

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
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Donald A. Kannas
Special Assistant
Attorney General

October 25, 1976

- SPA 260 Rules relating to the Use of State Funds Through the Minnesota Rail Service Improvement Act for the Rehabilitation of Rail Lines.

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

COUNTY OF RAMSEY

In the Matter of the Amendments of the Rules of the Minnesota Environmental Quality Council Relating to Selected Sections of the Rules Governing the Preparation and Review of Environmental Impact Statements [MEQC 22(a)(1) and (t); MEQC 24(b)(1)(bb), (ee), (tt) and (bbb); MEQC 25(e); MEQC 26(b); MEQC 28(a)(1) and (2); MEQC 29(a)(3); and MEQC 35(a); as adopted by the MEQC on 16 March 1976; and MEQC 25(d)(1) as originally noticed to Hearing on 7 October 1975].

FINDINGS OF FACT

The above-entitled matter came on for hearing before a hearing officer appointed by the Acting Director of the State Board of Hearing Examiners in Conference Room D of the Veterans Service Building, at 9:00 a.m. on August 3, 1976, pursuant to the Notice of Hearing after proper notice required by Minn. Stat. § 15.0412 (1974) was served upon all persons, associations, and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards and criteria, the Minnesota Environmental Quality Council, in its November 9, 1976 meeting, adopted by resolution, the attached Findings of Fact.

Dated: November 24, 1976

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

Peter Vanderpoel

Peter Vanderpoel, Chairman

ADMIN. 1000A

STATE OF MINNESOTA

DEPARTMENT Attorney General/SPA

Office Memorandum

TO : Mike Miller

DATE: Dec. 7, 1976

FROM : Don Kannas

SUBJECT: We have finally completed the three separate hearings on our proposed EIS rules (the initial hearing, a hearing on impact statements for power plant siting and a final hearing cleaning up all substantial changes). Here is a complete record of the entire process complete with five copies of the rules as finally adopted. If you have any questions, please feel free to call me.

Enclosures

Donald A. Kannas
Special Assistant Attorney General
State Planning Agency

December 29, 1976

- MEQC 21 - MEQC 41

ADOPTED BY EQC
SEPTEMBER 14, 1976

MINNESOTA ENVIRONMENTAL QUALITY COUNCIL

PROPOSED ENVIRONMENTAL IMPACT STATEMENT RULES

RELATING TO:

LARGE ELECTRIC POWER GENERATING PLANTS AND HIGH VOLTAGE TRANSMISSION LINES

MEQC 25(g)

MEQC 25

(g) Environmental Review of Proposed Large Electric Power Generating Plants and High Voltage Transmission Lines.

Other provisions of these Rules to the contrary notwithstanding, this subsection provides for the environmental review of large electric power generating plants (LEPGP) and high voltage transmission lines (HVTL) under the Minnesota Environmental Policy Act. Certificates of Need (Minn. Stat. §§ 116H.07), and Certificates of Corridor Compatibility and Site Compatibility (Minn. Stat. §§ 116C.57, subdivision 1) may be issued before preparation and filing of an EIS. One purpose of this process is to insure that the environmental review of LEPGP and HVTL is consistent with the sequential permitting for energy facilities as provided in Minnesota Power Plant Siting Act, Minn. Stat. §§ 116C.51 to 116C.69 and the Minnesota Energy Agency Act, Minn. Stat. §§ 116H.01 to 116H.15. The environmental review of LEPGP and HVTL shall be separated into the following five phases:

1. Environmental Report on Certificates of Need
2. Environmental Report on Sites for LEPGP
3. Environmental Report on Corridors for HVTL
4. HVTL Route EIS
5. LEPGP EIS

This environmental review process provides for the consideration of the potential environmental effects of a proposed action early

in the decision making process at the phase where they are most appropriately considered. The intent of the process set out in this subsection is to eliminate duplication by reducing repeated consideration of identical issues in the various phases of this sequential process. The limitation on the environmental issues considered at each phase of the environmental review process is based on the preemption of the need, siting, corridor, and routing decisions as provided in Minn. Stat. §§ 116H.06 and §§ 116C.61.

(1) Environmental Report on Certificates of Need

(aa) Preparation. The Minnesota Energy Agency shall prepare an Environmental Report when it receives an application for a Certificate of Need for a proposed LEPGP or HVTL.

(bb) Content. The Environmental Report on the Certificate of Need shall include; but not be limited to:

(i) A summary of the information provided in the application;

(ii) A brief analysis of alternatives to the proposed facility, which analysis shall include: a discussion of the economic and environmental feasibility of each alternative including the alternative of a different sized facility, an estimate of the time it would take to implement each alternative, the projected availability of each alternative, and the estimated reliability of each alternative;

(iii) An evaluation of the environmental and economic impact of the proposed facility, each reasonable alternative thereto, and the alternative of no facility;

(iv) An evaluation of:

(1) the environmental impact of the proposed action, including any pollution, impairment, or destruction of the air, water, land, or other natural resources located within the state;

(2) any direct or indirect adverse environmental, economic, and employment effects that cannot be avoided should the proposal be implemented;

(3) alternatives to the proposed action;

(4) the relationship between local short term uses of the environment and the maintenance and enhancement of long term productivity, including the environmental impact of predictable increased future development of an area because of the existence of a proposal, if approved;

(5) any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented;

(6) the impact on state government of any federal controls associated with proposed actions; and

(7) the multi-state responsibilities associated with proposed actions.

The report shall not be as exhaustive or detailed as an EIS, since an exhaustive and lengthy discussion of site-differentiating factors and detailed design information would be inappropriate and is not available at the Certificate of Need state.

(cc) Review and Comment. The Environmental Report on the Certificate of Need shall be distributed in accord with the MEQC distribution list at least 20 days before the commencement of the Energy Agency's Certificate of Need hearing on the Application. The availability of the report and notice of the hearing shall be published in the EQC Monitor as specified in MEQC 35. Comments on the Environmental Report shall be submitted at the Certificate of Need public hearing. The preparation and review of the Environmental Report shall be completed within the statutory time limit provided for the Energy Agency's final decision on an application for a Certificate of Need.

(dd) Council Review. The Energy Agency shall submit its findings of fact and decision to the Council. Failure by the Council to request review of the Energy

Agency's final decision within 10 days of the decision shall constitute Council acceptance of that decision and the issues determined by the Energy Agency in issuing or denying the Certificate of Need. Such issues shall not be considered in the Environmental Reports and environmental documents prepared at the subsequent siting, corridor, routing or licensing phases.

(2) Environmental Report on Sites for Large Electric Power Generating Plants

(aa) Preparation. The Council shall prepare a Site Environmental Report when it receives a site application for a LEPGP.

(bb) Content. In the Site Environmental Report the Council shall include an evaluation of the exclusion criteria, avoidance areas and site selection criteria as required by the regulations adopted under the Power Plant Siting Act for the designation of a site and also MEQC 30(d) of these Rules. The Report shall provide an evaluation of each site that is considered for designation at the siting public hearings. The Site Environmental Report shall not consider the need for the LEPGP or information not related to site differentiating impacts. It shall not be as exhaustive or detailed as an EIS.

(cc) Review and Comment. The Site Environmental Report shall be distributed in accord with the MEQC distribution list and made available for review and public comment at least 30 days prior to the conclusion of the public hearing held on the site application. The Council shall respond to substantive comments received on the Environmental Report. The preparation and review of the Site Environmental Report shall be completed within the statutory time limits for the issuance of a Certificate of Site Compatibility.

(dd) Final Decision on Certificate of Site Compatibility. The Council shall consider the Site Environmental Report before its final decision on the issuance of a Certificate of Site Compatibility for a LEPGP. Such issuance by the Council shall constitute a final determination of the issues that were considered in the designation of the site.

(3) EIS on Large Electric Power Generating Plant

(aa) Preparation. After designating a site, the Council shall determine whether an EIS shall be required on the LEPGP. If the Council or Responsible Agency determines that an EIS is required, the Minnesota Pollution Control Agency shall be the Responsible Agency, unless MEQC 27(a)(3) applies.

(bb) Content and Procedures. The content of the EIS shall contain the information required by MEQC 30(d) of these Rules. Alternative sites, the need for the facility, and any other issues previously determined by the Minnesota Energy Agency or the Council shall not be considered in the EIS. The Environmental Reports prepared at the siting and need phases and the issues previously determined shall be referenced and summarized in the EIS.

(4) Environmental Report on Corridors for High Voltage Transmission Line

(aa) Preparation and Content. The Council shall prepare a Corridor Environmental Report upon the receipt of an application for a corridor for a HVTL. The Corridor Environmental Report shall include the evaluation of exclusion criteria, avoidance areas and selection criteria as required in accordance with the regulations adopted under the Power Plant Siting Act and also MEQC 30(d) of these Rules, for each alternative corridor considered for designation by the Council. The Report shall not be as exhaustive or detailed as an EIS.

(bb) Review and Comment on Environmental Report. The Corridor Environmental Report shall be distributed in accord with the MEQC distribution list and made available for review and public comment at least 20 days prior to the conclusion of the public hearing held on the corridor application. The Council shall respond to the substantive comments received on the Environmental Report.

(cc) Final Decision on Certificate of Corridor Compatibility. The Council shall consider the Corridor Environmental Report before issuing a Certificate of Corridor Compatibility. Such issuance by the Council shall constitute a final determination of the issues that were considered in the designation of the corridor. The preparation and review of the Corridor Environmental Report shall be completed within the statutory time limits for the issuance of a Certificate of Corridor Compatibility.

(5) High Voltage Transmission Line Route EIS

(aa) Preparation. After designating a corridor, the Council shall determine whether an EIS shall be required on the route for the HVTL in accord with these Rules. If it determines that an EIS is required, it shall prepare the EIS.

(bb) Content. The Route EIS shall include the information required by the Power Plant Siting Act and the Rules adopted thereunder for High Voltage Transmission Lines (HVTL) and also MEQC 30(d) of these Rules. All alternative routes designated for study by the Council shall be discussed in the EIS. The Environmental Reports prepared at the need and corridor phases and the issues previously determined shall be referenced and summarized in the EIS. The EIS shall not consider the need for the facility, routes outside the designated corridor or any routes not designated for study by the Council.

(cc) Procedures. The Draft EIS shall be made available to all MEQC distribution points and to the extent practical to interested persons and shall be submitted at the public hearing on the route application. The Final EIS shall be submitted to the Council before it designates a specific route.

(dd) Final Decision on Designation of Route. The Council shall consider the Final EIS in designating a route for the HVTL. The preparation and review of the Route EIS shall be completed within the statutory time limits for the Council's designation of a route.

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

COUNTY OF RAMSEY

In the Matter of the Amendment of the Rules of the Minnesota Environmental Quality Council Relating to the Preparation and Review of Environmental Impact Statements (Minn. Reg. MEQC 21-50)

CERTIFICATE OF COMPLIANCE

I Special Assistant Attorney General Donald A. Kannas do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed throughout the three different hearings on this matter.

Dated: 7 Dec 76

D A Kannas

Donald A. Kannas
Special Assistant
Attorney General

CERTIFICATE OF COUNCIL'S

AUTHORIZING RESOLUTION

I, Mary Sullivan, do hereby certify that I am the Administrator of the Minnesota Environmental Quality Council, a Council duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Environmental Quality Council duly and properly called and held on the 12th day of August, 1975; that a quorum was present at said meeting; that a majority of the members of the Council voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, That the Environmental Quality Council approve the spirit of the rules and delegate to the Chairman the power to work with staff regarding solutions to technical problems raised at this meeting; and
>
> That the Chairman set a time and place for hearings in accordance with the law; and
>
> That the Chairman is authorized to hire or designate a hearing officer."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 7th day of October 1975

Mary Sullivan

Mary Sullivan
Administrator

Subscribed and sworn to before me
this 7 day of October, 1975.

