25,000 dry tons or more per year of input,** **B. Construction or expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by 5,000,000 or more gallons per year of alcohol produced,** **4410.4400 subp. 5** **EIS Thresholds:** A. **Construction of a facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 250,000 dry tons or more per year of input,** B. **For construction or expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by 50,000,000 or more gallons per year of alcohol produced if in the 7-county Twin Cities Metro area or by 125,000,000 or more gallons per year if outside that area,**	(1982 – SONAR This category area is proposed because of the potential for environmental impacts resulting from these facilities and because there are many areas of controversy relating to potential impacts of these types of categories since they are largely untested in practice. Specific categories recommended with this category area include: A. The current EAW category was designed primarily to deal with the potential for coal or peat conversion. This category was developed at a time when the likelihood of such a proposal was fairly remote. The proposed rules attempt to distinguish potential size differences for such projects and to distinguish those projects from alcohol production. Fuel conversion facilities for coal and peat have the potential for significant impacts with regard to air pollutant and water pollutant discharges, and transportation impacts. The state currently has no facilities of this nature. If such a proposal is submitted, it is likely to be highly controversial because of these potential impacts and because of the energy policy issues it would present. B. Fuel conversion facilities for alcohol production are generally viewed as having a lesser potential for significant environmental impact. In addition, the technology for alcohol production has been tested and applied; consequently, more data on environmental impacts is available. These facilities are likely to become more common in the future; therefore, controversy relating to use of natural areas for energy production and the use of agricultural land for energy production is anticipated. **EIS** Same as above A. Same as above B. Same as above	FEDERAL Alcohol Tobacco Tax and Trade Bureau Distiller's Permit **U.S. Corp of Engineers** 404 General Permit Section 404 Permit for the installation of water supply pipeline U.S. Fish and Wildlife Service STATE **MPCA** Air Emissions Permit NPDES/SDS industrial stormwater Discharge Permit NPDES Authorization to discharge hydrostatic test water SDS Utility Water Holding Pond Permit NPDES General stormwater Permit for construction activity Very Small Hazardous Waste Generators License Above Ground Storage Tank Permit Minnesota River Basin General Permit **DNR** Water Appropriation Permit Work in Public Waters Permit Work in Public Lands Permit Natural Heritage and Nongame Database Review **Mn Department of Agriculture** Agricultural Liming License **Minnesota Historical Society** Archeological Survey Construction Easements **Minnesota State Historical** Concurrences on Findings of Cultural **Preservation Office** Resource Impacts **Mississippi National River and** **Recreation Area**	**Subpart A:** Recommend review of definition of biomass in EQB Rules to ensure consistency with term as used in other rules or statutes. **EAW Threshold – No Change** **EIS Threshold – No change** Legislative changes have been made to this category (Item A) over the years. No additional changes appear to be necessary or warranted at this time. Project information is provided to decision makers in multiple jurisdictions. High level of public interest. Coal and peat conversion facilities have not been reviewed under this category.

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
		Critical Area Site Plan Approval **Mn Department of Transportation** Highway Crossing Permit Utility Permit to work in the State Right-of-way **Mn Department of Health** Dewatering Well Construction Permit Monitoring Well Construction Permit Plumbing and Engineering Plumbing Plan Review Special Well Construction Area Approval **Fire Marshal** Plan Approval **Mn Department of Public Safety** Above Ground Flammable and Combustible Liquids Review **COUNTY** Conditional Use Permit Utilities Permit On-site Septic Permit Building Permit Driveway Permit Incinerator Permit Permit to dispose at the County Landfill Ditch Use Authorization **Watershed Districts** Watershed District Permit **CITY** Building Permit Utilities Permit Industrial Stormwater Agreement Conditional Use Permit	

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
<u>Transfer Facilities</u> **4410.4300 subp. 8** **EAW Thresholds:** **A. Construction of a facility designed for or capable of transferring 300 tons or more of coal per hour or with an annual throughput of 500,000 tons of coal from one mode of transportation to a similar or different mode of transportation; or the expansion of an existing facility by these respective amounts,** **B. Construction of a new facility or the expansion by 50 percent or more of an existing facility for the bulk transfer of hazardous materials with the capacity of 10,000 or more gallons per transfer, if the facility is located in a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers district, Minnesota River Project Riverbend area, or the Mississippi headwaters area,**	**1982 - SONAR** The category area is proposed because of environmental impacts associated with operation of the facilities, because these facilities are typically located near water resources and because these facilities are often very controversial in the immediate vicinity. Specific categories recommended within this category area include: A. The need for the category relating to coal transfer facilities was voiced early in the process of developing category areas. Concerns documenting this need included fugitive dust emissions, leaking, noise levels, transportation related issues, local land use issued, and potential water pollution issues if the facilities is located near a water resource. The threshold was developed to be consistent with certificate of need definitions. The threshold used corresponds to the definition of "coal transshipment facility". The exemption category threshold was set at 10% of this threshold. The intention of the exemption threshold is to prevent petitions for minor industrial operations where coal is used as an energy source. If operations of this nature have the potential for significant impacts, the issue should be raised pursuant to the primary purpose of the activity. B. The need for the category relating to the transfer of hazardous materials was raised during the public participation process. The primary concerns documenting this need included the potential for spills resulting in serious water contamination if that facility is near water resources. The threshold was derived to be higher than the amount of material carried by an average truck transport but still sensitive enough to apply to large transfer facilities associated with barge transportation.	**FEDERAL** Army Corp of Engineers Section 404 Wetland Permit **STATE** MPCA NPDES General Construction Stormwater permit NPDES Industrial Stormwater Permit Above Ground Storage Tank Permit Section 401 Water Quality Certificate Air Emissions Permit **Minnesota Department Of Transportation** Access Permit **DNR** Minnesota Natural Heritage Database Search Work with in Waters of the State Pemit **Minnesota State Historical Preservation Office** Cultural Resources Review **COUNTY** Conditional Use Permits Septic System Permit **Watershed Districts** Watershed Permits **CITY** Building Permit Conditional Use Permit Fire Department Re	**Subpart A:** **EAW Threshold – No changes** **EIS Threshold – No changes** No change to this category, however, a review of the use of coal and peat is suggested as it relates to Subpart A. Project information is provided to decision makers in multiple jurisdictions **Subp B. No change** Project information is provided to decision makers in multiple jurisdictions

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
Storage Facilities **4410.4300 subp 10** **EAW Thresholds:** **A. Construction of a facility designed for or capable of storing more than 7,500 tons of coal or with an annual throughput of more than 125,000 tons of coal; or the expansion of an existing facility by these respective amounts, -** **B. Construction of a facility on a single site designed for or capable of storing 1,000,000 gallons or more of hazardous materials,** **C. Construction of a facility designed for or capable of storing on a single site 100,000 gallons or more of liquefied natural gas, synthetic gas, or anhydrous ammonia,**	1982 SONAR This category area is proposed because of concerns relating to potential environmental impacts and because of the likelihood of controversy relating to the siting of these types of projects. Specific categories recommended within this category area include: A. The need for proposed category was voiced early in the process of developing category areas. Concerns documenting the need for this category include fugitive dust emissions, leaching, transportation related issues, and water pollution issues. The threshold was developed to be consistent with certificate of need definitions. B. The category was changed as a result of comments received during the public participation process to apply to all hazardous materials as opposed to only petroleum fuels. It is likely, however, that only petroleum fuels will be stored in sufficient quantities to trigger this threshold. C. Natural gas and synthetic gas facilities were separated from the proposed petroleum category because the 1,000,000 gallon threshold was unrealistic. Natural and synthetic gases are typically stored in much smaller facilities. These facilities are stored under pressure and create controversy relating to the explosive nature of the facility. 1988 SONAR In the experience of the PCA staff, an anhydrous ammonia tank facility of 100,000 gallons or more size has a comparable potential for significant environmental impacts, including danger to the public health, as liquefied or natural gas storage facilities. Consequently, it is reasonable to explicitly add anhydrous ammonia tanks to this category with the same threshold.	**Army Corp of Engineers** Section 404 Wetland Permit **MPCA** NPDES General Construction Stormwater permit NPDES Industrial Stormwater Permit Above Ground Storage Tank Permit Section 401 Water Quality Certificate Minnesota Department Of Transportation Access Permit DNR Minnesota Natural Heritage Database Search Minnesota State Historical Preservation Office Cultural Resources Review COUNTY Conditional Use Permits Septic System Permit Watershed Districts Watershed Permits CITY Building Permit Conditional Use Permit	**No Changes** Issues and concerns identified in the SONAR are still valid. Project information is provided to decision makers in multiple jurisdictions **A.** Issues and concerns identified in the SONAR are still valid. Project information is provided to decision makers in multiple jurisdictions **B.** Issues and concerns identified in the SONAR are still valid. Project information is provided to decision makers in multiple jurisdictions C. Issues and concerns identified in the SONAR are still valid. Project information is provided to decision makers in multiple jurisdictions

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
Paper and Pulp Processing Mills **4410.4300 subp 13** **EAW Threshold:** **For expansion of an existing paper or pulp processing facility that will increase its production capacity by 50 percent or more,** **4410.4400 subp 10** **EIS Threshold:** **For construction of a new paper or pulp processing mill.**	1982 SONAR This category area is proposed because of the potential for significant effects on water quality, air quality, solid waste generation, and transportation impacts. These potential impacts are regulated by several different agencies. Environmental review would facilitate multi-agency coordination. Specific categories recommended within this category area include: Paper and pulp processing mills have a broad range of environmental impacts. Water related impacts include the use of large quantities of water and the discharge of both cooling and process waters. Air quality related impacts are primarily associated with power generation at the facility. The degree of the problem is tied to the type and amount of fuel used. Solid wastes in the form of ashes from power generation and sludges from process water treatment may pose serious disposal problems. Raw materials and products of these facilities are bulky materials and the facilities are labor intensive; therefore, transportation and sludges from process water treatment may pose serious disposal problems. Raw materials and products of these facilities are bulky materials and the facilities are labor intensive; therefore, transportation related impacts are likely to be a further issue. Expansions greater than 50% should require an EAW because of the magnitude of additional wastewater and solid waste generated and because of additional air quality and transportation impacts. The current rules did not have a category related to the expansion of these facilities. A ten percent figure is used to exempt minor expansions. This exemption is intended to allow equipment changes, alterations that may increase production efficiency, and minor operational changes without environmental review. Expansions between ten and 50 percent are subject to environmental review on a discretionary basis because such expansions are likely to be of a magnitude that will generate controversy and because of the scope and potential significance of impacts. The current rules do not contain exemptions relating to paper and pulp processing mills. This category area is proposed because of the potential for significant impacts on water quality, air quality, solid waste generation, hazardous waste generation, transportation, land use, demographic and economic impacts on local economies. The spectrum of impacts is diverse and the regulation of the impacts varies in effectiveness with the units of government responsible. This type of project tends to be controversial, as witnessed by the number of projects previously subjected to environmental review. Specific categories recommended within this category area include: EIS The EIS threshold, 6 MCAR § 3.039 I. is set at an all or none threshold for new facilities. This is reasonable because the size of these facilities must be economically practical and that size would have the potential for significant impacts. These are new impacts on the local environment and significant wildlife and land use questions must also be addressed. This category corresponds to the current EAW threshold; however, in practice an EIS is likely to be prepared on a new facility pursuant to current procedures. Therefore, this	**MPCA** Air Emissions Permit NPDES Discharge Permit NPDES General Construction Permit NPDES Industrial Stormwater Permit Above Ground Tank Permit **DNR** Water Appropriation Permit **MnDOT** Highway Crossing Permit Utility Permit **COUNTY** Conditional Use Permit Building Permit **CITY** Building Permit Utility Permit Capacity Allocation Agreement Wastewater Treatment Plant	**No Changes** The issues and concerns identified in the SONAR are still valid. Project information is provided to decision makers in multiple jurisdictions **EIS** **No Changes** The issues and concerns identified in the SONAR are still valid. Project information is provided to decision makers in multiple jurisdictions

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
	does not represent a major change in the requirements for environmental documents.		

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
Air Pollution **4410.4300 subp. 15** **EAW Threshold:** **A. 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, other than those air pollutants described in item after installation of air pollution control equipment, the PCA shall be the RGU.** **B. For construction of a stationary source facility that generates a combined 100,000 tons or more per year or modification of a stationary source facility that increases generation by a combined 100,000 tons or more per year of greenhouse gas emissions, after installation of air pollution control equipment, expressed as carbon dioxide equivalents, the PCA shall be the RGU. For purposes of this subpart, "greenhouse gases" include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride, and their combined carbon dioxide equivalents shall be computed by multiplying the mass amount of emissions for each of the six greenhouse gases in the pollutant GHGs by the gas's associated global warming potential published in Table A-1 to subpart A of Code of Federal Regulations, title 40, part 98, Global Warming Potentials, as amended, and summing the resultant value for each.**	(**1982 SONAR** This category area is proposed because of public concern relating to air quality and its impact on human health and the environment, especially via implications relating to acid rain. This category area is proposed because other category areas may not be specific enough to review projects with potentially significant impacts on air quality. Specific categories recommended within this category area include: A The qualitative measure was changed from a measurement of only Particulates and sulfur oxides to a measurement for any single air pollutant. Emissions that would trigger the threshold are likely to be Particulates or sulfur oxides; however, other pollutants, especially nitrogen oxides and ozone, are also of major concern. The measurement is designated as post treatment as an incentive for the installation of proper pollution control equipment. Synergistic impacts are not addressed specifically in the category; however, a lower threshold will facilitate a review of potential synergistic impacts on a case-by-case basis. The quantitative measure was adjusted to a realistic figure. The threshold of 50 tons per day (18,250 tons per year) in the current rule's EAW category was so high it excluded all facilities. Very large and inefficient sources currently in operation in Minnesota would correspond to approximately only 1,000 tons per year. The proposed threshold coincides with federal regulations which classify facilities of 100 tons per year as a major source of air pollution. This threshold is also consistent with the proposed state off-set rule. Technology is available to minimize this impact and past experience has demonstrated that early environmental review can control problems associated with major sources of air pollution. **1988 Sonar** The words proposed to be added are intended to extend the coverage of this mandatory category to modifications of air emission facilities which will increase emissions by the same threshold amount as for new facilities. From an environmental standpoint, it is immaterial whether 100 tons of a pollutant came from a totally new facility or a modification of an existing facility. The omission of modified facilities from this category when the rules were adopted in 1982 was probably an unintentional oversight. **Parking Facilities** The mandatory category threshold was changed from 1,000 to 2,000 or more vehicles. **2006 SONAR** Two changes are proposed in this subpart. In item A, the threshold for air emission sources is proposed to be changed from 100 tons per year to 250 tons per year. Item B, relating to parking facilities, is proposed to be deleted entirely. The threshold for air emission facilities in item A was changed to 100 tons per year in 1982. Since then, item A has been changed only to add that the 100 tons per year threshold applies to modifications of existing facilities as well as new facilities. The MPCA has had 23 years of experience working with this threshold. A threshold change to 250 tons per year is based on recommendations of the MPCA staff. This staff is responsible for permitting facilities that emit air pollutants and environmental review of other projects that are sources of air emissions. A threshold of 250 tons would coincide with the federal threshold for the Prevention of Significant Deterioration permitting	**FEDERAL** **U.S. Fish and Wildlife Service** Threatened and Endangered Species Review **EPA** Hazardous Waste Generators Identification Number **STATE** **MPCA** Air Emissions Permit NPDES General Stormwater Construction Permit NPDES industrial Stormwater Activity Permit NPDES Wastewater Discharge Permit Above Ground Tanks Permit Very Small Quantity Hazardous Generator License Beneficial Use Approval for ash land application **Minnesota State Historical Preservation Office** Concurrence on Findings of Cultural Resources Impacts **DNR** Water Appropriation Permit Minnesota Natural Heritage Datebase Search **Fire Marshall** Plan Review **MnDOT** Highway Crossing Permit **COUNTY** Water Shed District Permit Conditional Use Permit **CITY** Building Permit Conditional Use Permit Sanitary Sewer Hook-up Wastewater Discharge Permit Zoning Certificate Utility Permit	A. **No Changes** The issues, concerns and potential impacts outlined in the SONARs are still valid today. Project information and the opportunity to comment are provided to decision makers in multiple jurisdictions. Projects tend to have a high level of public interest. B. **No Changes** This category was changed recently, therefore no additional changes needed at this time.

