May 2010
Guide to Minnesota
Environmental Review Rules

Produced by the staff of the Environmental Quality Board at the Department of Administration,
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Introduction

Guide to Minnesota Environmental Review Rules was prepared by the staff of the Environmental Quality Board as an aid to units of government and others involved in the Minnesota Environmental Review program pursuant to Minnesota Statutes, section 116D.04 and 116D.045 and the administrative rules adopted by the EQB as Minnesota Rules, chapter 4410, parts 4410.0200 to 4410.7070.

This edition replaces the September 2008 edition of the *Guide to Minnesota Environmental Review Rules*. It incorporates information about rule amendments made in 2009.

The major changes made by the amendments of 2009 include:

- Creation of new EAW & EIS mandatory and Exemption categories for certain projects within shorelands
- Various amendments throughout the rules dealing with how to treat cumulative potential effects
- Several new procedures that may apply to certain Alternative Urban Areawide Reviews (AUARs).

Various other amendments were also made throughout the rules, most of which are considered as clarifications by the EQB staff.

Disclaimer: this guide is not intended to substitute for the rules themselves, nor to address every section of the rules; it is designed to help Responsible Governmental Units and other implement the program more effectively and efficiently and to avoid common pitfalls. The guide does not alter the rules or change their meaning; if any inconsistencies arise between this guide and the rules, the rules prevail.

Additional guidance: the EQB has prepared and posted several other more specialized guidance documents which may also be of interest to Responsible Governmental Units and others involved in the Environmental Review process, including citizens.

See the EQB website for further information including how to contact the staff: www.eqb.state.mn.us.

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Chapter 1. Program Overview

The function of the Minnesota Environmental Review Program is to avoid and minimize damage to Minnesota's environmental resources caused by public and private actions. The program accomplishes this by requiring certain proposed projects to undergo special review procedures prior to obtaining approvals and permits otherwise needed.

The program assigns a unit of government—the Responsible Governmental Unit—to conduct the review using a standardized public process designed to disclose information about environmental effects and ways to minimize and avoid them. Some people are disappointed to learn that the RGU is most often the governmental unit with greatest responsibility to approve or carry out the project, not an impartial unit as might be desired. The program does not give any unit authority over decisions of others, nor does it impart approval or disapproval of a proposed action. The Environmental Review program is not an approval process. It is an information gathering process to help governmental units with permitting authority over a project make better-informed decisions.

Local, state and federal regulatory agencies carry out the protection measures identified in environmental review. The program has no authority to enforce measures, regardless of how significant the environmental impact. In short, the review is a source of information that must be integrated with other permitting and approval processes to protect the environment.

Two basic review documents are used in this program: the Environmental Impact Statement (EIS) and the Environmental Assessment Worksheet (EAW). The EIS is a thorough study of the project's environmental impacts and a comparative analysis of its economic and sociological effects. It considers reasonable alternatives, including the "no-build" alternative. When completed, the review gives governmental units information to determine whether the project is environmentally acceptable and what mitigation measures are needed. The EIS is reserved for projects with "the potential for significant environmental effects."

The other, and much more common, level of review is the EAW. This review procedure uses a worksheet with a standardized list of questions to screen projects that may have the potential for significant environmental effects. The EAW is subject to a 30-day public review period before the RGU makes a decision about whether the project also needs an EIS.

Requirements for preparing a mandatory EIS or EAW for specific project types and sizes are described in the rules and in the last chapter of this guide. Usually, an EAW can also be initiated at the discretion of a governmental unit with permitting authority over the project or upon request by citizen petition, as discussed in Chapter 4, unless

the project is specifically exempted by the rules (Exemptions are also described in the final chapter of this guide).

Chapter 6 describes several other special types of review documents also used in this program, especially the Alternative Urban Areawide Review (AUAR).

Environmental review can apply to any action or project that meets three conditions:

- The action or project must involve the physical manipulation of the environment, directly or indirectly (see definition of project at part 4410.0200, subpart 65).

- The action or project must involve at least one governmental approval or one form of governmental financial assistance or be conducted by a government unit (defined at part 4410.0200, subpart 34). For types of approvals and financial assistance that qualify, including those by federal agencies, see definition of permit at part 4410.0200, subpart 58.

- Action or project approval and construction must take place in the future; that is, projects constructed or those with all required governmental approvals are not subject to further review, unless an expansion is proposed.

A moratorium is automatically placed on action or project approval and construction whenever environmental review is required or requested by citizen petition (Minnesota Statutes, section 116D.04, subdivision 2b and 4410.3100, subpart 1). Minnesota law requires that when environmental review is being conducted, a project may not proceed and permits authorizing the project may not be issued. Once all review is complete, governmental units with permitting authority or other authority over the project may proceed to make final decisions on the project. This moratorium concept is covered in detail in Chapter 2.

General responsibilities of those involved in environmental review are described at part 4410.0400 and can be summarized as follows:

- Project proposers provide for an EAW any information needed to which they have “reasonable access.” They also pay reasonable costs to prepare an EIS (required by part 4410.6000).

- Responsible Governmental Unit prepares an EAW or EIS (or other environmental review document) when required by the rules, verifies its accuracy and complies with rule procedures and time frames.

- Environmental Quality Board adopts program rules, monitors their effectiveness and revises, as appropriate. EQB also provides technical assistance to interpret and apply rules.

An appeal of an EAW or EIS need decision or an EIS or AUAR adequacy decision must be initiated within 30 days of the RGU decision being challenged (Minnesota

Statutes, section 116D.04, subdivision 10). Judicial review of environmental review decisions occurs in the state district court. The Environmental Quality Board is NOT an appeal body and cannot review an RGU decision; however, it may initiate judicial review or intervene in any proceeding brought under Minnesota Statutes, section 116D.04, subdivision 10.

Determining the Responsible Governmental Unit

Determining the Responsible Governmental Unit is the first step in the environmental review process. The RGU officially decides whether the project fits any mandatory EAW or EIS categories. Selection rules can be summarized as follows:

Mandatory review. The Responsible Governmental Unit is specified by each mandatory category, except for those projects proposed by state agencies, where the agency proposer serves as the RGU.

Discretionary review. If a governmental unit orders environmental review, it serves as the RGU. If a petition is filed, the Environmental Quality Board chair or staff assigns the RGU. The EQB cannot designate as the RGU a governmental unit that has already granted all permits for the project, regardless of whether the unit qualifies under other selection criteria (part 4410.0500, subpart 3).

RGU assignment. The rules provide a hierarchy of selection criteria if the RGU assignment is unclear or in dispute (part 4410.0500, subpart 5). These criteria are:

- If the project will be carried out by a single governmental unit, that unit is the RGU.
- If only a single unit has approval authority over the project, it is the RGU.
- The government unit with the greatest overall authority over the project is the RGU.
- If it is unclear who has the greatest authority, the government units involved may mutually agree on which is to be the RGU. In controversial cases units are advised to prepare a written document describing how the decision was reached.
- If the units cannot reach agreement, the Environmental Quality Board chair must determine the RGU.

The EQB can exercise extraordinary authority to change the RGU. The EQB has limited authority to change an RGU that is properly designated under the rules. The EQB can change the RGU only if making the change results in the appointment of an RGU with greater expertise in analyzing potential environmental impacts (part 4410.0500, subpart 6). The EQB's authority to change the RGU in this way is limited; it expires five business days after receipt of the completed data portion of an EAW. Since

the timeframe for using this authority is restricted and because the Board, which meets only periodically, must make the decision, the EQB staff should be contacted well in advance if a change in the RGU will be requested.

A governmental unit is not disqualified from acting as the RGU simply because it is the project proposer. The rules offer no mechanism for disqualifying an RGU because of an alleged bias. The EQB does not act as the RGU unless designated under the rules.

In some situations the designated RGU can agree to allow another willing governmental unit to act as the RGU. The EQB has itself acquiesced in these decisions when all interested parties have agreed.

Chapter 2. Beginning the Review

Environmental review should be initiated as early as possible. If the project fits into a mandatory review category, the Responsible Governmental Unit should be advised as soon as the proposer can thoroughly describe the project's location and basic features. For other projects, the sooner the public and governmental units with authority over the project are advised the sooner the need for environmental review can be determined.

Defining the Project

Before the review process can begin, the RGU needs to define the project. This should be done before the project is compared to the mandatory EAW, mandatory EIS and Exemption categories.

Is the action in question a "project"? Not all governmental actions are subject to review under the Environmental Review process. Certain governmental actions are specifically exempted by part 4410.4600, subpart 26. Beyond that, the process covers only actions that qualify as "projects." Part 4410.0200, subpart 65 defines project to be a governmental action the results of which would cause physical manipulation of the environment, directly or indirectly. The Minnesota Court of Appeals provided further guidance about how to identify a project in the 2002 case *Minnesotans for Responsible Recreation vs. DNR*, 651 N.W.2d 533 (Minn. Ct. App. 2002), in which the court distinguished between projects and plans. The court stated that a project "is a definite, site-specific action that contemplates on-the-ground environmental changes, including changes in the nature of the use." *Id*., at 540. Plans or other governmental actions that do not match this description are too broad and speculative to provide a meaningful basis for environmental review. *Id*. Review must wait until a later stage of approval when there is an actual project to review.

The 2009 rule amendments added several types of governmental actions that are not considered "projects" to the list of actions exempted under part 4410.4600, subpart 26 (see page 104 for the listing of exempted governmental actions).

Connected actions, Phased actions & the 3-year look-back rule

Once an RGU has determined that a project exists, it must then determine how big the project is. In other words, the RGU must determine what components the project includes for purposes of environmental review. Components in addition to those suggested by the proposer may need to be included as part of the project for environmental review purposes because of planned future stages of development or because additional projects will occur as a result of the initial project.

The rules contain three general concepts relating to identification of the complete project. One is "connected actions," which are actions by any proposer that are closely connected to the initial project. The second is "phased actions," which are future actions by the same proposer. The third is the "3-year, look-back rule," which is an extension of the phased action concept into the recent past. In addition, for residential

projects the rules provide special procedures for determining what constitutes the complete project as part of the mandatory EAW and EIS category texts (at parts 4410.4300, subpart 19, and 4410.4400, subpart 14).

Connected actions. Three types of relationships between projects qualify as connected actions (part 4410.0200, subpart 9b):

- One induces the other;
- One is a prerequisite for the other and is not justified by itself (the first occurring previously or simultaneously); or
- Neither is justified by itself; that is, the two projects are interdependent parts of a larger whole.

Whenever two or more projects are related in any of these ways, they must be considered as one project, **regardless of ownership** or timing (parts 4410.1000 and 4410.2000, subparts 4).

It is not common for projects to be "connected actions." Historically, the most common example of connected actions was the multi-site animal feedlot; however, the EQB excluded them from being considered as connected actions through a rule amendment adopted in 1999. One of the more common existing connected actions occurs when independent landowners with adjoining properties jointly design a residential or commercial project without regard to the ownership boundaries.

Another type of connected action arises when a major development project triggers construction of public infrastructure, such as a road or sewer that would not otherwise be needed. In some cases, it may be appropriate to review the infrastructure through its own EAW or EIS, especially if the project exceeds the applicable threshold and the RGU complies with parts 4410.1000 or 4410.2000, subparts 4. However, the concept of connected actions is not intended to require that environmental review of public infrastructure projects fully satisfy all review requirements for future development, unless the infrastructure is planned primarily to serve a specific project rather than to support development generally. This does not relieve the RGU of its responsibility to consider induced development in a generic way when reviewing the infrastructure project.

Phased actions. "Phased actions" are defined as: "two or more projects by the same proposer that an RGU determines will have environmental effects on the same geographic area and are substantially certain to be undertaken sequentially over a limited period of time." (4410.0200, subpart 60). This definition involves three components: same proposer, same area affected, and timing. Only one and not all of a group of owners need be involved in both projects if that owner's stake is substantial. The same geographic area is affected if the effects of any potentially significant impacts overlap. The project sites do not need to be adjacent, or even nearby, if the impact zone is large.

The third component, the relative timing of the phases, involves the most uncertainty and therefore is often the most difficult component to apply. The Environmental Quality Board recommends that the RGU consider the following factors as indicative that project stages are "substantially certain to be undertaken sequentially over a limited period of time:"

- Development rights are being granted for future stages; for example, all parcels given preliminary plat approval or concept plan approval conveying any development rights must be considered part of the same "phased actions."

- The project proposer is seeking approval for later stages from another governmental unit.

- Detailed plans and specifications have been prepared for future stages.

  Public infrastructure or support facilities are currently being built to serve future stages.

- Any aspect of the initial stage determines, limits or tends to prejudice decisions about future stages.

- Any assurances that future stages will not take place within a limited period of time.

- The proposer has constructed other previous stages in the area. Past history may provide evidence about the likelihood and development schedule of future stages.

- Any other factor that impacts the certainty and scheduling of the future stages.

"3-year look-back rule." This provision, found at part 4410.4300, subpart 1, second paragraph, addresses how to determine whether a proposed expansion of an existing project requires a mandatory EAW due to the combined size of the existing project and the proposed expansion. The existing project's magnitude must be added to that of the proposed expansion under the following conditions:

- Construction of the existing project commenced less than three years ago (specifically, less than three years before the date the first application was submitted to any governmental unit for the proposed expansion); and

- The existing project was not reviewed through an EAW or EIS.

EXAMPLE: A 150,000 square foot expansion is proposed to a 200,000 square foot office building constructed two years earlier, without an EAW. Since the conditions listed above are met, the RGU adds the square footage of the proposed expansion and the existing structure, comparing the 350,000 square foot total to the EAW threshold to determine if the expansion needs review.

In other situations, tons of air pollutants emitted or cubic yards of waste disposal or number of animal units may be added; what is added depends on the measuring tool identified in the mandatory category.

The purpose of the 3-year look-back rule is to catch phased actions that slip by, intentionally or unintentionally, without review at their initial stage. This provision does not require EAW review of any existing stages of the project. It only requires the RGU to include previous stages in the calculation to determine if the EAW mandatory threshold is exceeded, not to review completed construction. An EAW can only review impacts of actions that are not yet approved. Existing project stages are to be treated as background conditions, similar to the treatment of other development surrounding the project.

Phased residential projects. For residential projects, the EQB has adopted special provisions that prescribe how to treat potential future stages. The provisions are in the mandatory EAW and EIS categories for residential projects text (part 4410.4300, subpart 19 and part 4410.4400, subpart 14) and also in the residential shoreland categories added in 2009 (part 4410.4300, subpart 19a and part 4410.4400, subpart 14a). They require that the total number of units potentially buildable on all contiguous land owned or under an option by the proposer be considered, regardless of whether the whole area or only a part is proposed for immediate development. Land may be excluded only if it is identified for a future use other than residential development by an adopted comprehensive plan, zoning ordinance, or other official local government action such as a resolution or agreement. If the proposer does not yet have plans for part of the area, the number of units potentially buildable is calculated from the maximum allowable units per acre under the zoning ordinance, or if the ordinance does not specify, from the average number of units per acre from the area as planned, multiplied by the number of acres. If the total potential number of units exceeds a mandatory threshold, review is required for all phases. The review can be staged to coincide with phased development approvals (parts 4410.1000 and 4410.2000, subparts 4). If an EIS is mandatory, an initial stage of up to 10 percent of the applicable threshold may be reviewed through the EAW process; all subsequent stages are subject to an EIS.

Environmental review may be deferred if all phased action stages or connected action components cannot be adequately defined. Part 4410.1000, subpart 4 and part 4410.2000, subpart 4 specify that an EAW or Supplemental EIS must precede approval of each stage or component deferred for review. The initial review should describe the anticipated stages or components to the extent known, providing a general discussion of how they will likely relate to project impacts.