Karen Beckman

Notary Public

KAREN BECKMAN
Notary Public, Dakota County Minn.
My Commission Expires Nov. 3, 1981

EQC EXHIBIT 1
11/12/75

MINNESOTA ENVIRONMENTAL QUALITY COUNCIL

PROPOSED ENVIRONMENTAL IMPACT STATEMENT RULES

CHAPTER ELEVEN

AUTHORITY, PURPOSE, DEFINITIONS, GENERAL PROVISIONS

MEQC 21 AUTHORITY. The Rules contained herein are prescribed by the Minnesota Environmental Quality Council, pursuant to authority granted in Minnesota Statutes, Section 116D.04, Subdivision 2, and shall be followed by all public agencies and private persons in implementation of the Environmental Policy Act of 1973 concerning the Environmental Impact Statement process.

MEQC 22 PURPOSE

(a) The purpose of these Rules is to provide public agencies and private persons with procedures, guidelines and criteria to be used in the implementation of the Minnesota Environmental Impact Statement program.

(b) An EIS is an information document which enables public agencies and private persons to evaluate proposed actions to determine whether they will have significant effects on the environment, to consider alternatives to the proposed actions, and to institute methods of reducing adverse environmental effects. An EIS is not an instrumentto justify an action, nor shall indications of adverse environmental effects necessarily require that an action be disapproved. It is to be utilized as a guide in issuing permits and carrying out the responsibilities of regulatory authorities.

(c) The procedures specified in these Rules are in addition to the other procedures and substantive responsibilities of public agencies and private persons contained in the Act, and do not limit the authority of the Council to review, study, or resolve any matter of environmental concern as provided in Minnesota Statutes, Sections 116C.04 and 116D.04, Subd. 9.

MEQC 23 DEFINITIONS. The following terms as used in these Regulations shall have the meanings ascribed to them in this section.

(a) "Act" means the Minnesota Environmental Policy Act of 1973, as amended, Minnesota Statutes, Section 116D.01 et seq.

(b) "Action" means the whole of a project which will result in physical manipulation of the environment, directly or indirectly. "Action" refers to the physical activity to be undertaken and not to the governmental process of approving the activity. "Action" does not include the following:

(1) Proposals and enactments of the State Legislature.

(2) The rules, orders, or recommendations of state agencies.

(3) Executive Orders of the Governor, or their implementation by public agencies.

(4) Judicial Orders.

(5) Submissions of proposals to a vote of the people of the state.

(c) "Approval" means the issuance of a governmental permit, or any review of a proposed action required by state or federal law.

(d) "Council" means the Minnesota Environmental Quality Council.

(e) "Days". In computing any period of time prescribed or allowed in these Rules, the day of the act or the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 15 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(f) "Environmental Impact Statement", (EIS) means a written analysis of a proposed action as specified in Minnesota Statutes 116D.04 Subd. 1.

(g) "EIS Preparation Notice" means a written statement that a major action has the potential for significant environmental effects, and that an EIS shall be prepared.

(h) "Environment" means the physical conditions which exist in the area which will be affected by the proposed action, including land, air, water, minerals, flora, fauna, ambient noise, and man-made objects or natural features of historic, geologic or aesthetic significance.

(i) "Environmental Assessment Worksheet" (EAW) means a form provided by the Council for the initial evaluation of public and private actions to determine whether an EIS is required.

(j) "Environmental Documents" means Environmental Assessment Worksheets, EISs, Negative Declaration Notices, and EIS Preparation Notices.

(k) "Governmental Action" means an action proposed to be undertaken by a public agency.

(l) "Governmental Permit" means a lease, permit, license, certificate, variance, or other entitlement of use, or the commitment to issue or the issuance of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, by a public agency to another public agency or to a private person.

(m) "Inadequate EIS" means an EIS that fails to sufficiently examine potential environmental effects, alternatives, or desirable modifications, or an EIS not prepared in compliance with the Act and these Rules.

(n) "Local Agency" means any general or special purpose unit of government of the state, with less than state-wide jurisdiction, including but not limited to regional development commissions, counties, municipalities, townships, port authorities, housing authorities, and all agencies, committees, and boards thereof.

(o) "Negative Declaration Notice" means a written statement by the Responsible Person or Agency that a proposed action need not be preceded by an EIS.

(p) "Other Approving Agencies" means all public agencies other than the Responsible Agency that must approve a project for which environmental documents are prepared.

(q) "Person" means a human being, unincorporated association, partnership, trust, corporation, or public agency.

(r) "Petition" means a document that contains at least 500 signatures and requests the preparation of an EIS.

(s) "Private Action" means an action proposed to be undertaken by a private person.

(t) "Proposer" means the private person or public agency that will itself undertake an action or that will direct others to undertake the action.

(u) "Public Agency" means a federal, state, regional or local agency, board, commission, or other general or special purpose unit of government. "Public Agency" includes all public educational institutions but does not include the courts of this State.

(v) "Responsible Agency" means the public agency which has the principal responsibility for preparing the environmental documents required by the Act and these Rules. Except as provided hereinafter, when the preparer of the EAW recommends an EIS and the preparer is a public agency, that public agency is the Responsible Agency for preparation of the EIS.

(w) "Responsible Person" means the person who proposes to undertake an action that does not require a governmental permit and who is responsible for the preparation of the environmental documents required by the Act and these Rules.

(x) "Reviewing Agencies" means all public agencies which have either jurisdiction by law or special expertise with regard to the environmental effects of an action for which an EIS is prepared.

(y) "EQC Monitor" means the early notice bulletin containing all notices of impending actions which may have significant environmental effects as specified in MEQC 34.

MEQC 24 GENERAL RESPONSIBILITIES

(a) Environmental Quality Council.

(1) The Council's duties and responsibilities include the following:

(aa) The coordination of the EIS program, including promulgation of Rules.

(bb) The review of petitions to determine whether environmental documents must be prepared.

(cc) The designation of the Responsible Agency when there is a dispute between public agencies concerning which public agency should prepare the environmental documents for a particular action.

(dd) The coordination among public agencies of review of EISs prepared pursuant to the National Environmental Policy Act (NEPA). The coordination may include requests to the preparer or to a public agency to undertake additional environmental analysis, to hold public informational meetings, or to conduct any other review consistent with the Act and these Rules.

(ee) The review of Negative Declarations where, within 30 days of publication of a Negative Declaration Notice, a representative of 500 petitioners (MEQC 30) or an agency with jurisdiction over the proposed action (MEQC 26(b)(4) requests a review of the determination made by the Responsible Agency.

(ff) The requiring preparation of an EIS on any major governmental action or major private action of more than local significance with the potential for significant environmental effect, if a Negative Declaration Notice has not been published or if the 30 day limitation period of MEQC 26(b)(4) has not lapsed.

(2) In addition, the Council may, where it deems necessary:

(aa) Require the revision of an EIS that is found to be inadequate.

(bb) Require the preparation of alternative or additional environmental review before commencement of any action or approval of any action by a public agency.

(cc) In accordance with Minn. Stat. 116D.04 Subd. 9, review any state action or state approval of a private action that will have significant environmental effects, regardless of whether an adequate EIS has been prepared. This review may include modification or prohibition of the action, or the ordering of additional environmental review.

(dd) Provide technical assistance on request of a public agency.

(ee) Review of any state and local procedural rules and guidelines established to implement the Act and these Rules.

(ff) Hold hearings or informational meetings to facilitate implementation of this Act and these Rules.

(b) Public Agencies.

1. All public agencies are responsible for complying with the requirements of the Act and these Rules. Public agencies shall inform the proposer and the public of the procedures that will be followed in the implementation of the Act and these Rules for each EAW they prepare. Whether a public agency prepares environmental documents itself or contracts with private experts for the preparation, the public agency is solely responsible for the adequacy and objectivity of the environmental documents.

2. All public agencies shall retain their existing statutory authority subject to the policies of the Act and the authority of the Council to reverse or modify decisions or proposals, or to require preparation of environmental documents.

3. These Rules shall not affect the specific statutory obligations of any public agency to perform the following:

(aa) to comply with criteria or standards of environmental quality regardless of whether an environmental impact statement is required for an action.

(bb) to coordinate or consult with any federal or state agency.

(cc) to act or refrain from acting contingent upon the recommendations or certification of any public agency or federal agency.

4. A public agency, at the request of a Responsible Agency, shall provide any unprivileged data that it may have concerning a particular action and shall assist in the preparation of environmental documents on any action for which it has special expertise or access to information.

5. A Responsible Agency shall prepare the environmental documents on an action which is the subject of a petition upon the direction of the Council.

6. When environmental documents are prepared on an action by a Responsible Agency, every other public agency which has jurisdiction to approve the action shall consider the environmental documents prepared on that action before approving the action.

7. Public agencies shall provide one free reproducible copy of environmental documents to each EQC distribution point. These will be available for internal agency distribution and for public copying if facilities are available.

(c) Private Persons. When environmental documents are required on a private action that is subject to a governmental permit, the proposer shall supply in the prescribed manner any data or information reasonable requested by the Responsible Agency that that person has in his possession or to which he has reasonable access.

CHAPTER TWELVE

PROCEDURAL REQUIREMENTS

MEQC 25 APPLICATION OF ACT TO ACTIONS

Responsible Agency or Person

The Responsible Agency or Responsible Person shall prepare the environmental documents after consultation with all other public agencies which have the jurisdiction to approve the action or a part of the action. When a local unit of government is the Responsible Agency, it shall consult with all contiguous local agencies. This consultation shall be done at an early stage of the preparation of the environmental documents.

(a) Responsible Agency.

For any action not included in MEQC 26(a)(3) or which falls into more than one category of MEQC 26(a)(3) , all questions of which public agency is the Responsible Agency shall be determined as follows:

1. When a single public agency proposes to carry out or has jurisdiction to approve an action, the public agency shall be the Responsible Agency.

2. When two or more public agencies propose to carry out or approve an action, the Responsible Agency shall be the public agency with the greatest responsibility for superivsing or approving the action as a whole. Where two or more public agencies have an equal claim to be Responsible Agency, the public agencies shall either:

(aa) By agreement, designate which agency shall be the Responsible Agency; or

(bb) Submit the question to the Council, which shall designate the Responsible Agency based on consideration of the above principles.

3. To assist local governmental units in determining which public agency is the Responsible Agency, proposers of actions which are included in MEQC 26(a)(3) should include with their permit applications, or other local approvals, a list of the other state and local permits required on the action.

(b) Responsible Person.

When a private person proposes to carry out a private action that does not require any governmental permits, the person shall be the Responsible Person.

(c) Requirement of an EIS by the Responsible Agency.

(1) An EIS shall be required by the Responsible Agency only when it determines that for:

(aa) Private Actions:

(i) The action is a major private action; and
(ii) The action is of more than local significance; and
(iii) The action has the potential for significant environmental effects.

(bb) Governmental Actions:

(i) The action is a major governmental action; and
(ii) The action has the potential for significant environmental effects.

(2) Cumulative Actions. In determining whether an EIS is required on an action, the Responsible Agency or Responsible Person may consider non-major related actions and their cumulative environmental effects as collectively constituting a major action.

(3) Subsequent EIS. Where an EIS has been prepared on an action, no additional EIS need be prepared on the action unless substantial changes in the action are proposed which will involve new and potentially significant environmental effects not considered in the previous EIS.

(4) Single EIS. Where an action is to be carried out or approved by more than one public agency, only one EIS shall be prepared pursuant to the Act.

(5) Expansions or Modifications. The expansion or modification of an ongoing action which requires new or modified governmental permits shall be subject to the requirements in the Act and these Rules for the preparation of environmental documents in the same manner as a new action.

(d) Actions for Which Environmental Documents Are Not Required. The preparation of environmental documents shall not be required in the following instances:

(1) When all of the necessary governmental permits for the action have been lawfully issued;

(2) When a substantial portion of the action proposed by a public agency has been completed or implemented and an EIS on the action would not be able to influence remaining implementation or construction of the action to minimize adverse environmental consequences.

(3) When there has been adequate environmental review of actions within the jurisdiction of the Council pursuant to Minn. Stat. § 116G.01 et seq. (the Critical Areas Act of 1973), or Minn. Stat. § 116C.04 (2)(b).

(4) When the public agency determines that a governmental permit required for the action will be denied.