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
	review. There are programs and permits in effect now that were not in effect at the time the current threshold of 100 tons was set. The state of Minnesota now has the Federal Clean Air Act Title V program (sometimes called Part 70 permit). In Minnesota, this is a combined construction and operating permit. A facility needs a Part 70 permit if its potential to emit air pollutants meets or exceeds specific thresholds, which are: · 100 tons per year of any criteria pollutant (sulfur dioxide, nitrogen oxides, particulate matter less than 10 microns in diameter; carbon monoxide, and lead); · 10 tons per year or more of any single hazardous air pollutant (about 185); or · 25 tons per year or more of any combination of hazardous air pollutants. There are public notice requirements for Part 70 permits as well as EPA review. In addition, facilities emitting over 100 tons per year of one or more air pollutants often have to conduct air dispersion modeling, undergo an air emissions risk analysis, and for some modifications to existing facilities, must go through a Prevention of Significant Deterioration review, which includes installing best available control technology. The MPCA staff believes that the air emissions permitting program addresses all major and minor concerns regarding air pollutants from new or expanding facilities, particularly those below 250 tons per year of a single pollutant. Certain air emission facilities of concern to the MPCA and the general public are captured in other mandatory environmental review categories. These are: · Electric Generating Facilities (25 Megawatts and over) – subpart 3; · Petroleum Refineries - subpart 4; · Fuel Conversion Facilities (mainly ethanol plants) – subpart 5; · Metallic Mineral Mining and Processing – subpart 11; · Paper or Pulp Processing Mills – subpart 13; and · Solid Waste (Incineration) – subpart 17D. · Other potential facilities of concern such as biomass to energy plants under 25 megawatts, soybean oil, and coatings (printing and painting) would most likely be over a 250 ton per year threshold. Environmental review serves the purpose of helping the public, proposer, and government bodies to understand the environmental impact of a proposed project. For that reason, an EAW for the Air Pollution category not only identifies the effects of air pollutants, it also addresses water and waste related issues , as well as issues such as transportation patterns, truck traffic, archeological significance, and wildlife impacts. Between 2000 to 2003, 14 EAWs were completed under the Air Pollution category. Based on a review of these 14 EAWs, it is reasonable to conclude that the amount of air emissions from these projects has little, or no, relationship to the impact of the other environmental issues listed above. Furthermore, of the few public comments that came in on these projects, almost all were about air emissions or issues related to air that are addressed in the air emissions permit. Therefore, the environmental review threshold provides a rather “hit-or-miss” approach for examining other issues, and does not justify setting the threshold at 100 tons per year. These rule revisions will not change the ability for the public to petition the EQB for a proposed project to complete an EAW that is less that 250 tons per year. There are no exemptions for environmental review given to the Air Pollution Category. Because of the extensiveness of air emission permit programs at the MPCA, other environmental review categories covering air emissions, the weak relationship between air emissions and other issues, and the ability of the public to petition for an		

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
	EAW, it is reasonable to increase the air pollution category threshold from 100 to 250 tons.		

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
Hazardous Waste **4410.4300 subp. 16** **EAW Thresholds:** **A. Construction or expansion of a hazardous waste disposal facility** **B. Construction of a hazardous waste processing facility with a capacity of 1,000 or more kilograms per month** **C. Expansion of a hazardous waste processing facility that increases its capacity by ten percent or more** **D. Construction or expansion of a facility that sells hazardous waste storage services to generators other than the owner and operator of the facility or construction of a facility at which a generator's own hazardous wastes will be stored for a time period in excess of 90 days, if the facility is located in a water-related land use management district, or in an area characterized by soluble bedrock** **4410.4400 subp. 12** **EIS Thresholds:** **A. Construction or expansion of a hazardous waste disposal facility for 1,000 or more kilograms per month** **B. Construction or expansion of a hazardous waste disposal facility in a water-related land use management district, or in an area characterized by soluble bedrock** **C. Construction or expansion of a hazardous waste processing facility if the facility is located in a water-related land use**	**1982 Sonar** This category area is proposed because of the potential for ground and surface water contamination and the resultant human health and environmental impacts that may result from the disposal, processing and storage of hazardous wastes. Additional concerns include potential air quality, noise and odor impacts, safety questions relating to handling, and transportation and land use issues. This issue was not specifically addressed in the current rules. These facilities are permanent and the danger of contamination is long lasting. The disposal facility categories have the same variable as processing facilities. The base line is that all disposal facilities will require some form of environmental review. **A, B, C, and D** The storage category is designed to apply to facilities for long term storage. The 5,000 gallon threshold is regarded as a likely dividing line between strictly temporary facilities and long term storage. Below this threshold it is likely that materials are being gathered primarily to make shipment economically practical. The gallon unit of measurement is used because these wastes are usually stored as liquids in 55 gallon drums. Concerns relating to storage facilities are mainly the potential for accidental spills and leaks. No EIS category is proposed because the need for an EIS can best be addressed on a case-by-case basis depending on the nature and location of the activity. The commercial/non-commercial distinction was included because commercial facilities are likely to acquire a variety of different substances from a variety of different sources. Such facilities are likely to generate a more board spectrum of pollutants and are likely to be more controversial. An all or none threshold is applied as an EIS threshold if the facility is to be located in a sensitive area. For other commercial facilities the 1,000 kilogram per month threshold is used. This threshold is selected because it is consistent with federal regulations relating to hazardous waste. For non-commercial facilities, environmental review is discretionary unless the facility is located in a sensitive area and processes in excess of 1,000 kilograms per month. This threshold was applied because the permit process is adequate to deal with non-commercial facilities in sensitive areas that process small amounts of hazardous waste. In non-sensitive areas, the permit process is capable of providing adequate review of non-commercial facilities. **EIS** If the facility is located within a sensitive area or if the facility has a capacity exceeding the federal threshold, an EIS is mandated. The need for an EIS on other disposal facilities id determined on a case-by-case basis. It is unlikely that small facilities will be proposed; therefore, an EIS will probably be mandated for all proposed facilities. **1988 SONAR** The substantive change proposed in the hazardous waste EIS categories is to expand coverage (in item c) of processing facilities to cover all processing facilities located in water-related sensitive areas. Presently, only commercial facilities are covered. The RGU for these categories, the PCA, believes there is no valid distinction to be made relative to potential for environmental impacts between commercial generator-operated facilities. Addionally, the cumbersome listing of types of water-related	**FEDERAL** **Army Corp of Engineers** Section 404 Wetland Permit **STATE** **MPCA** NPDES General Construction Stormwater permit NPDES Industrial Stormwater Permit Above Ground Storage Tank Permit Section 401 Water Quality Certificate Air Emissions Permit **Minnesota Department Of Transportation** Access Permit **DNR** Minnesota Natural Heritage Database Search Work with in Waters of the State Pemit **Minnesota State Historical Preservation Office** Cultural Resources Review **COUNTY** Conditional Use Permits Septic System Permit **Watershed Districts** Watershed Permits **CITY** Building Permit Conditional Use Permit Zoning Fire Department Review	**Modify** · Suggested language changes to reflect current permit language · Suggest rule change - work with DNR to add sediment cleanups at Superfund or other remediation program sites as exemptions to Subp. 27 (wetlands and public waters) Project information is provided to decision makers in multiple jurisdictions **EIS** **No Changes**

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
	sensitive areas is proposed to be replaced by the new term "water-related land use management district."		

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
Solid Waste **4410.4300 subp. 17** **EAW Thresholds:** **A. Construction of a mixed municipal solid waste disposal facility for up to 100,000 cubic yards of waste fill per year** **B. Expansion by 25 percent or more of previous capacity of a mixed municipal solid waste disposal facility for up to 100,000 cubic yards of waste fill per year** **C. Construction or expansion of a mixed municipal solid waste transfer station for 300,000 or more cubic yards per year,** **D. Construction or expansion of a mixed municipal solid waste energy recovery facility or incinerator, or the utilization of an existing facility for the combustion of mixed municipal solid waste or refuse-derived fuel, with a capacity of 30 or more tons per day of input,** **E. Construction or expansion of a mixed municipal solid waste compost facility or a refuse-derived fuel production facility with a capacity of 50 or more tons per day of input** **F. Expansion by at least ten percent but less than 25 percent of previous capacity of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste fill per year,** **G. Construction or expansion of a mixed municipal solid waste energy recovery facility ash landfill receiving ash from an incinerator that burns refuse-derived fuel or mixed municipal solid waste.** **4410.4400 subp. 13** **EIS Thresholds:** A. **Construction of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste fill per year,**	1982 SONAR This category area is proposed because of the potential for significant impacts relating to ground and surface water contamination through the migration of leachate and because environmental review is needed to assist governmental units in adequately assessing resource recovery alternatives. Additional environmental concerns relate to methane gas generation, fugitive dust, emissions, odor and noise problems, transportation issues, aesthetic impacts, toxic air emissions and land use issues. This category area is extremely controversial. **EAW** **A** For new disposal facilities the issue of siting is of primary importance. Cost requirements of operation and transportation factors make small disposal facilities unlikely. The 100,000 cubic yard per year threshold coincides with state solid waste regulations. There are approximately 20 facilities in operation with a capacity of over 100,000 cubic yards per year. Smaller facilities are likely to be modified and are not subject to the same regulations as the large facilities. Environmental review is necessary for all new facilities; however, the decision on need for an EIS on a case -to-case basis is adequate for the small facilities. For expansions of existing facilities, siting is less of an issue; however, the 100,000 cubic yards per year threshold was utilized for an EIS to maintain consistency with state solid waste regulations and because of the potential for ground and surface water contamination from that amount of waste. B. The lesser EAW threshold is used for expansions that do not exceed 100,000 cubic yards per year and for very large facilities where the expansion exceeds that amount. A 25 percent cut off is used to allow small increases in capacity to accommodate minor changes in the configuration as may be necessary for final contour plans. **C.** The transfer facility category: Impacts associated with this type of facility are primarily transportation issues, noise, odor, aesthetics, rodent and pest problems, and land use issues. These problems are usually controversial because the facilities are typically located in populated areas. The cubic yard measure is used because transfer vehicles are measured in cubic yards and because existing state solid waste regulations utilize this measurement. The threshold of 300,j000 cubic yards is proposed because only very large transfer stations are likely to require environmental review. Other facilities can be adequately regulated through the permit process. The experience of the PCA indicates 300,000 cubic yards is reasonable as a threshold. **D.** The resource recovery facility categories; Impacts associated with this type of facility are primarily air emissions, ash disposal, noise, odor, and transportation issues. A tons per day unit of measure is used because tons is the standard unit of measure for resource recovery and BTU's/ton is the standard unit of measure with relation to use of	**Solid Waste Transfer Facilities** **MPCA** Solid Waste Management Facility Permit NPDES General Storm Water Permit for Industrial Activities NPDES Storm Water Permit for Construction Activity Metropolitan Area Policy Plan Review **County** Operating License Conditional Use Permit Septic Permit Very Small Quantity Generator Hazardous Waste License **CITY** License to Operate Waste Transfer Facility Building Permit Utility Permit Conditional Use Permit Zoning Amendment **Watershed Districts** Watershed Permit **Compost Facilities** **MPCA** Solid Waste Permit Very small Quantity Generators Hazardous Waste License NPDES General Storm Water Permit for Industrial Activities NPDES Storm Water Permit for Construction Activity **COUNTY** Conditional Use Permit	**EAW and EIS** **Modify.** · Category language should be changed to reflect current permitting process · Future review of landfill projects may be accomplished by means of an alternative environmental review or AUAR-like process. **Eliminate** · Transfer facilities should be reviewed for possible elimination. **No change** · The remainder of the subparts. The concerns expressed in the SONAR are still valid. · Project information is provided to decision makers in multiple jurisdiction · High level of public interest

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
B. **Construction or expansion of a mixed municipal solid waste disposal facility in a water-related land use management district, or in an area characterized by soluble bedrock** C. **Construction or expansion of a mixed municipal solid waste energy recovery facility or incinerator, or the utilization of an existing facility for the combustion of mixed municipal solid waste or refuse-derived fuel, with a capacity of 250 or more tons per day of input,** D. **Construction or expansion of a mixed municipal solid waste compost facility or a refuse-derived fuel production facility with a capacity of 500 or more tons per day of input** E. **Expansion by 25 percent or more of previous capacity of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste fill per year**	solid waste for energy production. The 100 tons per day threshold was used for the EAW because these facilities are likely to be modular units. Performance and construction standards for modular units are standardized; therefore, project specific review on a discretionary basis is adequate. One hundred tons per day corresponds to 10% of the major air emission threshold. Resource recovery facilities are likely to be located in heavily populated areas with air quality problems and are likely to have toxic air emissions. Therefore, environmental review at this threshold is reasonable. **EIS** A. For expansions of existing facilities, siting is less of an issue; however, the 100,000 cubic yards per year threshold was utilized for an EIS to maintain consistency with state solid waste regulations and because of the potential for ground and surface water contamination from that amount of waste. B. An all or none threshold was used for facilities in sensitive areas. These locations carry a high potential for ground and surface water pollution. PCA experience in dealing with existing facilities demonstrates that problems are likely and that an EIS is necessary to adequately assess the potential for problems in these locations. C. Facilities involving combustion of mixed municipal solid wastes, "energy recovery facilities" and combustion in other incinerators, are proposed to require mandatory EISs' at a threshold of 250 tons per day of input. Mandatory EISs would be required for mixed municipal solid waste compost facilities and refuse-derived fuel production facilities at the same threshold as in the present rules, i.e., 50O tons per day. The other types of resource recovery facilities, recycling centers and yard waste compost facilities, would no longer be subject to a mandatory EIS ,category. D. The 500 tons per day threshold was used for the EIS because this is approximately the level at which an incinerator would have to meet new source performance standards. Five hundred tons per day would yield approximately 50 tons per year of particulate emissions. This corresponds to approximately 50% of the major source threshold. However, these facilities are likely to be located in heavily populated areas and are likely to have additional toxic emissions; therefore, this more restrictive threshold is reasonable. Mandatory EISs would be required for mixed municipal solid waste compost facilities and refuse-derived fuel production facilities at the same threshold as in the present rules, i.e., 50O tons per day. The other types of resource recovery facilities, recycling centers and yard waste compost facilities, would no longer be subject to a mandatory EIS category. **E.** No specific language for this section. **General Discussion** The need for lower thresholds for projects involving the combustion of mixed municipal solid waste results from a better understanding of the air emissions of such facilities and	Building Permit **CITY** Conditional Use Permit Building Permit **Landfills** **Corp of Engineers** Section 404 General Permit **STATE** **MPCA** Solid Waste Disposal Facility Permit NPDES Facility Stormwater Permit Certificate of Need Title V Air Permit NPDES Stormwater Permit for Industrial Activity **Metropolitan Control Commission** License for Leachate Disposal **Minnesota Historical Society** Archeological Survey Construction Easements **Minnesota Historical Preservation Office** Concurrence on Findings of Cultural Resources Impacts **Minnesota Department Of Health** Monitoring Well Permits **COUNTY** Wetland Conservation Act Approval Building Permit Conditional Use Permit Septic System Permit Transport License Solid Waste License **TOWNSHIP** Conditional Use Permit **CITY** Conditional Use Permit	

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
	the mechanisms of possible exposure to these emissions than was possessed in 1982. As indicated in Appendix 3, of 17 permits for such facilities considered by PCA, 14 were considered since 1982 and all of the EAWs and EISs have been done since then. In addition, the scope of nationally available information about the potential impacts of burning solid wastes has also greatly expanded in recent years. One consequence of this increased information base is a recognition by the State that potentially severe impacts may occur from facilities smaller than the 500 ton per day threshold adopted in 1982. According to a recent U.S. Environmental Protection Agency study (Municipal waste Combustion study, Emission Data Base for Municipal Waste Combustors, U. S. EPA, EPA/530-SW-8 7-021 , June, 1987) mixed municipal solid waste, incinerators emit toxic Chemicals including dioxins/furans, PCB's, , PAH's, arsenic, beryllium, cadmium, chromium, lead, mercury, and nickel. The toxic properties of these chemicals can cause acute or chronic poisoning ("systemic toxicity"), increased rates of mutations and birth defects, reproductive problems, immune system effects, and cancer (see, for example~ Winona County Incinerator EIS, Technical Work Paper Hazard Identification, ICF/Clement Associates, 1987). The risks to human health posed by these emissions are dependent on many factors in addition to the capacity of the facility: facility design, pollution control equipment, operational parameters,' composition of the fuel, facility location, local meteorology, surrounding terrain, and the types of receptors and land uses in the area. Depending' on the combination of specific factors for any given project, there may be considerable variation in environmental and health impacts for a facility of a given capacity. For example, the proposed Winona County incinerator was found, to have a projected health risk in excess of the Minnesota Dept. of Health guideline despite it relatively small size (150 tons per day) and state-of-the-art pollution control equipment because of potential exposure to humans through the consumption of contaminated fish. This was due to the proposed location near the Mississippi River, in an area noted as a fisheries resource (Winona County Resource Recovery Facility Draft (EIS, PCA, 1988.) This and other health risk assessments for resource recovery facilities have frequently indicated that human exposure to toxic emissions through the aquatic food chain is the exposure route of greatest significance (Anoka County RDF Facility EIS, MPCA, 1986; Hennepin Energy Recovery corporation Permit, MPCA, 1987; Summary of Risk Assessment and Proposed Risk Management Actions, Midland Michigan, U.S. EPA, Office of Public Affairs, Region 5, April 1988). The threshold proposed in item C for energy recovery facilities and incinerators has been a subject of considerable controversy between the PCA, local units of government interested in incineration as an alternative to landfilling of mixed municipal solid waste, the solid waste processing industry, and environmental groups. The 250 ton per day threshold represents a compromise between competing positions negotiated at two meetings of an ad hoc work group convened by the EQB to discuss the original PCA proposal to reduce the threshold to 100 tons per day. The 250 ton figure is the smallest-sized facility which is generally accepted to automatically have the potential for significant environmental effects. The work group concluded that while some -- perhaps many smaller facilities might warrant an EIS because if individual circumstances, it was not reasonable to set the mandatory	**INCINERATORS** FEDERAL **U.S. Fish and Wildlife Service** Threatened and Endangered Species Review **Federal Aviation Administration** FAA Notification Form 7460-1 STATE **MPCA** Air Emissions Permit NPDES Stormwater Construction permit NPDES Industrial Stormwater Permit **Minnesota State Historical Preservation Office** Cultural Resources Review Minnesota Natural Heritage Database Review **DNR** Water Appropriation Permit **COUNTY** Conditional Use Permit **CITY** Conditional Use Permit Building Permit and Zoning Certificate	

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
	threshold below 250 tons per day. It was agreed by the work group that all energy recovery and incineration project EAWs in the future should include a health risk assessment, and the results of that assessment, a swell as other EAW information, should form the basis for a case-by-case decision on the need for an EIS for facilities less than 250 tons per day. The EAW procedure will allow for consideration of the individual circumstances which largely dictate the magnitude of the potential impacts of each project, circumstances which it is not possible with present knowledge to specify in the rules themselves.		