Network projects such as highways, utility systems and pipelines may be divided for review if “logical in relation to the design of the total system or network and must not be made merely to divide up a large system into exempted segments” (parts 4410.1000 and 4410.2000, subparts 4). However, an unreviewed stage may not be approved or put into construction until the review is completed.

Relationship to Cumulative Potential Effects. One final point regarding defining the complete project is that the concept of cumulative potential effects has nothing to do with determining what is the complete project, nor whether a project fits any mandatory or exemption categories. Only "other projects" that are connected actions or phased actions as defined by the rules (including the 3-year look-back provision) are to be added in and considered when comparing the magnitude of the project in question with the mandatory and exemption thresholds.

Discretionary Review

Regardless of whether a petition is filed, any government unit with approval authority can order a discretionary EAW if it determines that the project may have the potential for significant environmental effects, unless the project is exempt according to part 4410.4600.

A discretionary EAW is particularly appropriate for public projects with some possibility of significant adverse environmental impacts or with the perception of such. By preparing a discretionary EAW, the governmental unit can systematically identify adverse impacts and the severity, forestalling potential delays if a petition is filed.

A discretionary EAW may be used to jointly review projects which independently do not exceed a mandatory threshold but collectively may impact the same geographic area.

Joint review of independent projects. Independent projects – those which are neither phased nor connected actions – may be considered jointly for environmental review. Decisions about joint review of independent projects are at the RGU's discretion, with the general understanding that joint review may not unduly delay the review of any one project, and that an RGU is obligated to consider cumulative potential effects from other projects when determining EIS need for any given project (part 4410.1700, subpart 7, item B – see further guidance regarding cumulative potential effects elsewhere in this document.

Joint review may be appropriate in the following circumstances:

- Several projects, each of which requires an EAW, are planned for the same vicinity and the RGU believes that review can be completed more efficiently or cumulative potential effects can be assessed more effectively by preparing a joint EAW.

- An RGU believes that several projects with potential cumulative potential effects on the same area can be reviewed more effectively by a joint EIS. This type of EIS historically has been referred to as a "related actions EIS" (part 4410.2000, subpart 5).

- An RGU has the authority to prepare a single EAW for a group of projects if the RGU concludes that the projects may have the potential for significant cumulative potential effects on the same area. If confirmed by the EAW and comments received, an EIS must be ordered (part 4410.1700).

- Another option for preparing a joint review is the Alternative Urban Areawide Review process, described in Chapter 6. Only certain types of development qualify for use of this process, however.

Prohibition on Governmental Approvals and Construction

Minnesota Statutes, section 116D.04, subdivision 2b, calls for one of the following to occur before a project that requires environmental review can be started or can be approved and before any permits or other authorizations can be granted:

- A petition for an EAW is dismissed;

- A negative declaration on the need for an EIS is made;

- An EIS is determined adequate; or

- A variance is granted by the Environmental Quality Board.

Prohibitions on governmental approvals and construction also begin when a valid petition for an EAW is filed with the board (part 4410.3100). The prohibition on governmental approvals and construction ends with any of the above actions. Once the review process ends, final decisions on permits and other forms of approval can be made at any later time – even at the same meeting.

One of the key purposes of environmental review is to provide information about potential environmental effects and how to avoid or minimize those effects to each of the governmental units which will approve or conduct the project. For this information to have utility, the governmental units must have the information in mind when they take their actions about the project. To issue permits or approvals before the information is available undermines the very purpose of the review. That is the reason why all decisions approving the project (or parts of the project) are prohibited until the review has been completed.

The statute and rule prohibit “final decisions” granting permits or other approvals. In this context, “final” means “not to be altered or undone,” rather than “last.” Any discretionary step in an approval process that conveys rights to the proposer and is not subject to further review or change is a final decision. Examples include preliminary plat approvals, which convey development rights under Minnesota law, as well as final plat approvals and conditional use permits. It may also include zoning or rezoning decisions if associated with a specific project or concept plan approvals if development rights are conveyed under applicable ordinances.

Permits and approvals include virtually any discretionary action by a government unit to entitle or assist a particular project to proceed, including financial subsidies or other assistance (see definition of permit, part 4410.0200, subpart 58, which is a very broad definition).

Here are some of the common ways in which governmental units have **mis**interpreted the prohibition against governmental approvals:

- Governmental units have taken the position that the prohibition only applied to the governmental unit that serves as the RGU for a project. In other words, governmental units have mistakenly believed that they could approve a project before environmental review was complete because some other governmental entity was acting as the RGU for the project. To the contrary, the statutory wording applies to all governmental bodies, not just the RGU.

- Governmental units have taken the position that they could issue authorizations for projects because some other governmental unit would have to act on other permits later. These governmental units took the position that their approvals were not "final" because some other governmental entity would have to issue subsequent approvals before the project at issue could go forward. These RGUs misinterpreted the meaning of "final." The law intends that *all* governmental units take the environmental information turned up through environmental review into account when each makes its decisions about the project.

- Governmental units have taken the position that that permits or approvals that did not directly authorize the construction or operation of the project were not subject to the prohibition. To the contrary, the statutory wording applies to all permitting and approval actions that apply to a project for which environmental review is required and not yet completed. Again, the intent of the law is that all project-related governmental decisions benefit from the information disclosed through the process.

- Governmental units have taken the position that they could issue so-called "conditional approvals." Conditional approvals typically involve a governmental unit issuing an approval with the caveat that the approval does not become effective until the environmental review process is complete. These approvals are also sometimes referred to as "spring-to-life" approvals. Such approvals are not permitted under the environmental review rules. If a governmental unit issues an approval that requires no further action by that governmental unit before environmental review is complete, then that approval is in violation of the prohibition on final governmental approvals. The governmental unit has made *its* decision about the project without benefit of the environmental review information.

- It should be noted that the prohibition on final governmental decisions does *not* preclude a governmental unit from reviewing permit applications, working on permits, preparing draft permits, or otherwise processing a requested approval

during the environmental review process. In fact, having access to the terms and conditions of a draft permit or approval can often aid in the environmental review process because the draft permit or approval may include mitigation measures that the RGU must understand in order to reach a reasoned decision on the environmental review. The prohibition on final approvals simply precludes governmental units from taking the final step of issuing permits or approvals until after the environmental review process is complete.

In the 2009 rule amendments, the EQB clarified that the prohibition on final governmental decisions does not prohibit governmental units from issuing notice of and receiving public comments on DRAFT permits while the environmental review process is still underway by adding a new subpart 2a to part 4410.3100.

Public project proposers may not take any action to prejudice the ultimate decision prior to a completed environmental review (part 4410.3100, subpart 2). Prejudicial actions are those that limit alternatives or mitigative measures or predetermine subsequent development. In other words, actions that make one option, including the option of not building the project, more or less likely to be chosen are prohibited. This prohibition includes the acquisition of property, if prejudicial to the ultimate decision. If property is acquired prior to completing the review, the governmental unit cannot use the ownership or possession of a property as a justification for choosing one alternative or design over another.

A variance allows limited approval and construction to begin prior to a completed environmental review. Requirements and procedures for the EQB to grant a variance are discussed at part 4410.3100, subparts 4 to 8. Specifically, the project proposer must demonstrate evidence of the conditions in subpart 6. In addition, the RGU must concur with the variance request. Anyone considering requesting a variance should consult with Environmental Quality Board staff in advance.

Chapter 3. Cumulative potential effects

The concept of cumulative potential effects was a troublesome aspect of environmental review for many years. The rules provided little – and in some ways puzzling – guidance and RGUs usually gave the concept fairly superficial treatment. However, in the 2006 case *Citizens Advocating Responsible Development (CARD) vs. Kandiyohi County Board of Commissioners and Duininck Brothers, Inc.*, the Minnesota Supreme Court provided new insight into how to handle the concept (which the court termed "cumulative potential effects," rather than "cumulative impacts"). This new clarity elevated the obligation of RGUs to address the concept if their environmental review decisions were to be defensible against legal challenges.

Through the 2009 amendments to the rules, the EQB has responded to the Supreme Court's *CARD* opinion and also addressed several other issues regarding cumulative potential effects. The revisions relating to cumulative potential effects include:

- A definition for the term "cumulative potential effects." This is the term that will be used for the review of specific projects, while the term "cumulative impacts" will only apply to Generic EISs. In the *CARD* case the Supreme Court distinguished between a broader scope of review associated with the term "cumulative impacts" as it is used in conjunction with the Generic EIS process, and a narrower focus associated with the term "cumulative potential effects" as used in conjunction with review of specific projects. The new definition includes guidance for determining how to decide what projects need to be taken into account, including what constitutes a 'basis of expectation' for a future project, and about how to treat effects from past projects in an EAW, EIS, or AUAR. The new definition appears at part 4410.0200, subpart 11a.

- Directives that cumulative potential effects be analyzed in EAWs, EISs, and AUARs. Although it has long been the practice to include such impacts to some extent in review documents, the rules formerly did not explicitly include requirements to do so. The directives appear at rule parts 4410.1200, 4410.2300, item H, and 4410.3610, subpart 4.

- A revised criterion for determining if a project requires an EIS due to cumulative potential effects, at part 4410.1700, subpart 7, item B.

- A clarification to the AUAR process relating to cumulative potential effects stating that the AUAR boundary is not intended to limit the geographic extent of analyses of impacts.

Definition of cumulative potential effects. The concept of cumulative potential effects means, as the Supreme Court stated, putting the project in context. It has to do with the question of to what extent, when conducting Environmental Review of a given project, do you need to consider impacts from other projects. How do you decide what other projects need to be considered? How far does the RGU need to look in terms of geography and timing, especially with respect to the future? Guidance for answering

these questions has been built into the definition of “cumulative potential effects.” The new definition indicates that CPE means the (total) effect on the environment resulting from the incremental effects of the project under review plus similar effects from certain other projects. The crux of the matter usually lies in deciding which are the relevant “other projects” that need to be considered .

The definition provides the following specific guidance regarding which other projects must be considered:

1. They must be located within the “environmentally-relevant area” and be reasonably expected to affect the same environmental resources as the project under review. One way to think about this that may be helpful is to consider the “environmental footprints” of projects; those other projects whose environmental footprints would likely overlap the footprint of the project under review are those that meet this test. It is for that reason that the EQB chose to use a different term than did the Supreme Court; the court referred to the “surrounding area,” while the EQB changed the term to “environmentally-relevant area.” As noted in the SONAR (page 22), the EQB believed that “surrounding area” tends to imply a fixed geographic area around the project under review. In actuality, the size of the area of impact (the “footprint”) usually will vary by type of impact so that a project will typically have several environmental footprints of different sizes. Furthermore, projects of different magnitudes will have differently-sized footprints for the same type of impacts (for example, a major power plant would have an air-quality footprint much larger than that of most other kinds of projects). To better convey this variability of the size of the areas of impact, the EQB decided to use the term “environmentally-relevant.”

2. To account for past projects (which includes projects constructed in the past but still in existence), the definition provides that the “current aggregate effects” of past projects can be used as a surrogate for an inventory of the effects from individual past projects (in most cases). This provides a significant shortcut in practice. Typically, the existing conditions with respect to an environmental resource will be equal to the current aggregate effects from past projects. (The rule does acknowledge that there could be cases where a detailed inventory of the contributions from past projects could be necessary to “describe the cumulative potential effects.” However, the EQB staff cannot point to any examples of this.)

3. In looking to the future, only other projects actually planned or for which a basis of expectation has been laid need be considered. This restriction was specifically stated by the Supreme Court in the *CARD* decision. However, the court did not define what is meant by a basis of expectation being laid. In its 2009 rule amendments the EQB provided guidance about that topic This guidance consists of a two-part test and five sources of pertinent information.

The first half of the test is whether the other project is "reasonably likely to occur." The definition lists the following as sources of information that should be scrutinized relative to that question:

1. Whether any applications for permits have been filed with any units of government; (note that this includes units of government other than the RGU and that "permit" is a defined term (4410.0200, subp. 58) that includes virtually any form of permission or assistance from any unit of government)

2. Whether detailed plans and specifications have been prepared

3. Future development indicated by adopted comprehensvie plans, and zoning or other ordinances

4. Historic or forecasted development trends, and

5. Any other factors found to be relevant by the RGU; (one possible example might be the status of funding for the project).

The EQB staff believes that each of these sources of information is not intended to be a "hard-and-fast rule" that by itself necessarily means that a project is or is not "reasonably likely to occur" (although in some cases a single piece of information may be found definitive). In fact, sometimes the different sources may contradict each other; for example, the adopted comprehensive plan might not be consistent with the project as proposed, while other factors tend to predict that it is likely to occur (presumably after the comprehensive plan is amended). In general, the RGU is advised synthesize available information from all the sources and come to an overall conclusion about the likelihood that the project in question will in fact occur.

The second half of the test is whether "sufficiently detailed information is available about the project to contribute to the understanding of CPE." Note that the rule states that this half of the test only needs to be applied if the first half is met. This half of the test reflects the fact that identifying CPE is not some academic exercise, but rather a practical effort to predict potential environmental effects as accurately as possible. If in a given case it appears to the RGU that a certain other project is "reasonably likely to occur" but very little specific information is available about its potential impacts, then that project would fail this half of the test and not be considered to have a basis of expectation laid for it; thus, it would not be considered when the cumulative potential effects are evaluated. The same five sources of information as discussed above are to be used with respect to the question of whether sufficiently detailed information is available.

Treatment of Cumulative Potential Effects in EAWs, EISs, and AUARs. The 2009 amendments to the rules added explicit instructions that CPEs must be addressed in all forms of environmental review documents. The RGU must identify other projects contributing to the CPEs consistent with the definition of CPE as explained above. CPE considerations relevant to each form of review document are described below.

EAWs. The EQB staff intends to revise the EAW form and its instruction document *EAW Guidelines* in 2010 to reflect the rule amendments regarding CPE. Once the revised *EAW Guidelines* has been prepared, RGUs should consult that document for assistance in dealing with CPEs in the preparation of EAWs and also in considering CPEs when determining the need for an EIS based on the EAW process record.

EISs. The EIS chapter of this guide has information relating to CPE in the section of Scoping Documents and also in a section titled Cumulative Potential Effects.

AUARs. The AUAR section of chapter 6 has been revised in accordance with the 2009 rule amendments relating to CPE.

Petitions and CPEs. When an RGU is making a decision about whether an EAW is required in response to a citizens petition it is directed (by part 4410.1100, subpart 6) to consider the factors listed at part 4410.1700, subpart 7; one of these is (after the 2009 rule amendments) "cumulative potential effects." With the heightened emphasis on CPE resulting from the CARD decision and the 2009 rule amendments, RGUs may worry about what sort of inquiry they need to make into whether there may be significant CPE issues involved with a petition. It is the EQB staff's view that while any CPE issues raised in the petition itself or otherwise known to the RGU must be taken into account, there is no obligation on the RGU to undertake an investigation into whether there may be CPE issues that are otherwise as yet unknown. In general, the rules only obligate an RGU to take into account evidence already before it when dealing with a citizens petition. CPE issues should be treated similarly.

Chapter 4. Environmental Assessment Worksheets & Citizen Petitions

The EAW is a "brief document, which is designed to set out the basic facts necessary to determine whether an EIS is required for a proposed project" (part 4410.0200, subpart 24). Its primary, legal purpose is to provide the information needed to determine whether the project has the potential for significant environmental effects. It also provides permit information, informs the public about a project and helps identify ways to protect the environment.