(5) When these Regulations require the preparation of a state EIS on an action, and a federal EIS is required for the same action, pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA) and the implementing regulations thereto, all or any part of the federal EIS may be submitted in lieu of all or any part of a state EIS. However, when the federal EIS is used, the elements of the EIS that are required by the Act and these Regulations, but are not required by NEPA, shall be added to the federal EIS. When these Regulations require the preparation of a state EIS on a proposed federal action and a federal EIS is not required, a federal agency may be requested to prepare a state EIS.

(6) When an imminent and substantial danger to the health or welfare of the people of the State makes it necessary to undertake a major action that has the potential for significant environmental effects and application of these Rules would be impracticable. In such cases, the proposer shall consult with the Chairman of the Council to arrange an alternative means of environmental review before taking the action.

MEQC 26 ENVIRONMENTAL DOCUMENTS

(a) Environmental Assessment Worksheet (EAW).

(1) Authority.

A Responsible Agency and Responsible Person may prepare an EAW on any action which it has proposed to undertake or has the jurisdiction to approve. After an EAW is prepared, the preparer of the EAW shall file with the Council either an EIS Preparation Notice or Negative Declaration Notice based on the conclusion of the EAW.

(2) Preparation of an EAW.

(aa) By Proposer. Where the proposer of an action is a private person, the proposer may prepare an EAW and prepare for publication either an EIS

Preparation Notice or a Negative Declaration Notice. The notice submitted by the proposer shall not be published until the Council has determined that all public agencies with jurisdiction over the action have received a copy of the EAW. When the Council publishes an EIS Preparation Notice, submitted by a proposer, it shall include in the notice a designation of a Responsible Agency for the preparation of the EIS.

(bb) By Public Agency. When a public agency proposes to undertake an action, or has the jurisdiction to approve a private action, it may prepare an EAW and the other necessary environmental documents on the action.

(cc) By Council. The Council may require a Responsible Agency or Responsible Person to prepare an EAW, and the other necessary environmental documents on an action.

(3) Mandatory Categories for EAWs.

An EAW shall be prepared on any action not exempted by MEQC 25(d) which falls within one of the following categories. It shall be prepared by the indicated public agency unless the Council for a particular action specifies another agency, by the action proposer if it is a governmental action, or by the proposer of a private action pursuant to MEQC 26(a)(2)(aa).

(aa) Construction of a new industrial park of over 320 acres in size-- (Local);

(bb) Construction of a facility or integral group of facilities with at least 500,000 square feet of commercial or retail floor space or 350,000 square feet of industrial floor space, unless located in an industrial park for which an EIS has already been prepared--(Local);

(cc) Any industrial, commercial or residential development of 40 or more acres, any part of which is within a floodplain area, as defined by the Statewide Standards and Criteria for Management of Floodplain Areas of Minnesota--(DNR);

(dd) Construction of a commercial or industrial development within a shoreland area (as defined by Minnesota Statutes, Section 105.485) covering 20,000 or more square feet of ground space, not including access roads or parking areas, and located on a parcel of land having 1,500 feet or more of shoreline frontage--(Local);

(ee) Construction of a facility that generates more than a maximum of 5,000 vehicle trips per hour or a maximum of 25,000 vehicle trips per eight-hour period--(Local);

(ff) Construction of a new oil refinery, or an expansion of an existing refinery that shall increase capacity by 10,000 barrels per day or more--(PCA);

(gg) Construction of a pipeline greater than six inches in diameter and 50 miles in length--(DNR);

(hh) Construction of facilities on a single site that are designated for, or capable of, storing a total of one million or more gallons of liquid natural gas, liquid petroleum gas, or other liquid fuels--(PCA);

(ii) Construction of an underground storage facility for gases and liquids that requires a permit, pursuant to Minnesota Statutes Section 84.57--(DNR);

(jj) Construction of a mineral or fuel processing or refining facility, including, but not limited to, smelting and hydrometallurgical operations--(PCA or DNR);

(kk) Construction of a facility if the cumulative emissions of particulate matter and sulphur oxides exceed 50 tons per day--(PCA);

(ll) Main roadway grading construction of a four-or-more lane, divided highway with at least partial control of access of ten route miles or more in length and carrying 10,000 vehicles ADT (Average Daily Traffic)--(Hwys);

(mm) Construction of a new airport that is within the key system, pursuant to Minnesota Statutes, Section 360.305, Subdivision 3--(Aeronautics);

(nn) Construction or opening of a facility for mining metallic minerals--(DNR);

(oo) Construction or opening of a facility for mining gravel, other non-metallic minerals and fuels involving more than 320 acres--(Local);

(pp) A new appropriation for commercial or industrial purposes of either surface water or ground water averaging 30 million gallons per month, or exceeding 2 million gallons in any day during the period of use; or a new appropriation of either ground water or surface water for irrigation of 640 acres or more in one continuous parcel from one source of water--(DNR);

(qq) Any new or additional impoundment of water creating a water surface in excess of 200 acres--(Local);

(rr) An action that will eliminate or significantly alter a wetland of Type 3,4, or 5 (as defined in U.S. Department of Interior, Fish and Wildlife Service, Circular 39, "Wetlands of the U.S., 1956") of five or more acres in the seven-county metropolitan area, or of 50 or more acres outside the seven-county metropolitan area, either singly or in a complex of two or more wetlands--(Local);

(ss) Any marina and harbor project of more than 20,000 square feet of water surface area--(Local);

(tt) Construction of a new or additional residential development outside any Standard Metropolitan Statistical Area (as defined by the U.S. Census Bureau) that includes 100 or more units in an unsewered area or 500 or more units in a sewered area; or construction of a new or additional residential development within a Standard Metropolitan Statistical Area that includes 200 or more units in an unsewered area or 500 or more units in a sewered area--(Local);

(uu) Construction of a residential development, consisting of 50 or more residential units any part of which is within a shoreland area (as defined by Minnesota Statutes, Section 105.485)--(Local);

(vv) Construction of a residential development consisting of "condominium-type" campgrounds, mobile home parks, or other semi-permanent residential and/or recreational facilities within a shoreland area (as defined by Minn. Stat., Sec. 105.485) or floodplain (as defined by the Statewide Standards and criteria for Management of Floodplain Areas of Minnesota) exceeding a total of 50 units, or if located in areas other than the above, exceeding a total of 100 units--(Local);

(ww) Construction of a sanitary landfill for an excess of 100,000 cubic yards per year of waste fill, or any sanitary landfill located in an area characterized by soluble bedrock, where leachates may significantly change groundwater quality--(PCA);

(xx) Construction of a new paper and pulp processing mill--(PCA);

(yy) The application of restricted use pesticides over more than 1,500 contiguous acres--(Agriculture);

(zz) Harvesting of timber within the Boundary Waters Canoe Area Portal Zone or in a State Park or Historical Area, that is not included in an annual timber management plan filed with the Council--(DNR);

(aaa) Permanent removal of 640 or more contiguous acres of forest cover for purposes other than reforestation--(DNR);

(bbb) Construction of electric generating plants at a single site designed for, or capable of, operation at a capacity of 200 or more megawatts (electrical)--(PCA);

(ccc) Construction of electric transmission lines and associated facilities designed for, or capable or, operation at a nominal voltage of 200 kilovolts AC or more, or operation at a nominal voltage of ± 200 kilovolts DC or more, and are 50 miles or more in length--(EQC);

(ddd) Construction of nuclear material processing plants and facilities--(PCA)

(4) The Council may be resolution supplement the categories in MEQC 26(a)(3).

(b) Notice of EIS Determinations

(1) The private person or public agency which has prepared an EAW shall give notice of its EIS determination by filing with the Council either an EIS Preparation Notice or a Negative Declaration Notice.

(2) An EIS Preparation Notice shall contain

(aa) A brief description of the action that shall be the subject of the EIS.

(bb) The agency or person responsible for preparing the EIS.

(cc) The time requirements for preparing the EIS.

(dd) The extent to which progress on the action shall be halted during the EIS process, if applicable.

(ee) The places at which the EAW, and other supporting documentation, is available for public inspection and copying.

(3) A Negative Declaration Notice shall contain

(aa) A brief description of the proposed action.

(bb) A finding that the action is not a major governmental action, or a major private action of more than local significance with the potential for significant environmental effects.

(cc) The places at which the EAW and other supporting documentation is available for public inspection and copying.

(4) The EIS Preparation Notices and Negative Declaration Notices shall be published in the EQC Monitor to inform the public of the determination of the EAW preparer as to whether the preparation of an EIS is required.

(5) Except as provided in MEQC 30, unless within 30 days of publication of the Negative Declaration Notice the EQC or a public agency with the jurisdiction to approve the action files a notice with the EAW preparer, the proposer of the action and the Council that it does not concur with the Negative Declaration Notice, an EIS shall not be required on the action. When such a notice is filed, the Council shall determine whether an EIS should be prepared. The Council may hold a public hearing to assist it in its determination.

(c) Preparation and Review of Draft EIS. Except as provided in MEQC 25(d) in the preparation of the Draft EIS:

(1) The Responsible Agency or Responsible Person shall have 120 days from the date of the publication of the EIS Preparation Notice to prepare and file the Draft EIS. This time limitation may be extended by the Council for good cause upon written request by the Responsible Agency or Person; however, such an extension shall be minimized and considered an exception to normal operating procedures.

(2) The Responsible Agency may require the proposer to submit any relevant data or information that the proposer has in his possession or to which he has reasonable access.

(3) The Draft EIS is filed when the Draft EIS is delivered to the Council in a form and manner acceptable to the Council and when copies of the Draft EIS are mailed to all appropriate Council-designated distribution points, reviewing agencies, the proposer, and requesting persons.

(4) Reviewing agencies shall consult with and request the comments of public agencies that have jurisdiction by law or special expertise on an action with respect to any environmental effects involved, including the appropriate Regional Development Commission and local agencies.

(5) The Responsible Agency or Responsible Person may consult with any person who has special expertise regarding any environmental effects involved and with members of the public. The Responsible Agency or Responsible Person shall receive and include as part of the EIS record any written responses to a Draft EIS.

(6) Between 30 and 60 days after the Draft EIS is filed, an informational meeting shall be ehld in a county affected by the proposed action as part of the Draft EIS review process. Three weeks notice shall be given for the meeting which shall be mailed to recipients of the Draft EIS and published in a newspaper of general circulation in the counties affected by the action. The Draft EIS meeting may be consolidated with any hearing required by law to be held before approval of the action. A transcription of the meeting shall be made, and the public record shall remain open for between 20 and 90 days to allow any person to submit additional information or opinions. All written statements or summaries thereof received into the record shall be included in the final EIS.

(d) Notwithstanding any other provision in these rules, Certificates of Need (Minn. Stat. 116H.07), and Certificates of Corridor Compatibility and Site Compatibility (Minn. Stat. 116C.57, Subd. 1) may be issued prior to the filing of a Draft EIS on an action which is included within MEQC 26(a)(3)(bbb), (ccc) and (ddd).

(e) Preparation and Review of Final EIS.

(1) The Responsible Agency or Person shall have 30 days from the date that the Draft EIS record closes to prepare the Final EIS. The Council may extend this time limitation upon written receipt and showing of good cause by the Responsible Agency or Person.

(2) The Final EIS is filed when the Final EIS is delivered to the Council in a form and manner acceptable to the Council and when distributed to all Council-designated distribution points, reviewing agencies, the proposer and public agencies.

(3) Council Review.

(aa) The Council may review any Final EIS to determine whether the procedures and policies of the Act and these Rules have been adequately complied with.

(bb) If the Council decides to review a Final EIS, it shall undertake the review at or before its first meeting held more than 30 days following completion of the Final EIS. All persons receiving the Final EIS shall be notified. Thereupon, the Council shall complete its review at or before its first meeting held 45 days after commencing review. To aid in its review of the Final EIS, the Council may hold informational meetings.

(4) When the Council determines that a Final EIS is inadequate, it shall notify the Responsible Agency or Responsible Person of the inadequacy and shall specifically identify the improvements or additions necessary for Council acceptance of the Final EIS as adequate. The Final EIS shall be resubmitted to the Council within 30 days.