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
<u>Wastewater Systems</u> **4410.4300 subp. 18** **EAW Thresholds:** **A. Expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of any part of that system by 1,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with a capacity less than 20,000,000 gallons per day or for expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of any part of that system by 2,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with the capacity of 20,000,000 gallons or greater,** **B. Expansion or reconstruction of an existing municipal or domestic wastewater treatment facility which results in an increase by 50 percent or more and by at least 200,000 gallons per day of its average wet weather design flow capacity, or construction of a new municipal or domestic wastewater treatment facility with an average wet weather design flow capacity of 200,000 gallons per day or more,** **C. Expansion or reconstruction of an existing industrial process wastewater treatment facility which increases its design flow capacity by 50 percent or more and by at least 200,000 gallons per day or more, or construction of a new industrial process wastewater treatment facility with a design flow capacity of 200,000 gallons per day or more, 5,000,000 gallons per month or more, or 20,000,000**	**1982 Sonar** This category area is proposed because of problems associated with treatment facilities including ground and surface water pollution due to effluent discharges and sludge and ash disposal, and air pollution from sludge incineration. Problems associated with sewer systems include erosion during construction and maintenance, elimination or degradation of wetland habitats and adjacent water resources, and ground and surface water pollution resulting from seepage from sewer lines. Additional concerns are generated because of increased potential for secondary development fostered by the installation of a new system. **A**. A sewage system may be viewed as consisting of the treatment facility and the sewer system or conveyance system to that facility. Sewage systems were formerly a major source of concern relating to water pollution; however, much progress has been made in lessening impacts pursuant tot he federal Clean Water Act. For projects receiving federal funds pursuant to the Clean Water Act, limited environmental review takes place. For facilities not receiving federal funds no federal environmental review is required. The threshold is proposed to exclude small new facilities and minor additions to existing sewage systems. The threshold for new systems was set at a level approximately equivalent to the required size of a facility to service 300 people. The threshold for expansions was set at a level approximately equal to the expansion of services for 500 people. A second threshold for expansions was set for 50% because the base expansion threshold would potentially exclude small facility expansions for 150 to 500 people. Expansions of that relative magnitude are likely to generate significant local impacts such that environmental review is reasonable. **1988 Sonar** The threshold for collection system expansions in item A would be raised for cities of all sizes, including those which discharge to systems operated by Metropolitan Council Wastewater Services (MCWS) or the Western Lake Superior Sanitary District (WLSSD). Presently, EAWs are required for sewer projects with design flows of 500,000 gallons per day within 1st and 2nd class cities or the MCWS or WLSSD systems, 100,000	<u>SEWER COLLECTION SYSTEMS</u> FEDERAL **U.S. Corp of Engineers** Section 10 Permit for activities affecting navigable waters in the U.S. Section 404 Letter of Permission STATE **MPCA** Sewer Extension Permit NPDES General Stormwater Constrution Permit Section 401 Water Quality Certificate **DNR** Water Appropriation Permit Minnesota Natural Heritage Database Review Utility Crossing License Work Within Public Waters Permit **MnDOT** Utility Permit on Trunk Highway Right-Of-Way **Minnesota Department of Health** Watermain Plan Approval	**Modify** Reviewed for possible change in requirements for expansion of WWTF. Reviewed for possible addition to the category for the following items. The following wastewater is not currently being addressed Utility wastewater (cooling tower blowdown, reject, etc.) NOT associated with an industrial wastewater classified as process wastewater under the federal regulations should be considered for review · Waste streams resulting from the removal of pollutants or “impurities” from water being used for either industrial or drinking water should be considered for review. · Water Treatment Plant Residual (backwash, reject, etc.) from a domestic water treatment plant should be considered for review. Project information is provided to decision makers in multiple jurisdictions

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
gallons per year or more, This category does not apply to industrial process wastewater treatment facilities that discharge to a publicly-owned treatment works or to a tailings basin reviewed pursuant to subpart 11, item B.	gpd for 3rd class cities, and 50,000 gpd for 4th class cities and unincorporated areas. Over the most recent three-year period, the MPCA has prepared EAWs for approximately 15 projects per year under the sewage system category, more than half of which were sewer extensions. This level of review is believed to be unjustified because the majority of the sewer extensions are relatively minor expansions of much larger systems, and because the increases in wastewater flow accompanying sewer extensions usually occur gradually over a period of many years. Furthermore, problems which have been cited as associated with sewer systems, i.e., construction erosion, the degradation or loss of wetlands, seepage from sewer lines, and the potential for secondary development, are addressed by permit programs for runoff from construction sites and the preservation of wetlands, and by the application of minimum standards for sewer construction and maintenance. The potential for impacts from secondary development will also continue to be addressed through state and local requirements for environmental review and permitting. B. In item B, a clarification is proposed stating that an EAW is not mandatory for a domestic wastewater treatment expansion unless it increases the design flow capacity of the facility by at least 50\ AND it is an increase of at least 50,000 gallons per day. This is consistent with past and present policy of the MPCA that the preparation of EAWs should not be mandatory for projects that involve relatively minor expansions of existing, small treatment facilities. C. Regarding new item C, the rules currently provide for mandatory EAW categories for certain types of industrial facilities which may involve the generation of industrial wastewater. Examples are petroleum refineries, fuel conversion facilities, mineral mining and processing, and pulp and paper processing. These and other industrial project may also require environmental review because of their potential air emissions (under subpart 15). However, because there is currently no EAW category pertaining directly to the generation of industrial wastewater, some major industrial projects may not be subject to mandatory review. Examples would be food processing and the manufacture of wood products other than pulp or paper. The proposed new category at item C would establish a threshold for the construction of new or expansion of existing industrial process wastewater treatment facilities. Process wastewater is not intended to include noncontact cooling water, storm water runoff, or animal feedlot runoff. The proposed threshold is based on existing PCA nondegradation regulations for new or expanded discharges. Projects of this magnitude are likely to generate significant local impacts. This category would not apply to industries which discharge to publicly owned treatment facilities. Such discharges are subject to the terms and conditions of preexisting discharge permits and are also regulated by local jurisdictions under existing programs and subject to state and federal oversight. It also would not apply to tailings basins which are covered by the mandatory metallic mineral mining category at subpart 11, item B; this exclusion is stated in the proposed amendment to eliminate the potential for future questions over which agency, MPCA or DNR, should be the RGU for review of such facilities.	Water Extension Permit **Metropolitan Council** Connection Permit **State Historical Preservation Office** Concurrence on Findings of Cultural Resources Impacts **COUNTY** Highway Access/Entrance Permit **Watershed District** Project Approval Watershed Permit Application for Minnesota Wetland conservation Act Exemption **CITY** Conditional Use Permit Street and Utility Plan Approval **WASTEWATER TREATMENT FACILITY PERMITS** FEDERAL **U.S. Corp of Engineers** Section 404 Permt Wastewater Infrastructure Funding Program Outfall Permits STATE **MPCA** WWTF Plans and Specifications Approval SDS Permit for land application of treated Wastewater NPDES General Stormwater Construction Permit Sanitary Sewer Extension Permit NPDES/SDS Surface Water	

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
		Discharge Permit NPDES Industrial Stormwater discharge Permit Air Quality Permit for back up generators Non-degradation to All Waters Review **DNR** Water Appropriation Permit License to Cross Public Lands and Waters Natural Heritage and Nongame Database Review Outfall Permits **Minnesota Department of Health** Well Abandonment Permit State Historic Preservation Office Concurrence on Findings of Cultural Resource Impacts **Public Facilities Authority** Funding Application **Board of Water and Soil Resources** Wetland Conservation Act Permits **COUNTY** Certificate of Wetland Conservation Act Exemption Conditional Use Permit Utility Permit Building Permits Right-Of-Way Permit Conditional Use Permit **CITY** Building Permit	

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
	(1982 SONAR	STATE **MPCA**	**No Change** - Legislative changes have been made to this mandatory category over

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
Animal Feedlots **4410.4300 subp. 29** **A. Construction of an animal feedlot facility with a capacity of 1,000 animal units or more or the expansion of an existing facility by 1,000 animal units or more, provided the facility is not in an area listed in item B, PCA or county.** **B. Construction of an animal feedlot facility of more than 500 animal units or expansion of an existing animal feedlot facility by more than 500 animal units if the facility is located wholly or partially in any of the following sensitive locations: shoreland; a delineated flood plain, except that in the flood plain of the Red River of the North the sensitive area includes only land within 1,000 feet of the ordinary high water mark; a state or federally designated wild and scenic river district; the Minnesota River Project Riverbend area; the Mississippi headwaters area; or an area within a drinking water supply management area delineated under chapter 4720 where the aquifer is identified in the wellhead protection plan as vulnerable to contamination; or within 1,000 feet of a known sinkhole, cave, resurgent spring, disappearing spring, Karst window, blind valley, or dry valley, PCA or county.** **Exemptions** **Animal feedlots. The activities in items A to D are exempt.** **A. Construction of an animal feedlot facility with a capacity of less than 1,000 animal units or the expansion of an existing animal feedlot facility to a total cumulative capacity of less than 1,000 animal units, if all of the following apply:** **(1)the feedlot is not in an environmentally sensitive location listed in part 4410.4300, subpart 29, item B;** **(2) the application for the animal feedlot permit includes a written commitment by the proposer to design, construct, and operate the facility in full compliance with PCA feedlot rules; and** **(3) the county board holds a public meeting for citizen input at least ten business days prior to the PCA or county issuing a feedlot permit for the facility, unless another public meeting for citizen input has been held with regard to the feedlot facility to be permitted.** **B. The construction of an animal feedlot facility of less than 300 animal units or the expansion of an existing facility by less than 100 animal units, no part of either of which is located within a shoreland area; delineated flood plain; state or federally designated wild and scenic rivers district; the Minnesota River Project Riverbend area; the Mississippi headwaters area; an area within a drinking water supply**	This category was proposed because of the potential for significant environmental impacts relating to ground and surface water quality, odors, and local land use issues. This type of activity is likely to be controversial if the location is in a sensitive area or near residential or recreational developments. Specific categories proposed within this category area include: The current rules contain no EAW or exemption categories relating to the animal feedlot category area. Although the current rules do not contain a mandatory EAW category relating to these facilities, several citizen petitions were submitted on animal feedlot facilities pursuant to the current rules. Facilities petitioned were of a smaller size than the proposed threshold but the facilities were located in areas of soluble bedrock. The proposed threshold corresponds to the threshold established in the Clean Water Act. Facilities of this size must be evaluated to determine if a national Pollutant Discharge Elimination System (NPDES) permit is required. The alternative of requiring an EAW only for facilities located within a shoreland area, delineated flood plain area or area with soluble bedrock was considered but rejected on the basis or local government comments indicating that activities of this scale are very controversial and should be noticed to the public. Exemptions The exemption category is proposed because projects of this size are not likely to result in significant impacts. Projects of this type have the potential to generate petitions based more on “neighborhood disputes” than true impacts. This threshold is a reasonable level to prevent abuse of the environmental review process in this manner.	NPDES/SDS Feedlot Permit NPDES Construction Stormwater Permit **DNR** Water Appropriations Permit **Board of Animal Health**Notification to Compost Dairy Cattle **Fire Marshall** Plan Review **COUNTY** Conditional Use Permit Building Permit **Watershed District** Discharge to Surface Waters **TOWNSHIP** Conditional Use Permit	the past 14 years. No additional changes appear to be necessary or warranted at this time. Project information is provided to decision makers in multiple jurisdictions High level of public interest.

Category	Intended Historical Purpose - SONAR (Year)	Government Actions	Analysis and Recommendation
management area designated under chapter 4720 where the aquifer is identified in the wellhead protection plan as vulnerable to contamination; or 1,000 feet of a known sinkhole, cave, resurgent spring, disappearing spring, Karst window, blind valley, or dry valley. **C. The construction or expansion of an animal feedlot facility with a resulting capacity of less than 50 animal units regardless of location.** **D. The modification without expansion of capacity of any feedlot of no more than 300 animal units if the modification is necessary to secure a Minnesota feedlot permit.**			

MINNESOTA ENVIRONMENTAL QUALITY BOARD

Environmental Review – 2017 Survey Results Debrief

Overview

The Environmental Quality Board is responsible for monitoring the effectiveness of Environmental Review, taking measures to improve its effectiveness, and providing assistance to all parties involved. To that end, EQB staff have been collecting data to better understand trends and identify areas for program improvement. The results of EQB staff data collection are an important first step in understanding environmental review being completed around the state. 2017 data collection consisted of Project Proposers and Responsible Governmental Units (RGUs), the results of which are included in this report. 2017 data collection also included citizen petition representatives, however, the low distribution and response rate do not warrant ample information for a review at this time. 2018 data collection includes a Citizen Survey.

Purpose and Report Outline

The survey is broken into five sections, including demographics, each was focused on a different aspect of the ER process. The report is similarly broken into five sections, preceded by a Summary:

1. **2017 Survey Results Summary**
2. **Survey Demographics**
3. **General Environmental Review Process: Consultants, Timeliness and Cost**
4. **Environmental Review Effectiveness**
5. **Environmental Review Outcomes**
6. **EQB Technical Assistance**

I. 2017 Survey Results – Summary

In 2017, 89 surveys were distributed to RGUs and 59 were distributed to project proposers upon completion of an Environmental Review (ER) process such as a Citizen Petition, Environmental Assessment Worksheet (EAW), Environmental Impact Statement (EIS), or Alternative Urban Areawide Review (AUAR). Upon closing the survey at the end of December 2017, RGUs had submitted 45 complete responses for a 51% response rate. Project proposers had submitted 24 completed surveys for a response rate of 41%. The survey focused on timeliness and cost of the ER process, perceptions of the effectiveness and outcomes of ER, and the quality of technical assistance provided by the EQB.

The following pages present a high-level summary of the results from the RGU surveys. While this report is fairly comprehensive, it does not include every piece of data collected. Instead, it presents the purpose of each section, followed by results that EQB Staff found to be the most surprising, informative, and useful. As you review the results below, we also ask that you keep in mind the following discussion questions, as they will guide the conversation at the meeting on April 18th:

Survey Results Discussion Questions:

- Is there anything surprising?
- How should EQB staff prioritize program improvements and data collection?
- Is there additional information we should be gathering?
- Are there areas that EQB should focus on next?
- What kind of program improvement initiatives can we implement based on this information?

II. Survey Demographics

The majority of Monitor submissions (Figure 1, n=122) received in 2017 were for the EAW process (98, 80%), followed by AUARs (15, 12%), Petitions (6, 5%), and finally EISs (3, 3%). The RGU (Figure 3, n=45) and project proposer (Figure 4, n=24) samples reflect the submissions in that the majority of respondents (82% and 87%, respectively) had completed EAWs. EISs were not represented in the RGU sample. Neither AUARs nor EISs were represented in the project proposer sample. In terms of governmental unit type, the RGU sample (Figure 5, n=45) was fairly representative of the Monitor submissions (Figure 2, n=122), as was the proposer sample (Figure 6, n=23).