The EAW process consists of four basic steps:

Step 1. Project proposer supplies complete data to the RGU.

Step 2. RGU prepares an Environmental Assessment Worksheet.

Step 3. The public comments during a 30-day period.

Step 4. RGU makes a decision about the need for an EIS, based on the EAW, comments received and comment responses.

Details of the EAW process steps and of how to complete the EAW form are not dealt with in this guide, but rather in a companion booklet, *EAW Guidelines: Preparing Environmental Assessment Worksheets*. (The EQB staff intends to revise the EAW form and guidelines during 2010.)

Also available at the EQB website are several other guides related to EAWs for RGUs and citizens, as well as the official distribution list for EAWs and the EAW worksheet form itself.

CITIZEN PETITION FOR AN EAW

(part 4410.1100)

The purpose of the citizens' petition process is to provide a standard mechanism by which citizens can bring to the attention of the government projects which may have the potential for significant environmental effects. Some projects that do not fall into any mandatory category or are below the EAW threshold nonetheless need review because of their location or unusual features.

Detailed guidance for citizens interested in filing a petition for an EAW is contained in the document titled *A Citizen's Guide: the Petition Process*. Guidance for RGU's on how to respond to a citizens' petition is contained in the document titled *Reviewing*

Petitions: a Procedural Guide for Local RGUs. These documents are available through the EQB website.

Here is a bare outline of the citizens' petition process:

Step 1. Citizens prepare a petition, which to be valid must contain all of the following items:

- A description of the proposed project.
- Identification of the project proposer. (*Note: petitioners must also notify the proposer in writing that they have filed a petition with the EQB*)
- Identification of a representative for petitioners, including mailing address and telephone number.
- A brief description of the project's potential environmental effects, including an explanation of how unusual or unique characteristics of the project or its location create a need for an EAW even though no mandatory threshold is exceeded.
- Material evidence of potential for significant environmental effects because of the project's nature or location.
- Signatures of at least 25 individuals, with no restriction on location of residence, age or any other factor. *Signers must provide a complete mailing address.*

Step 2. Petitioners file the petition with the Environmental Quality Board for verification that the petition is complete and to assign the petition to the proper Responsible Governmental Unit. The EQB is merely the clearinghouse for all petitions, and does not make any recommendations about the need for review; however, it does advise the RGU of the major steps and criteria for review.

Step 3. The RGU reviews the petition and determines the need for an EAW. Any aggrieved party may appeal the decision in district court within 30 days of the date the RGU made the decision.

Chapter 5. Environmental Impact Statements

The primary purpose of the Minnesota environmental review program is to prepare an Environmental Impact Statement for each project with "potential for significant environmental effects," as mandated in Minnesota Statutes, section 116D.04, subdivision 2a. Although prepared much less frequently than an EAW, the EIS is the heart of the program.

The EIS provides information about the extent of potentially significant environmental impacts and how they may be avoided or minimized. Intended primarily for government decision-makers who must approve the project, the information is used by the proposer and the general public as well.

A key point: The EIS is not a means to approve or disapprove a project, but is simply a source of information to guide approval decisions. Occasionally, the information results in an alternative site or design being selected. More commonly, the information suggests changes or mitigative measures to minimize potential impacts that can later be imposed via governmental approvals. However, the legal basis for choosing an alternative other than the proposer's preference or for imposing mitigative measures comes from other statutory authorities. Again, the EIS can only point out problems and solutions, it cannot enforce them.

Minnesota has a variety of independent statutory authorities to carry out solutions suggested by an EIS. State agencies can reject the proposer's preference in favor of a "feasible and prudent" alternative if the former is "likely to cause pollution, impairment or destruction" or natural resources (Minnesota Statutes, section 116D.04, subdivision 6). Citizens have similar authority through judicial action under the Environmental Rights Act, Chapter 116B.

When is an EIS required? An EIS is required under any of the following circumstances:

- The project fits a mandatory EIS category (in part 4410.4400). These mandatory EIS categories are reproduced in Chapter 7. (The RGU must be sure that it is comparing the complete project to the EIS thresholds – see Chapter 2 for further information.)

- Based on an EAW, comments and responses, the RGU determines that the project has the potential for significant environmental effects (part 4410.1700).

- When the proposer and RGU agree that an EIS should be prepared; this generally occurs when both parties recognize an EIS order is the EAW's likely outcome and they wish to expedite the process.

An EIS prepared under the first circumstance is referred to as a mandatory EIS. Those prepared under the other circumstances are referred to as a discretionary EIS; the third circumstance is also referred to as a voluntary EIS.

Who pays for an EIS? Minnesota Statutes, section 116D.045 directs that the project proposer shall pay for the RGU's full "reasonable costs" for scoping, preparing and distributing an EIS; most cost at least $100,000. Parts 4410.6000 to 4410.6500 cover how to determine allowable costs, how to make payments and other cost-related details

The four basic steps to prepare an EIS are:

Step 1. Scoping, or deciding what impacts and alternatives will be covered by the EIS and the extent of effort and depth of analysis to be devoted to each topic.

Step 2. Preparing the draft EIS based on the work outlined in scoping.

Step 3. Public review of the draft and preparing a final EIS that responds to comments and makes any necessary revisions.

Step 4. Determining "adequacy" of the EIS.

The RGU is responsible for all steps; however, the Environmental Quality Board will occasionally take over step four, determining adequacy. Compiling information and analysis of impacts and mitigation measures are frequently handled by consultants under the supervision of the RGU.

At the end of this chapter is a detailed list of the steps of the EIS process and their time limits.

EIS Content and Scoping

General guidance for EIS content is given at part 4410.2300. Other provisions that clarify requirements – primarily alternatives, impacts and mitigation – are found at:

- 4410.2000, subpart 4, connected and phased actions (defining the project).
- 4410.2100, subpart 1, purpose of scoping.
- 4410.2400, incorporation by reference.
- 4410.2500, incomplete or unavailable information.
- 4410.2700, subparts 1 and 2, responding to draft comments and preparing the final document.
- 4410.2800, subpart 4, criteria for EIS adequacy.

Unlike the EAW (or AUAR), the EIS does not have a questionnaire-type form or a standardized list of topics. Instead, the rules give general guidance about the content, which ultimately is determined by the RGU through scoping.

The purpose of scoping is to streamline the EIS document, to identify only potentially significant and relevant issues and to define alternatives (part 4410.2100, subpart 1). The proposer and the public (including agencies) must be involved in scoping to gain basic information about the project and ascertain public views about issues and alternatives; but the RGU must do more than simply collect comments from interested people about what belongs in the EIS. The RGU must identify all topics and alternatives that potentially could be in the EIS, exercising independent judgment about what the document ultimately will contain and how it will be prepared. If RGUs are too hasty in scoping the EIS, they almost inevitably will face delays later on and may damage their credibility and that of the EIS in the process. Topics and alternatives that need to be in the EIS are generally more extensive than the issues raised by public comments.

Part 4410.2300, item H clarifies the level of detail and effort for each topic. The rule states that the importance of the impact and the relevance of the information to choices among alternatives and selection of mitigation should dictate the amount of information presented; and the RGU is to consider the cost of obtaining the information compared to its importance and relevance when deciding what information should be included and how it should be obtained. In other words, the RGU should be willing to spend more for the information most needed for project decisions.

The rules state that only potentially significant impacts need to be addressed in an EIS (see part 4410.2300, item H; see also part 4410.2100, subpart 1 and part 4410.2800, subpart 4, item A). However, in some cases the need for public education may be an overriding reason to be more inclusive. The EIS often serves as a basic public informational document about a controversial project, and its audience expects information about all topics related to the project. Information about minor environmental impacts can be added to the EIS by attaching the scoping EAW as an appendix or by inserting information from the scoping EAW where appropriate. In any case, since the EAW only covers environmental impacts, any minor socioeconomic impacts would have to be added by the RGU in some other way.

EIS Scoping Documents

The scoping process requires preparation of three documents: the scoping EAW, the draft scoping decision document and the final scoping decision document. The RGU often also prepares proposer cost agreements and documents needed to hire consultants to work on the EIS. At the end of the scoping process the RGU issues another short document, the EIS preparation notice.

Scoping EAW. This document uses the standard EAW form to disclose sufficient information to identify potentially significant environmental impacts. As with the regular EAW process, the rules provide that the project proposer supply the completed data portions of the EAW. The RGU should carefully review this information and modify the EAW as needed. The RGU should be cautious about initiating scoping if it discovers

any uncertainty or ambiguity about the project description or location. Scoping may need to be repeated if the project changes in any way that influences potential environmental impacts or the people interested in the project.

The EQB staff recommends that when completing the EAW form, the RGU should answer each question according to how the topic will be treated in the EIS:

a. the topic is obviously not relevant or is so minor that it will not be addressed at all in the EIS;

b. the topic is minor, but will be discussed briefly in the EIS using the same information as in the EAW;

c. the topic is significant but the EAW information is adequate for use in the EIS; or

d. the topic is significant and information beyond what was in the EAW will be included in the EIS.

For topics that fall under item a, the RGU should provide enough information in the EAW to justify not addressing them in the EIS. For topics under b and c, the RGU should write text that can be used in the EIS without need to rewrite or edit extensively. For topics under d, little factual information should be included in the EAW; instead, the EAW may simply state that the EIS will include a major discussion of the topic and provide a description of its intended scope and study methods.

Draft scoping decision document. This document, which is distributed with the scoping EAW, gives the public a preliminary view of the intended scope of the EIS, focusing attention on its potential controversial aspects. The document need reflect only the information available at the beginning of scoping; it is acceptable for the draft document to admit uncertainty about scoping issues. Its format is usually the same as that for the final scoping decision document.

Final scoping decision document. Prepared after the scoping period, this document is adopted by the RGU governing body as the official “blueprint” for the EIS. At a minimum, the final scoping document must include the items listed at part 4410.2100, subpart 6: a. issues to be addressed; b. time limits (if shorter than standard 280-day requirement); c. permits for which information will be gathered concurrently; d. permits which will require a record of decision; e. alternatives to be addressed; f potential impact areas resulting from the project itself and from related actions (i.e., from any phased or connected actions that are being included in the EIS analysis); and g. studies to be done to develop information.

In the final scoping decision document, it may be more logical to reorder the required items as follows: a, f, g, e, c, d and b. This approach places the issues/impacts to be analyzed and the studies to be used together; topics covered under a, f, and g could be grouped as described in the section on the Scoping EAW above according to how they will be treated in the EIS. This would also be the place to identify any other projects in the environmentally-relevant area that will be included in any cumulative potential

effects analyses needed for the EIS. Item e, alternatives, is discussed in the next section. Permit-related items c and d are addressed in a later section.

Unlike EAW procedures, the rules do not require the scoping decision document to respond to public comments. Nevertheless, this step is typically done and is worthwhile in most cases. Often the RGU's governing body will want to know about the responses in considering the adoption of the final scope.

The scoping decision document is the basis for the work plan and cost estimates developed for the EIS. As portions of the EIS are prepared, the RGU should check the work against the scoping document to see that all commitments are fulfilled. The RGU should also refer to the scoping decision document when responding to comments on the EIS.

EIS preparation notice. This notice announces that work is starting on the EIS document and contains a summary of the scoping decision. It must be published in the *EQB Monitor* within 45 days after the RGU receives the project proposer's initial EIS cost payment. The notice must also be sent as a press release to at least one newspaper of general circulation in each county where the project will occur. Copies of the notice may also be sent to individuals who commented on the EIS scope (or the RGU may choose to send the complete scoping decision to commenters).

Scoping an EIS Ordered through the EAW Process

When an RGU orders an EIS at the end of the EAW process, the scoping documents and procedures differ from those used if the EIS is mandatory or voluntary (part 4410.1700, subparts 3 and 5 and 4410.2100, subpart 4). The differences are as follows:

- No scoping EAW is prepared. The EAW and record of decision documenting the EIS need supply the necessary background information to scope the EIS.

- The RGU provides an estimate of its expected costs for the scoping process to the proposer; the proposer is to pay this cost within five business days of the positive declaration. In cases where the RGU staff recommends or expects issuance of a positive declaration, the staff should also prepare the estimate of the scoping cost to be provided to the proposer along with notice of the positive declaration decision; if this estimate must be approved by the RGU governing body, that approval should be part of or accompany the decision on the positive declaration.

- Notice of a public scoping meeting must appear in the *EQB Monitor* within 15 business days of receipt of the proposer's scoping cost payment.

- The meeting must be held between 10 business and 20 calendar days after the notice appears in the *EQB Monitor* (this effectively restricts timing of the meeting to the second week after publication).

- The RGU must make its final scoping decision within 15 business days after the public scoping meeting, or, if the decision is made by a board or council, at its first regular meeting after the public scoping meeting (but no later than 45 days after the *Monitor* notice of the positive declaration).

After the scoping decision is made, the rest of the EIS process is identical to that for a mandatory or voluntary EIS.

Hiring Consultants

Information about the project may be obtained from the proposer or its consultants; however, the RGU may want to use an independent consultant to analyze the project's impacts, alternatives and mitigation to ensure an impartial study. Since the law authorizes the RGU to charge its full EIS costs to the proposer, there is no fiscal disincentive for the RGU to directly hire the consultants. (However, the RGU would need to devote the resources – although their costs can be recovered – to procuring the consultants and managing the contracts.)

Alternatives Analysis

One of the main purposes of an EIS is to examine potential impacts of project alternatives. Unlike with an EAW, the impacts analyzed are not limited to environmental impacts. The statute calls for the EIS to evaluate "economic, employment and sociological impacts" as well. The RGU should observe the following when selecting an appropriate range of alternatives.

- The EIS must include the **no-build alternative and at least one alternative of each of the following types** or provide a concise explanation of why no alternative is included in the EIS: 1) sites; 2) technologies; 3) modified designs or layouts; 4) modified scale or magnitude; or 5) an alternative incorporating reasonable mitigation measures identified through comments on the scope or the draft EIS.

- **Alternatives may be excluded only if they meet one (or more) of the following criteria:**

    - a) underlying need for or purpose of the project is not met;

    - b) significant environmental benefit over the proposed project is not provided; or

    - c) another alternative is likely to be similar in environmental benefits but will have less socioeconomic impact.

- The RGU should keep a written record of alternatives examined and its rationale for any exclusions, providing a summary in the EIS scoping document and complete documentation in the EIS. It is not necessary for the EIS to identify any alternative as preferred.

- In applying exclusion criteria, the RGU must not be overly restrictive in defining the project's purpose and need. Occasionally, an RGU will claim desirable but nonessential elements as part of the project's purpose or need, thus eliminating alternatives that should be included. In many cases, these are cost-related factors and, while important, they cannot overrule environmental considerations. At the same time, the RGU should not examine extraneous alternatives just to make an EIS more complicated.

- The intent of the requirements about alternatives is to ensure that the RGU takes a serious look at whether significant environmental impacts can be avoided or minimized by carrying out the project in another way.

The RGU must always consider alternative sites when scoping the EIS and evaluate site alternatives in the EIS unless they can be excluded based on the three exclusion criteria above. The following factors should be considered by the RGU when deciding whether alternative sites would meet the underlying need and purpose criterion:

- Whether the proposer owns the proposed site;

- How long the proposer has owned the site;

- The likelihood that the proposer could sell or otherwise use the proposed site if the project was moved;

- Whether the proposer has access to other sites. Proposers with eminent domain authority have greater access than those who do not; access also depends on whether other sites are for sale;

- Whether the site is an integral part of the project or whether the project could be built on other sites in the general area. For example, if a farmer wants to develop his land as residential property, no other site would meet the need. Conversely, if a major retailer wants to open a store in a new housing area, multiple sites may satisfy the objective;

- The likely use of the proposed site if the project did not take place on it and the environmental impacts of other uses.