(f) Approvals on Actions. Except as provided in MEQC 26(d), on any action for which an EIS Preparation Notice has been published, no gove-nmental permit shall be issued until the Council has completed its review of the Final EIS, if any. Where public hearings are required by law to precede issuance of a governmental permit or implementation of a governmental action, public hearings cannot be held prior to filing of a Draft EIS.

(g) Halting the Action. When an EIS is required on an action, any physical construction on the action or operation of the action shall be halted from the time the EIS Preparation Notice is published until the Final EIS is accepted by the Council, unless the Council or the Responsible Agency determines that construction or operation may begin or continue. In that case, the Council or Responsible Agency shall specify the extent to which construction shall be allowed.

CHAPTER THIRTEEN

SUBSTANTIVE REQUIREMENTS

MEQC 27 EVALUATION OF ACTIONS.

(a) Major Action. In determining whether an action is a major action, the following factors shall be considered:

(1) Type of action;

(2) Scope of action, including size and cost;

(3) Location and nature of surrounding area;

(4) The totality of cumulative related actions;

(5) Relation of the action to anticipated growth and development.

(b) Local Significance. In determining whether a major private action is of more than local significance, the following factors shall be considered:

(1) Location of the action;

(2) Area affected by the action.

(3) The governmental permits required on the action.

(c) Potential for Significant Environmental Effects. In determining whether an action has the potential for significant environmental effects, the following factors shall be considered:

(1) Type, extent, and irreparability of environmental effects;

(2) Cumulative environmental effects of related or anticipated future actions;

(3) The extent to which the environmental effects are subject to mitigation by ongoing state regulatory authority;

(4) The extent to which environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, or of EISs previously prepared on similar actions.

MEQC 28 CONTENT OF DRAFT EIS.

A Draft EIS shall contain the following information:

(a) Summary. A summary sheet which describes the action, major environmental impacts, (adverse and beneficial), reasonable alternatives, and the federal, state, and local permits outstanding shall be included. Also, federal, state, or local agencies, other organizations, and private individuals consulted in the preparation of the EIS shall be identified.

(b) Description. A description of the action, including type, size and location, and the environmental setting of the action. A regional and site-specific map should be included to assist in identification of the project.

(c) Environmental Impact of the Proposed Action. All phases of an action shall be considered when evaluating an action; planning, acquisition, construction,

implementation, development, operation, and conclusion of operation. Special consideration shall be given to pollution, impairment, or destruction of the air, water, land or other natural resources located within the State resulting from the proposed action.

This discussion shall also include a description of the resources in the area that shall be affected by the action, with emphasis placed on resources that are rare or unique to the region or that possess important historical, cultural, natural, ecological, or aesthetic values.

(d) Any direct or indirect environmental, economic, and employment effects that cannot be avoided if the proposed action is implemented. This discussion shall describe the adverse and beneficial environmental, economic and employment effects that will result directly from the action, as well as the effects that may be reasonably expected to result from the action. Mitigation measures that have been or may be incorporated into the action to reduce or minimize significant adverse environmental, economic, and employment effects shall be discussed.

(e) Any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented. This discussion shall include the proposed use of non-renewable resources, long term or irreversible commitments of resources to a particular use and any irreversible and irretrievable damage that may result from the action.

(f) The relationship between local short term uses of the environment and the maintenance and enhancement of long term productivity, including the environmental impact of predictable increased future development of an area if the action is implemented. This discussion shall include the extent that the proposed action involves trade-offs between short term environmental gains or losses versus long term gains or losses, including potential risks to health and safety, and the extent that the proposed action forecloses future options. The impact of predictable increased future development in the area that may be stimulated, directly or indirectly, by the proposed action shall be discussed.

(g) Alternatives to the Proposed Action. An objective evaluation of all reasonable alternatives to the action and the environmental impact of each and the reasons for their rejection in favor of the recommended choice shall be made. Reasonable modifications of the proposed action that may avoid or reduce adverse environmental effects shall be discussed, including the expected benefits, costs, and effects on the objective of the proposed action.

(h) The impact on state government of any federal controls associated with the proposed action. Federal actions pending which may effect the final outcome of the project should be discussed, including those actions which may result in the expenditure of additional state funds.

(i) The multi-state responsibilities associated with the proposed action. Impacts of the proposed action upon multi-state respon sibilities shall be discussed, including the environmental effects of the action upon adjacent states.

MEQC 29 CONTENT OF FINAL EIS

The Final EIS shall consist of the Draft EIS, the comments or summaries thereof received through consultation and public comment, including public meetings or hearings held on the EIS, and the response of the Responsible Agency or Responsible Person to the significant environmental issues raised in the consultation, comment, and review process. The response of the Responsible Agency or Responsible Person to constructive comments received may take the form of a revision of the Draft EIS or may be an attachment to the Draft EIS.

MEQC 30 PETITION FOR AN EIS

(a) Petition. Any person or group of persons may file with the Council a petition that contains the signatures and addresses of 500 or more individuals and requests the Council to require an EIS on an action.

(b) Content. In addition to the signatures, the petition shall include the following written information:

(1) Description of the action;

(2) Proposer of the action;

(3) The anticipated environmental effects of the action;

(4) The name and address of a representative of the petitioners for the purpose of this section.

(5) Any additional information that may be used in the EAW to determine whether the proposed action is a major governmental action or a major private action of more than local significance with the potential for significant environmental effects.

(c) Council Action.

(1) No petition need be reviewed by the Council if the Council staff determines that:

(aa) The petition lacks 500 signatures; or

(bb) The action is one to which these Rules do not apply, pursuant to MEQC 25(d); or

(cc) An EIS determination has been made in accordance with these Rules; or

(dd) The action is outside the jurisdiction of the EQC; or

(ee) The action does not involve potential for significant environmental effects or have more than local significance.

(2) In all other cases, the Council staff shall refer the petition to a Responsible Agency for preparation of an EAW or, where appropriate, arrange for a Council review pursuant to subd. (e).

(d) Responsible Agency Action. The Responsible Agency shall have 45 days in which to prepare the EAW, referred to it by the Council pursuant to (c)(2) and shall thereupon publish an EIS Preparation Notice or Negative Declaration Notice. If a Negative Declaration Notice is published, the representative of the petitioners, may, within 30 days, request Council review of the decision pursuant to MEQC 30(e).

(e) On all petitions received within 30 days of publication of a Negative Declaration Notice as provided in MEQC 36, the Council may conduct a public hearing to facilitate the Council's review of whether an EIS must be prepared. The hearing shall be held as expeditiously as practicable in a county to be affected by the proposed action.

At least two weeks notice of the hearing shall be given to the proposer of the action, to all public agencies with jurisdiction over the action, and to the representative of the petitioners. At the first monthly meeting at least 20 days after receipt by the Council and by requesting persons of the hearing officer's findings and recommendation, the Council shall consider the recommendation and any written briefs or argument filed by interested parties to the hearing, and shall decide whether to accept, reject, or modify the recommendation. No oral argument shall be permitted before the Council. Failure of the Council to act at this meeting shall be deemed acceptance of the recommendation of the hearing officer.

(f) Receipt of a valid petition by the Council pursuant to subdivision (e) shall suspend the 30 day period specified in MEQC 36, until a final determination has been made by the Council.

EARLY NOTICE RULES

CHAPTER FOURTEEN

MEQC 31 AUTHORITY

To provide early notice of impending actions which may have significant environmental effects, the Council shall, pursuant to Minnesota Statutes 116D.04, subdivision 8, publish a bulletin with the name of "EQC Monitor" containing all notices as specified in MEQC 34. The Council may prescribe the form and manner in which the agencies submit any material for publication in the EQC Monitor, and the Chairman of the Council may withhold publication of any material not submitted according to the form or procedures the Council has prescribed.

MEQC 32 PURPOSE

These Rules are intended to provide a procedure for notice to the Minnesota Environmental Quality Council and to the public of natural resource management and development permit applications, and impending governmental and private actions that may have significant environmental effects. The ntoice given through the early notice procedures is in addition to public notices otherwise required by law or regulation.

MEQC 33 EXEMPTIONS

(a) All National Pollutant Discharge Elimination System Permits (NPDES) granted by the Minnesota Pollution Control Agency, under the authority given them by the Environmental Protection Agency, of the United State of America, shall be exempt from the Early Notice procedures unless otherwise provided by resolution of the Council.

(b) Where, in the opinion of any public agency, strict observance of these Rules would jeopardize the public health, safety, or welfare, or would otherwise generally compromise the public interest, the agency shall comply with the Rules as far as practicable. In such cases, the agency shall carry out alternative means of public notification and shall communicate the same to the Chairman of the Minnesota Environmental Quality Council.

(c) Any federal permits for which review authority has been delegated to a public agency by the federal government may be exempted by Resolution of the Council.

MEQC 34 EQC MONITOR PUBLICATION REQUIREMENTS

(a) Public Agencies are required to publish the following in the EQC Monitor:

(1) Notice of natural resources management and development permit applications for actions and all proposed agency actions which are included in MEQC 26(a)(3).

(2) EIS Preparation Notices and notices of Negative Declarations.

(3) Notice of receipt of permit applications or of government proposals for natural resource management and development permit applications (Minn. Stat. 116D.04, Subd. 5) when the proposed action will occur in:

(aa) An area designated a Critical Area by the governor; or

(bb) An area designated a Wild & Scenic River Area by the Commissioner of Natural Resources.

(4) Notice of other actions that the Council may specify by Resolution.

(5) Notice of Draft EIS hearings to be held pursuant to MEQC 26(c)(6).

(b) Public Agencies may publish notices of general interest or information in the EQC Monitor.

(c) The MEQC is required to publish the following in the EQC Monitor:

(1) Receipt of valid petitions, pursuant to MEQC 30, and assignment of a Responsible Agency therefor.

(2) Receipt of Draft or Final EIS.

(3) Notice of intent to take any action pursuant to Minn. Stat. 116D.04, Subd. 9, with notice of the hearing held therefor.

(4) Receipt by the Council of notice of nonconcurrence by petitioners or a public agency with a Proposer's or Responsible Agency's Negative Declaration, and the time and place at which the Council will review the matter, including notice of public hearings, if any.

(5) Certification of Local Plans pursuant to Minn. Stat. 116G.01 et seq. (Critical Areas Act of 1973).

(6) Issuance of a Certificate of Corridor Compatibility or Site Compatibility, or a High-Voltage Transmission Line Construction Permit pursuant to Minn. Stat. 116C.51 et seq. (Power Plant Siting Act of 1973).

MEQC 35 CONTENT OF NOTICE

(a) The information to be included in the notice for natural resource management and development permit applications and other items in MEQC 34(a)(1) and (3) shall be submitted by the public agency on a form approved by the Council. This information shall include:

(1) Identification of applicant, by name and mailing address.

(2) The location of the proposed project, or description of the area affected by the action by county, Minor Civil Division, public land survey township number, range number, and section number.

(3) The name of the permit applied for, or a description of the proposed project or other action to be undertaken in sufficient detail to enable other state agencies to determine whether they have jurisdiction over the proposed action.

(4) A statement of whether the agency intends to hold public hearings on the proposed action, along with the time and place of the hearings if they are to be held in less than 30 days from the date of this notice.

(5) The identification of the agency publishing the notice, including the manner and place at which comments on the action can be submitted and additional information can be obtained.

MEQC 36 FINAL DECISIONS AND ACTIONS

(a) No final decisions granting or denying a permit application for which notice is required to be published shall be made until at least 30 days following publication of the notice therefor.

(b) No public agency proposing an action for which notice is required to be published shall begin to implement that action until at least 30 days following publication of the notice therefor.

MEQC 37 STATEMENT OF COMPLIANCE

Each governmental permit or agency authorizing order subject to the requirements of these Rules issued or granted by a public agency shall contain a statement by the agency concerning whether these Rules have been complied with, and publication dates of the Notices, if any, concerning that permit or authorization.

MEQC 38 PUBLICATION

(a) The Council shall publish the EQC Monitor whenever it is necessary, except that material properly submitted to the Council shall not reamin unpublished for more than 10 working days.