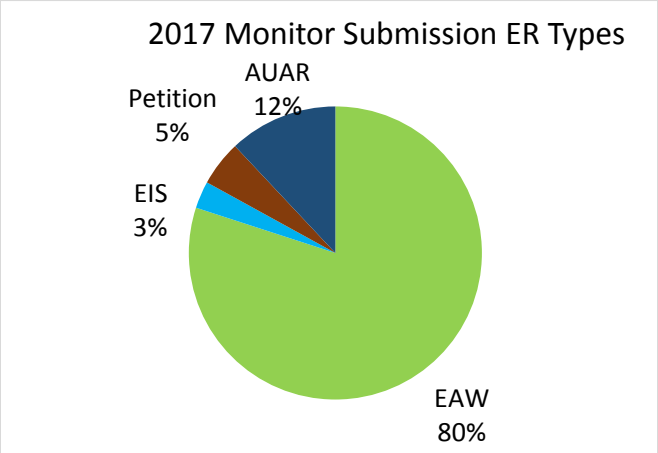

Figure 1

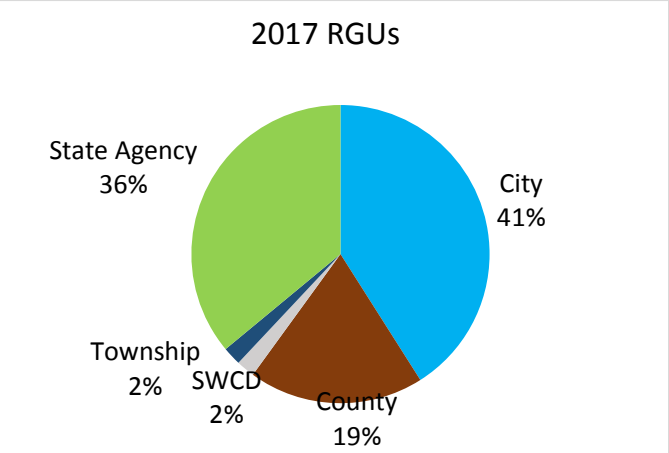

Figure 2

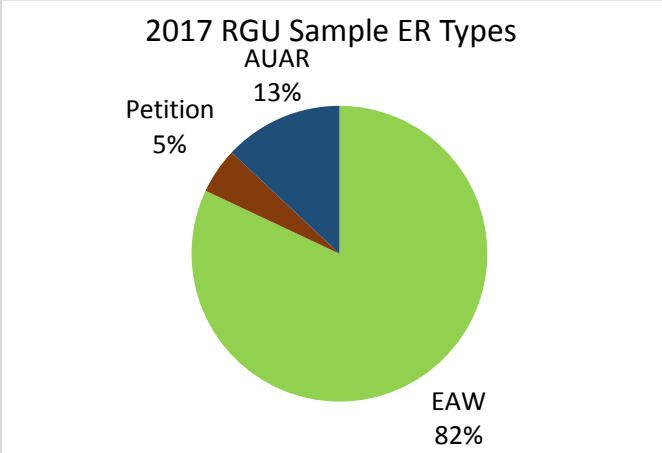

Figure 3

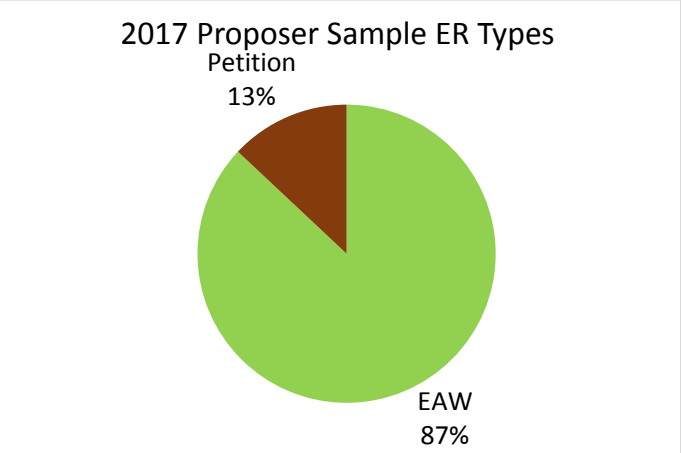

Figure 4

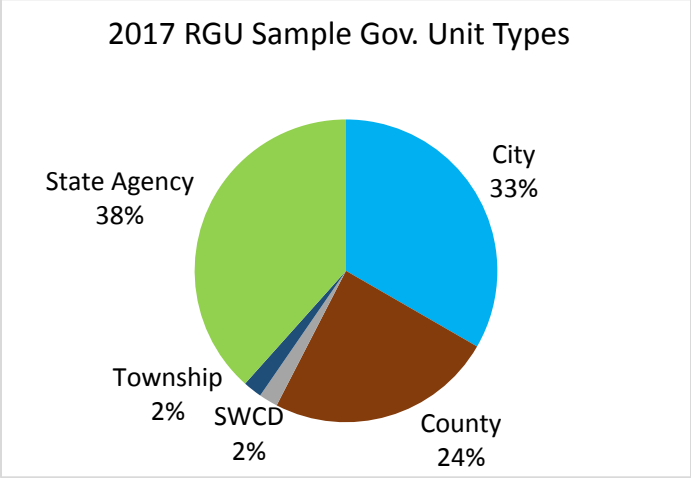

Figure 5

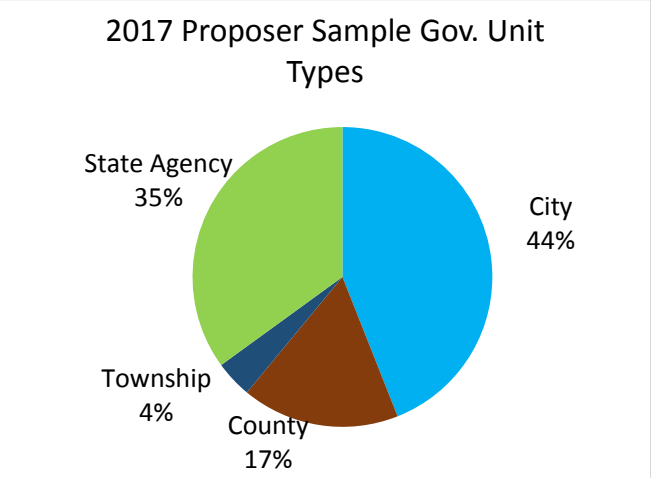

Figure 6

III. The Environmental Review Process: Consultants, Timeliness and Cost

A key component of the survey was to gather quantitative data on the ER processes. This includes data on the staff time and cost required to complete an ER process, as well as data on the timeliness of the preparation of the ER document. This data is intended to better understand timeliness and cost concerns that have been raised by policy makers. For purpose of the survey and reporting the survey results, "ER process" includes the preparation and review of the ER document(s), the public comment period, public meetings, response to comments, and any other components required to complete the ER process for the project identified above. The number of respondents for each question may differ between questions as not all questions were mandatory.

Did the (project proposer or RGU) hire a consultant to assist with the ER process?

As the EQB looks to update guidance documents, it is important to know who is completing the environmental review process in order to better design the guidance documents. **Most project proposers (76%, n=21; Figure 7) and RGUs (53%, n=43, Figure 8) indicated that they hired a consultant to assist with the ER process.** Of the RGUs, three-quarters of LGU respondents (67%, n=27) and one-quarter of state agency respondents (25%, n=16) reported consultant use.

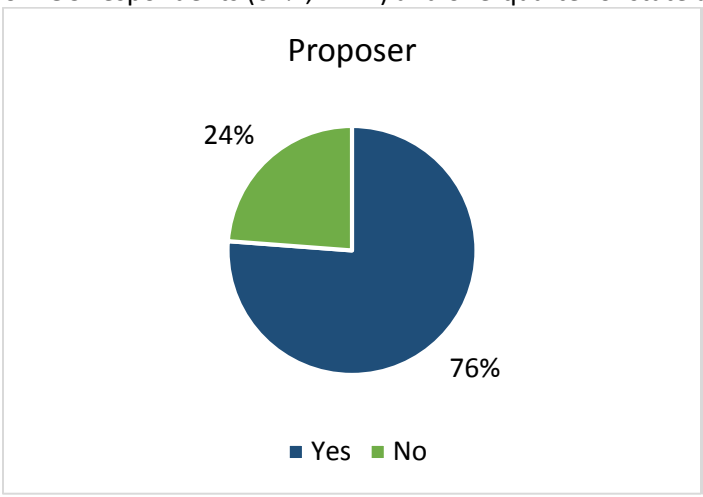

Figure 7

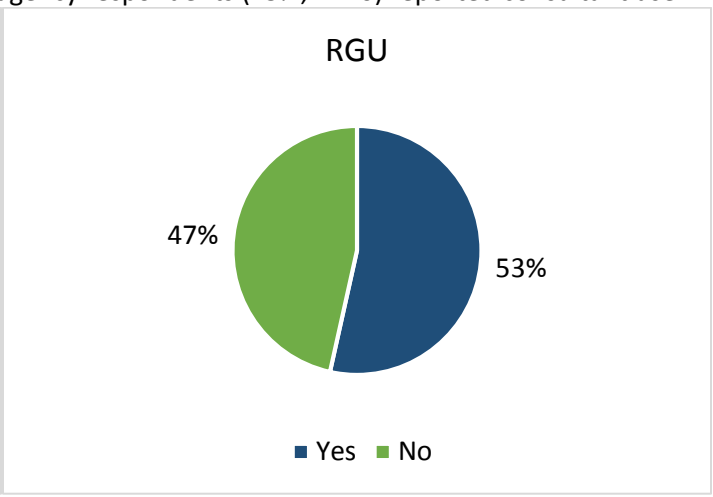

Figure 8

Did the (project proposer or RGU) track the total amount of staff time required to complete the ER process for the project?

This information can help inform EQB Staff on the relative time required to complete the entire environmental review process for different types of projects. **Most project proposers (71%, n=21; Figure 9) and RGU respondents, (72%, n=43; Figure 10) are not tracking staff time.** Of those who tracked and provided the staff time required, the average for proposers (n=4) was 70 hours, for RGUs (n=10) it was 62 hours.

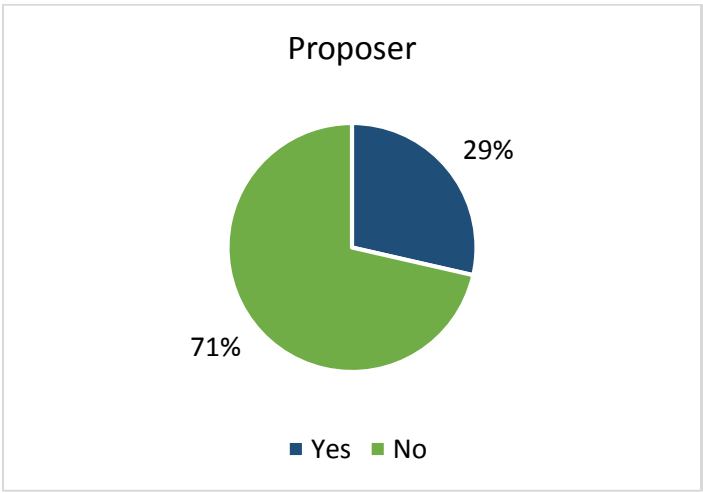

Figure 9

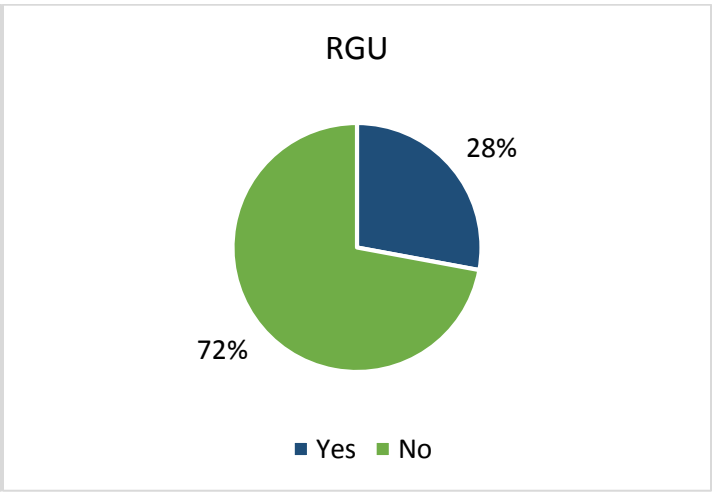

Figure 10

Did the (project proposer or RGU) track the total costs required to complete the ER process for the project?
This information allows EQB to gain a better understanding of the costs to RGUs and project proposers to complete the ER process. **Most project proposers (67%, n=21; Figure 11) are tracking cost information, but most RGUs (84%, n=43; Figure 12) are not.** The average cost provided for project proposers (n=12) was $103,473, with a range of $12K-$550K. For RGUs (n=4) the average cost was $35,960, with a range of $200 – $75K. It is worth noting both the small sample size for this question and the large range reported, especially from RGU respondents. The key takeaway from this data is that additional guidance is needed on how to report cost information, and a larger sample size is needed to make any definitive statement.

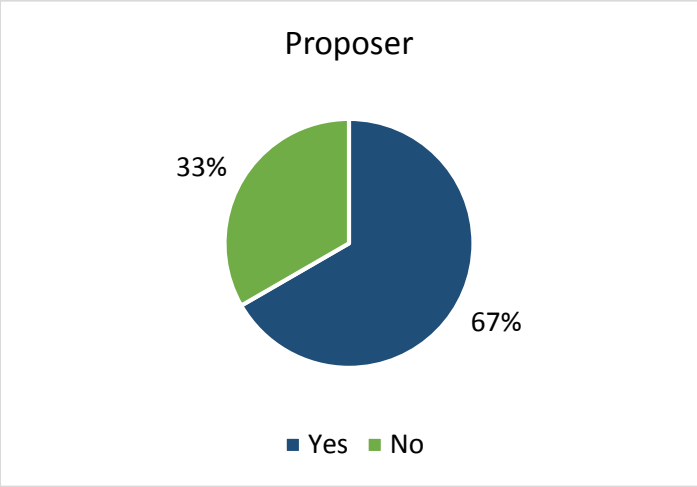

Figure 11

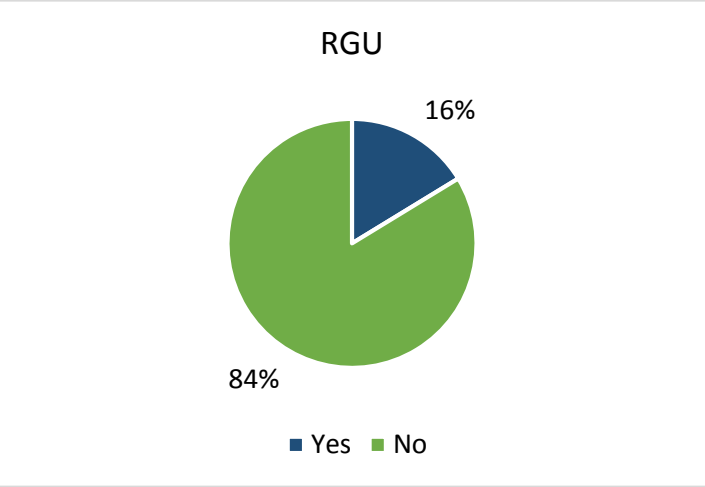

Figure 12

Timeliness of the Environmental Review Process

EQB Staff are able to track the timeliness of the environmental review process upon publication of the ER documents in the *EQB Monitor.* However, this length of time only represents a portion of the process and fails to account for the time required to prepare the document for distribution. The RGU survey included detailed questions designed to gather information on the ER document preparation process timelines for EAWs and EISs. No respondents answered timeliness questions focused on EISs and few respondents (n=2) were able to provide pre-data submittal dates for EAWs. **RGU respondents reported an average of 106 days (n=18) from the time the project proposer first submitted data for the EAW to the time that the RGU distributed the draft EAW** (Figure 13). Responses ranged from 0 to 554 days. Of those respondents, local governmental units reported an average of 29 days with a range of 0-82 days (n=9). State agencies reported an average of 183 days and a range of 56-554 days (n=9). **EQB Staff track the time from EAW distribution to the EIS Need Decision, which is on average 95 days.** Of the RGUs, state agencies had an average of 113 days, and local governmental units averaged 84 days. The difference in timeliness averages is potentially due to the mandatory categories each RGU is responsible for, the complexity of which can vary widely between local units of government and state agencies.

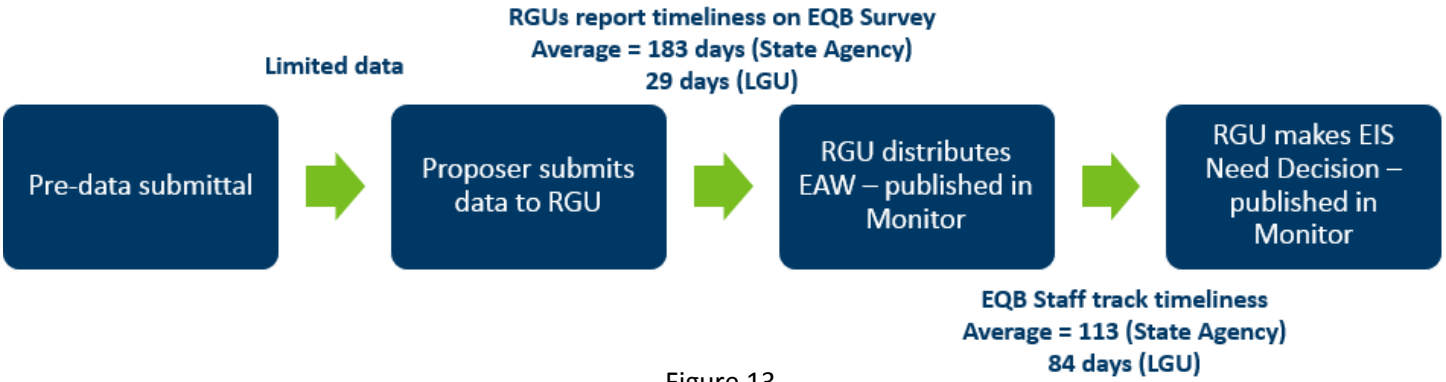

Figure 13

Project proposers were not asked to report actual timeliness. They were asked about their experience compared to their expectations. **Two-thirds (67%, n=21) reported the entire ER process took more time than expected**. The remainder (33%) said the time required met their expectations. When asked which phases took more time than expected, most (79%, n=18) reported the EAW data submittal and prep phase took longer than expected. About one-third (36%) said it was the EIS ND, and the remainder (14%) said Monitor publication and comment period.

IV. Perceptions of Effectiveness Environmental Review

According to Minnesota Rules 4410.0400, it is the responsibility of the EQB to monitor the effectiveness of ER, and take measure to improve the effectiveness. Before taking steps to improve the effectiveness, EQB must first collect baseline data to establish how well the process is currently working. Consequently, a number of the survey questions asked RGUs and project proposers to share their perceptions of the effectiveness of various components of the ER process. Please note overlapping questions are not intended as a comparison between RGU and proposer perceptions, but to gauge each of their perceptions independently.