For public projects, the RGU should be careful not to eliminate alternatives from the EIS based simply on the culmination of a prior planning process. The RGU must take a hard look at the basis for prior decisions to make sure that environmentally superior alternatives were not eliminated without sufficient justification based on the rule's three criteria. Eliminated alternatives should be discussed in the EIS and noted in the scoping decision document. Prior decisions to eliminate options may need to be revisited in the EIS if insufficient consideration was given to environmental impacts. The next chapter describes how the RGU can use the "tiered" EIS concept to efficiently incorporate environmental review into complicated public decision-making processes and to help avoid prematurely dismissing alternatives without sufficient justification.

Public project proposers are further cautioned against taking any actions regarding site or route acquisitions or project commitments prior to completing the EIS unless it is clear that such action is not prohibited by part 4410.3100, subpart 2 or other laws; consult Chapter 2 for further information.

Mitigation Measures

Even if major alternatives to the proposed project are not implemented, mitigation measures identified in the EIS provide decision-makers with a list of possible measures to reduce impacts. These measures can be imposed through permit restrictions or through project modifications negotiated with the project proposer.

Mitigation measures are not restricted to merely reducing impacts to permit levels. For example, if noise from the project is likely to be a problem, mitigation measures can suggest ways to reduce noise below the levels required by standards. Mitigation measures should be discussed within the impacts sections and listed in a separate chapter of the EIS. This makes it easier for decision-makers to find and consider these measures in their deliberations. Mitigation should be discussed for all alternatives but especially for the proposed project since it is the one most likely to be implemented.

Analysis of Cumulative Potential Effects

The EQB staff recommends that RGUs follow the guidance given in Chapter 3 about how to decide which other projects need to be included in the analyses to be done for the EIS to address cumulative potential effects. For assistance regarding the technical aspects of cumulative effects analysis the EQB staff recommends consulting the federal Council on Environmental Quality document *Considering Cumulative Effects under the National Environmental Policy Act.* This is comprehensive guidance for federal agencies on how to handle cumulative effect analysis in federal environmental impact statements and environmental assessments. This guidance thoroughly covers the conceptual background of cumulative effect analysis, offering a compendium of techniques and methods which may be useful to practitioners in the Minnesota environmental review process. It is available at the following Web address: http://ceq.hss.doe.gov/nepa/ccenepa/exec.pdf.

EIS and Permit Relationships in Scoping

An RGU may be confused about the relationships between the EIS and various permits needed for the project and how these permits are to be addressed in scoping. A permit can relate to an EIS in three ways. Only the first as listed below is always required in an EIS; the other two ways are optional at the RGU's discretion.

- All known governmental permits and approvals are required to be listed in the EIS in the Governmental Approvals section (part 4410.2300, item F). Since this is a firm requirement, it does not require mention in the scoping decision, although it is usually included in a proposed EIS content list.

- Some permits and approvals can require a “record of decision,” which documents how EIS information was considered in making the decision. (Part 4410.2900) Permits included in this group (if any) are determined by the RGU in its scoping decision. The RGU can require other agencies to prepare a record of decision. This record of decision is only appropriate for major discretionary decisions on the whole project, such as plat approval or a conditional use permit, or a major element that directly impacts the environment, such as an air emissions permit or a storm water system permit.

- The scoping decision may identify permits for which information will be gathered concurrently with the EIS. The permitting agency must issue such permits within 90 days of the EIS adequacy decision, unless in conflict with federal or state law or the proposer agrees to an extension (part 4410.2900). However, this provision in no way reduces the information needed for a permit, so if permit-related information is missing, either the 90-day time limit for the permit must be extended or the EIS adequacy decision must be delayed. Consequently, the usefulness of this provision is debatable and it has seldom or never been used to the knowledge of EQB staff.

Another aspect of the EIS and permit relationship, which is not part of the EIS scoping, must be clear to the project proposer. The proposer must realize that the EIS is not a generic permit application: it does not replace permit applications or supporting data requirements. The proposer needs to file any necessary permit information directly with the permitting agencies.

Changes in the project while the EIS is underway. Occasionally, the proposer will modify the project after scoping is substantially complete. The rules prescribe minimal requirements for amending the scoping decision (part 4410.2100, subpart 8); however, in some situations the RGU will need to exceed the legal minimum to maintain credibility. If the proposed change could result in different or substantially greater impacts, different reasonable alternatives or different people becoming concerned, the RGU should consider repeating the scoping process. For minor changes, Environmental Quality Board staff recommend that interested people be notified of the proposed revision, in advance if possible, and offered an opportunity to comment or object.

EIS termination. If a project is modified substantially after the EIS process has started (which the EQB staff considers to be once the scoping EAW and draft scoping decision document have been noticed in the EQB Monitor in the case of a mandatory or voluntary EIS or as soon as a positive declaration has been made by the RGU in the case of a discretionary EIS) so that an EIS is no longer required, the rules provide a specific process to terminate (part 4410.2100, subpart 11). This provides opportunity for the public to comment on the need to continue with an EIS. The exact procedures to follow depend on whether the modified project exceeds any mandatory EAW threshold or not.

EIS Adequacy

Upon completion of the EIS, the RGU must determine whether the EIS is adequate in accomplishing the following:

- Includes topics required to be in the EIS or that were in the scoping document and does a reasonable job analyzing the topics.
- Includes responses to comments on the draft EIS.
- Followed procedures for providing an opportunity for public comment on the EIS.

The exact criteria that must be met are prescribed at 4410.2800, subpart 4.

Supplementing an EIS

Occasionally after an EIS has been completed but before the project is built changes of some sort require the EIS to be amended through a Supplement. The criteria for determining if an EIS must be supplemented are given at 4410.3000, subpart 3. These criteria are quite straightforward and are not discussed here; they are similar to those used in the federal NEPA review process. The rules also provide for an "EIS Addendum" to correct a completed EIS text in situations that do not rise to the level where an EIS Supplement is required (4410.3000, subpart 2).

Procedures to prepare an EIS Supplement are found at part 4410.3000, subparts 4 and 5. The procedures for a supplemental EIS are similar to those for a regular EIS with the following exceptions:

- A procedure is provided for requests for supplements and RGU responses (subpart 4).
- The 30-day scoping period, scoping EAW and scoping decision document are eliminated. Instead, the RGU must adopt a scope in the "preparation notice," which also is the official order and rationale for the supplement. Interested people have 20 days after the preparation notice release to object to the scope, in which case the RGU must provide a written response in the draft EIS document. However, the rules allow the RGU to go through a more public scoping process, including scoping meetings, if advisable.
- The time limit to complete the supplement is 120 days, as measured from the date the preparation notice is adopted to the date of adequacy determination.

STEPS & TIMELINE: ENVIRONMENTAL IMPACT STATEMENT PROCESS

Scoping for a mandatory or voluntary EIS*

***** the process differs for a discretionary EIS through step 9; for the discretionary EIS scoping process see 4410.2100, subpart 4 and 4410.6500, subpart 1.

0. Informal communication between project proposer and RGU in preparation for filing scoping EAW (usually in conjunction with discussions about permit information needs)

1. **Proposer submits** completed data portions of EAW and payment for estimated scoping costs to RGU

2. **RGU reviews data submittal** for completeness (within 30 days – extendable with agreement of proposer)

a. If complete, notifies proposer within 5 business days

b. If incomplete, returns for corrections (then steps 1 & 2 repeat)

3. RGU prepares and approves **scoping EAW and draft Scoping Decision** Document for public comment (within 30 days of notice of completeness sent to proposer)

4. RGU submits **scoping notice** to EQB for publication in *EQB Monitor* and distributes Scoping EAW and draft Scoping Decision Document to official EQB distribution list (within 5 business days of approval of scoping EAW)

5. RGU provides **press release** about EAW scoping to at least one newspaper of general circulation in project area (within 5 business days of submission of notice to EQB)

6. **Notice appears in *EQB Monitor*** (varies between 7 and 20 days from receipt of notice at EQB, but usually is 7 days)

7. **Public scoping comment meeting**(s) held (between 15 business and 30 calendar days after *Monitor* notice published)

8. **Scoping comment period ends** (30 days after *Monitor* notice published)

9. **RGU approves final scope** (documented in final Scoping Decision Document) (within 15 business days of end of scoping comment period) (Note: it is not required that the RGU distribute the final Scoping Decision Document, but it is often done and is usually a good idea)

10. **RGU and proposer arrange to prepare draft EIS**. The procedures provided in the EQB rules are as follows, however, RGUs and proposers often elect to follow alternate procedures:

a. RGU estimates EIS costs and sends draft cost agreement to proposer (within 30 days of scoping decision)

b. Proposer and RGU discuss costs, finalize and sign cost agreement (within 30 days of proposer's receipt of draft agreement) (or if agreement cannot be reached either party can refer the cost dispute to EQB)

c. Proposer pays ½ the estimated EIS cost to RGU (within 10 business days of signing the cost agreement)

d. Meanwhile, the RGU arranges to hire any consultants that will assist the RGU in preparation of the EIS

11. **EIS Preparation Notice** published in *EQB Monitor* (within 45 days after the RGU receives the proposer's ½ cash payment) and a press release is sent by RGU to newspaper in area of project. (Note: in order for the notice to appear in *Monitor* within 45 days after receipt of cash payment, RGU must send notice to EQB at least 7 days in advance)

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EIS Preparation and Review

12. Informal process occurs during which RGU, consultants and proposer conduct studies and **prepare draft EIS** document. RGU decides when draft EIS is ready for public release (this decision is often made by the RGU governing body, but sometimes by staff). (There is no set time limit for this step, except that it must conform to the overall EIS time limit as noted in step 21.)

13. **RGU distributes Draft EIS** to distribution list and submits notice to EQB for publication in *EQB Monitor* and sends press release to at least one newspaper of general circulation in the project area; notice and press release announce opportunity to comment on Draft EIS and public meeting

14. **Notice of Draft EIS availability and information meeting** published in *EQB Monitor* (varies between 7 and 20 days from receipt of notice at EQB, but usually is 7 days)

15. **Public information meeting**(s) held in county where project would occur, no sooner than 15 business days after the *Monitor* notice published)

16. **Written comment period ends** (no sooner than 10 business days after (last) date of public information meeting(s)

17. Informal process occurs during which RGU, consultants and proposer respond to comments, obtain additional information if needed, and **prepare Final EIS document**. RGU decides when final EIS is ready for public release. (There is no set time limit for this step, except that it must conform to the overall EIS time limit as noted in step 21.)

18. **RGU distributes Final EIS**, sends notice to EQB for publication in *EQB Monitor,* and sends press release to at least one newspaper of general circulation in the project area.

19. **Notice of Final EIS availability** published in *EQB Monitor* (varies between 7 and 20 days from receipt of notice at EQB, but usually is 7 days)

20. **Comment period** on adequacy of Final EIS (ends no sooner than 10 business days after publication of notice in the *Monitor*)

21. **RGU determines if EIS is adequate.** (Statute provides that this must happen within 280 days after the publication of the EIS Preparation Notice (step 11); the time limit may be extended by agreement of the proposer or by the Governor)

a. If found adequate, process is complete.

b. If found inadequate, the RGU has 60 days to revise the EIS; then must repeat steps 18 through 21.

Chapter 6. Substitute Methods of Environmental Review

State statutes provide for "alternative forms of environmental review which will address the same issues and use similar procedures … in a more timely or more efficient manner to be used in lieu of an EIS." The EQB rules contain specific options for such substitute forms of review at parts 4410.3600 to 4410.4000.

4410.3600. Alternative Review. This is a general authority that allows the Environmental Quality Board to approve some type of governmental review process as a substitute review process that can replace an EAW or EIS. An RGU with a review process that might qualify under 4410.3600 should contact board staff to discuss the feasibility of approval. Since requirements are stringent, only a few approvals have been issued to date.

4410.3610. Alternative urban areawide review. This substitute process is covered in detail in the next section.

4410.3700. Model ordinance. This option is available to any local unit that adopts the model ordinance found at part 4410.3700. To be valid, the ordinance must be adopted *exactly* as worded in the rules. The ordinance **does not apply to any project that requires a state agency permit;** therefore, it can only be used for a limited number of projects.

Some RGUs have been confused about this ordinance, thinking that it has to do with charging proposers for an RGU's costs for environmental review. That is not the case. (The EQB does provide some guidance regarding that issue in *Establishing Local Government Policies and Ordinances for Environmental Review,* available at the EQB website.)

4410.3900. Joint federal and state review. Federal and state review documents are often prepared jointly; however, in some cases it is more expeditious to complete one review and use the completed documents in a subsequent review under the other process. Board staff can help determine the best approach for the situation. Although the same factual information can often be used, each process has separate and independent legal requirements. *The state EIS process requirements cannot be met by following federal procedures.*

4410.4000. Tiered EIS. This provision is derived from federal NEPA procedures. It applies to projects for which decisions are made sequentially over time, allowing environmental review to be done in stages – or tiers – corresponding to decisions. In each tier, only information relevant to that stage is developed. The level of detail usually becomes greater and more site-specific as the review proceeds from one tier to the next. An appropriate situation for a tiered review is the siting of a major facility where a general area for the facility is selected first and the best site within the area is selected later.

Energy facilities review. Most electric energy production and transmission facilities and pipelines are reviewed through special alternative procedures and do not have regular EAWs and EISs prepared for them. The special procedures are conducted by the Minnesota Department of Commerce and the Minnesota Public Utilities Commission.

Alternative Urban Areawide Review Process (AUAR)

The regular environmental review process is best suited for distinct projects with environmental impacts that do not overlap. In 1988 the Environmental Quality Board adopted a process to review incremental impacts accumulating from a series of sequential projects in a certain geographic area, development typical of the rapidly growing suburbs of the Twin Cities metropolitan area. The Alternative Urban Areawide Review (AUAR) process substitutes for any EAW or EIS required for specific qualifying projects proposed in the area, provided they comply with the review assumptions and mitigation measures. In other words, the specific projects can be "pre-reviewed" by the AUAR.

The review's key feature is that its subject is a development scenario (or several scenarios) for an entire geographical area rather than a specific project. (However, it is permissible to review specific development projects through the AUAR process (although the 2009 amendments added an additional "scoping" step to the beginning of the process that applies if certain large development projects are included.) Development scenarios are established by the local unit based upon the comprehensive plan, zoning ordinances, developers' plans and other relevant information. More than one scenario can be reviewed, providing at least one is consistent with the existing adopted comprehensive plan. A maximum development, "worst case" scenario is usually included. Development scenarios chosen by the local unit serve as the project description for the environmental impacts analysis. Specific projects ready for review within the area can be included; however, the review can also be done before any specific projects are proposed.

The AUAR process can be used by a local governmental unit if the area to be reviewed is covered by an acceptable comprehensive plan (defined at part 4410.3610, subpart 1, criteria derived from Minnesota Statutes, section 473.859). Any city, county or township with planning and zoning authorities, which has adopted a comprehensive plan meeting these requirements, qualifies to use the AUAR process; the RGU is required to certify that requirements are met.

