

**m** MINNESOTA  
ENVIRONMENTAL QUALITY BOARD

Minnesota Environmental Quality Board | 520 Lafayette Road North | Saint Paul, MN 55155

December 1, 2022

The Honorable Tim Walz  
Governor, State of Minnesota  
Room 130, State Capitol  
75 Rev. Dr. Martin Luther King Jr. Blvd  
St. Paul, MN 55155

Ms. Michelle Weber, Director  
Legislative Coordinating Commission  
600 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, Minnesota 55155

Mr. Ryan Inman, Revisor  
Office of the Revisor of Statutes  
700 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, Minnesota 55155

The Honorable Carrie Ruud, Chair  
Environment and Natural Resources Policy and  
Legacy Finance Committee  
3233 Minnesota Senate Building  
St. Paul, MN 55155

The Honorable Bill Weber, Vice Chair  
Environment and Natural Resources Policy and  
Legacy Finance Committee  
2109 Minnesota Senate Bldg.  
St. Paul, MN 55155

The Honorable Foug Heu  
Environment and Natural Resources Policy and  
Legacy Finance Committee  
2201 Minnesota Senate Bldg.  
St. Paul, MN 55155

The Honorable Patricia Torres Ray  
Environment and Natural Resources Finance  
Committee  
2225 Minnesota Senate Bldg.  
St. Paul, MN 55155

The Honorable Bill Ingebrigtsen, Chair  
Environment and Natural Resources Finance  
Committee  
3207 Minnesota Senate Building  
St. Paul, MN 55155

The Honorable Rick Hansen, Chair  
Environmental and Natural Resources Finance and  
Policy Committee  
407 Rev. Dr. Martin Luther King Jr. Blvd  
St Paul, MN 55115

The Honorable Ami Wazlawik, Vice Chair  
Environmental and Natural Resources Finance and  
Policy Committee  
565 Rev. Dr. Martin Luther King Jr. Blvd  
St Paul, MN 55115

The Honorable Josh Heintzeman  
Environmental and Natural Resources Finance and  
Policy Committee  
353 Rev. Dr. Martin Luther King Jr. Blvd  
St Paul, MN 55115

Subject: Annual report on obsolete, unnecessary, or duplicative rules as required by Minnesota Statutes, section 14.05, subdivision 5

Dear Governor Walz, Senators, Representatives, and Revisor Inman:

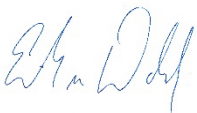
The Environmental Quality Board (EQB) respectfully submits its annual report on obsolete, unnecessary, or duplicative rules as required by [Minn. Stat. § 14.05, subd. 5](#).

In accordance with Minnesota Statute, the EQB conducted a review of its rules. EQB held a voluntary 30-day public comment period in the fall of 2022, for members of the public to review and identify obsolete, unnecessary, or duplicative rules. EQB collected comments using a survey advertised in the weekly *EQB Monitor* newsletter and emailed to a GovDelivery list of people subscribed to receive updates related to the Environmental Review Program. In the survey, people were asked to identify the specific Minnesota Rules reference they believe is obsolete, unnecessary, or duplicative of other state or federal statutes or rules, and explain what makes the rule reference obsolete, unnecessary, or duplicative. Personal identifying information was not collected.

The EQB received surveys from five distinct responders. All feedback submitted is included in the attachment. Responses are listed verbatim and were not checked for accuracy by EQB staff. The comments received fit into three themes: conflict between rule and statute, rule is obsolete because of how RGUs implement the program, and rule is obsolete and needs updating to fit the present day. To validate the comments received, EQB will need to further consider the comments during the next rulemaking and the preparation of the 2024 Mandatory Environmental Review Categories Report ([Minn. Stat. 116D.04 subd. 5b](#)).

In addition to the survey comments, EQB staff received an emailed comment letter that referenced alternative review. Because the comments did not identify if the portions of rule described were obsolete, duplicative, or unnecessary, they warrant additional consideration as EQB moves forward with future work. The feedback included in this letter will be further reviewed in the continuous improvement process EQB intends to launch in December 2022. The continuous improvement process for the environmental review program will identify projects that optimize efficiency, transparency, and high-quality outcomes. Research will result in a portfolio of improvement projects prioritized for implementation. EQB will then take appropriate measures to modify and improve the effectiveness of the ER Program. The issues identified in the 2021 Mandatory Environmental Review Categories report will be incorporated into this effort.