Perceptions of Environmental Review Effectiveness

The only effectiveness question answered by both project proposers and RGUs was whether the ER process was useful to the project proposer. **When asked if the ER process provided usable information to the project proposer regarding the proposed project's potential environmental effects, about three-quarters (77%, n=43; Figure 14) of RGU respondents, and almost half of project proposer respondents (48%, n=21) agreed**, while 12% of RGUs and 24% of proposers, were neutral. The remainder of RGUS (12%) and project proposers (29%) disagreed.

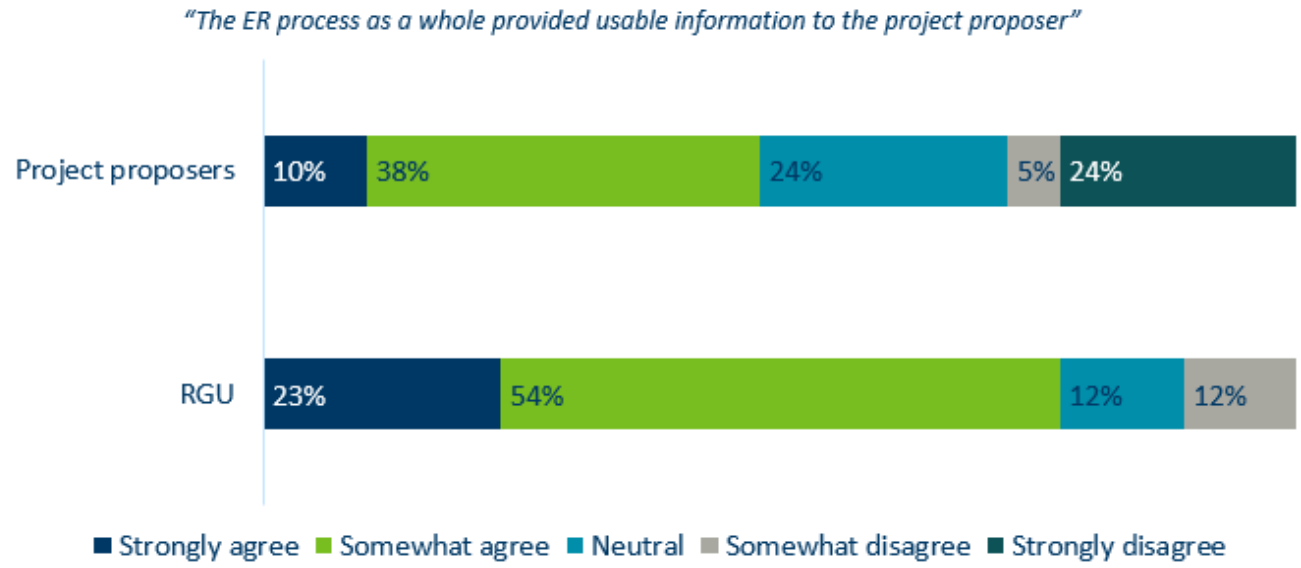

Figure 14

RGUs conveyed predominately positive perceptions of the ER process when answering the remaining questions on ER process effectiveness. Almost three-quarters of RGUs reported the ER process was useful in identifying the proposed project's potential environmental effects that would not have otherwise been identified (72%, n=43; Figure 15). The remainder were split equally between neutral (14%) and disagree (14%). When asked whether the ER process allowed for public participation that would not otherwise have occurred, the majority (63%, n=43; Figure 15) agreed. Few responded as neutral (7%), and close to one-third disagreed (30%). Finally, the majority of RGUs (59%, n=43; Figure 15) reported that the comments received during the ER process provided usable information. Close to one-third (28%) were neutral, and the remainder (14%) disagreed.

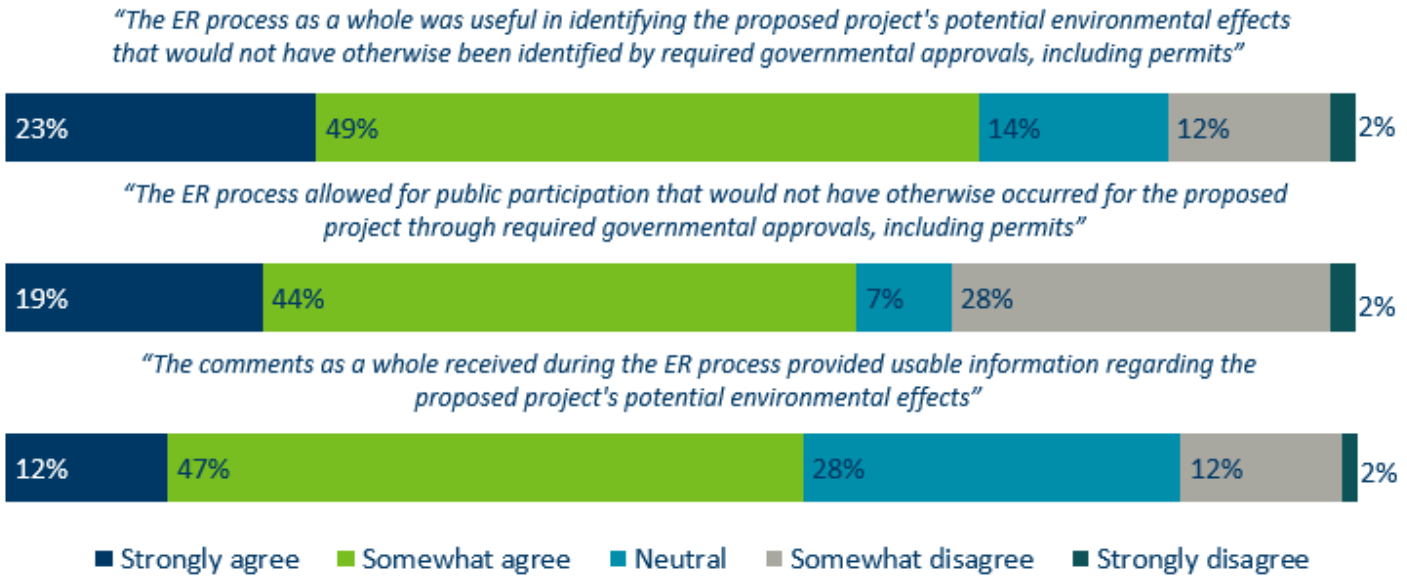

Figure 15

RGUs were also asked to assess whether the ER process provided usable information to other stakeholder groups (governmental units and citizens) involved in the ER process. **RGUs largely indicated that the ER process did provide usable information to each party.** A majority of RGUs agreed the ER process provides usable information to citizens (77%, n=43; Figure 16) and to RGUs (82%). More RGUs were neutral on whether the process provided usable information to citizens (21%) than to RGUs (7%). The remainder disagreed that the process provided information to citizens (2%) and RGUs (12%).

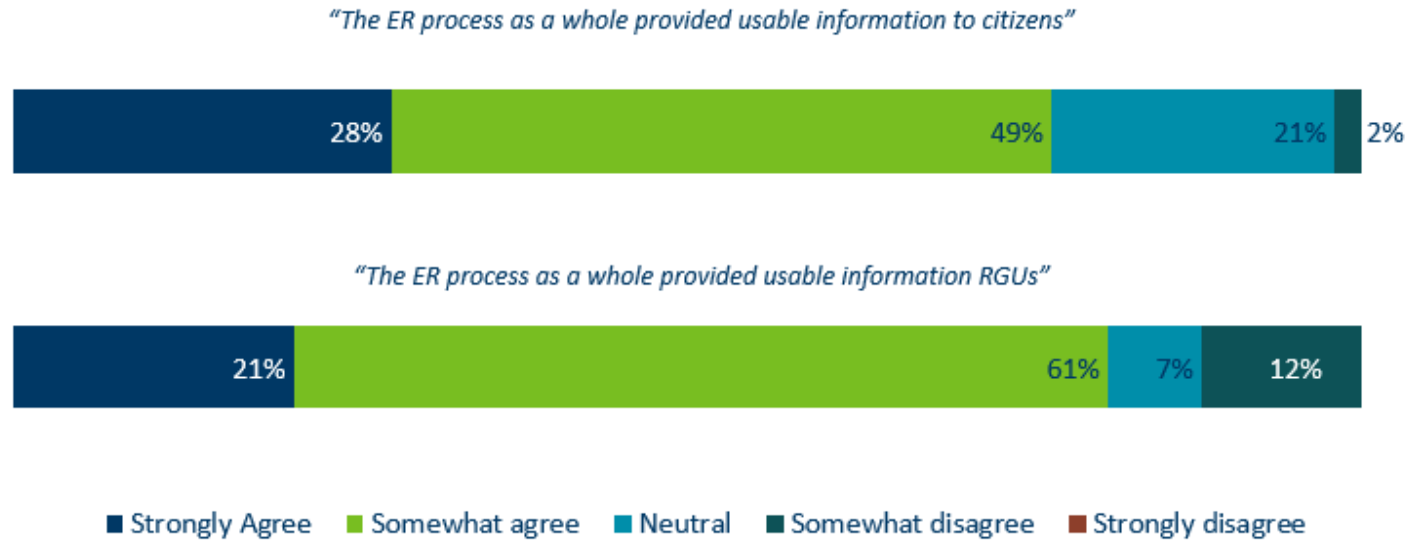

Figure 16

Project proposers were asked a slightly different set of questions: whether they found the opportunity for public engagement to be useful and whether the ER process was fair. **When asked whether they found the ER process as a whole to be fair, a majority of project proposers agreed (52%, n=21; Figure 17).** Almost one-third (29%) were neutral, and about one-fifth disagreed (19%).

When asked whether they found the opportunity for public engagement to be a useful part of the ER process, the majority of project proposers (52%, n=21; Figure 17) disagreed. One-third (34%) agreed, and the remainder (15%) were neutral or didn't know.

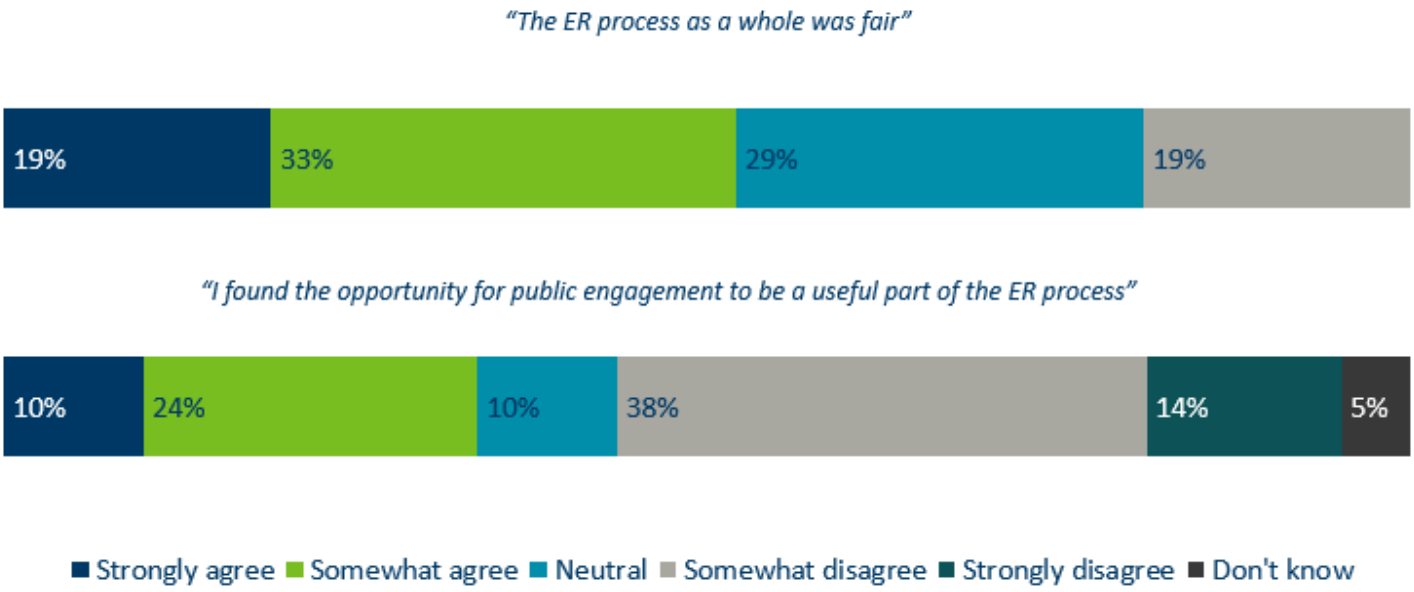

Figure 17

V. Perceptions of Environmental Review Outcomes

The survey also included questions focused on the perceived outcomes of the ER process. Specifically, the survey asked about the mitigation measures identified exclusively through the ER process and the likelihood that these measures would be included in applicable permits. This data allows us to better understand how the ER program impacts environmental outcomes of a project.

Project proposers and RGUs were both split on whether the ER process changed the design of the proposed project to reduce the potential negative environmental effects, though they both lean towards disagreement with the statement. Almost half of RGUs (42%, n=43; Figure 18) and project proposers (47%, n=21; Figure 18) disagreed. The remainder of the RGUs were split between neutral (33%) and agree (25%), as were the remainder of project proposers (24% and 29%, respectively).

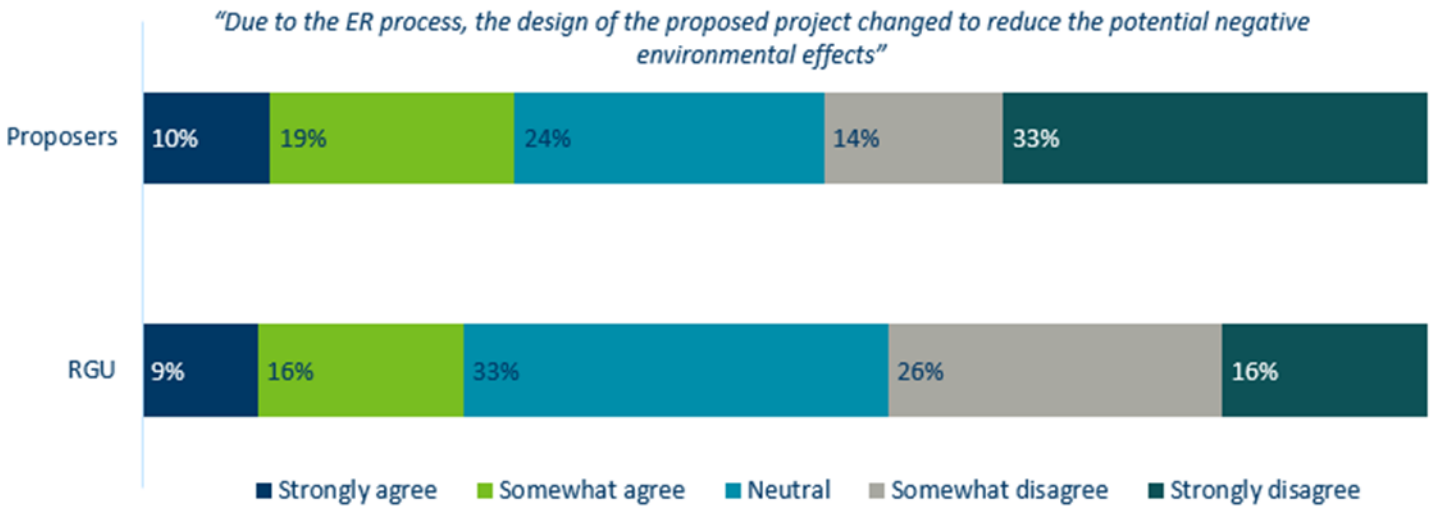

Figure 18

RGUs were also split on whether the ER process identified mitigation measures for environmental effects that would not have otherwise been identified by required governmental approvals. They leaned slightly towards agreement with the statement (40%, n=43; Figure 19), about one-third (35%) responded as neutral, and about one-quarter (26%) disagreed. **By contrast, RGUs were relatively clear on whether the mitigation measures identified would be included in required governmental approvals, including permits, for the proposed project. Over three-quarters (76%, n=43; Figure 19) reported it was very or somewhat likely the mitigation measures would be included in approvals**. The remainder leaned towards neutral (17%), with few disagreeing (7%).