(b) The EQC Monitor shall have a distinct and permanent masthead with the title "EQC Monitor" and the words "State of Minnesota" prominently displayed. All issues of the EQC Monitor shall be numbered and dated.

MEQC 39 COST AND DISTRIBUTION

(a) When an agency properly submits material to the Council for publication, the Council shall then be accountable for the publication of the same in the EQC Monitor. The Council shall require each agency which requests the publication of material in the state register including the Council itself, to pay its proportionate cost of the EQC Monitor unless other funds are provided and are sufficient to cover the cost of the EQC Monitor.

(b) The Council may organize and distribute contents of the EQC Monitor according to such categories as will provide economic publication and distribution and will offer easy access to information by any interested party.

(c) The Council may further provide at least one copy to the Documents Division for the mailing of the EQC Monitor to any person, agency, or organization if so requested, provided that reasonable costs are borne by the requesting party. Ten copies of each issue of the EQC Monitor, however, shall be provided without cost to the legislative reference library and ten copies to the state law library, and at least one copy to designated EQC depositories.

(d) The EQC shall provide adequate office space, personnel and supply necessary equipment for the operation of the EQC Monitor without cost to the agencies.

MEQC 40 GENERAL

(a) Publication duties of the EQC Monitor may be transferred to the State Register upon Resolution of the Council.

(b) MEQC 34(b) may be supplemented upon Resolution of the Council to include notice of consolidated state permit applications.

MEQC 41 EFFECTIVE DATE

The amendments to these Rules shall take effect on

All petitions received, environmental assessments ordered, and environmental impact statements ordered before the effective date of the amendments shall be processed and reviewed as if these amendments were not in effect. Projects previously reviewed or exempted by the EQC are not subject to these Rules.

STATE OF MINNESOTA MINNESOTA ENVIRONMENTAL QUALITY COUNCIL

COUNTY OF RAMSEY

In the Matter of the Amendment
of the Rules of the Minnesota
Environmental Quality Council
Relating to the Preparation
and Review of Environmental
Impact Statements (Minn. Reg.
MEQC 21-50).

ERRATA for PROPOSED ENVIRONMENTAL IMPACT
STATEMENT RULES (DRAFT 9/25/75)

CHAPTER ELEVEN

page 1, MEQC 21, line 5: after "the" and before "Environmental" insert: "Minnesota"
page 1, MEQC 23, line 1: delete: "Regulations" and insert: "Rules"
page 3, MEQC 24, (a) (1) (ee), line 4: after "(4)" and before "requests" insert: ")"
Page 3, MEQC 24, (a) (1) (ff), line 1: delete: "The requiring" and insert: "Requiring the"
line 3: delete: ",if" and insert: "; provided that"
line 4: delete: "if"
page 4, MEQC 24, (b) (7), line 2: after "each" and before "EQC" insert: "location on the official"
line 2: delete: "point" and insert" "list"
page 4, MEQC 24, (c), line 3: delete: "reasonable" and insert: "reasonably"

CHAPTER TWELVE

page 5, MEQC 25, (a) (2), line 3: delete: "superivsing" and insert: "supervising"
page 6, MEQC 25, (d) (1), line 2: delete: ";" and insert: "."
page 6, MEQC 25, (d) (3), line 3: after "(b)" and before "." insert: "(the Environmental Quality Act of 1973)"
page 6, MEQC 25, (d) (5), line 1, line 7, line 8: delete: "Regulations" and insert: "Rules"
page 6, MEQC 26, (a) (1), line 1:delete: "and" and insert: "or"
page 7, MEQC 26, (a) (3) (cc), line 3: after "the" and before "Statewide" insert: """
line 4: after "Minnesota" and before "--" insert: """
page 8, MEQC 26, (a) (3) (vv), line 1: delete: "residential"
line 3: after "facilities" and before "within" insert: ", any part of which, is"
line 4: after "the" and before "Statewide" insert: """
line 5: delete: "criteria" and insert: "Criteria"
line 5: after "Minnesota" and before ")" insert: """
page 9, MEQC 26, (a) (3) (ccc), line 2: after "capable" delete: "or" and insert: "of"
page 9, MEQC 26, (a) (4), line 1: delete: "be" and insert: "by"
page 9, MEQC 26, (b) (3) (bb), line 2: after "significance" and before "with" insert: ","
page 10, MEQC 26, (c) (6), line 2: delete: "ehld" and insert: "held"
page 10, MEQC 26, (c) (6), line 10: delete: "final" and insert: "Final"
page 10, MEQC 26, (d), line 4: delete: "(bbb), (ccc), and (ddd)." and insert: "(bbb) and (ccc)."
page 10, MEQC 26 (e) (1), line 1: after "or" and before "Person" insert: "Responsible"
line 3: delete: "receipt" and insert: "request"
line 4: after "or" and before "Person" insert: "Responsible"

page 11, MEQC 26, (f), line 2: delete: "gove-nmental" and insert: "governmental"

CHAPTER THIRTEEN

page 12, MEQC 27, (c) (1), line 1: delete: "irreparability" and insert: "reversibility"
page 14, MEQC 30, (b) (5), line 2: after "action" and before "or" insert: ","
line 3; after "significance" and before "with" insert: ","
page 14, MEQC 30, (c) (2), line 3: after "(e)" and before "." insert: "of this section"

CHAPTER FOURTEEN

page 15, MEQC 32, line 4: delete: "ntoice" and insert: "notice"
page 15, MEQC 33, (a), line 3: delete: "State" and insert: "States"
page 15, MEQC 34, (a) (2), line 1: delete: "notices of Negative Declaration." and insert: "Negative Declaration Notices."
page 15, MEQC 34, (a) (4), line 1: delete: "Resolution." and insert: "resolution."
page 16, MEQC 35, (a), line 4: after "include" and before":" insert: "but not be limited to"
page 16, MEQC 35, (a) (2), line 2: delete: "Minor Civil Division" and insert: "minor civil division"
page 17, MEQC 38, (a), line 2: delete: "reamin" and insert: "remain"
page 17, MEQC 39, (a), line 4: delete: "state register" and insert: "EQC Monitor"
page 17, MEQC 40, (a), line 2: delete: "Resolution" and insert: "resolution"
page 17, MEQC 41, line 1: delete: "shall take effect on" and insert: ", (MEQC 21-41), shall become effective upon filing with the Secretary of State."

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL
CAPITOL SQUARE BUILDING
550 CEDAR STREET
ST. PAUL, 55101

ENVIRONMENTAL QUALITY COUNCIL STAFF
Additional Errata Submitted 11/12/75
Amendments to MEQC Environmental Impact Statement Rules

Page 4, MEQC 24 (cc)

Delete paragraph. Renumber (dd), (ee) and (ff) to (cc), (dd) and (ee).

Page 11, MEQC 26 (e) (3) (bb) Council Review,

Line 5, after "held", and before "45", insert: more than.

Page 13, MEQC 28(g), Alternatives to the Proposed Action

Include: When an action has been reviewed or will be reviewed by the Council under the authority of the Power Plant Siting Act, Minn. Stat., Sections 116C.51 et. seq., alternative sites or routes shall not be considered in the EIS.

Page 14, MEQC 30(e), Line 2,

Delete MEQC 36 and insert this section,

Page 16, MEQC 34 (a)(5),

Add after, "EIS" and before "hearings", "informational meetings or".

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL QUALITY COUNCIL

In the Matter of the Amendment of the Rules of the Minnesota Environmental Quality Council Relating to the Preparation and Review of Environmental Impact Statements (Minn. Reg. MEQC 21-50).

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes, Section 116D.04, Subds. 2, 8 (1974) in the above-entitled matter commencing in St. Paul in Rm. 81 of the State Office Building at 1:00 p.m. on November 12th and continuing at the following places and times: in St. Paul on November 12th in Rm. 81 of the State Office Building at 7:00 p.m.; in Mankato on November 17th in the Mankato High School West, Little Theatre, 51 Park Lane, at 7:00 p.m.; and in Duluth at the St. Louis County Courthouse, Boardroom, 5th Avenue West and 1st Street, on Wednesday, November 19th, at 2:00 p.m. and 7:00 p.m. The hearing will be continued to such time and place as the Hearing Officer may designate until all representatives of associations or other interested groups or persons have had an opportunity to participate and be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted to the Minnesota Environmental Quality Council (MEQC) at its St. Paul offices without appearing at the hearing and will be accepted for a period of twenty (20) calendar days following the close of the hearing.

The purposes of the amendments of these Rules are generally as follows: Placing the responsibility for initiating environmental review of proposed projects on state agencies and local units of governments rather than on the MEQC; Providing for fact-finding public hearings where good cause exists for believing an agency's decision not to prepare an environmental impact statement is incorrect; Designating responsibility for conducting environmental review for specific projects to specific public agencies; Providing a cut-off time within which public agencies must decide whether to prepare an environmental impact statement on a project; Establishing an informational publication giving notice of impending projects which may have significant environmental effects. In addition, other amendments are proposed which clarify ambiguous existing Rules, eliminate duplicative existing Rules, and reorganize the structure of existing Rules.

EQC 3
11/12/75

Copies of the proposed rules are now available for review at the following locations:

Minnesota Environmental Quality Council
101 Captiol Square Building
550 Cedar Street
St. Paul, MN 55101

Minnesota Environmental Quality Council's Designated Distribution Points (see attached listing)

Offices of Regional Development Commissions

Office of County Auditor -- all Minnesota counties

Office of City Clerk -- Cities over 15,000 population according to the 1970 census.

Notice is also given that under Minn. Stat. § 10A.01, Subd. 11 (1974) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual. The State Ethics Commission is located at 410 State Office Building, St. Paul, Minnesota 55155.

Dated: October 7, 1975

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

By Peter Vanderpoel
Peter Vanderpoel
Chairman

ENVIRONMENTAL QUALITY COUNCIL - DESIGNATED DISTRIBUTION POINTS

Region 1
Polk County-Crookston Library
120 N. Ash St.
Crookston, Minn. 56716
(218) 281-4522

Region 2
Bemidji Public Library
6th & Beltrami
Bemidji, Minn. 56601
(218) 751-3963

Region 3
Duluth Public Library
101 West Second
Duluth, Minn. 55802
(218) 722-5803

Region 4
Fergus Falls Public Library
125 N. Union
Fergus Falls, Minn. 56537
(218) 739-9387

Region 5
Kitchigami Regional Library
Pine River, Minn. 56474
(218) 587-2171

Region 6E
Crow River Regional Library
410 West Fifth
Willmar, Minn. 56201
Att: Burt Sundberg
(612) 235-3162

Region 6W
Chippewa County Library
224 S. First St.
Montevideo, Minn. 56265
(612) 269-6501

Region 7E
East Central Regional Library
240 Third Ave. S.W.
Cambridge, Minn. 55008
(612) 689-1901

Region 7W
Great River Regional Library
124 South Fifth Ave.
St. Cloud, Minn. 56301
(612) 251-7282

Region 8
Marshall-Lyon County Library
301 W. Lyon St.
Marshall, Minn. 56258
(507) 532-2849

Region 9
Minnesota Valley Regional Library
120 South Broad St.
Mankato, Minn. 56001
(507) 387-3431

Region 10
Rochester Public Library
Broadway at 1st St. S.E.
Rochester, Minn. 55901
(507) 288-9070

Region 11
St. Paul Public Library
90 West Fourth St.
St. Paul, Minn. 55102
Att: Ralph Huebscher
(612) 224-3383

Environmental Conservation Library
(ECOL)
300 Nicollet Mall
Minneapolis, Minn. 55401
Att: Nancy Johnson
(612) 372-6609

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL QUALITY COUNCIL

In the Matter of the Amendment of the Rules of the Minnesota Environmental Quality Council Relating to the Preparation and Review of Environmental Impact Statements (Minn. Reg. MEQC 21-50).

ORDER FOR HEARING

To more effectively implement the Minnesota Environmental Policy Act, the Minnesota Environmental Quality Council (MEQC) deems it necessary to consider adoption of proposed amendments to the Rules captioned above, pursuant to the authority granted it in Minnesota Statutes 116D.04, Subdivisions 2, 8 (1974).