Only certain types of development projects that can be reviewed through the Alternative Urban Areawide Review process. Specifically, an AUAR can substitute for review of: residential development, commercial development, warehousing, light industrial development and infrastructure associated with development, such as roadways, water, sewer and stormwater systems (but not a wastewater treatment facility). Developments with characteristics that meet thresholds of any industrial mandatory EAW or EIS categories at part 4410.4300, subparts 2 to 13, 15 to 17, 18 items B & C or part 4410.4400, subparts 2 to 10, 12, 13 or 25) are not eligible for AUAR review.

A hybrid of the EAW and EIS review processes, the AUAR uses a standard list of questions adapted from the EAW form, providing a level of analysis for typical urban area impacts comparable to an EIS. The EQB staff's guidance *Recommended Content and Format: AUAR Documents* is available at the EQB website. Since the content is uniform, a scoping process is not necessary unless the review will include a specific project which either exceeds a mandatory EIS threshold or covers at least 50% of the geographic area of the AUAR. (This requirement for scoping some AUARs was added as part of the 2009 rule amendments, and is discussed in more detail below.) However, some RGUs have voluntarily added a scoping process to reviews that did not require scoping when the review was expected to be complex or controversial.

A draft and a final document are prepared and distributed in a manner similar to an EIS to ensure adequate review. A process for appeal to the Environmental Quality Board can be invoked by state agencies and the Metropolitan Council.

Benefits of the AUAR process. The process offers several significant advantages to developers, local governments, reviewing agencies and to the environment. It is an excellent tool for review of cumulative potential effects of multiple projects in a given area. AUAR enables planners to better integrate environmental review into their comprehensive planning process. A single review process can address both public infrastructure construction scheduled in the near future as well as the ensuing residential and commercial development slated for later years. By examining multiple development scenarios through the AUAR process, planners are able to evaluate how much development can be accommodated in an area without significant environmental impacts. Moving review to an earlier planning stage helps anticipate and correct potential problems while project plans are still flexible.

Projects will not be subject to individual environmental reviews if designers conform to AUAR assumptions and mitigation plan requirements. Failure to conform exposes the project to additional time delays and expenses, thereby encouraging projects to be designed in an environmentally conscientious manner.

Initiating the AUAR process. Preparing a successful AUAR can be complicated – certainly more so than a typical EAW. An RGU may want to consider hiring an experienced consulting firm to assist them with the AUAR process.

Since the 2009 rule amendments went into effect on November 23, 2009, the procedure to initiate an AUAR differs depending upon whether the review will include a specific project that either exceeds a mandatory EIS threshold or covers at least 50% of the AUAR's geographic area. If no such specific project is included, the procedure to initiate an AUAR would be unchanged from what it has been in the past. If such a specific project is included, then a process similar to EIS scoping must precede the adoption of the order for review; the "scoping" process is described below.

An AUAR process is formally initiated by RGU order, which must define the review area boundaries and the "anticipated nature, location, and intensity" of development (part 4410.3610, subpart 3). Several development scenarios may be designated. At least

one must be consistent with the current adopted comprehensive plan; if the plan is outdated or being revised, but the new plan has not yet been officially adopted, the AUAR *must* include a scenario based on the existing comprehensive plan. This scenario takes the place of the no-build alternative required in an EIS, although the RGU can also include less intense development scenarios if it has reason to do so. If disputes or uncertainties arise about the nature, location or intensity of development within the review area, the RGU can proceed by incorporating multiple scenarios that reflect differing viewpoints. The review area may be subdivided into smaller subareas so that variations in land uses and intensities can be delineated.

It is presumed that the RGU will discuss potential development scenarios and how to pay review costs with property owners. The rules do not address the issue of how an AUAR is funded, leaving this up to the RGU.

In defining development scenarios, the RGU should keep in mind the fundamental principle that if actual development – in total or in any subarea – is proposed to exceed the maximum development studied, the AUAR looses its validity as a substitute for an EAW and EIS; therefore, the RGU should include a development scenario that represents the maximum development expected or allowed. This approach has another advantage to the RGU and developers: if the maximum development level is inconsistent with state environmental laws – for example, the resulting traffic will cause air quality standard violations – the AUAR will reveal the problem and appropriate planning can be done prior to development.

In choosing the AUAR area boundaries and defining development scenarios the RGU should be careful not to "bite off more than it can chew." The larger the area and the greater the number of scenarios, the more analysis work that will be needed. Some RGUs have needed to scale back the size of the AUAR area during the review after finding that there was too much work involved in studying the overly-large area originally included. This is another good reason for hiring experienced consultants to help the RGU with planning an AUAR.

The 2009 rule amendments included a clarification about the boundaries of an AUAR. In a 2006 opinion, the MN Court of Appeals declared that an RGU did not need to address impacts or sources of impacts that lay outside the AUAR boundary. The EQB believes the appeals court was confused about how an RGU typically sets the boundaries of an AUAR in reaching this conclusion. To correct this error, the amended rules state: "The geographic extent of the analyses of direct, indirect, and cumulative potential effects conducted in preparing the [AUAR] document is not to be limited by the boundaries set in the order for review…" (part 4410.3610, subpart 5, item A).

AUAR "scoping" step required when large specific project covered by the review. The 2009 rule amendments added a required step at the beginning of the AUAR process if the review will cover any specific projects which meet mandatory EIS requirements or comprise at least half the AUAR area. This step is found at part 4410.3610, subpart 5a. This "scoping" step was added to the AUAR process in response to concerns that when a large specific project is included in an AUAR review,

the presence of the specific project tends to distort the nature of the review compared to a “pure” AUAR where specific projects have not yet been identified. In particular, there have been concerns that the range of development scenarios studied is restricted due to the presence of a large specific project.

This step involves public comment on the scope of the AUAR review, specifically on development scenarios and relevant issues to be covered. The comment process is initiated by a draft AUAR order which must be noticed in manner like an EAW. Commenters may suggest additional development scenarios, including alternatives for the large specific project(s) in question and may include site alternatives outside the proposed AUAR boundary; they must give reasons why a proposed alternative is potentially environmentally superior to those listed in the draft AUAR order.

The RGU must consider the timely and substantive comments received and adopt a final order for review within 15 business days of the end of the comment period, with a copy of the order and record of decision being sent within 10 business days of the decision to the EQB and anyone who submitted timely and substantive comments. The RGU must use the same criteria for excluding a suggested development scenario as for excluding an EIS alternative as given at part 4410.2300, item G. (See page 27 in the EIS chapter for a discussion of these criteria.)

Steps of the AUAR are detailed at the end of this chapter and summarized below. The process is supposed to be completed in 120 days from the RGU’s order for the AUAR to adoption of the final document or mitigation plan. To maximize the likelihood of meeting this deadline, an RGU should not officially order the review until it is ready to actually begin the analysis.

Step 1. The RGU selects area boundaries to be reviewed and defines anticipated levels of development on various parcels. If the review will cover any specific projects that would otherwise require a mandatory EIS or that comprise at least 50% of the ground area within the AUAR boundary, a scoping-like process as prescribed in part 4410.3610, subpart 5a must be completed prior to approval of the order for review.

Step 2. An Alternative Urban Areawide Review document (with mitigation plan) is drafted. The EQB guidance for the contents and format is available at the EQB website.

Step 3. The draft document is reviewed in a manner similar to an EAW. The basic comment period is 30 days, but any state agency or the Metropolitan Council must be granted a 15-business day extension upon request.

Step 4. Based on comments received, the RGU revises the document and mitigation plan. The RGU may also need to revise development assumptions or set development limits to protect environmental resources.

Step 5. The finalized document and mitigation plan is distributed for review.

Step 6. If objections are filed by any state agency or the Metropolitan Council, negotiations ensue after which, if no resolution can be reached, the Environmental

Quality Board decides if the review is adequate or must be revised. If revised, the documents are again reviewed according to procedures above.

The mitigation plan. The mitigation plan is probably the most important result of the AUAR process, commanding careful attention by both the RGU and reviewers. This plan must specify not only physical mitigation measures but also the legal and financial measures and institutional arrangements to ensure mitigation.

The mitigation plan is not merely a list of ways to avoid significant environmental effects; rather it is an action plan for how the effects **will** be avoided. It is a commitment by the RGU and other agencies to take action to prevent impacts that otherwise could occur from project development. Failure to develop and implement an adequate mitigation plan could leave projects exposed to legal action under the Environmental Rights and Environmental Policy acts for causing "pollution, impairment or destruction" of the environment for which there are "feasible and prudent" alternatives.

Updating the AUAR. Subpart 7 provides guidance on when the review needs to be updated to remain valid, listing six specific examples of such circumstances. Regardless of any significant changes, the review must be updated every five years until all development in the area has been approved. The EQB staff recommends that the RGU initiate the update process early enough so that the update can be completed before the five-year period expires. If the five-year period expires before an update is begun, it is the opinion of the EQB staff that an update may still be prepared, but until it is completed there is no environmental review coverage provided by the AUAR. Thus, if a specific project that exceeds any mandatory EAW or EIS categories is applied for during the AUAR hiatus, an EAW or EIS would need to be completed, or the project would need to wait for approval until the AUAR update was completed.

Revisions to the documents are distributed for review in the same manner as for a final AUAR document. An update need not start "from scratch," but rather needs only to revise information in the original documents to the extent necessary to reflect changes that have occurred. The update document must be circulated for review in the same manner as for a final AUAR document, except it must be sent to all persons on the EAW distribution list and the EQB will publish notice of the update review in the EQB Monitor. If the update involves extensive changes from the original AUAR document, the EQB staff recommends that the RGU provide an extended comment period to allow reviewers sufficient time for a complete review. The update is subject to the same objection procedure as a final AUAR document.

Audits. Subpart 8 provides that the board chair may ask the RGU at any time for a status report on development progress in the area and on mitigation plan implementation. This provision allows the board to investigate any allegations of procedural abuse, to make sure that agreed upon mitigation is being implemented and to make sure that development is consistent with review assumptions.

Failure to conform to the original assumptions or to implement the mitigation plan voids the status of the AUAR as a substitute form of review, which means that individual projects are then subject to EAW and EIS requirements.

Excluding a small specific project within the AUAR boundary from review. The 2009 amendments provide a procedure for an RGU to follow if, after the AUAR order is adopted, it wishes to exclude from the review a specific project within the AUAR boundary. This may only be done if neither an EAW nor EIS is mandatory for the project. The procedure is found at part 4410.3610, subpart 2, item D. It provides for public notice of the intended exclusion and an opportunity to file comments. If adverse comments are filed, the RGU must make a determination about whether the project "may have potential for significant environmental effects" (the standard for an EAW). If no adverse comments are received, the project is automatically excluded once the comment period ends.

STEPS & TIMELINE: ALTERNATIVE URBAN AREAWIDE REVIEW PROCESS

0. **Informal preparations for AUAR by RGU**. (May include optional "scoping-like" orientation meetings with reviewing agencies if complex or controversial issues may arise.)

1. Only if AUAR will include a specific project that meets a mandatory EIS requirement or covers at least 50% of AUAR area: **RGU issues notice of draft AUAR order and receives public comment** as per EAW process. Commenters address development scenarios and alternatives to be considered and issues to be addressed. RGU considers comments and whether additional scenarios and issues should be covered (must be documented in a record of decision).

2. **RGU orders AUAR** (done by the governing body of RGU). The order for the AUAR establishes the study area & scenarios to be addressed, and starts the 120 day period for completion.

3. Informal process occurs during which RGU, consultants and sometimes project proposers conduct studies and **prepare draft AUAR document,** following content and format guidance issued by EQB. RGU decides when draft AUAR document is ready for public release (this decision is often made by the RGU governing body, but sometimes by staff). (There is no set time limit for this step, except that it must conform to the overall time limit as noted in step 11.) **Note:** Technical tasks to conduct studies, gather data, prepare reports, or write sections to support preparation of the draft AUAR may be done before the AUAR is actually ordered – to the extent allowed by the policies and procedures of the RGU.

4. **RGU distributes Draft AUAR document** (to EQB EAW distribution list) and sends notice to EQB for publication in *EQB Monitor*

5. RGU provides **press release** about AUAR availability to at least one newspaper of general circulation in project area (within 5 business days of submission of notice to EQB)

6. **Notice appears in *EQB Monitor*** (varies between 7 and 20 days from receipt of notice at EQB, but usually is 7 days). The notice may include the time and place of any (optional) information meeting(s). Such meetings are not required, but would need to occur during the comment period if held.

7. **Public comment period** (ends 30 days after *Monitor* notice, except governmental units have right to 15 business day extension upon request)

8. Informal process occurs during which RGU, consultants and sometimes proposers respond to comments, obtain additional information if needed, and **prepare Final AUAR document**. RGU decides when Final AUAR is ready for

public release. (There is no set time limit for this step, except that it must conform to the overall time limit as noted in step 11.)

9. **RGU distributes Final AUAR document**. (Note: there is no *EQB Monitor* notice or press release required at this step.)

10. **Review of Final AUAR documents.** Reviewers have 10 business days from *receipt* to submit comments or "object" (only state agencies or Metropolitan Council may object)

a. If no objections filed, review proceeds to step 11.

b. If any objections filed, review proceeds to step 12

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11. **RGU formally adopts AUAR** (after making any final corrections based on any comments received) (must wait until at least 15 business days after distribution of Final AUAR documents) There is an overall time limit between the AUAR order (step 2) and this step: adoption is to occur at first meeting held more than 120 days after the AUAR ordered.

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12. **RGU and objecting agency negotiate resolution** of issues as per 4410.3610, subpart 5, items F & G.

13. If RGU and objecting agency cannot work out resolution, **EQB determines** whether AUAR is adequate, conditionally adequate, or inadequate.

14. Once issues worked out, or AUAR revised per EQB instructions, **RGU formally adopts AUAR.**

Chapter 7. Mandatory EAW, EIS & Exemption Categories

This chapter reproduces the mandatory EAW & EIS and Exemption thresholds for environmental review from Minnesota Rules, parts 4410.4300, 4410.4400 and 4410.4600. The chapter is organized into sections, each section presenting EAW, EIS and Exemption requirements for a particular type of project and describing how to determine if review is mandatory or exempt for that class of projects. It also indicates in bold the assigned **Responsible Governmental Unit**. The sections are in the order that the mandatory EAW categories appear in part 4410.4300. Each section begins on a new page. If a project does not fit in any category, its review is discretionary. Notes accompany some sections to define terms, provide guidance and give examples.

Notes that apply to the entire table

- Two frequently used terms are: **construction**, any activity that directly alters the environment, including land preparation or facilities fabrication, excluding surveying or mapping; and **expansion**, a facility's capability to produce or operate beyond its existing capacity, excluding repairs or renovations that do not increase capacity.

- The "complete project" must be compared to the appropriate categories. Guidance about defining the complete project can be found in Chapter 2.

- Be aware that a project may fit several different categories. If the RGU listed is different, follow procedures at part 4410.0500 to determine the RGU (or contact the EQB staff). Note that a mandatory category overrides an exemption (except the special "standard" exemptions in subpart 2 of 4410.4600). A project that fits both an EAW and an EIS category requires a mandatory EIS.