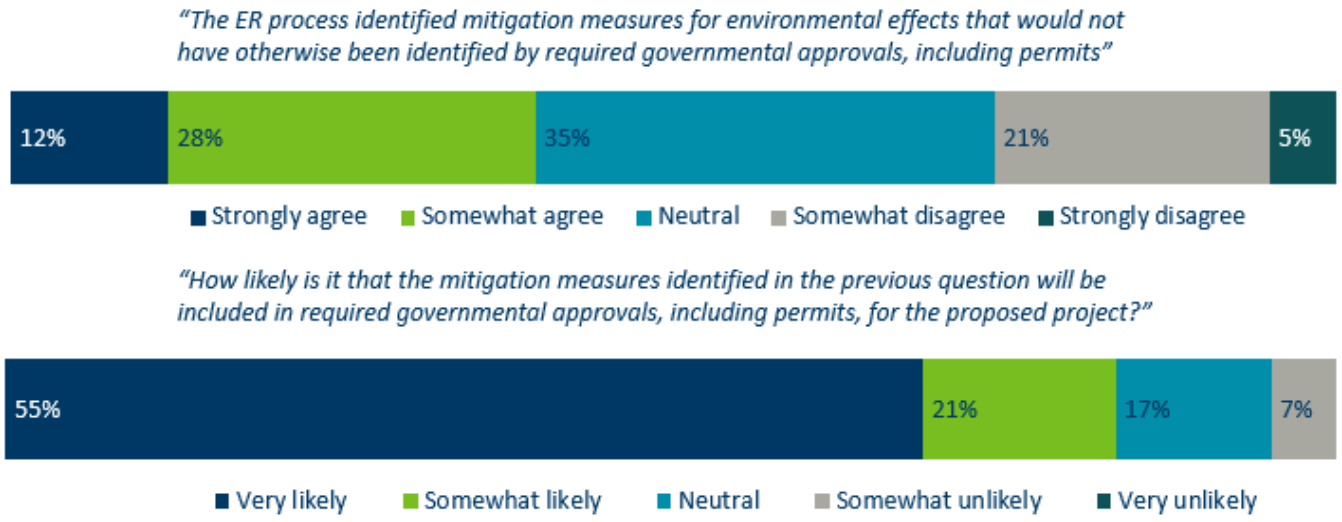

Figure 19

Most project proposers indicated they were agreeable towards implementing mitigation measures. Over half of project proposers (62%, n=21; Figure 20) agreed that they would voluntarily implement the mitigation measures identified through the ER process that aren't required by permits. About one-third (29%) were neutral or didn't know, and the remainder (10%) disagreed. **Over half of project proposers (57%, n=21; Figure 20) also agreed that if implemented the mitigation measures identified would reduce potential negative environmental effects of the proposed project**. Again, about one-third (29%) were neutral, and the remainder (15%) disagreed.
Project proposers were split on whether the ER process identified useful mitigation measures for potential environmental effects resulting from the proposed project, with equal numbers agreeing (38%, n=21; Figure 20) and disagreeing (38%). The remainder (24%) responded as neutral.

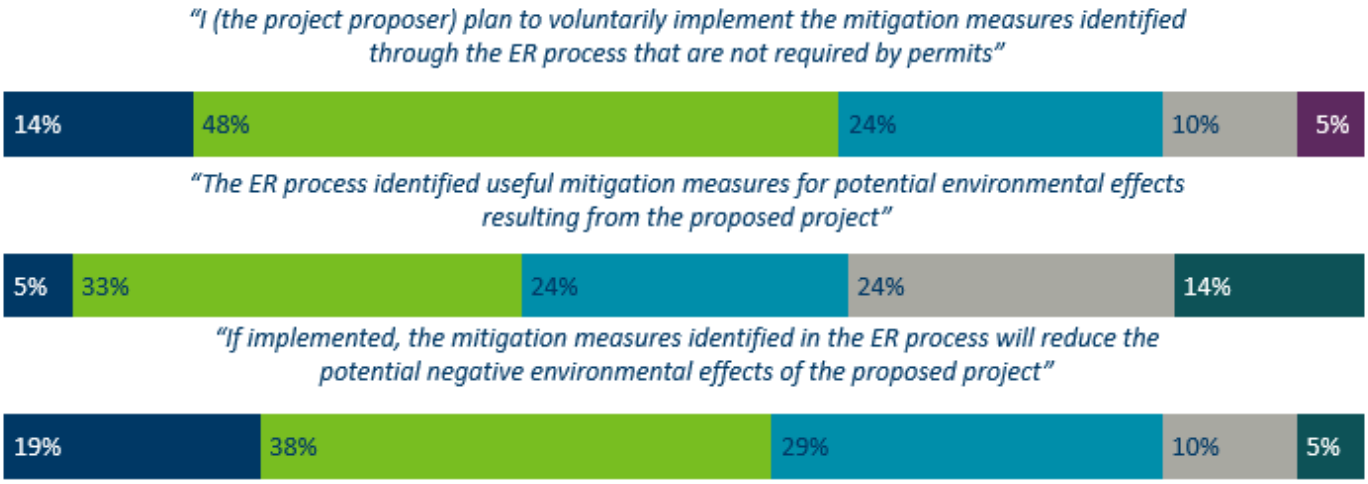

Figure 20

Most project proposers reported the ER process changed the design of the project. Just over half of respondents indicated the project design changed either significantly or somewhat (5% and 48%, respectively, n=21; Figure 21). One-third (33%) reported the project design did not change and the remainder (14%) did not know.

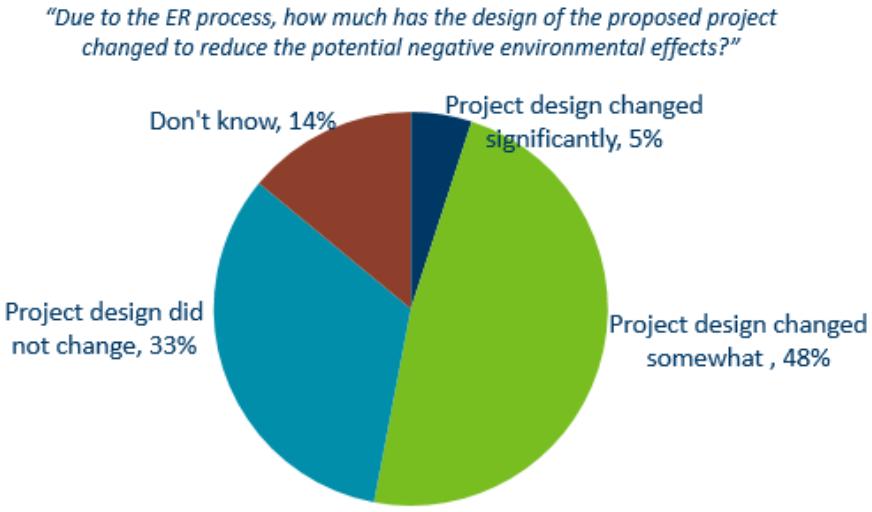

Figure 21

VI. Perceptions of Environmental Review Outcomes

Finally, the intent of the last section was to collect data on how well the EQB is providing technical assistance to RGUs and project proposers, as well as identify opportunities for future outreach and assistance. This will help EQB Staff understand areas for potential improvement in our current technical assistance resources, and provide guidance on which resources we could provide in the future to benefit RGUs.

First, RGUs and project proposers were asked about their level of satisfaction with EQB resources. **The majority of RGU respondents report being satisfied with EQB resources (>50% on all items, n=30-41; Figure 22). Project proposer respondents reported slightly lower levels of satisfaction across resources (35-56%, n=16-23; Figure 23).**

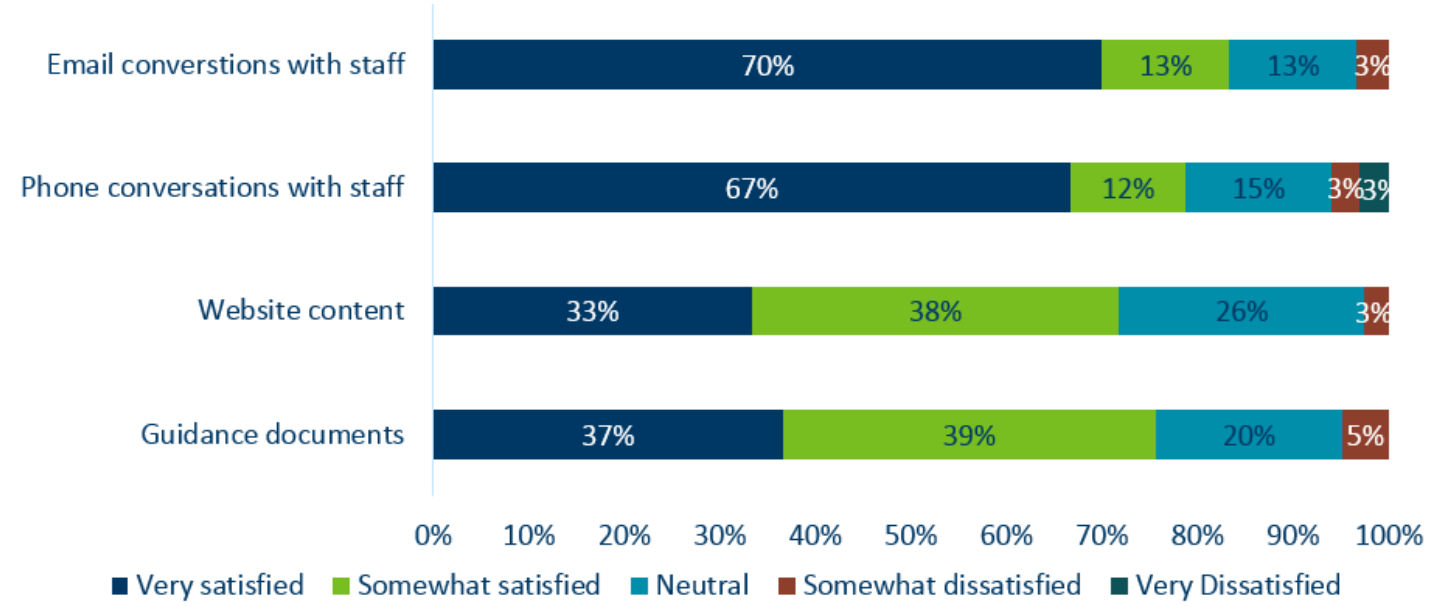

Figure 22

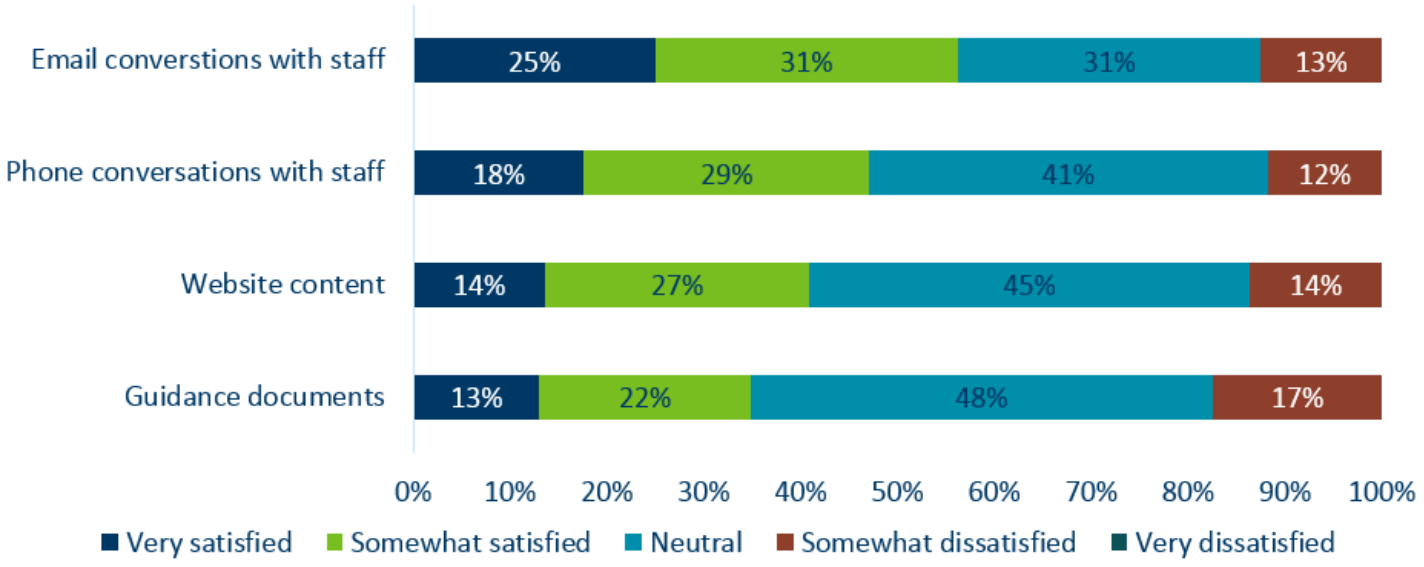

Figure 23

Only RGUs were asked about their interest in different EQB resources. **Most RGUs were interested in updated Environmental Review guidance (82%, n=43; Figure 24) and EQB Staff presentations at conferences (74%).** This interest is consistent with last year's results (80% and 72%, respectively). Video guidance (40%) and in-person training (44%) received the least interest. Again, these results are consistent with 2016 responses (50% for each).

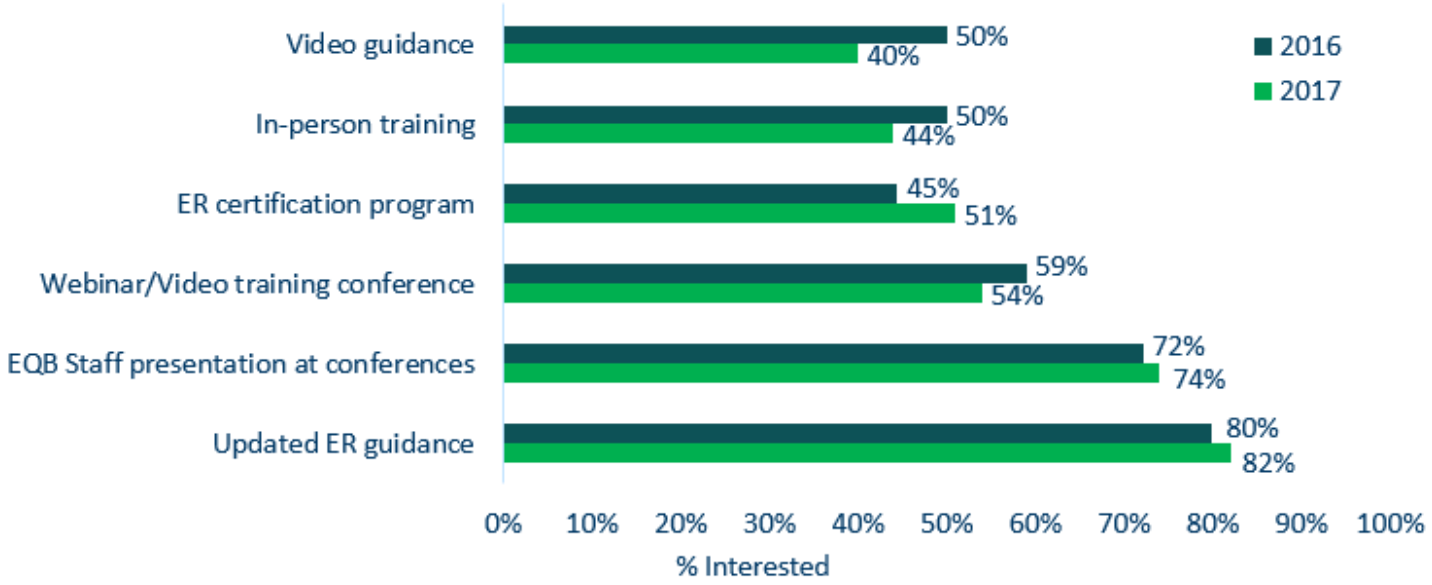

Figure 24

Recreational Trails Legal Review of Previous Efforts:

Under the previously initiated rulemaking (Revisor ID Number R-4381), the EQB attempted to use the good cause exemption rulemaking procedure to adopt rules in accordance with the above Minn. Laws from the 2015 legislative session in November 2015. The proposed rules were not approved (OAH 82-9008-32965) by the presiding judge because "the legislature provided no direction to the Board with respect to how EAW requirements apply to a new trail that consists of a combination of newly constructed trail and an existing trail newly designated for motorized use…"

In addition, in a response to the Board's proposed rule, the author of the legislation and representatives from all-terrain vehicle associations commented that "[t]he draft rules as presented by the EQB do not follow the explicit intent of the rule changes as was my intent and as directed by the legislature…" The author states that "[u]nder the application of items A and B, the EQB should not be summing the parts of trail A and trail B, because it could result in a mandatory environmental assessment worksheet (EAW) for less than 25 miles of new trail, which is what the legislation I authored specifically prohibited."[1][2] Essentially, the Judge's order states that "[I]n order to effectuate the identified intent of the legislation, the Board would have had to alter the formula paragraph or strike it entirely. To do either would go beyond the requirement of subdivision 1(3) of the good cause exemption, which allows the agency only to "incorporate specific changes set forth in the applicable statute when no interpretation of law is required."[3]"In February 2016, the EQB again submitted the proposed rules for adoption. The proposed rules were not adopted. Consequently, the subject of the rulemaking initiated under Revisor ID Number R-4381 is being address in this rulemaking.

Furthermore, in the Administrative Law Judge Barbara J. Case's Order on Review (OAH 82-9008-32965) it is stated that the phrases "legally constructed route" and "logging road" were, "…impermissibly vague if it is so indefinite that one must guess at its meaning.[4] A rule must establish a reasonably clear policy or standard to control and guide administrative officers so that the rule is carried out by virtue of its own terms and not according to the whim and caprice of the officer.[5] This language is impermissibly vague and therefore unconstitutional.[6]"

After the proposed rule was disapproved, EQB suspended the good cause exempt rulemaking process and is now conducting standard rulemaking to address the issues detailed above. Thus, this rulemaking incorporates the statutory rule language (Minn. Laws 2015, ch. 4, section 33.), clarifies terms, and amends the "new trail /old trail" formula.