NOW THEREFORE, IT IS ORDERED that a public hearing on the proposed Rules be held commencing in St. Paul in Rm. 81 of the State Office Building at 1:00 p.m. on November 12th and continuing at the following places and times: in St. Paul on November 12th in Rm. 81 of the State Office Building at 7:00 p.m.; in Mankato on November 17th in the Mankato High School West, Little Theatre, 51 Park Lane, at 7:00 p.m.; and in Duluth at the St. Louis County Courthouse, Boardroom, 5th Avenue West and 1st Street, on Wednesday, November 19th, at 2:00 p.m. and 7:00 p.m., and until all interested persons, representatives and organizations have had an opportunity to be heard by submitting oral or written data, statements, comments, or arguments or by presenting witnesses.

IT IS FURTHER ORDERED, that notice of said hearing be given to all persons and associations who have registered their names with the Secretary of State for that purpose.

Dated this 7th day of October, 1975.

Blue Earth 16 9S
left up on
bridge to Front

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

By Peter Vanderpoel
Peter Vanderpoel
Chairman

EQC EXHIBIT 2
K A [illegible] DATE 11/12/75

STATE OF MINNESOTA

COUNTY OF RAMSEY

ENVIRONMENTAL QUALITY COUNCIL

In the Matter of the Amendment of the Rules of the Minnesota Environmental Quality Council Relating to the Preparation and Review of Environmental Impact Statements (Minn. Reg. MEQC 21-50)

STATEMENT OF NEED

The above-captioned rules are amendments to existing rules of the Minnesota Environmental Quality Council. The last time the above-captioned rules were amended was April 4, 1974.

The need to adopt these rules arises because environmental issues and the determination of the need for environmental impact statements could not be adequately addressed under the present centralized review process. After an extensive review of the existing process, a consulting firm engaged by the state, recommended that the environmental impact statement process be decentralized.

Dated: 7 Dec 76

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

Peter Vanderpoel

Peter Vanderpoel, Chairman

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

COUNTY OF RAMSEY

In the Matter of the Public Hearing
of the Minnesota Environmental Quality
Council on the Proposed Environmental
Impact Statement Amendments.

AFFIDAVIT

Pam Jirovec first being duly sworn on oath, deposes and says that:

1) She is an employee of the State Planning Agency of the State of Minnesota.

2) On the 7th day of October, 1975 she went to the Secretary of State's Office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) On the 7th day of October, 1975, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Pam Jirovec

Subscribed and sworn to before me
this 7th day of October, 1975.

Karen Lockman

Notary Public

Notary Public
My Commission Expires

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Public Hearing
of the Minnesota Environmental Quality
Council on the Proposed Environmental
Impact Statement Amendments

CERTIFICATE

I hereby certify that the attached 440 Label 1 & one sheet constitute the complete list of persons, associations, and other interested groups who as of 12:00 o'clock —.M., this 7th day of October, 1975 have requested pursuant to M.S. 1971, Section 15.0412, Subd. 4, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State

Joan Anderson Growe

By Cecil Dixon

EQC EXHIBIT 4
K.A.M. DATE 11/12/75

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL QUALITY COUNCIL

In the Matter of the Amendment of the Rules of the Minnesota Environmental Quality Council Relating to the Preparation and Review of Environmental Impact Statements (Minn. Reg. MEQC 21-50).

AFFIDAVIT OF MAILING

Pamela L. Jirovec, first being duly sworn on oath, deposes and says that:

1. I am an employee of the State Planning Agency.

2. On October 7 I served the attached Notice of Hearing upon each of the individuals and organizations named in the Secretary of State's mailing lists that existed at that time; upon each of the State of Minnesota's legislators; upon each of the Environmental Quality Council members, Technical Committee and Citizens Advisory Committee; upon each person listed on the Governor's "A" List; upon each city with a population of over 1,000; upon each County Board Chairman and Auditor of every county in Minnesota; and upon every Regional Development Commission in Minnesota, by depositing in the United States mail, with postage prepaid, envelopes containing a true and correct copy of the said Notice addressed to each of the names and addresses contained in the lists.

Pamela L. Jirovec

Subscribed and sworn to before me this 7 day of October, 1975 at Saint Paul, Minnesota.

Karen Beckman

Notary Public

EQC EXHIBIT 5

K.A.K. DATE 11/12/75

KAREN BECKMAN
Notary Public, Dakota County Minn.
My Commission Expires Nov. 3, 1981

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL QUALITY COUNCIL

In the Matter of the Amendment of the Rules of the Minnesota Environmental Quality Council Relating to the Preparation and Review of Environmental Impact Statements (Minn. Reg. MEQC 21-50).

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes, Section 116D.04, Subds. 2, 8 (1974) in the above-entitled matter commencing in St. Paul in Rm. 81 of the State Office Building at 1:00 p.m. on November 12th and continuing at the following places and times: in St. Paul on November 12th in Rm. 81 of the State Office Building at 7:00 p.m.; in Mankato on November 17th in the Mankato High School West, Little Theatre, 51 Park Lane, at 7:00 p.m.; and in Duluth at the St. Louis County Courthouse, Boardroom, 5th Avenue West and 1st Street, on Wednesday, November 19th, at 2:00 p.m. and 7:00 p.m. The hearing will be continued to such time and place as the Hearing Officer may designate until all representatives of associations or other interested groups or persons have had an opportunity to participate and be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted to the Minnesota Environmental Quality Council (MEQC) at its St. Paul offices without appearing at the hearing and will be accepted for a period of twenty (20) calendar days following the close of the hearing.

The purposes of the amendments of these Rules are generally as follows: Placing the responsibility for initiating environmental review of proposed projects on state agencies and local units of governments rather than on the MEQC; Providing for fact-finding public hearings where good cause exists for believing an agency's decision not to prepare an environmental impact statement is incorrect; Designating responsibility for conducting environmental review for specific projects to specific public agencies; Providing a cut-off time within which public agencies must decide whether to prepare an environmental impact statement on a project; Establishing an informational publication giving notice of impending projects which may have significant environmental effects. In addition, other amendments are proposed which clarify ambiguous existing Rules, eliminate duplicative existing Rules, and reorganize the structure of existing Rules.

Copies of the proposed rules are now available for review at the following locations:

Minnesota Environmental Quality Council
101 Captiol Square Building
550 Cedar Street
St. Paul, MN 55101

Minnesota Environmental Quality Council's Designated Distribution Points (see attached listing)

Offices of Regional Development Commissions

Office of County Auditor -- all Minnesota counties

Office of City Clerk -- Cities over 15,000 population according to the 1970 census.

Notice is also given that under Minn. Stat. § 10A.01, Subd. 11 (1974) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual. The State Ethics Commission is located at 410 State Office Building, St. Paul, Minnesota 55155.

Dated: October 7, 1975

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

By Peter Vanderpoel
Peter Vanderpoel
Chairman

ENVIRONMENTAL QUALITY COUNCIL - DESIGNATED DISTRIBUTION POINTS

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Region 3
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101 West Second
Duluth, Minn. 55802
(218) 722-5803

Region 4
Fergus Falls Public Library
125 N. Union
Fergus Falls, Minn. 56537
(218) 739-9387

Region 5
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Region 6E
Crow River Regional Library
410 West Fifth
Willmar, Minn. 56201
Att: Burt Sundberg
(612) 235-3162

Region 6W
Chippewa County Library
224 S. First St.
Montevideo, Minn. 56265
(612) 269-6501

Region 7E
East Central Regional Library
240 Third Ave. S.W.
Cambridge, Minn. 55008
(612) 689-1901

Region 7W
Great River Regional Library
124 South Fifth Ave.
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Region 11
St. Paul Public Library
90 West Fourth St.
St. Paul, Minn. 55102
Att: Ralph Huebscher
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Environmental Conservation Library
(ECOL)
300 Nicollet Mall
Minneapolis, Minn. 55401
Att: Nancy Johnson
(612) 372-6609

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

COUNTY OF RAMSEY

In the Matter of the Amendment of the Rules of the Minnesota Environmental Quality Council Relating to the Preparation and Review of Environmental Impact Statements (Minn. Reg. MEQC 21-50).

APPOINTMENT OF HEARING OFFICER

Will Hartfeldt is hereby appointed hearing officer in the matter of the amendment of the Rules of the Minnesota Environmental Quality Council relating to the preparation and review of environmental impact statements.

Said hearing officer is authorized and empowered to conduct the hearing and to perform any and all acts necessary and proper thereto.

Dated this 6 day of November, 1975.

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

By Peter Vanderpoel

Peter Vanderpoel
Chairman

EQC EXHIBIT 6

K A K DATE 11/12/75

(These Rules have been adopted by the Minnesota Environmental Quality Council. They will not be in effect until they have been approved by the Attorney General and filed with the Secretary of State.)

MINNESOTA ENVIRONMENTAL QUALITY COUNCIL

ENVIRONMENTAL IMPACT STATEMENT RULES

CHAPTER ELEVEN

AUTHORITY, PURPOSE, DEFINITIONS, GENERAL PROVISIONS

MEQC 21 AUTHORITY AND PURPOSE

A. Authority. The Rules contained herein are prescribed by the Minnesota Environmental Quality Council to implement the Environmental Impact Statement provisions pursuant to authority granted in Minnesota Statutes, Section 116D.04, subdivision 2 (1974), and shall be followed by all persons in implementation of the Minnesota Environmental Policy Act of 1973. The procedures specified in these Rules are in addition to the other procedures and substantive responsibilities of public agencies and private persons contained in the Act, and do not limit the authority of the Council to review, study, or resolve any matter of environmental concern authorized by law.

B. Purpose of Environmental Impact Statement. The purpose of an Environmental Impact Statement is to provide information for agencies and private persons to evaluate proposed actions which have the potential for significant environmental effects, to consider alternatives to the proposed actions, and to institute methods for reducing adverse environmental effects. An Environmental Impact Statement is not a document to justify an action, nor shall indications of adverse environmental effects necessarily require that an action be disapproved. It is to be utilized as a guide in issuing, amending, and denying permits and carrying out the other responsibilities of public agencies to avoid or minimize adverse environmental effects and to restore or enhance environmental quality consistent with the Act.

MEQC 22 DEFINITIONS

The following terms have the meanings ascribed to them in these Rules.

A. "Act" means the Minnesota Environmental Policy Act of 1973, as amended, Minn. Stat. § 116D.01 et seq. (1974).

B. "Action" means the whole of a project which will cause physical manipulation of the environment, directly or indirectly. The determination of whether an action requires environmental documents shall be made by reference to the physical activity to be undertaken and not to the governmental process of approving the activity. "Action" does not include the following:

1. Proposals and enactments of the Legislature.

2. The rules, orders, or recommendations of public agencies.

3. Executive Orders of the Governor, or their implementation by public agencies.

4. Judicial orders, except orders establishing judicial ditches pursuant to Minn. Stat. Chapter 106 (1974).

5. Submissions of proposals to a vote of the people of the State.

C. "Approval" means the issuance of a governmental permit, or any review of a proposed action required by state or federal law or regulations.

D. "Council" means the Minnesota Environmental Quality Council (MEQC).

E. "Days." In computing any period of time prescribed or allowed in these Rules, the day of the act or the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is 15 days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

F. "Environmental Impact Statement (EIS)" is defined by Minn. Stat. § 116D.04, subdivision 1 (1974) and these Rules.

G. "EIS Preparation Notice" means a written statement by the Responsible Agency or Responsible Person which requires an EIS to be prepared.

H. "Environment" means the physical conditions existing in the area which

will be affected by the proposed action, including land, air, water, minerals, flora, fauna, ambient noise, energy resources available to the area, and man-made objects or natural features of historic, geologic or aesthetic significance.

I. "Environmental Assessment Worksheet (EAW)" means a worksheet provided by the Council to determine whether an EIS is required.

J. "Environmental Documents" means EAWs, Draft EISs, Final EISs, Negative Declaration Notices, and EIS Preparation Notices.