- **Guide to Minnesota state agencies acronyms used:**

- Department of Natural Resources, **DNR**

- Department of Transportation, **DOT**

- Environmental Quality Board, **EQB**

- Department of Agriculture, **MDA**

- Department of Health, **MDH**

- Pollution Control Agency, **PCA**

- Public Utilities Commission, **PUC**

NUCLEAR FUELS AND NUCLEAR WASTE

Mandatory EAW **4410.4300, subpart 2**

A. Construction or expansion of a facility for the storage of high level nuclear waste, **EQB**

B. Construction or expansion of a facility for the storage of low level nuclear waste for one year or longer, **MDH**

C. Expansion of a high level nuclear waste disposal site, **EQB**

D. Expansion of a low level nuclear waste disposal site, **MDH**

E. Expansion of an away-from-reactor facility for temporary storage of spent nuclear fuel, **EQB**

F. Construction or expansion of an on-site pool for temporary storage of spent nuclear fuel, **EQB**

Mandatory EIS **4410.4400, subpart 2**

A. Construction or expansion of a nuclear fuel or nuclear waste processing facility, including fuel fabrication facilities, reprocessing plants, and uranium mills, **DNR** for uranium mills; otherwise, **PCA**

B. Construction of a high level nuclear waste disposal site, **EQB**

C. Construction of an away-from-reactor facility for temporary storage of spent nuclear fuel, **EQB**

D. Construction of a low level nuclear waste disposal site, **MDH**

Exemptions

None

ELECTRIC GENERATING FACILITIES

Mandatory EAW **4410.4300, subpart 3**

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, **EQB.**

Construction of an electric power generating plant and associated facilities designed for or capable of operating at a capacity of 50 megawatts or more requires environmental review under special procedures conducted by the **PUC and Department of Commerce**.

Mandatory EIS **4410.4400, subpart 3**

Construction of a large electric power generating plant requires environmental review under special procedures conducted by the **PUC and Department of Commerce**.

Exemptions **4410.4600, subpart 3**

Construction of an electric generating plant or combination of plants at a single site with a combined capacity of less than five megawatts

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Notes

Large electric power generating plants and associated facilities include power generating plants of 50 or more megawatt capacity

Special procedures apply to integrate Environmental Review into the permitting and siting process conducted by the Public Utilities Commission and the Department of Commerce. These special procedures replace preparation of regular EAWs or EISs when review is assigned to the PUC and the Department of Commerce, Office of Energy Security, Energy Facilities Permitting.

PETROLEUM REFINERIES

Mandatory EAW **4410.4300, subpart 4**

Expansion of an existing petroleum refinery facility that increases its capacity by 10,000 or more barrels per day, **PCA**

Mandatory EIS **4410.4400, subpart 4**

Construction of a new petroleum refinery facility, **PCA**

Exemptions

None

FUEL CONVERSION FACILITIES

Mandatory EAW **4410.4300, subpart 5**

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, **PCA**

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, **PCA**

Mandatory EIS **4410.4400, subpart 5**

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, **PCA**

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, **PCA**

Exemptions **4410.4600, subpart 4**

Expansion of a facility for the production of alcohol fuels that would have or would increase its capacity by less than 500,000 gallons per year of alcohol produced.

Notes

Biomass sources are animal wastes and all forms of vegetation, natural or cultivated (4410.0200, subpart 6).

TRANSMISSION LINES

Mandatory EAW **4410.4300, subpart 6**

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, **EQB**.

Construction of a transmission line and associated facilities of 100 kilovolts or more requires environmental review under special procedures conducted by the **PUC and Department of Commerce**.

Mandatory EIS **4410.4400, subpart 6**

Construction of a high voltage transmission line requires environmental review under special procedures conducted by the **PUC and Department of Commerce.**

Exemptions **4410.4600, subpart 5**

Construction of a transmission line with a nominal capacity of 69 kilovolts or less.

Notes

High voltage transmission line is a conductor of electricity designed to operate at a nominal voltage of 200 kilovolts or more or at 100 kilovolts or more if it has at least ten miles of length within Minnesota or crosses a state boundary.

Special procedures apply to integrate Environmental Review of transmission lines into the route review and selection process conducted by the Public Utilities Commission and the Department of Commerce. These special procedures replace preparation of regular EAWs or EISs when review is assigned to the PUC and Department of Commerce, Office of Energy Security, Energy Facilities Permitting.

PIPELINES

Mandatory EAW **4410.4300, subpart 7**

A. 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, **see Notes regarding RGU.** .

B. 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, **Municipality; see Notes regarding state agency RGU.**

C. 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, **see Notes regarding RGU.**

D. 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, **see Notes regarding RGU.**

Mandatory EIS **4410.4400, subpart 24**

Routing of a pipeline subject to the full route selection procedures under Minnesota Statutes, section 116I.015, **see Notes regarding RGU**

Exemptions

None

Notes

RGU: The EQB has approved the pipeline routing and review process conducted by the PUC and the Department of Commerce, Office of Energy Security, Energy Facilities Permitting, under chapter 4415 as an alternative form of environmental review which

automatically satisfies EAW and EIS requirements (approved pursuant to 4410.3600). Therefore, EAWs and EISs are not prepared for pipelines when permitted under chapter 4415.

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.

Item C (interstate natural gas pipelines) does not apply if the application is expressly preempted by federal law, or under specific circumstances when a conflict exists with applicable federal law.

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TRANSFER FACILITIES

Mandatory EAW **4410.4300, subpart 8**

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, **PCA**

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, **PCA**

Mandatory EIS

None

Exemptions **4410.4600, subpart 6**

Construction of a facility designed for or capable of transferring less than 30 tons of coal per hour or with an annual throughput of less than 50,000 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.

Notes

Water-related land use management district is any of the following designated zones: shorelands, flood plains, wild or scenic rivers districts, Mississippi Headwaters and Minnesota Project Riverbend districts.

UNDERGROUND STORAGE

Mandatory EAW **4410.4300, subpart 9**

A. 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), **DNR**

B. 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), **DNR**

Mandatory EIS **4410.4400, subpart 7**

A. 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), **DNR**

B. 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), **DNR**

Exemptions

None

STORAGE FACILITIES

Mandatory EAW **4410.4300, subpart 10**

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, **PCA**

B. Construction of a facility on a single site designed for or capable of storing 1,000,000 gallons or more of hazardous materials, **PCA**

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, **PCA**

Mandatory EIS

None

Exemptions **4410.4600, subpart 7**

Construction of a facility designed for or capable of storing less than 750 tons of coal, with an annual throughput of less than 12,500 tons of coal, or the expansion of an existing facility by these respective amounts

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Notes

Item C includes all types of natural or synthetic gas stored in a liquid state.

METALLIC MINERAL MINING AND PROCESSING

Mandatory EAW **4410.4300, subpart 11**

A. Mineral deposit evaluation of metallic mineral deposits other than natural iron ore and taconite, **DNR**

B. Expansion of a stockpile, tailings basin, or mine by 320 or more acres, **DNR**

C. 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, **DNR**

Mandatory EIS **4410.4300, subpart 8**

A. 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, **DNR**

B. Construction of a new facility for mining metallic minerals or for the disposal of tailings from a metallic mineral mine, **DNR**

C. Construction of a new metallic mineral processing facility, **DNR**

Exemptions **4410.4600, subpart 8**

A. General mine site evaluation activities that do not result in a permanent alteration of the environment, including mapping, aerial surveying, visual inspection, geologic field reconnaissance, geophysical studies, and surveying, but excluding exploratory borings.

B. Expansion of metallic mineral plant processing facilities that are capable of increasing production by less than ten percent per year, provided the increase is less than 100,000 tons per year in the case of facilities for processing natural iron ore or taconite.

C. Scram mining operations.

Notes

Mineral deposit evaluation is examining an area to determine the quantity and quality of minerals, excluding exploratory boring, but including bulk samples obtained by excavating; trenching; constructing shafts, tunnels or pits; producing refuse and other associated activities (4410.0200, subpart 47, citing Minnesota Statute, section 103I.605, subdivision 2).

Scram mining operations produce natural iron ore or ore concentrates from previously developed stockpiles, tailings basins, underground mines or open pits. Land can be no more than 80 acres previously not affected by mining, that is: from which no materials have been removed or on which no mine wastes have been deposited (4410.0200, subpart 78, citing part 6130.0100).

NONMETALLIC MINERAL MINING

Mandatory EAW **4410.4300, subpart 12**

A. 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, **DNR**

B. 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, **local governmental unit**

C. [new category, added 2009] 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 or more acres of forested or other naturally vegetated land in a nonsensitive shoreland area, **local governmental unit**

Mandatory EIS **4410.4400, subpart 9**

A. Development of a facility for the extraction or mining of peat which will utilize 320 acres of land or more during its existence, **DNR**

B. 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, **local governmental unit**

C. [new category, added 2009] 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, **local governmental unit**

Exemptions

None

Notes

EAW and EIS item B categories require a mine to be <u>both</u> at least 40 (or 160) acres in extent and of 10-foot average depth. Thus, for example, a 20 acre mine with a mean depth of 20 feet would NOT require an EAW.

Because mining activities tend to concentrate in specific areas and occur in stages over time, issues relating to phased actions, connected actions, and cumulative potential effects frequently arise. Consult Chapter 2 for guidance on how to deal with these situations.

Shoreland means land located within the following distances from public water: 1,000 feet from the ordinary high water level of a lake, pond, or flowage; and 300 feet from a river or stream, or the landward extent of a flood plain designated by ordinance on a river or stream, whichever is greater. The limits of shorelands may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances and when approved by the commissioner.

Sensitive shoreland areas include any of the following:

Shoreland designated as a special protection district by the local unit pursuant to part 6120.3200

Shoreland of lakes, or bays of lakes, classified as natural environment pursuant to part 6120.3000

Shoreland of trout lakes and trout streams designated pursuant to part 6264.0050

Shoreland of wildlife lakes designated pursuant to Minn. Stat., sec. 97A.101, subd. 2

Shoreland of migratory waterfowl feeding and resting lakes designated pursuant to Minn. Stat., sec. 97A.095, subd. 2

Shoreland of outstanding resource waters designated pursuant to part 7050.0180.

PAPER OR PULP PROCESSING MILLS

Mandatory EAW **4410.4300, subpart 13**

Expansion of an existing paper or pulp processing facility that will increase its production capacity by 50 percent or more, **PCA**

Mandatory EIS **4410.4400, subpart 10**

Construction of a new paper or pulp processing mill, **PCA**

Exemptions **4410.4600, subpart 9**

Expansion of an existing paper or pulp processing facility that will increase its production capacity by less than 10 percent.

INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL FACILITIES

Mandatory EAW **4410.4300, subpart 14**

A. 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, **local governmental unit**:

(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. 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, **local governmental unit:**

(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

(4) first class city, 400,000 square feet

Mandatory EIS **4410.4400, subpart 11**

A. 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, **local governmental unit**:

(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. 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, **local governmental unit**:

(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

Exemptions **4410.4600, subpart 10**

A. Construction of a new or expansion of an existing warehousing, light industrial, commercial, or institutional facility of less than the following thresholds, expressed as gross floor space, if no part of the development is within a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area:

(1) third or fourth class city or unincorporated area, 50,000 square feet

(2) second class city, 75,000 square feet

(3) first class city, 100,000 square feet

B. 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.

C. Construction of a new parking facility for less than 100 vehicles if the facility is not located in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

Notes

These general industrial, commercial & institutional thresholds do not apply to projects which are of a (single) type for which there is a specific mandatory category included in parts 4410.4300 & 4410.4600 (e.g., a “pulp and paper mill” or an “animal feedlot.” However, they do apply when a project fits multiple specific categories. (See items C & D of parts 4410.4300, subp. 14 and 4410.4400, subp. 11.)

If a project will include several buildings, of which some fit the item A category and some the item B, an arithmetic calculation similar to that explained under the Residential development categories can be used to determine if an EAW or EIS is required.

Warehousing facility's primary function is storage of goods or materials; a small portion may be used for office or sales space (4410.0200, subpart 89a).

Light industrial facility's primary function is that other than manufacturing with fewer than 500 employees (4410.0200, subpart 42a).

Gross floor space is the total square footage of all floors, including all structures on the site, but not including parking space or approach areas (4410.0200, subpart 35).

City classes by population (based on the most recent population census or the latest reliable population estimate from the State Demographer or Metropolitan Council):

First class: Minneapolis, St. Paul, Duluth, and Rochester (and any other city that reaches population of 100,000)

Second class: 20,000 to 100,000

Third class: 10,000 to 20,000

Fourth class: under 10,000

AIR POLLUTION

Mandatory EAW **4410.4300, subpart 15**

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 after installation of air pollution control equipment, **PCA**

Mandatory EIS

None

Exemptions

See 4410.4600, subpart 10, item C (page 61)

Notes

Former EAW category 4410.4300, subpart 15, item B covering parking facilities was repealed by EQB in 2006.

HAZARDOUS WASTE

Mandatory EAW **4410.4300, subpart 16**

A. Construction or expansion of a hazardous waste disposal facility, **PCA**

B. Construction of a hazardous waste processing facility with a capacity of 1,000 or more kilograms per month, **PCA**

C. Expansion of a hazardous waste processing facility that increases its capacity by ten percent or more, **PCA**

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, **PCA**

Mandatory EIS **4410.4400, subpart 12**

A. Construction or expansion of a hazardous waste disposal facility for 1,000 or more kilograms per month, **PCA**

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, **PCA**

C. Construction or expansion of a hazardous waste processing facility if the facility is located in a water-related land use management district, or in an area characterized by soluble bedrock, **PCA**

Exemptions

None

Notes

Water-related land use management district is any of the following designated zones: shorelands, flood plains, wild or scenic rivers districts, Mississippi Headwaters and Minnesota Project Riverbend districts.

SOLID WASTE

Mandatory EAW **4410.4300, subpart 17**

A. Construction of a mixed municipal solid waste disposal facility for up to 100,000 cubic yards of waste fill per year, **PCA**

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, **PCA**

C. Construction or expansion of a mixed municipal solid waste transfer station for 300,000 or more cubic yards per year, **PCA**

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, **PCA**

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, **PCA**

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, **PCA**

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, **PCA**

Mandatory EIS **4410.4400, subpart 13**

A. Construction of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste fill per year, **PCA**

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, **PCA**

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, **PCA**

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, **PCA**

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, **PCA**

Exemptions

None

Notes

"Capacity" means the following in the identified items:

EAW categories items A, B & F and EIS categories items A, B & E: "capacity" is the total airspace volume occupied by a facility, including all solid waste, topsoil, and cover system, and considering existing regulations that affect engineering designs and site development.

EAW categories items C, D & E and EIS categories items C & D: "capacity" is the maximum daily operational input volume a facility is designed to process on a continuing basis.

Water-related land use management district is any of the following designated zones: shorelands, flood plains, wild or scenic rivers districts, Mississippi Headwaters and Minnesota Project Riverbend districts.

WASTEWATER SYSTEMS

Mandatory EAW **4410.4300, subpart 18**

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, **PCA**

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, **PCA**

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 gallons per year or more, **PCA**. 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.

Mandatory EIS

None

Exemptions **4410.4600, subpart 11**

Construction of a new wastewater treatment facility with a capacity of less than 5,000 gallons per day average wet weather flow or the expansion of an existing wastewater treatment facility by less than 5,000 gallons per day average wet weather flow or the expansion of a sewage collection system by less than 5,000 gallons per day design daily average flow or a sewer line of 1,000 feet or less and an eight-inch diameter or less.

RESIDENTIAL DEVELOPMENT

Mandatory EAW **4410.4300, subpart 19**

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 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 elements listed in the Notes.

Mandatory EIS **4410.4400, subpart 14**

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 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 elements listed in the Notes below.

Exemptions **4410.4600, subpart 12**

A. Construction of a sewered residential development, no part of which is within a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, of:

(1) less than ten units in an unincorporated area,

(2) less than 20 units in a third or fourth class city,

(3) less than 40 units in a second class city, or

(4) less than 80 units in a first class city.

B. Construction of less than 10 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. [For definitions of terms used in this exemption refer to the Notes for the following section on residential development in shoreland.]