---

[1] Letter comment of Representative Tom Hackbarth dated November 25, 2015.
[2] Judge Barbara J. Case, Administrative Law Judge order dated December 2, 2015
[3] Minn. Stat. § 14.388, subd. 1(3)
[4] *In re the Proposed Amendment to and Repeal of Rule of the Minn. Dep't of Emp't and Econ. Dev. Relating to Unemployment Ins.; Modifying Appeals, Emp'r Records, and Worker Status Provisions; Minn. Rules Parts 3310 and 3315*, No. 80-1200-31264, 2014 WL 2156996, at *3 (Minn. Off. Admin. Hrgs. May 5, 2014).
[5] *See Hard Times Café, Inc. v. City of Minneapolis,* 625 N.W.2d 165, 171 (Minn. Ct. App. 2001) (stating that "[a] statute is void due to vagueness if it defines an act in a manner that encourages arbitrary and discriminatory enforcement, or the law is so indefinite that people must guess at its meaning" (quotation omitted)).
[6] In order to be constitutional, a rule must be sufficiently specific to provide fair warning of the type of conduct to which the rule applies. *See Cullen v. Kentucky*, 407 U.S. 104, 110 (1972); *Thompson v. City of Minneapolis*, 300 N.W.2d 763, 768 (Minn. 1980).

MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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December 2, 2015

Erik Cedarleaf Dahl
Planning Director
Minnesota Environmental Quality Board
520 Lafayette Rd N Fl 4
Saint Paul, MN 55155

Re: ***In the Matter of the Exempt Permanent Rule Relating to Environmental Review of Recreational Trails***
OAH 82-9008-32965; Revisor 4381

Dear Mr. Cedarleaf Dahl:

Enclosed herewith and served upon you by mail is the **ORDER ON REVIEW OF RULES UNDER MINN. STAT. §§ 14.386 AND MINN. R. 1400.2400** in the above-entitled matter. The amendments to the rule parts are exempt from the rulemaking requirements of Minn. R. ch. 14 (2015) pursuant to the good cause exemption in Minn. Stat. § 14.388, subd. 3 (2014).

Pursuant to Minn. R. 1400.2400, subp. 4a, the agency may resubmit the rule and accompanying materials to the administrative law judge for review after changing it. The agency 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 judge's decision**.

If you have any questions regarding this matter, please contact Denise Collins at 651-361-7875 or denise.collins@state.mn.us

Sincerely,

Barbara J. Case/km

BARBARA J. CASE
Administrative Law Judge

BJC:klm
Enclosure
cc: Legislative Coordinating Commission (lcc@lcc.leg.mn)
Attorney General Lori Swanson
Paul Marinac (paul.marinac@revisor.mn.gov)
Elizabeth Dressel

OAH 82-9008-32965
Revisor 4381

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Exempt Permanent Rule Relating to Environmental Review of Recreational Trails

ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.386 AND MINN. R. 1400.2400

On November 18, 2015 the Minnesota Environmental Quality Board (Board) filed documents with the Office of Administrative Hearings seeking review and approval of the above-entitled rules under Minn. Stat. § 14.386 (2014) and Minn. R. 1400.2400 (2015). The matter was assigned to Administrative Law Judge Barbara J. Case for legal review.

Based upon a review of the written submissions by the Board, and for reasons set out in the Memorandum which follows below,

IT IS HEREBY ORDERED THAT:

The proposed exempt rules are **not approved**.

Dated: December 2, 2015

BARBARA J. CASE
Administrative Law Judge

NOTICE

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

MEMORANDUM

Minnesota Statutes section 14.388 (2014) provides for an abbreviated and streamlined set of procedures for promulgating new rules that may be used when "good cause" is present. An agency may use the good cause exemption to rulemaking when an agency:

> for good cause finds that the rulemaking provisions of [Chapter 14] are unnecessary, impracticable, or contrary to the public interest when adopting, amending, or repealing a rule to:
>
> (1) address a serious and immediate threat to the public health, safety, or welfare;
>
> (2) comply with a court order or a requirement in federal law in a manner that does not allow for compliance with sections 14.14 to 14.28;
>
> (3) incorporate specific changes set forth in applicable statutes when no interpretation of law is required; or
>
> (4) make changes that do not alter the sense, meaning, or effect of a rule.[1]

Here, the Board was instructed by the legislature that it may rely on Minn. Stat. § 14.388, subd. 1, clause 3, for amending its rules.[2] Accordingly, it is the Board's burden to show in its submissions to the Office of Administrative Hearings that the proposed changes to the rules "incorporate specific changes set forth in applicable statutes [and] no interpretation of law is required."[3] Failure to concretely establish these elements results in the disapproval of the proposed rules under Minn. Stat. § 14.388.

Under the good cause exemption, both the Board's rulemaking powers and the breadth of the review by the Office of Administrative Hearings are sharply reduced. This is because the good cause exemption, by its terms, contemplates that administrative rules will only be promulgated pursuant to this method in order to meet truly exigent circumstances or when the policy choices underlying the new rules were made through an earlier, publicly-accessible process (such as a prior rulemaking or through the legislature's enactment of a statute which sets forth the specific requirements). In these circumstances, the legal review completed by the Office of Administrative Hearings is narrowed.[4] As the Minnesota Court of Appeals has noted, the abbreviated, exempt rulemaking process eliminates the public's opportunity to bring to the agency's attention all relevant aspects of the proposed rules.[5] Public comment is an important element of

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[1] Minn. Stat. 14.388, subd. 1.
[2] 2015 Minn. Laws 1st Spec. Sess. ch. 4, art. 5, § 33, at 163.
[3] Minn. Stat. § 14.388, subd. 1(3).
[4] Unlike a more typical rulemaking proceeding, rules presented under the good cause exemption are not examined as to their need or reasonableness. Compare generally, Minn. Stat. § 14.388, subd.1 with Minn. Stat. § 14.131 (2014).
[5] *Jewish Community Action v. Commissioner of Public Safety*, 657 N.W.2d 604, 610 (Minn. Ct. App. 2003).

the typical rulemaking process and is permitted in order to enhance the quality of the agency decision. The exempt process has a negative impact on the statutory goal of "increase[ing] public accountability of administrative agencies."[6] Consequently, it should be used sparingly and rules proposed through the expedited process must be strictly scrutinized.

In the 2015 Special Legislative Session, the legislature directed the Board as follows:

> RULEMAKING; MOTORIZED TRAIL ENVIRONMENTAL REVIEW.
>
> (a) The Environmental Quality Board shall amend Minnesota Rules, chapter 4410, to allow the following without preparing a mandatory environmental assessment worksheet:
>
> (1) constructing a recreational trail less than 25 miles long on forested or other naturally vegetated land for a recreational use;
>
> (2) adding a new motorized recreational use or a seasonal motorized recreational use to an existing motorized recreational trail if the treadway width is not expanded as a result of the added use; and
>
> (3) designating an existing, legally constructed route, such as a logging road, for motorized recreational trail use.
>
> (b) The board may use the good cause exemption rulemaking procedure 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.[7]

The Board attempted to make the changes as directed by placing language modifications in Minnesota Rules Chapter 4410, section 4300, subpart 37 (2015), which regulates recreational trails. This subpart previously allowed construction of a trail less than ten miles in length for recreational use without the preparation of an environmental assessment worksheet (EAW).[8] The Board changed the number ten in the current rule language to twenty-five and then added the legislature's language from subparts (2) and (3) above to subpart 37(B) of the existing rule.

However, the legislature provided no direction to the Board with respect to how EAW requirements apply to a new trail that consists of a combination of newly constructed trail and an existing trail newly designated for motorized use. In the current rule, an EAW must be prepared if the sum of the quotients obtained by dividing the length of the new construction by ten miles, and length of existing but newly designated

---

[6] *Id.*
[7] 2015 Minn. Laws 1st Spec. Sess. ch. 4, art. 5, § 33, at 163.
[8] Minn. R. 4410.4300, subp. 37A.

trail by 25 miles, equals or exceeds one.[9] In the proposed rule, the Board keeps this formula paragraph but changes the calculation so that if a proposed trail will contain segments of newly constructed trail and segments that will follow an existing trail but be designated for a new motorized use an EAW must be prepared if the length of the new construction plus the length of the existing but newly designated trail equals or exceeds 25.

In response to the Board's proposed rule, the author of the legislation and representatives from all-terrain vehicle associations commented that "[t]he draft rules as presented by the EQB do not follow the explicit intent of the rule change as was my intent and as directed by the legislature...." The author states that "[u]nder the application of items A and B, the EQB should not be summing parts of trail A and trail B, because it could result in a mandatory environmental assessment worksheet (EAW) for less than 25 miles of new trail, which is what the legislation I authored specifically prohibited."[10] The author's concerns have merit. The gap between the author's intention and the proposed rules may be instructive to the Board regarding whether exempt rule making is appropriate for these proposed rule changes.[11]

By its terms, the good cause exception for legislatively directed rule changes presumes and mandates that no interpretation of law by the agency be needed. This typically requires precise line-by-line edits to be provided by the enabling legislation. The legislation cited above did not direct the Board by giving it specific line-by-line changes to the current rule. In addition, the legislation specifies no language changes to the formula paragraph of the rule, the part now in controversy. Yet in order to effectuate the identified intent of the legislation, the Board would have had to alter the formula paragraph or strike it entirely. To do either would go beyond the requirement of subdivision 1(3) of the good cause exemption, which allows the agency only to "incorporate specific changes set forth in the applicable statute when no interpretation of law is required."[12] The Board could not simply implement the legislation by striking and adding language as set forth in the legislation. Therefore, the proposed rules do not fit within the good cause exception from the rulemaking provisions of chapter 14 because the Board is not simply incorporating "specific changes set forth in applicable statutes when no interpretation is required."[13]

Furthermore, the formula paragraph appears to be an application or reiteration of a "threshold test" found at the beginning of Minn. R. 4410.4300, which provides as follows:

> An EAW must be prepared for projects that meet or exceed the threshold of any subparts of 2 to 37.... If the proposed project is an expansion or additional stage of an existing project, the cumulative total of the proposed project and any existing stages or components of the existing project must

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[9] Minn. R. 4410.4300, subp. 37(B).
[10] Letter comment of Representative Tom Hackbarth dated November 25, 2015.
[11] The legislation made exempt rulemaking permissive in this instance.
[12] Minn. Stat. § 14.388, subd. 1(3).
[13] *Id.*

> be included when determining if a threshold is met or exceeded.... Multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when comparing the project or projects to the thresholds of this part....[14]

It is not clear that the proposed rule can be implemented as the legislative author intended without changes to this threshold section of the rule. Such a change is beyond the scope of the Board's authority under the good cause rulemaking exception.

The rules proposed by the Board did not simply incorporate specific changes in applicable statutes. Thus, because the proposed rules fail to meet the applicable standard for exempt rulemaking, the rules are not approved.

B. J. C.

[14] Minn. R. 4410.4300, subp. 1.

OAH 82-9008-32965
Revisor R-4381

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Exempt Permanent Rule Relating to Environmental Review of Recreational Trails

ORDER ON REVIEW OF RESUBMITTED RULES UNDER MINN. STAT. § 14.388, SUBD. 3 AND MINN. R. 1400.2400

The Minnesota Environmental Quality Review Board (Board) sought review and approval of the above-entitled rules under Minn. Stat. § 14.388, subd. 3 (2014).

On November 18, 2015, the Board filed documents with the Office of Administrative Hearings seeking review and approval of the above-entitled rules under Minn. Stat. § 14.386 (2014) and Minn. R. 1400.2400 (2015). By Order dated December 2, 2015, Administrative Law Judge Barbara J. Case did not approve the proposed rules.

On February 9, 2016, the Board submitted a revised version of the proposed rules.

Based on a review of the written submissions by the Board, and for the reasons set out in the attached Memorandum,

IT IS HEREBY ORDERED THAT:

The proposed exempt rules are **not approved**.

Dated: February 16, 2016

BARBARA J. CASE
Administrative Law Judge

NOTICE

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

MEMORANDUM

EXEMPT RULEMAKING AUTHORIZATION

In the 2015 Special Legislative Session, the legislature directed the Board as follows:

> RULEMAKING; MOTORIZED TRAIL ENVIRONMENTAL REVIEW.
>
> (a) The Environmental Quality Board shall amend Minnesota Rules, chapter 4410, to allow the following without preparing a mandatory environmental assessment worksheet:
>
> (1) constructing a recreational trail less than 25 miles long on forested or other naturally vegetated land for a recreational use;
>
> (2) adding a new motorized recreational use or a seasonal motorized recreational use to an existing motorized recreational trail if the treadway width is not expanded as a result of the added use; and
>
> (3) designating an existing, legally constructed route, such as a logging road, for motorized recreational trail use.
>
> (b) The board may use the good cause exemption rulemaking procedure 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.[1]

The terms of the legislative authorization allowing the Board to use exempt rulemaking provisions mandate that the rulemaking meet the requirements of Minn. Stat. § 14.388, subd. 1(3) (2014). The amendments to the proposed rules fail to meet these requirements both because the Board failed to show good cause for the use of the exempt process and because the legislative language did not allow the Board to incorporate specific changes without interpretation.

Requirement to Show Good Cause

Minnesota Statutes, section 14.388 (2014), provides an abbreviated set of procedures for promulgating new rules that may be used when "good cause" is present. An agency may use the good-cause rulemaking exemption when an agency

> for good cause finds that the rulemaking provisions of [chapter 14] are unnecessary, impracticable, or contrary to the public interest when adopting, amending, or repealing a rule to:

[1] 2015 Minn. Laws 1st Spec. Sess. ch. 4, art. 5, § 33, at 163.

(1) address a serious and immediate threat to the public health, safety, or welfare;

(2) comply with a court order or a requirement in federal law in a manner that does not allow for compliance with sections 14.14 to 14.28;

(3) incorporate specific changes set forth in applicable statutes when no interpretation of law is required; or

(4) make changes that do not alter the sense, meaning, or effect of a rule.[2]

"Normally, to proceed under Minn. Stat. § 14.388, an agency must show that the usual chapter 14 rulemaking process is unnecessary or impractical and must show that the proposed rules fit within one of four very narrow categories set out in the statute. OAH is directed to determine whether adequate justification has been provided for use of the good cause process."[3] In some cases, the legislature has provided the good cause in the legislation and in those cases the agency does not have to meet the good-cause requirement of the good-cause statute.[4] The legislation in this case does not provide good cause and makes use of the good-cause rulemaking process permissive rather than mandatory.[5] Here, the legislature authorized the Board to rely on Minn. Stat. § 14.388, subd. 1(3), when amending its rules.[6] In doing so, the legislature used the word "may," making use of the process permissive. For the Board to utilize the procedures in section 14.388, subdivision 1(3), it must demonstrate that the proposed changes to the rules "incorporate specific changes set forth in applicable statutes [and] no interpretation of law is required."[7] Failure to concretely establish these requirements must result in disapproval of the proposed rules under Minn. Stat. § 14.388.

The Board's "Statement of Supporting Reasons" lacks substantive presentation regarding why chapter 14's (2014) broader rulemaking provisions are "unnecessary, impracticable, or contrary to the public interest." The Board's supporting documents simply state that broader rulemaking is "unnecessary, impracticable, or contrary to the

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[2] Minn. Stat. § 14.388, subd. 1.

[3] *In the Matter of the Adoption of Rules Governing Voter Registration (generally), Voter Registration Data, the Statewide Voter Registration System, Voter Registration Applications, Verification of Registrations Received by Election Officials, Absentee Voting and Mail Balloting, Minnesota Rules, Chapters 8200 and 8210*, Docket No. 70-3500-16046-1, ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.388 (July 22, 2004) (finding that typically an agency has to make a finding of good cause **and** one of the four categories for exemption).

[4] *See id.* In that case, in contrast to the present case, the legislature "supplied good cause for use of the process. Section 39 of Chapter 293 states that, 'Enactment of this article is good cause for the Secretary of State to use the authority of Minnesota statutes, section 14.388[.]' The commenters point out that the legislature could have specified that the expedited rule process in Minn. Stat. § 14.389 (2014) be used. That process allows 30 days for public comment. But the legislative intent is clearly to authorize the process in sections 14.388 and 14.386 that allows only five working days for comment. The legislature also clearly allowed use of the process without the agency having to show good cause itself under the requirements of the statute." *Id.* at 3.

[5] 2015 Minn. Laws 1st Spec. Sess. ch. 4, art. 5, § 33, at 163.

[6] *Id.*

[7] Minn. Stat. § 14.388, subd. 1(3).

public interest" without explanation. The Board has not explained why there is good cause for using the exempt rulemaking process. This explanation is critical where the enabling legislation made use of the process permissive.[8]

Requirement to Incorporate Specific Changes with no Interpretation

The type of change permitted under Minn. Stat. § 14.388 is akin to a clerical change when the proposed rule "incorporates specific changes set forth in statute where no legal interpretation is required" if the proffered legislation sets forth specific language to be placed into rule. In those cases, the language provided by the legislature is so clear that the proposed rule simply conforms to specific language in the legislation, which would either trump or augment the rule were the rule not altered. In such a case, the opportunity for public input is provided during the legislative process. It is not necessary to repeat that process via full rulemaking. In this case, the Board's proposed rules do more than incorporate specific changes set forth in statute and so fail to meet the requirements for exempt rulemaking under Minn. Stat. § 14.388, subd. 3.