K. "EQC Monitor" means an early notice bulletin containing all notices of impending actions that may have significant environmental effects.

L. "Governmental Action" means an action proposed to be undertaken by a public agency directly or an action supported or licensed, in whole or in part, by a governmental permit issued by a public agency.

M. "Governmental Permit" means a lease, permit, license, certificate, variance, or other entitlement of use, or the commitment to issue or the issuance of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, by a public agency to another public agency or to a private person.

N. "Inadequate EIS" means an EIS that fails sufficiently to examine potential environmental effects, alternatives, or desirable modifications, or an EIS not prepared in compliance with the Act and these Rules.

O. "Local Agency" means any general or special purpose unit of government of the state with less than state-wide jurisdiction, including but not limited to regional development commissions, counties, municipalities, townships, port authorities, housing authorities, and all agencies, committees, and boards thereof.

P. "Negative Declaration Notice" means a written statement by the Responsible Agency or Responsible Person that a proposed action does not require the preparation of an EIS.

Q. "Other Approving Agencies" means all public agencies other than the Responsible Agency that must approve a project for which environmental documents are prepared.

R. "Person" means a human being, unincorporated association, partnership, trust, corporation, or public agency.

S. "Petition" means a document that contains at least 500 signatures and requests the preparation of an EIS.

T. "Private Action" means an action proposed to be undertaken by a private person that does not require a governmental permit.

U. "Proposer" means the private person or public agency that will undertake an action or that will direct or authorize others to undertake the action.

V. "Public Agency" means a federal, state, regional or local agency, board, commission, or other special purpose unit of government. "Public Agency" includes all public educational institutions but does not include the courts of this State.

W. "Regional Development Commission" means any regional development commission created pursuant to Minn. Stat. §§ 462.381-396 (1974) inclusive and the Metropolitan Council established by Minn. Stat. Chapter 473 (Supp. 1975).

X. "Responsible Agency" means that public agency which has the principal responsibility for preparing the environmental documents required by the Act and these Rules.

Y. "Responsible Person" means the person who proposes to undertake an action and who is responsible for the preparation of the environmental documents required by the Act and these Rules.

Z. "Reviewing Agencies" means all public agencies which have either jurisdiction by law or special expertise with regard to the environmental effects of an action for which an EIS is prepared. All agencies that are members of the Council shall be considered reviewing agencies.

MEQC 23 GENERAL RESPONSIBILITIES

A. Environmental Quality Council.

1. The Council's duties and responsibilities include the following:

a. Coordinate the EIS program as set forth in these Rules.

b. Coordinate among public agencies, when appropriate, review of EISs prepared pursuant to the National Environmental Policy Act. The coordination may include requests to the preparer or to a public agency to undertake additional environmental analysis, to hold informational meetings, or to conduct any other review consistent with the Act and these Rules.

c. Provide a manual of procedure to guide public agencies, Responsible Agencies, and Responsible Persons in the implementation of this Act and these Rules; and assist on request in determining whether the specific action requires an EIS.

2. In addition, the Council may, where it deems necessary:

a. Require revision of any EIS that it finds inadequate.

b. Require preparation of alternative or additional environmental review before allowing commencement of any action or approval of any action by a public agency.

c. Provide technical assistance on request of a public agency, Responsible Agency or Responsible Person.

d. Review any rules, guidelines, procedures, or local ordinances adopted to implement the Act and these Rules.

e. Hold hearings or informational meetings to facilitate implementation of the Act and these Rules.

B. Public Agencies.

1. All public agencies are responsible for complying with the requirements of the Act and these Rules. Public agencies shall inform a proposer, and a representative of the petitioners when a petition is involved, of the operating procedures that they will follow in implementing the Act and these Rules for each EAW they prepare. Such operating procedures shall also be available to the public at the offices of the Responsible Agency. Whether a public agency prepares environmental documents itself or contracts with private experts for the preparation, the public agency is solely responsible for the adequacy and objectivity of the environmental documents. Nothing in these Rules shall limit existing authority of public agencies to charge proposers reasonable fees for document preparation.

2. All public agencies shall retain their existing statutory authority subject to the policies of the Act and the authority of the Council to reverse or modify decisions or proposals or to require preparation of environmental documents.

3. Under the Act, these Rules shall not affect the specific statutory obligations of any public agency to perform the following:

a. To comply with criteria or standards of environmental quality regardless of whether an EIS is required for an action.

b. To coordinate or consult with any federal or state agency.

c. To act or refrain from acting contingent upon the recommendations or certification of any public agency or federal agency.

4. A public agency, at the request of a Responsible Agency, shall provide any unprivileged data or information to which it has reasonable access concerning a particular action and shall assist in the preparation of environmental documents on any action for which it has special expertise or access to information.

5. A public agency shall prepare the environmental documents on an action which is the subject of a petition upon the direction of the Council.

6. When environmental documents are prepared on an action by a Responsible Agency, every public agency which has jurisdiction to approve the action shall consider the environmental documents prepared on that action before approving the action.

7. Public agencies shall provide one free reproducible copy of all environmental documents to each location on the official MEQC distribution list, except as otherwise provided herein. These will be available for internal agency distribution and for public copying.

C. Private Persons. When environmental documents are required on an action that is subject to a governmental permit, the proposer shall supply in the prescribed manner any unprivileged data or information reasonably requested by the Responsible Agency that that person has in his possession or to which he has reasonable access.

CHAPTER TWELVE

SUBSTANTIVE REQUIREMENTS

MEQC 24 ACTIONS REQUIRING ENVIRONMENTAL ASSESSMENT WORKSHEETS

A. General. The purpose of an EAW is to assess rapidly, in a worksheet format, whether a proposed action is a major action with the potential for significant environmental effects and additionally in the case of a private action, whether it is of more than local significance.

B. EAW Required.

1. An EAW shall be prepared on any action which is not exempted by MEQC 26 and which falls within one of the following categories. The Responsible Agency is shown in parentheses for each category except that when a proposer of an action is a public agency that agency shall be the Responsible Agency. The Council may specify a different Responsible Agency for good cause.

a. Construction of a new industrial park of over 320 acres in size -- (Local);

b. Construction of a facility or integral group of facilities with at least 250,000 square feet of commercial or retail floor space or at least 175,000 square feet of industrial floor space, or a mixture of commercial, industrial and retail floor space totaling at least 250,000 square feet, unless located in an industrial park for which an EIS has already been prepared -- (Local);

c. Any industrial, commercial or residential development of 40 or more acres, any part of which is within a floodplain area, as defined by the "Statewide Standards and Criteria for Management of Floodplain Areas of Minnesota" -- (Local);

d. Construction of a commercial or industrial development, any part of which is within a shoreland area (as defined by Minn. Stat. § 105.485 (1974)), covering 20,000 or more square feet of ground space, not including access roads or

parking areas, and located on a parcel of land having 1,500 feet or more of shoreline frontage -- (Local);

e. Construction of a facility that generates more than a maximum of 2,500 vehicle trips per hour or a maximum of 12,500 vehicle trips per eight-hour period -- (Local);

f. Construction of a new oil refinery, or an expansion of an existing refinery that shall increase capacity by 10,000 barrels per day or more -- (PCA);

g. Construction of a pipeline greater than six inches in diameter and 50 miles in length -- (DNR);

h. Construction of facilities on a single site that are designed for, or capable of, storing a total of one million or more gallons of liquid natural gas, liquid petroleum gas, or other liquid fuels -- (PCA);

i. Construction of an underground storage facility for gases and liquids that requires a permit, pursuant to Minn. Stat. § 84.57 (1974) -- (DNR);

j. Construction of a new mineral or fuel processing or refining facility, including, but not limited to, smelting and hydrometallurgical operations -- (PCA or DNR);

k. Construction of a facility if the cumulative emissions of particulate matter and sulfur oxides exceed 50 tons per day -- (PCA);

l. Main roadway grading construction of a four-or-more lane, divided highway with at least partial control of access of ten route miles or more in length and carrying 10,000 vehicles ADT (Average Daily Traffic) -- (Hwys);

m. Construction of a new airport that is within the key system, pursuant to Minn. Stat § 360.305, subdivision 3 (1974) -- (Aeronautics);

n. Construction or opening of a new facility for mining metallic minerals -- (DNR);

o. Construction or opening of a facility for mining gravel, other non-metallic minerals, and fuels involving more than 320 acres -- (Local, except DNR with respect to peat fuels).

p. A new appropriation for commercial or industrial purposes of either surface water or ground water averaging 30 million gallons per month, or exceeding 2 million gallons in any day during the period of use; or a new appropriation of either ground water or surface water for irrigation of 640 acres or more in one continuous parcel from one source of water -- (DNR);

q. Any new or additional impoundment of water creating a water surface in excess of 200 acres -- (DNR);

r. An action that will eliminate or significantly alter a wetland of Type 3, 4, or 5 (as defined in U.S. Department of Interior, Fish and Wildlife Service, Circular 39, "Wetlands of the U.S., 1956") of five or more acres in the seven-county metropolitan area, or of 50 or more acres outside the seven-county metropolitan area, either singly or in a complex of two or more wetlands -- (Local);

s. Any marina and harbor project of more than 20,000 square feet of water surface area -- (Local);

t. Construction of a new or additional residential development that includes 100 or more units in an unsewered area or 500 or more units in a sewered area -- (Local);

u. Construction of a residential development consisting of 50 or more residential units, any part of which is

within a shoreland area (as defined by Minn. Stat. § 105.485 (1974)) -- (Local);

v. Construction of a development consisting of "condominium-type" campgrounds, mobile home parks, or other semi-permanent residential and/or recreational facilities, any part of which is within a shoreland area (as defined by Minn. Stat. § 105.485 (1974)) or floodplain (as defined by the "Statewide Standards and Criteria for Management of Floodplain Areas of Minnesota") exceeding a total of 50 units or, if located in areas other than the above, exceeding a total of 100 units -- (Local);

w. Construction of a sanitary landfill for an excess of 100,000 cubic yards per year of waste fill, or any sanitary landfill located in an area characterized by soluble bedrock, where leachates may significantly change groundwater quality -- (PCA);

x. Construction of a new paper and pulp processing mill -- (PCA);

y. The application of restricted use pesticides over more than 1,500 contiguous acres -- (Agriculture);

z. Harvesting of timber within the Boundary Waters Canoe Area Portal Zone or in a State Park or Historical Area, that is not included in an annual timber management plan filed with the Council -- (DNR);

a_1 Permanent removal of 640 or more contiguous acres of forest cover -- (DNR);

b_1 Conversion of 40 or more contiguous acres of forest cover to a different land use -- (Local);

c_1 Construction of electric generating plants at a single site designed for, or capable of,

operation at a capacity of 200 or more megawatts (electrical) -- (PCA);

d_1 Construction of electric transmission lines and associated facilities designed for, or capable of, operation at a nominal voltage of 200 kilovolts AC or more, or operation at a nominal voltage of ± 200 kilovolts DC or more, and are 50 miles or more in length -- (EQC);

e_1 Construction of nuclear material processing plants and facilities -- (PCA).

2. An EAW may be prepared on any proposed action to determine if the action is a major action with the potential for significant environmental effects and for a private action if the action is of more than local significance.

C. Waiver of EAW. In cases where the magnitude and environmental impact of a project allow a Responsible Agency or Responsible Person to determine that an EIS is necessary without preparation of an EAW, or if a federal agency is preparing a state EIS pursuant to MEQC 25 F.4, an EAW need not be prepared. Publication of the EIS Preparation Notice shall be required. In cases where the Responsible Agency is not the proposer, if the project proposer does not concur in the determination of need for an EIS without the preparation of an EAW, the agency shall prepare an EAW.

MEQC 25 ACTIONS REQUIRING ENVIRONMENTAL IMPACT STATEMENTS

A. General Criteria. An EIS shall be required whenever it is determined that an action is major and has the potential for significant environmental effects. In making this determination, material effects on the environmental variables specified in MEQC 30 A.3 will indicate that an EIS should be prepared. In the case of a private action, it must also be determined that the action is of more than local significance.