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

Notes

All contiguous land must be included if the developer owns it or has a purchase option on it, unless it has been identified for a future use *other than residential* by a comprehensive plan, ordinance or other official governmental action .

To calculate number of units: a. if known, use the number of units planned by the proposer, or b. use the maximum number of units per acre allowed by the zoning ordinance, or c. if option b is not available, use the average number of units per acre in the proposer's plan.

Attached units are dwelling units that are grouped together with four or more units per structure. **Unattached units** are single-family, duplex and triplex structures.

Sewered area is one served by a sanitary sewer system connected to a wastewater treatment or a centralized septic system servicing the entire development, or one that lies within the Metropolitan Council's designated Metropolitan Urban Service Area.

Water-related land use management district is any of the following designated zones: shorelands, flood plains, wild or scenic rivers districts, Mississippi Headwaters and Minnesota Project Riverbend districts.

Mixtures of attached and unattached units. An arithmetic computation must be performed to determine if mixed unit developments require an EAW or EIS. The formula is:

S = A/B + C/D, where:

A = # of unattached units

B = applicable unattached unit threshold

C = # of attached units, and

D = applicable attached unit threshold.

If S equals or exceeds 1.00, review is required.

Example: Determine if an EAW is required for a development of 300 apartments and 50 single-family units; and the development is consistent with a certified comprehensive plan.

Step 1: divide the number of unattached units, 50, by the applicable unattached EAW threshold, 250: 50/250 = 0.20

Step 2: divide the number of attached units, 300, by the applicable attached unit threshold, 375: 300/375 = 0.80

Step 3: add the quotients from steps 1 & 2: 0.20 + 0.80 = 1.00

Step 4: compare the sum to 1.00. Since 1.00 equals 1.00, an EAW is mandatory for this project.

Requirements for a qualifying comprehensive plan. The overall plan must include 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 (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 for zoning, subdivision and private sewage systems, and a schedule for their implementation.

RESIDENTIAL DEVELOPMENT IN SHORELAND OUTSIDE THE TWIN CITIES METROPOLITAN AREA [new categories added 2009]

Mandatory EAW **4410.4300, subpart 19a**

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 with the following numbers of lots or units (note: attached and unattached units are counted the same for purposes of this category):

Sensitive Shoreland	Nonsensitive Shoreland
25	50
OR	
15	25

IF any of the following 3 conditions applies to the project:

- less than 50% of the area within shoreland is common open space
- number of riparian lots/units exceeds by at least 15% the number of lots/units allowable as calculated according to the applicable area and width standards for riparian unsewered single lots in the DNR shoreland management rules (see Appendix A), or
- any part of the project is in an unincorporated area and the number of nonriparian lots/units exceeds by at least 15% the number of lots/units allowable as calculated according to the applicable area and width standards for nonriparian unsewered single lots in the DNR shoreland management rules (see Appendix A).

OR

IF the project provides permanent mooring space for at least 1 nonriparian lot:

1	Not applicable

OR

IF any lots/units will be created by the conversion of a resort, motel, hotel, campground, or RV park:

1 1

IF EITHER:

- the number of riparian lots/units exceeds by at least 15% the number of lots/units allowable as calculated according to the applicable area and width standards for riparian unsewered single lots in the DNR shoreland management rules (see Appendix A) or

- the number of nonriparian lots/units exceeds by at least 15% the number of lots/units allowable as calculated according to the applicable area and width standards for nonriparian unsewered single lots in the DNR shoreland management rules (see Appendix A).

Mandatory EIS **4410.4400, subpart 14a**

The **local governmental unit** is the RGU for construction of a permanent or potentially permanent residential development of located wholly or partially in shoreland outside the seven-county Twin Cities metropolitan area with the following numbers of lots or units (attached and unattached units are counted the same for purposes of this category):

Sensitive Shoreland	Nonsensitive Shoreland
100	200
OR	
50	100

IF any of the following 3 conditions applies to the project:

- Any part of the project is in an unincorporated area

- less than 50% of the area within shoreland is common open space, or

- number of riparian lots/units exceeds by at least 15% the number of lots/units allowable as calculated according to

the applicable area and width standards for riparian unsewered single lots in the DNR shoreland management rules (see Appendix A),

OR

20 40

IF those lots/units will be created by the conversion of a resort, motel, hotel, campground, or RV park AND EITHER:

- the number of riparian lots/units exceeds by at least 15% the number of lots/units allowable as calculated according to the applicable area and width standards for riparian unsewered single lots in the DNR shoreland management rules (see Appendix A) or
- the number of nonriparian lots/units exceeds by at least 15% the number of lots/units allowable as calculated according to the applicable area and width standards for nonriparian unsewered single lots in the DNR shoreland management rules (see Appendix A).

Exemptions **4410.4600, subpart 12**

Construction of less than 10 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.

Construction of a single residence or multiple residence with four dwelling units or less and accessory appurtenant structures and utilities.

Notes

The thresholds in this section apply to residential projects that include any shoreland if located outside of the 7-county Twin Cities metro area; residential projects that do not fit any of the categories in this section may require review under the regular Residential Development categories covered in previous section.

All contiguous land must be included if the developer owns it or has a purchase option on it, unless it has been identified for a future use *other than residential* by a comprehensive plan, ordinance or other official governmental action .

To calculate number of units: a. if known, use the number of units planned by the proposer, or b. use the maximum number of units per acre allowed by the zoning ordinance, or c. if option b is not available, use the average number of units per acre in the proposer's plan.

Refer to Appendix A for the lot area and width standards from DNR rules part 6120.3300, subparts 2a and 2b, that are referenced in the categories.

Attached units and unattached units are counted in the same way for purposes of these categories (in contrast to how they are counted under the regular residential development categories).

Common open space means a portion of a development permanently set aside to preserve elements of the natural landscape, which will not be developed or subdivided, and is owned either in common by the owners in the development or by a permanently established management entity. It does NOT include: impervious surfaces; areas within 25 feet of any structure; or areas between buildings within an individual cluster of buildings where clustering is used to create or preserve green, space such as in a conservation subdivision, PUD, or resort.

Ordinary high water level means the boundary of public waters and wetlands, and is: an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial; for watercourses, the OHWL is the elevation of the top of the bank of the channel; for reservoirs and flowages, the OHWL is the operating elevation of the normal summer pool. (Minn. Stat., sec. 103G.005, subd. 14).

Riparian unit is a unit or lot that abuts a public water, or in cases where the units/lots are not allowed to abut the public water, is a unit/lot in the first tier of development (as provided by DNR shoreland management rules).

Shoreland means land located within the following distances from public water: 1,000 feet from the ordinary high water level of a lake, pond, or flowage; and 300 feet from a river or stream, or the landward extent of a flood plain designated by ordinance on a river or stream, whichever is greater. The limits of shorelands may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances and when approved by the DNR Commissioner. (Minn. Rules, part 6120.2500, subpart 15)

Sensitive shoreland areas include any of the following:

- Shoreland designated as a special protection district by the local unit pursuant to part 6120.3200
- Shoreland of lakes, or bays of lakes, classified as natural environment pursuant to part 6120.3000

- Shoreland of trout lakes and trout streams designated pursuant to part 6264.0050
- Shoreland of wildlife lakes designated pursuant to Minn. Stat., sec. 97A.101, subd. 2
- Shoreland of migratory waterfowl feeding and resting lakes designated pursuant to Minn. Stat., sec. 97A.095, subd. 2
- Shoreland of outstanding resource waters designated pursuant to part 7050.0180.

Projects partially in shoreland areas.

If a project is partly in sensitive shoreland and partly in nonsensitive shoreland, determine whether an EAW or EIS is required by the following arithmetic calculation:

S = A/B + C/D, where:

A = # of units in sensitive shoreland

B = applicable sensitive shoreland area threshold

C = # of units in nonsensitive shoreland, and

D = applicable nonsensitive shoreland area threshold.

If S equals or exceeds 1.00, review is required.

Example: Determine if an EAW is required for a development with 10 lots on a bay classified Natural Environment and 15 lots on another part of the lake classified as Recreational Development; The development contains less than 50% open space.

Step 1: divide the number of units in the sensitive shoreland area, 10, by the applicable sensitive shoreland area EAW threshold, 15: 10/15 = 0.67

Step 2: divide the number of units in nonsensitive shoreland, 15, by the applicable nonsensitive area threshold, 25: 15/25 = 0.60

Step 3: add the quotients from steps 1 & 2: 0.67 + 0.60 = 1.27

Step 4: compare the sum to 1.00. Since 1.27 exceeds 1.00, an EAW is mandatory for this project.

If a project is partly in shoreland and partly not in shoreland, determine whether an EAW or EIS is required by the following arithmetic calculation:

S = A/B + C/D, where:

A = # of units in shoreland

B = applicable shoreland area threshold

C = # of units not in shoreland, and

D = applicable threshold from Residential Development categories (previous section of table).

If S equals or exceeds 1.00, review is required.

CAMPGROUNDS AND RV PARKS

Mandatory EAW **4410.4300, subpart 20**

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, **local governmental unit**.

Mandatory EIS

None

Exemptions

None

RESORTS, CAMPGROUNDS & RV PARKS IN SHORELAND

[new categories added 2009]

Mandatory EAW **4410.4300, subpart 20a**

The **local governmental unit** is the RGU for construction or expansion of a resort or other seasonal or permanent recreational development located wholly or partly in shoreland, accessible by vehicle, of the following numbers of units:

Sensitive Shoreland	Nonsensitive Shoreland
25	50
OR	
15	25

IF less than 50% of the area in shoreland is common open space

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Mandatory EIS **4410.4400, subpart 26**

The **local governmental unit** is the RGU for construction or expansion of a resort or other seasonal or permanent recreational development located wholly or partly in shoreland, accessible by vehicle, of 100 or more units or sites in a sensitive shoreland area 200 or more units or sites in a nonsenstive shoreland area.

None

Exemptions

None

Notes

For definitions of terms see the Notes for “Residential Development in Shoreland Outside the Twin Cities Metro Area” categories beginning on page 73.

If a project lies partly in shoreland, or lies partly in sensitive and partly in nonsensitive shoreland, a similar arithmetic calculation as shown on page75 must be used.

AIRPORT PROJECTS

Mandatory EAW **4410.4300, subpart 21**

A. Construction of a paved, new airport runway, the DOT, **local governmental unit or Metropolitan Airports Commission**

B. 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 governmental unit or Metropolitan Airports Commission**

Mandatory EIS **4410.4400, subpart 15**

Construction of a paved and lighted airport runway of 5,000 feet of length or greater, **local governmental unit or DOT**

Exemptions **4410.4600, subpart 13**

A. Runway, taxiway, apron, or loading ramp construction or repair work including reconstruction, resurfacing, marking, grooving, fillets, and jet blast facilities, except where the project will create environmental impacts off airport property

B. Installation or upgrading of airfield lighting systems, including beacons and electrical distribution systems

C. Construction or expansion of passenger handling or parking facilities, including pedestrian walkway facilities.

D. Grading or removal of obstructions and erosion control projects on airport property, except where the projects will create environmental impacts off airport property.

Notes

RGU for the airport categories shall be selected according to part 4410.0500, subpart 5.

HIGHWAY PROJECTS

Mandatory EAW **4410.4300, subpart 22**

A. Construction of a road on a new location over one mile in length that will function as a collector roadway, **local governmental unit or DOT**

B. For construction of additional travel lanes on an existing road for a length of one or more miles, **local governmental unit or DOT**

C. For the addition of one or more new interchanges to a completed limited access highway, **local governmental unit or DOT**

Mandatory EIS **4410.4400, subpart 16**

Construction of a road on a new location which is four or more lanes in width and two or more miles in length, **local governmental unit or DOT**

Exemptions **4410.4600, subpart 14**

A. Highway safety improvement projects

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

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

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

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

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

Notes

Collector roadway is a road that provides access to minor arterial roadways from local roadways and adjacent land uses.

Highway safety improvement projects are those at specific hazardous locations, including geometric corrections with minimal additional right-of-way.

BARGE FLEETING

Mandatory EAW **4410.4300, subpart 23**

Construction of a new or expansion of an existing barge fleeting facility, **DOT or port authority**

Mandatory EIS **4410.4400, subpart 17**

Construction of a barge fleeting facility at a new off-channel location that involves the dredging of 1,000 or more cubic yards, **DOT or port authority**

Exemptions

None

WATER APPROPRIATION AND IMPOUNDMENTS

Mandatory EAW **4410.4300, subpart 24**

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, **DNR**

B. New permanent impoundment of water creating additional water surface of 160 or more acres or an additional permanent impoundment of water creating additional water surface of 160 or more acres, **DNR**

C. Construction of a dam with an upstream drainage area of 50 square miles or more, **DNR**

Mandatory EIS **4410.4400, subpart 18**

Construction of a Class I dam, **DNR**

Exemptions **4410.4600, subpart 15**

A new or additional permanent impoundment of water creating a water surface of less than ten acres.

Notes

Class I dam is a dam whose failure would probably result in loss of life; serious hazard; damage to health; damage to main highways, high-value industrial or commercial properties, major public utilities; or serious economic loss to the public.

MARINAS & HARBORS

Mandatory EAW **4410.4300, subpart 25**

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, **local governmental unit**

Mandatory EIS **4410.4400, subpart 19**

Construction of a new or expansion of an existing marina, harbor, or mooring project on a state or federally designated wild and scenic river, **local governmental unit**

Exemptions **4410.4600, subpart 16**

Construction of private residential docks for use by four or less boats and utilizing less than 1,500 square feet of water surface.

Notes

Marina is an inland or offshore commercial mooring facility for the concentrated mooring of seven or more watercraft or seaplanes wherein commercial ancillary services common to marinas are provided.

STREAMS AND DITCHES

Mandatory EAW **4410.4300, subpart 26**

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 subpart 17, **local governmental unit**

Mandatory EIS

None

Exemptions **4410.4600, subpart 17**

Routine maintenance or repair of a drainage ditch within the limits of its original construction flow capacity, performed within 20 years of construction or major repair.

(Also see Exemption at subpart 14, item E, highway projects.)

WETLANDS AND PUBLIC WATERS

Mandatory EAW **4410.4300, subpart 27**

A. 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, **local governmental unit**

B. 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, **local governmental unit**

Mandatory EIS **4410.4400, subpart 20**

Projects that will eliminate a public water or public waters wetland, **local governmental unit.**

Exemptions

None

Notes

Public waters and wetlands are identified on official maps of the Department of Natural Resources, which requires permits for work within their beds. Wetlands regulated by a local governmental unit under the Wetland Conservation Act are generally not covered by EQB categories, except as specified under item B. Circular 39 wetland classes are described in an appendix to the EQB's *EAW Guidelines*. Wetlands are covered by item B only if: a. a type 3 to 8 wetland; b. not on the DNR public waters wetland inventory; c. at least 2.5 acres; and d. at least partially in a shoreland, flood plain, or wild or scenic river zone.

Item B threshold is triggered if a project cumulatively affects five acres or 40 percent of any wetland.

FORESTRY

Mandatory EAW **4410.4300, subpart 28**

A. 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, **DNR**

B. Clear cutting 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, **DNR**

Mandatory EIS

None

Exemptions **4410.4600, subpart 18**

A. Harvesting of timber for maintenance purposes.

B. Public and private forest management practices, other than clear cutting or the application of pesticides, that involve less than 20 acres of land.

ANIMAL FEEDLOTS

Mandatory EAW **4410.4300, subpart 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**.