As stated in the Administrative Law Judge's previous order, the legislation does not provide further instruction regarding the specific changes that are to be made in rule.[9] In response to the Board's first version of the proposed rule, the author of the legislation and representatives from all-terrain vehicle associations commented that "[t]he draft rules as presented by the EQB do not follow the explicit intent of the rule change as was my intent and as directed by the legislature." In its revised rules, the Board proposed, in part, the following language in response to such criticisms:

> In applying items A and B if a proposed trail will contain segments of newly constructed trail and segments that will follow an existing trail but be designated for a new motorized use, an EAW must be prepared if the sum of the quotients obtained by dividing the length of the new construction by ten miles and the length of the existing but newly designated trail by 25 miles, equals or exceeds one. <u>This formula does not apply when adding a new motorized recreational use or a seasonal motorized recreational use to an existing motorized recreational trail if the treadway width is not expanded as a result of the added use or when designating an existing, legally constructed route, such as a logging road, for motorized recreational use.</u>

The revised rules take two pieces of the language provided by the legislature and links them in an interpretive manner. This interpretation violates the limitation in section 14.388, subdivision 3(1), to language which "incorporate[s] specific changes set forth in applicable statutes when no interpretation of law is required." In addition, the proposed rules eliminate the current rule language and alter the current formula without either change having been part of the enabling legislation's language. Where, as here,

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[8] 2015 Minn. Laws 1st Spec. Sess. ch. 4, art. 5, § 33, at 163 ("The board **may** use the good cause exemption rulemaking procedure under Minnesota Statutes, section 14.388, subdivision 1, clause (3) . . . ." (emphasis added)).

[9] Order on Review of Rules under Minn. Stat. § 14.386 and Minn. R. 1400.2400, at 4 (Dec. 2, 2015).

the language provided in the statute is not sufficiently specific to be used consistent with the requirements of section 14.388, subdivision 3(1), it is inevitable that the agency's proposal will be contrary to the good-cause statute. This is because the agency is required, under the circumstances, to clarify the legislative language. The fact that the legislative author has found it necessary to comment on whether the proposed rules meet his intentions further underscores that these proposed rules do not incorporate specific language but rather interpret the statute.[10]

Review under Minnesota Rule 1400.2100 E (2015).

Even if the Board's proposed language met the requirements of Minn. Stat. § 14.388, subd. 1(3), it would nonetheless be disapproved for failing to meet the requirement of Minn. R. 1400.2100 E. The Office of Administrative Hearings is directed to review an exempt rule according to the standards at Minn. R. 1400.2100 A and D to G.[11] Rule 1400.2100 E requires an Administrative Law Judge to disapprove a rule if the rule "is unconstitutional or illegal."

The proposed rule twice uses language in subsection B referring to "designating an existing, legally constructed route, such as a logging road, for motorized recreational use." One commenter contends that even the characteristics and designation of what constitutes a logging road may change depending on the season. "Logging road" is not defined in this chapter or elsewhere in Minnesota statutes. Here, the reader is left to guess at what other routes would be like a logging road. The use of the phrase "*such as*" makes the proposed rule unclear regarding the characteristics of and parameters for a route to be designated for new motorized recreational use.

A rule is impermissibly vague if it is so indefinite that one must guess at its meaning.[12] A rule must establish a reasonably clear policy or standard to control and guide administrative officers so that the rule is carried out by virtue of its own terms and not according to the whim and caprice of the officer.[13] This language is impermissibly vague and therefore unconstitutional.[14]

CONCLUSION

The Board did not meet the requirements of Minn. Stat. § 14.388, subd. 3(1) as required by the authorizing legislation it was attempting to use in this rulemaking

[10] Letter of Rep. Hackbarth (Feb. 9, 2016).
[11] Minn. R. 1400.2400, subp. 3.
[12] *In re the Proposed Amendment to and Repeal of Rule of the Minn. Dep't of Emp't and Econ. Dev. Relating to Unemployment Ins.; Modifying Appeals, Emp'r Records, and Worker Status Provisions; Minn. Rules Parts 3310 and 3315*, No. 80-1200-31264, 2014 WL 2156996, at *3 (Minn. Off. Admin. Hrgs. May 5, 2014).
[13] *See Hard Times Café, Inc. v. City of Minneapolis,* 625 N.W.2d 165, 171 (Minn. Ct. App. 2001) (stating that "[a] statute is void due to vagueness if it defines an act in a manner that encourages arbitrary and discriminatory enforcement, or the law is so indefinite that people must guess at its meaning" (quotation omitted)).
[14] In order to be constitutional, a rule must be sufficiently specific to provide fair warning of the type of conduct to which the rule applies. *See Cullen v. Kentucky*, 407 U.S. 104, 110 (1972); *Thompson v. City of Minneapolis*, 300 N.W.2d 763, 768 (Minn. 1980).

proceeding. In addition, the language of the rule is, at least in part, unconstitutionally void for vagueness. Thus, because the proposed rules fail to meet the applicable standard for exempt rulemaking, the rules are not approved.

B. J. C.

General Powers and Duties (M.S. 116C.04)

https://www.revisor.mn.gov/statutes/cite/116C.04

Minnesota Statutes, section 116C.04 gives the Environmental Quality Board (EQB/Board) responsibility for investigating environmental problems that cut across agency interests. The law identifies a range of topics for investigation, including future population and settlement patterns, air and water resources and quality, solid waste management, transportation and utility corridors, economically productive open space, energy policy and need, growth and development, and land use planning.

- The Board shall review programs of state agencies that significantly affect the environment and coordinate those it determines are interdepartmental in nature.
- The Board shall ensure agency compliance with state environmental policy.
- The Board may review environmental rules and criteria for granting and denying permits by state agencies.
- The Board may resolve conflicts involving state agencies with regard to programs, rules, permits and procedures significantly affecting the environment.
- The Board may establish interdepartmental or citizen task forces or subcommittees to study particular problems.
- The Board shall, at its discretion, convene an annual congress to receive reports and exchange information on progress and activities related to environmental improvement.

Environmental Review (M.S. 116D.04 - .045)

https://www.revisor.mn.gov/statutes/cite/116D.04

EQB oversees the state's Environmental Review program. The Board was given the authority, by the Legislature, to promulgate rules related to managing the Environmental Review program. The law and associated rules (4410) call for project reviews to be conducted by responsible governmental units (RGU) and not the Board (unless it is the RGU). Environmental Review for a project is required when there is potential for significant environmental effects resulting from any major governmental action. The Board established by rule, categories of projects for which environmental impact statements (EIS) and environmental assessment worksheets (EAW) must be prepared (called "mandatory categories"), as well as categories of projects and actions for which no environmental review is required under state law (called "exemptions"). The Board also established procedures, by rule, for when an alternative review may be undertaken for a project in lieu of Environmental Review. EAWs are developed to inform a RGU when there is a potential for significant environmental effects and that an EIS should be prepared.

116C.04 POWERS AND DUTIES.

Subdivision 1.Scope; votes. The powers and duties of the Minnesota Environmental Quality Board shall be as provided in this section and as otherwise provided by law or executive order. Actions of the board shall be taken only at an open meeting upon a majority vote of all the permanent members of the board.

Subd. 2.Jurisdiction.

(a) The board shall determine which environmental problems of interdepartmental concern to state government shall be considered by the board. The board shall initiate interdepartmental

investigations into those matters that it determines are in need of study. Topics for investigation may include but need not be limited to air and water resources and quality, solid waste management, transportation and utility corridors, energy policy and need, and planning.
(b) The board shall review programs of state agencies that significantly affect the environment and coordinate those it determines are interdepartmental in nature, and ensure agency compliance with state environmental policy.

(c) The board may review environmental rules and criteria for granting and denying permits by state agencies and may resolve conflicts involving state agencies with regard to programs, rules, permits and procedures significantly affecting the environment, provided that such resolution of conflicts is consistent with state environmental policy.

Subd. 3. [Repealed, 2017 c 93 art 2 s 166]
Subd. 4.Task forces. The board may establish interdepartmental or citizen task forces or subcommittees to study particular problems.
Subd. 5. [Repealed, 1984 c 558 art 2 s 4]
Subd. 6. [Repealed, 1984 c 558 art 2 s 4]
Subd. 7.Annual congress. At its discretion, the board shall convene an annual Environmental Quality Board congress including, but not limited to, representatives of state, federal and regional agencies, citizen organizations, associations, industries, colleges and universities, and private enterprises who are active in or have a major impact on environmental quality. The purpose of the congress shall be to receive reports and exchange information on progress and activities related to environmental improvement.
Subd. 8. [Repealed, 1982 c 524 s 9]
Subd. 9. [Repealed, 1982 c 524 s 9]
Subd. 10.Stipulation agreements. The board may enter into and enforce stipulation agreements made to enforce statutes and rules administered by the board.
§Subd. 11.Coordination. The Environmental Quality Board shall coordinate the implementation of an interagency compliance with existing state and federal lead regulations and report to the legislature by January 31, 1992, on the changes in programs needed to comply.

116D.04 Subd. 2a (b) The board shall by rule establish categories of actions for which environmental impact statements and for which environmental assessment worksheets shall be prepared as well as categories of actions for which no environmental review is required under this section. A mandatory environmental assessment worksheet is not required for the expansion of an ethanol plant, as defined in section 41A.09, subdivision 2a, paragraph (b), or the conversion of an ethanol plant to a biobutanol facility or the expansion of a biobutanol facility as defined in section 41A.15, subdivision 2d, based on the capacity of the expanded or converted facility to produce alcohol fuel, but must be required if the ethanol plant or biobutanol facility meets or exceeds thresholds of other categories of actions for which environmental assessment worksheets must be prepared. The responsible governmental unit for an ethanol plant or biobutanol facility project for which an environmental assessment worksheet is prepared is the state agency with the greatest responsibility for supervising or approving the project as a whole.

116D.04 Subd. 5a.Rules. The board shall, by January 1, 1981, promulgate rules in conformity with this chapter and the provisions of chapter 15, establishing:

(1) the governmental unit which shall be responsible for environmental review of a proposed action;

(2) the form and content of environmental assessment worksheets;

(3) a scoping process in conformance with subdivision 2a, paragraph (g);

(4) a procedure for identifying during the scoping process the permits necessary for a proposed action and a process for coordinating review of appropriate permits with the preparation of the environmental impact statement;

(5) a standard format for environmental impact statements;

(6) standards for determining the alternatives to be discussed in an environmental impact statement;

(7) alternative forms of environmental review which are acceptable pursuant to subdivision 4a;

(8) a model ordinance which may be adopted and implemented by local governmental units in lieu of the environmental impact statement process required by this section, providing for an alternative form of environmental review where an action does not require a state agency permit and is consistent with an applicable comprehensive plan. The model ordinance shall provide for adequate consideration of appropriate alternatives, and shall ensure that decisions are made in accordance with the policies and purposes of Laws 1980, chapter 447;

(9) procedures to reduce paperwork and delay through intergovernmental cooperation and the elimination of unnecessary duplication of environmental reviews;

(10) procedures for expediting the selection of consultants by the governmental unit responsible for the preparation of an environmental impact statement; and

(11) any additional rules which are reasonably necessary to carry out the requirements of this section

Office Memorandum

Date: September 4, 2018

To: Erik Cedarleaf Dahl, Environmental Quality Board

From: Sean Fahnhorst, Minnesota Management and Budget

CC: Alisha Cowell, Minnesota Management and Budget

RE: M.S. 14.131 Review of Proposal to Amend Rules Regarding Environmental Assessment Worksheets, Environmental Impacts Statements, Responsible Government Unit Determinations, and Exemptions from Environmental Review

The Environmental Quality Board (EQB) proposes to amend Minnesota Rules Chapters 4410.0200, 4410.0500, 4410.4300, 4410.4400, 4410.5200, 4410.7904, 4410.7906, 4410.7926, and 4410.4600 regarding mandatory categories for environmental assessment worksheets and environmental impact statements, definitions to support those categories, responsible governmental unit determinations, and categories of exemptions from environmental review. Pursuant to M.S. 14.131, EQB has consulted with the commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact of the proposed rule changes on local units of government.

Evaluation

On behalf of the commissioner of MMB, I reviewed the proposed rule changes and the related Statement of Need and Reasonableness and consulted with board staff to determine the local fiscal impact of the changes as proposed. The attached table encapsulates the potential impacts of the amendments on local government units. To summarize, the proposed change to part 4410.4300, subpart 3, item B regarding electric-generating facilities may increase costs for local governments if a project is proposed that meets the rule's threshold. This change makes the local government unit the responsible government unit, and therefore, responsible for conducting environmental review when a project occurs. According to Minnesota Pollution Control Agency records, during the last 10 years, 13 projects have occurred in this general category. Of these 13 projects, one would have fallen under item B and required environmental review by the local government unit if this proposed change had been in effect. To mitigate these costs, local government units have the option of creating a local ordinance to require project proposers to pay the costs of an environmental assessment worksheet.

Further, the EQB is uncertain if the amendment to part 4410.4300, subpart 27 regarding wetlands and public waters will increase costs for local governments. Because this amendment clarifies and simplifies rule language, local government units will potentially apply the rule more frequently and incur additional costs. The remaining rule amendments should have little to no effect on, or decrease, the costs to local government units.

Rule Number and Title	Cost to Local Government Unit	Notes
Part 4410.0200, subpart 1b. Acute hazardous waste.	None	
Part 4410.0200, subpart 5a. Auxiliary lane.	None	
Part 4410.0200, subpart 9b. Compost facility.	None	
Part 4410.0200, subpart 36a. Hazardous material.	None	
Part 4410.0200, subpart 40b. Institutional facility.	None	
Part 4410.0200, subpart 43. Local governmental unit.	None	
Part 4410.0200, subpart 52a. Mixed municipal solid waste land disposal facility.	None	
Part 4410.0200, subpart 59a. Petroleum refinery.	None	
Part 4410.0200, subpart 71a. Refuse-derived fuel.	None	
Part 4410.0200, subpart 82a. Silica sand	None	
Part 4410.0200, subpart 82b. Silica sand project.	None	
Part 4410.0200, subpart 93. Wetland.	None	
Part 4410.0500, subpart. 4. RGU for EAW by order of EQB.	None	
Part 4410.0500, subpart 6. Exception.	None	
Part 4410.4300, subpart 2. Nuclear fuels and nuclear waste.	None	
Part 4410.4300, subpart 3. Electric-generating facilities.	Item B, likely if a project is proposed.	Local government units have approval authority over projects in item B. Other changes align with rule 7854
Part 4410.4300, subpart 4. Petroleum refineries.	None	
Part 4410.4300, subpart 5. Fuel conversion facilities.	None	
Part 4410.4300, subpart 6. Transmission lines.	None	
Part 4410.4300, subpart 7. Pipelines.	None	
Part 4410.4300, subpart 8. Transfer facilities.	None	
Part 4410.4300, subpart 10. Storage facilities.	None	
Part 4410.4300, subpart 12. Nonmetallic mineral mining.	None	
Part 4410.4300, subpart 14. Industrial, commercial, and institutional.	None	
Part 4410.4300, subpart 16. Hazardous waste.	None	
Part 4410.4300, subpart 17. Solid waste.	None	
Part 4410.4300, subpart 18. Wastewater system.	None	
Part 4410.4300, subpart 20. Campgrounds and RV parks.	None	
Part 4410.4300, subpart 20a. Resorts, campgrounds, and RV parks in shorelands	None	
Part 4410.4300, subpart 21. Airport projects.	None	
Part 4410.4300, subpart 22. Highway projects.	Cost Reduction	Increase in threshold will likely cause local government units to undertake less environmental review
Part 4410.4300, subpart 25. Marinas.	None	

Rule Number and Title	Cost to Local Government Unit	Notes
Part 4410.4300, subpart 26. Stream diversion.	None	
Part 4410.4300, subpart 27. Wetlands and public waters.	Uncertain	This amendment will clarify and simplify language. The modification potentially would cause local government units to apply the rule more frequently, which could increase their costs
Part 4410.4300, subpart 30. Natural areas.	None	
Part 4410.4300, subpart 31. Historical places.	None	
Part 4410.4300, subpart 36. Land use conversion, including golf courses.	None	
Part 4410.4300, subpart 37. Recreational trails.	Cost Reduction	Projects that require environmental review are likely to decrease
Part 4410.4400, subpart 2. Nuclear fuels.	None	
Part 4410.4400, subpart 3. Electric-generating facilities.	None	
Part 4410.4400, subpart 4. Petroleum refineries.	None	
Part 4410.4400, subpart 5. Fuel conversion facilities.	None	
Part 4410.4400, subpart 6. Transmission lines.	None	
Part 4410.4400, subpart 8. Metallic mineral mining and processing.	None	
Part 4410.4400, subpart 9. Nonmetallic mineral mining.	None	
Part 4410.4400, subpart 11. Industrial, commercial, and institutional facilities.	None	
Part 4410.4400, subpart 12. Hazardous waste.	None	
Part 4410.4400, subpart 13. Solid waste.	None	
Part 4410.4400, subpart 15. Airport runway projects.	None	
Part 4410.4400, subpart 16 Highway projects.	None	
Part 4410.4400 Subp. 19. Marinas.	None	
Part 4410.4400, subpart 20. Wetlands and public waters.	None	
Part 4410.4400, subpart 25. Incineration of wastes containing PCBs.	None	
Part 4410.4600, subpart 10. Industrial, commercial, and institutional facilities.	None	
Part 4410.4600, subpart 12. Residential development.	None	
Part 4410.4600, subpart 14. Highway projects.	None	
Part 4410.4600, subpart 18. Agriculture and forestry.	None	
Part 4410.4600, subpart 27. Recreational trails.	Cost Reduction	
Part 4410.5200, subpart 1. Required notices.	None	

Rule Number and Title	Cost to Local Government Unit	Notes
Part 4410.7904, Licensing of Explorers.	None	
Part 4410.7906, subpart 2. Content of an application for drilling permit.	None	
Part 4410.7926. Abandonment of Exploratory Borings.	None	