If you have any questions regarding this report, please feel free to contact me at 651-757-2364 or [erik.dahl@state.mn.us](mailto:erik.dahl@state.mn.us).



Erik Dahl  
Interim Executive Director, Environmental Quality Board

Attachment

Obsolete rules public feedback

Minnesota rules chapter 4410 reference	Obsolete, unnecessary, or duplicative	Explanation	Recommended next step
4410.0400 subp. 4	Obsolete	<p>Minnesota Center for Environmental Advocacy (“MCEA”) requests that the EQB revise Minn. R. 4410.0400, subp. 4 (“the Rule”), Appeal of Final Decisions, because it is in part inconsistent with the Minnesota Environmental Policy Act (“MEPA”). The Rule provides that decisions on the need for an Environmental Assessment Worksheet (“EAW”), the need for an Environmental Impact Statement (“EIS”), the adequacy of an EIS, and the adequacy of an alternative urban areawide review (“AUAR”) document may be reviewed through a declaratory judgment action in district court. This language came from the 1980 version of MEPA, which was enacted before the Minnesota Court of Appeals was created. See Minn. Stat. § 116D.04, subd. 10 (1980); Statement of Need and Reasonableness, at 36-37 (Aug. 12, 1982). However, in 2011, the Minnesota Legislature revised MEPA to authorize review of decisions on the need for an EAW, the need for an EIS, or the adequacy of an EIS pursuant to the Minnesota Administrative Procedure Act in the Court of Appeals. Minn. Stat. 116D.04, subd. 10. Accordingly, the rule, which provides for review in district court, is now inconsistent with the statute, which provides for review in the Court of Appeals, with regard to the method of obtaining judicial review for such decisions. MCEA proposes that the Rule be revised to be consistent with MEPA, Minn. Stat. § 116D.04, subd. 10. This would ensure that parties are aware that (1) these decisions are now reviewed in the Court of Appeals and (2) that a petition for writ of certiorari must be filed and served within 30 days of notice of the final decision in the EQB Monitor. In addition, because the statutory language does not specifically discuss alternative forms of environmental review, MCEA proposes that the language of the rule be changed to provide for review of an alternative urban areawide review in the Court of Appeals as well. See Final Alternative Urban Areawide Review and Mitigation Plan For the Upper Harbor Terminal Development, 973 N.W.2d 331, 337 n.8 (Minn. App. 2022) (concurring opinion). To ensure that the rule is consistent with the statute, MCEA proposes the following rule language: Decisions by a RGU on the need for an EAW, the need for an EIS, the adequacy of an EIS, and the need for or adequacy of an alternative urban areawide review are final decisions and may be reviewed under Minn. Stat. §§ 14.63 to 14.68, following the requirements in Minn. Stat. § 116D.04, subd. 10.</p>	Further review during next proposed rulemaking

<b>Minnesota rules chapter 4410 reference</b>	<b>Obsolete, unnecessary, or duplicative</b>	<b>Explanation</b>	<b>Recommended next step</b>
Any reference to timelines in the Env Review rules or statutes	Obsolete	They are not followed by state agencies. So clearly, they are obsolete.	Further review during next proposed rulemaking
410.3610 subp. 7	Unnecessary	It is unnecessary to update the AUAR in 5 years because generally nothing of substance has happened. AUARs are typically used for large sites and it is not uncommon for it to take 12-24 months after the AUAR completion to obtain all approvals and begin construction. I have a project that has so much grading and infrastructure that we are four years in and have not started a building. I would suggest a 10 year update as the AUAR is really a mini comprehensive plan, which has a 10 year update cycle.	Further review during next proposed rulemaking
4410.4300	Obsolete, Unnecessary	The EAW thresholds are too low. I think this is true in the 7-county metro and outside it. In the City of Big Lake, a huge portion of the city is in the shoreland and requires and EAW for 25 units. I can assure that that we learn nothing through the EAW process that is not already addressed in our standard development review process. It simply extends the development review process and increases the cost of development. At a time when we are struggling to provide affordable housing across the nation, adding an EAW process that does not offer insights not already garnered through the review process by professional city staff (and consultants) is unnecessary.	Further review during 2024 Mandatory Categories report
4410.4300 subp. 27(B)	Unnecessary	The EQB rule is referencing a designated area and program that no longer exists. DNR's Land Use Section Program has confirmed that statues designating and authorizing Project River Bend were repealed in 2014. There are currently no readily available data, maps, or resources indicating the location of the Minnesota River Project Riverbend area.	Further review during 2024 Mandatory Categories report