Mandatory EIS

None

Exemptions **4410.4600, subpart 19**

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. 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 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. Construction or expansion of an animal feedlot facility with a resulting capacity of less than 50 animal units regardless of location.

D. 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.

Notes

The EQB website has links to special guidance documents to assist the reader in deciding if a given feedlot requires an EAW, is exempt, or may be subject to a discretionary EAW.

The **RGU** for a feedlot EAW is either the PCA or the county, depending on which will issue the Minnesota feedlot permit.

EQB rules regarding “connected actions” do not apply to animal feedlots.

Feedlot EAWs are prepared using a customized EAW form designed solely for animal feedlots; it is available at the EQB website.

Animal units:

A. dairy cattle:

one mature cow (whether milked or dry) over 1,000 pounds = 1.4 animal unit

one mature cow (whether milked or dry) under 1,000 pounds = 1.0 animal unit

one heifer = 0.7 animal unit

one calf = 0.2 animal unit;

B. beef cattle:

one slaughter steer or stock cow = 1.0 animal unit

one feeder cattle (stocker or backgrounding) or heifer = 0.7 animal unit

one cow and calf pair = 1.2 animal unit

one calf = 0.2 animal unit

C. one head of swine:

over 300 pounds = 0.4 animal unit

between 55 pounds and 300 pounds = 0.3 animal unit

under 55 pounds = 0.05 animal unit

D. one horse = 1.0 animal unit;

E. one sheep or lamb = 0.1 animal unit;

F. chickens:

if the facility has a liquid manure system one laying hen or broiler = 0.033 animal unit

if the facility has a dry manure system:

one chicken over five pounds = 0.005 animal unit

one chicken under five pounds = 0.003 animal unit;

G. one turkey:

over five pounds = 0.018 animal unit

under five pounds = 0.005 animal unit

H. one duck, 0.01 animal unit

For animals not listed in items A to H, the number of animal units is the average weight of the animal in pounds divided by 1,000 pounds.

NATURAL AREAS

Mandatory EAW **4410.4300, subpart 30**

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, **local governmental unit or DNR**

Mandatory EIS

None

Exemptions

None

Notes

The Department of Natural Resources is the RGU if the area is state-owned or state-managed; for all other areas, including federally managed lands, the local governmental unit is the RGU.

HISTORICAL PLACES

Mandatory EAW **4410.4300, subpart 31**

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, except as listed below, l**ocal governmental unit or permitting state agency.**

This subpart does not apply to:

(1) 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

OR

(2) 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.

Mandatory EIS

None

Exemptions

None – however, see Exemption at 4410.4600, subpart 21, item E under "Exemptions with no associated EAW or EIS categories" section below.

Notes

The local governmental unit is almost always the RGU for this category. If a state agency owns the property in question, it would be the RGU. The State Historical Society is never the RGU.

MIXED RESIDENTIAL AND INDUSTRIAL-COMMERCIAL PROJECTS

Mandatory EAW **4410.4300, subpart 32**

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, **local governmental unit**

Mandatory EIS **4410.4400, subpart 21**

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.

Exemptions

None

Notes

Calculations needed for this category are similar to those explained for mixed-unit residential projects under the Residential development section (see page 70).

COMMUNICATIONS TOWERS

Mandatory EAW **4410.4300, subpart 33**

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 RGU is the **local governmental unit**

Mandatory EIS

None

Exemptions

None

Notes

Official maps showing public waters and wetlands are available at many local unit offices and at DNR hydrology offices. DNR issues permits for protected waters and wetlands rather than a local unit, as under the Wetland Conservation Act.

Distances are measured to the nearest point of the shoreline.

SPORTS OR ENTERTAINMENT FACILITIES

Mandatory EAW **4410.4300, subpart 34**

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, **local governmental unit**

Mandatory EIS **4410.4400, subpart 22**

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, **local governmental unit**

Exemptions

None

Notes

Sports or entertainment facility is any facility for sports events or various forms of entertainment or amusement that attract large numbers of people within a limited period of time, including sports stadiums and arenas; racetracks; concert halls or amphitheaters; theaters; facilities for festivals or pageants (if other than temporary facilities such as grandstands, amplification systems, or lighting are to be constructed); fairgrounds; amusement parks; and zoos.

The number of participants is to be counted as part of the attendance.

WATER DIVERSIONS

Mandatory EAW

None

Mandatory EIS **4410.4400, subpart 23**

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, **DNR**

Exemptions

None

RELEASE OF GENETICALLY ENGINEERED ORGANISMS

Mandatory EAW **4410.4300, subpart 35**

Release of a genetically engineered organism that requires a release permit from the EQB under chapter 4420, **EQB**. For all other releases of genetically engineered organisms, **permitting state agency**. This subpart does not apply to the direct medical application of genetically engineered organisms to humans or animals.

Mandatory EIS

For release and a permit for the release of genetically engineered wild rice, **EQB**

[new category added 2009]

Exemptions

None

Notes

The EQB is required to prepare an EAW for the release of any genetically engineered organism except those regulated under a significant environmental permit. Currently, only certain agriculturally related organisms regulated by the Department of Agriculture qualify for this exception.

Agriculturally related organism is any organism that is used in agricultural production or processing of agricultural products, including livestock and livestock products; dairy animals and dairy products; poultry and poultry products; domestic fur-bearing animals; animal feeds; horticultural stock; nursery stock; fruit; vegetables; forage grain; wild rice; seeds; bees; apiary products; and products for the control or mitigation of noxious weeds. It excludes vaccines and drugs for use in humans; genetic engineering of human germ cells and human somatic cells intended for use in human gene therapy; vaccines for use in livestock, dairy animals, poultry, domestic fur-bearing animals, or private aquatic life; genetically engineered wild animals; and forestry products.

Genetically engineered organism is an organism derived from genetic engineering.

Genetic engineering is the introduction of new genetic material to an organism or the regrouping of an organism's genes using techniques or technology designed by

humans. This does not include selective breeding, hybridization or nondirected mutagenesis.

Organism is any animal, plant, bacterium, cyanobacterium, fungus, □rotest or virus.

Release is the placement or use of a genetically engineered organism outside a contained laboratory, greenhouse, building, structure, or other similar facility or under any other conditions not specifically determined by the EQB to be adequately contained

LAND USE CONVERSION (INCLUDING GOLF COURSES)

Mandatory EAW **4410.4300, subpart 36**

A. 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, except that this subpart does not apply to agricultural land inside the boundary of the Metropolitan Urban Service Area established by the Metropolitan Council, **local governmental unit**

B. Projects resulting in the conversion of 640 or more acres of forest or naturally vegetated land to a different open space land use, **local governmental unit**

Mandatory EIS

None

Exemptions

None

Notes

Permanent conversion is a change that impairs the ability to convert the land back to its agricultural, natural or forest capacity. It does not include changes in management practices such as the conversion to parklands, open space or natural areas (4410.0200, subpart 57). In practice, the EQB considers almost all intensified land development to be permanent conversion, even when it would be physically possible to reconvert the land, unless the intensified use is clearly temporary.

Open space land use is a function particularly oriented to an area's outdoor character including agriculture; campgrounds, parks and recreation areas (4410.0200, subpart 55).

In counting the number of acres converted, the EQB does not count portions of the site that will be left alone, such as wetland areas or steep slopes (provided in the case of residential projects they are left as outlots and not divided up among individual lots). For residential projects if some lots are over, and some under, 5 acres in size, the EQB only counts those under 5 acres.

LAND CONVERSION IN SHORELAND

[new categories added 2009]

Mandatory EAW **4410.4300, subpart 36a**

The **local governmental unit** is the RGU for a project that:

A. Alters 800 or more feet of the shoreline in a sensitive shoreland area or 1,320 or more feet of the shoreline in a nonsensitive shoreland area.

B. Alters at least 5,000 square feet, which alteration is also more than 50% of the area of the shore impact zone.

C. Permanently converts forested or other naturally vegetated land of 20 or more acres in a sensitive shoreland or 40 or more acres in nonsensitive shoreland.

Mandatory EIS **4410.400, subpart 27**

A project that permanently converts forested or other naturally vegetated land of 40 or more acres in a sensitive shoreland or 80 or more acres in nonsensitive shoreland, **local governmental unit**.

Exemptions

None

Notes

In the EAW category: item A refers to the length of an alteration at the SHORELINE, item B refers to the alteration of an area within the shore impact zone, and item C refers to the conversion of natural vegetation within the shoreland.

Shoreland means land located within the following distances from public water: 1,000 feet from the ordinary high water level of a lake, pond, or flowage; and 300 feet from a river or stream, or the landward extent of a flood plain designated by ordinance on a river or stream, whichever is greater. The limits of shorelands may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances and when approved by the DNR Commissioner. (Minn. Rules, part 6120.2500, subpart 15)

Sensitive shoreland areas include any of the following:

- Shoreland designated as a special protection district by the local unit pursuant to part 6120.3200
- Shoreland of lakes, or bays of lakes, classified as natural environment pursuant to part 6120.3000
- Shoreland of trout lakes and trout streams designated pursuant to part 6264.0050
- Shoreland of wildlife lakes designated pursuant to Minn. Stat., sec. 97A.101, subd. 2
- Shoreland of migratory waterfowl feeding and resting lakes designated pursuant to Minn. Stat., sec. 97A.095, subd. 2
- Shoreland of outstanding resource waters designated pursuant to part 7050.0180.

Shore impact zone means land located between the ordinary high water level of a public water and a line parallel to it at a setback of 50 percent of the structure setback (see part 6120.2500, subpart 14c) or at a greater distance if so specified in a local ordinance. (See page 74 for the definition of ordinary high water level.)

Permanent conversion is a change that impairs the ability to convert the land back to its agricultural, natural or forest capacity. It does not include changes in management practices such as the conversion to parklands, open space or natural areas (4410.0200, subpart 57). In practice, the EQB considers almost all intensified land development to be permanent conversion, even when it would be physically possible to reconvert the land, unless the intensified use is clearly temporary.

PCB INCINERATION

Mandatory EAW

None

Mandatory EIS **4410.4400, subpart 25**

Incineration of wastes containing PCBs for which an EIS is required by Minnesota Statutes, section 116.38, subdivision 2, **PCA**

Exemptions

None

RECREATIONAL TRAILS

Mandatory EAW **4410.4300, Subpart 37**

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.

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.

Mandatory EIS

None

Exemptions **4410.4600, subpart 27**

A. Rerouting less than one continuous mile of a recreational trail if the reroute is necessary to avoid sensitive areas or to alleviate safety concerns. Multiple reroutes on the same trail must be treated as independent projects, except that where the cumulative length of currently proposed reroutes exceeds one mile on any five-mile segment of trail, as measured along the rerouted trail, those reroutes are not exempt.

B. Reconstructing, rehabilitating, or maintaining an existing trail involving no changes in designated use.

C**.** Constructing less than one continuous mile of trail for use by snowmobiles or cross-country skiers.

D. Constructing a trail for winter-only use across agricultural land or across frozen water.

E. Designating an existing trail for use by snowmobiles or cross-country skiers.

F. Constructing or rehabilitating a nonmotorized trail within the Twin Cities Metropolitan Regional Park System.

Notes

RGU assignment: If a project 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.

Existing trail means an established corridor in current legal use.

In applying EAW categories 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.

The arithmetic calculation needed for the above and for item F are similar to that demonstrated for mixed-unit residential projects under the notes for the Residential development section.

EXEMPTIONS WITH NO ASSOCIATED EAW OR EIS CATEGORIES

Standard exemptions **4410.4600, subpart 2**

Projects are exempt when:
A. No governmental decisions are required.
B. All governmental decisions have been made. However, this exemption does not in any way alter the prohibitions on final governmental decisions to approve a project under part 4410.3100.
C. A governmental unit has denied a required governmental approval.
D. A substantial portion of the project has been completed and an EIS would not influence remaining construction.
E. Environmental review has already been completed or environmental review is being conducted pursuant to parts 4410.3600 or 4410.3700.

Utilities **4410.4600, subpart 20**

A. Water service mains of 500 feet or less and 1-1/2 inches diameter or less.
B. Local electrical service lines.
C. Gas service mains of 500 feet or less and 1-inch diameter or less.
D. Telephone services lines.

Construction projects **4410.4600, subpart 21**

A. Construction of accessory appurtenant structures including garages, carports, patios, swimming pools, agricultural structures excluding feedlot or other similar buildings not changing land use or density.
B. Accessory signs appurtenant to any commercial, industrial or institutional facility.
C. Operation, maintenance or repair work having no substantial impact on existing structures, land use or natural resources.
D. Restoration or reconstruction of a structure provided that the structure is not of historical, cultural, architectural, archaeological or recreational value.
E. Demolition or removal of building and related structures, except where they are of historical, archaeological or architectural significance.

Land use **4410.4600, subpart 22**

A. Individual land use variances, including minor lot line adjustments and side yard and setback variances not resulting in the creation of a new subdivided parcel of land or any change in land use character or density.
B. Minor temporary uses of land having negligible or no permanent effect on the environment.
C. Maintenance of existing landscaping, native growth and water supply reservoirs, excluding the use of pesticides.

Research and data collection **4410.4600, subpart 23**

Basic data collection, training programs, research, experimental management and resource evaluation projects that do not result in an extensive or permanent disturbance to an environmental resource, and do not constitute a substantial commitment to a further course of action having potential for significant environmental effects.

Financial transactions **4410.4600, subpart 24**

A. Acquisition or disposition of private interests in real property, including leaseholds, easements, right-of-way or fee interests.
B. Purchase of operating equipment, maintenance equipment or operating supplies.

Licenses **4410.4600, subpart 25**

A. Licensing or permitting decisions related to individual persons or activities directly connected with an individual's household, livelihood, transportation, recreation, health, safety and welfare, such as motor vehicle licensing or individual park entrance permits.
B. All licenses required under electrical, fire, plumbing, heating, mechanical and safety codes and regulations, but not including building permits.

Governmental activities **4410.4600, subpart 26**

Proposals and enactments of the legislature, rules or orders of governmental units, adoption and amendment of comprehensive and other plans, zoning ordinances, or other official controls by local governmental units, rezoning actions by a local governmental unit unless the action would be primarily for the benefit of a specific project or projects, adoption and amendment of plans by state agencies, executive orders of the governor or their implementation by governmental units, judicial orders and submissions of proposals to a vote of the people of the state.

Notes

The Standard Exemptions in subpart 2 supersede any mandatory EAW or EIS categories that a project might fit.

All other exemptions are superseded by a mandatory EAW or EIS category if a project fits both.

APPENDIX A

Lot Area & Width Standards for Single, Unsewered Lots

(from DNR Shoreland Management Rules, pt 6120.3300, subp 2a & 2b)

Use the numbers in this table to make the calculations for the number of riparian and nonriparian lots that would be allowable under DNR rules for purposes of the Residential Development in Shoreland Outside the Twin Cities Metro Area Category Thresholds.

Lots on LAKES

The lot area and width standards vary according to the classification of the lake (or bay of the lake) as follows:

	Riparian Lots	Nonriparian Lots
A. **Natural Environment Lakes**:		
Lot area (square feet)	80,000	80,000
Lot width (feet)	200	200
B. **Recreational Development Lakes**:		
Lot area (square feet)	40,000	40,000
Lot width (feet)	150	150
C. General Development Lakes:		
Lot area (square feet)	20,000	40,000
Lot width (feet)	100	150

Lots on RIVERS

The lot width standards vary by river classification, as follows; (there are no lot area size standards for rivers):

River class	Remote	Forested	Transition	Agricultural	Urban & Tributary
Lot width (feet)	300	200	250	150	100