B. Major Action. In determining whether an action is major, the following factors shall be considered:

1. Type of action;

2. Scope of action, including size and cost;

3. Location and nature of surrounding area;

4. The totality of cumulative related actions, as defined by MEQC 25 E;

5. Relation of the action to anticipated growth and development; and

6. Permit(s) and approval(s) required in addition to those of one primary, local agency.

C. Local Significance. In determining whether a major private action is of more than local significance, the following factors shall be considered:

1. Location of the action; and

2. Area affected by the action.

D. Potential for Significant Environmental Effects. In determining whether an action has the potential for significant environmental effects, the following factors shall be considered:

1. Type, extent, and reversibility of environmental effects;

2. Cumulative potential effects of related or anticipated future actions, as defined by MEQC 25 E;

3. The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and

4. The extent to which environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, or of EISs previously prepared on similar actions.

E. Related Actions.

1. When two or more actions are related, they shall be considered as a single action and their cumulative potential effects on the environment shall be considered in determining whether an EIS is required. Actions are related if:

a. They are of a similar type, and are planned or will occur at the same time, and will affect the same geographic area; or

b. They are interdependent and not independently viable stages or segments of development of the same project and would not be undertaken if subsequent stages or segments would not also occur; or

c. It can be determined, based on a comprehensive plan or on the precedent that would be established by a public agency's undertaking or approving an action, that one of the actions will induce other actions of the same type or affecting the same geographic area.

2. A comprehensive plan for a geographic area or other public agency overall program or plan document may be considered as a Related Actions EIS.

a. The geographic area must contain possible actions each with the potential for significant environmental effects or actions whose cumulative potential environmental effect is significant.

b. For an individual action in the geographic area, the need for an individual action EIS or a modification of the Related Actions EIS shall be judged by the guidelines for a Subsequent EIS.

3. A Related Actions EIS shall meet the content requirement of MEQC 30 D; however, the data may be more generalized and not as exhaustive as an individual action EIS. Additionally, the alternatives may be more in the nature of prototypes or alternate scenarios.

F. Miscellaneous.

1. Subsequent EIS. When an EIS has been prepared on an action, no additional EIS need be prepared on the action unless changes in the action are proposed which will involve new and potentially significant environmental effects not considered in the previous EIS.

2. Single EIS. When an action is to be carried out or approved by more than one public agency, only one EIS shall be prepared

pursuant to the Act.

3. Expansions or Modifications. The expansion or modification of an ongoing action which requires new or modified governmental permits shall be subject to the same requirements in the Act and these Rules for the preparation of environmental documents as a new action.

4. Federal EIS. When these Rules require the preparation of a state EIS on an action, and a federal EIS is required for the same action, pursuant to the requirements of the National Environmental Policy Act (NEPA) and the implementing regulations thereto, all or any part of the federal EIS may be submitted in lieu of all or any part of a state EIS. However, when the federal EIS is used, the elements of the EIS that are required by the Act and these Rules, but are not required by NEPA, shall be added to the federal EIS, including alternatives and modifications which can be implemented by state and local agencies. When a federal EIS is prepared in lieu of a state EIS, the state Responsible Agency shall independently review the federal EIS and ascertain that the conclusions and recommendations are those that the state agency would reach. Insofar as practicable, the Responsible Agency shall consult with the federal agency and coordinate all environmental reviews to the end that the requirements of state law are met by a single Draft EIS, single Final EIS, and a single hearing process, in which the state agency actively participates and adds supplementary material as necessary. In such circumstances, an EAW shall not be required; however, an EIS Preparation Notice shall be published in the EQC Monitor.

G. Environmental Review of Proposed Large Electric Power Generating Plants and High Voltage Transmission Lines.

1. Other provisions of these Rules to the contrary notwithstanding, this subsection provides for the environmental review of large electric power generating plants (LEPGP) and high voltage transmission lines (HVTL) under the Minnesota Environmental Policy Act. Certificates of Need (Minn. Stat. §§ 116H.07), and Certificates of Corridor Compatibility and Site Compatibility (Minn. Stat. §§ 116C.57, subdivision 1) may be issued before preparation and filing of an EIS. One purpose of this process is to insure that the environmental review of LEPGP and HVTL is consistent with the sequential permitting for energy facilities as provided in Minnesota Power Plant Siting Act, Minn. Stat. §§ 116C.51 to 116C.69 and the Minnesota Energy Agency Act, Minn. Stat. §§ 116H.01 to 116H.15. The environmental review of LEPGP and HVTL shall be separated into the following five phases:

   a. Environmental Report on Certificates of Need
   b. Environmental Report on Sites for LEPGP
   c. Environmental Report on Corridors for HVTL
   d. HVTL Route EIS
   e. LEPGP EIS

2. This environmental review process provides for the consideration of the potential environmental effects of a proposed action early in the decision making process at the phase where they are most appropriately considered. The intent of the process set out in this subsection is to eliminate duplication by reducing repeated consideration of identical issues in the various phases of this sequential process. The limitation on the environmental issues considered at each phase of the environmental review process is based on the preemption of the need, siting, corridor, and routing decisions as provided in Minn. Stat. §§ 116H.06 and §§ 116C.61.

   a. Environmental Report on Certificates of Need

      (1) Preparation. The Minnesota Energy Agency shall prepare an Environmental Report when it receives an application for a Certificate of Need for a proposed LEPGP or HVTL.

(2) Content. The Environmental Report on the Certificate of Need shall include; but not be limited to:

(a) A summary of the information provided in the application;

(b) A brief analysis of alternatives to the proposed facility, which analysis shall include: a discussion of the economic and environmental feasibility of each alternative including the alternative of a different sized facility, an estimate of the time it would take to implement each alternative, the projected availability of each alternative, and the estimated reliability of each alternative;

(c) An evaluation of the environmental and economic impact of theproposed facility, each reasonable alternative thereto, and the alternative of no facility;

(d) An evaluation of:

(i) the environmental impact of the proposed action, including any pollution, impairment, or destruction of the air, water, land, or other natural resources located within the state;

(ii) any direct or indirect adverse environmental, economic, and employment effects that cannot be avoided should the proposal be implemented;

(iii) alternatives to the proposed action;

(iv) the relationship between local short term uses of the environment and the maintenance and enhancement of long term productivity, including the environmental impact of predictable increased future development of an area because of the existence of a proposal, if approved;

(v) any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented;

(vi) the impact on state government of any federal controls associated with proposed actions; and

(vii) the multi-state responsibilities associated with proposed actions.

(3) The report shall not be as exhaustive or detailed as an EIS, since an exhaustive and lengthy discussion of site-differentiating factors and detailed design information would be inappropriate and is not available at the Certificate of Need stage.

(4) Review and Comment. The Environmental Report on the Certificate of Need shall be distributed in accord with the MEQC distribution list at least 20 days before the commencement of the Energy Agency's Certificate of Need hearing on the Application. The availability of the report and notice of the hearing shall be published in the EQC Monitor as specified in MEQC 35. Comments on the Environmental Report shall be submitted at the Certificate of Need public hearing. The preparation and review of the Environmental Report shall be completed within the statutory time limit provided for the Energy Agency's final decision on an application for a Certificate of Need.

(5) Council Review. The Energy Agency shall submit its findings of fact and decision to the Council. Failure by the Council to request review of the Energy Agency's final decision within 10 days of the decision shall constitute Council acceptance of that decision and the issues determined by the Energy Agency in issuing or denying the Certificate of Need. Such issues shall not be considered in the Environmental Reports and environmental documents prepared at the subsequent siting, corridor, routing or licensing phases.

b. Environmental Report on Sites for Large Electric Power Generating Plants

(1) Preparation. The Council shall prepare a Site Environmental Report when it receives a site application for a LEPGP.

(2) Content. In the Site Environmental Report the Council shall include an evaluation of the exclusion criteria, avoidance areas and site selection criteria as required by the regulations adopted under the Power Plant Siting Act for the designation of a site and also MEQC 30 D of these Rules. The Report shall provide an evaluation of each site that is considered for designation at the siting public hearings. The Site Environmental Report shall not consider the need for the LEPGP or information not related to site differentiating impacts. It shall not be as exhaustive or detailed as an EIS.

(3), Review and Comment. The Site Environmental Report shall be distributed in accord with the MEQC distribution list and made available for review and public comment at least 30 days prior to the conclusion of the public hearing held on the site application. The Council shall respond to substantive comments received on the Environmental Report. The preparation and review of the Site Environmental Report shall be completed within the statutory time limits for the issuance of a Certificate of Site Compatibility.

(4) Final Decision on Certificate of Site Compatibility. The Council shall consider the Site Environmental Report before its final decision on the issuance of a Certificate of Site Compatibility for a LEPGP. Such issuance by the Council shall constitute a final determination of the issues that were considered in the designation of the site.

C. EIS on Large Electric Power Generating Plant

(1) Preparation. After designating a site, the Council shall determine whether an EIS shall be required on the LEPGP. If the Council or Responsible Agency determines that an EIS is required, the Minnesota Pollution Control Agency shall be the Responsible Agency, unless MEQC 27 A.3 applies.

(2) Content and Procedures. The content of the EIS shall contain the information required by MEQC 30 D of these Rules. Alternative sites, the need for the facility, and any other issues previously determined by the Minnesota Energy Agency or the Council shall not be considered in the EIS. The Environmental Reports prepared at the siting and need phases and the issues previously determined shall be referenced and summarized in the EIS.

d. Environmental Report on Corridors for High Voltage Transmission Line

(1) Preparation and Content. The Council shall prepare a Corridor Environmental Report upon the receipt of an application for a corridor for a HVTL. The Corridor Environmental Report shall include the evaluation of exclusion criteria, avoidance areas and selection criteria as required in accordance with the regulations adopted under the Power Plant Siting Act and also MEQC 30 D of these Rules, for each alternative corridor considered for designation by the Council. The Report shall not be as exhaustive or detailed as an EIS.

(2) Review and Comment on Environmental Report. The Corridor Environmental Report shall be distributed in accord with the MEQC distribution list and made available for review and public comment at least 20 days prior to the conclusion of the public hearing held on the corridor application. The Council shall respond to the substantive comments received on the Environmental Report.

(3) Final Decision on Certificate of Corridor Compatibility. The Council shall consider the Corridor Environmental Report before issuing a Certificate of Corridor Compatibility. Such issuance by the Council shall constitute a final determination of the issues that were considered in the designation of the corridor. The preparation and review of the Corridor Environmental Report shall be completed within the statutory time limits for the issuance of a Certificate of Corridor Compatibility.

e. High Voltage Transmission Line Route EIS

(1) Preparation. After designating a corridor, the Council shall determine whether an EIS shall be required on the route for the HVTL in accord with these Rules. If it determines that an EIS is required, it shall prepare the EIS.

(2) Content. The Route EIS shall include the information required by the Power Plant Siting Act and the Rules adopted thereunder for High Voltage Transmission Lines (HVTL) and also MEQC 30'D of these Rules. All alternative routes designated for study by the Council shall be discussed in the EIS. The Environmental Reports prepared at the need and corridor phases and the issues previously determined shall be referenced and summarized in the EIS. The EIS shall not consider the need for the facility, routes outside the designated corridor or any routes not designated for study by the Council.

(3) Procedures. The Draft EIS shall be made available to all MEQC distribution points and to the extent practical to interested persons and shall be submitted at the public hearing on the route application. The Final EIS shall be submitted to the Council before it designates a specific route.

(4) Final Decision on Designation of Route. The Council shall consider the Final EIS in designating a route for the HVTL. The preparation and review of the Route EIS shall be completed within the statutory time limits for the Council's designation of a route.

MEQC 26 ACTIONS NOT REQUIRING ENVIRONMENTAL DOCUMENTS

A. General Exemptions. The preparation of environmental documents shall not be required:

1. When a substantial portion of the action has been completed or implemented and an EIS on the action would not be able to influence remaining implementation or construction of the action to minimize adverse environmental consequences.

2. When there has been adequate environmental review of an action within the jurisdiction of the Council pursuant to Minn. Stat. § 116G.01 et seq. (1974) (the Critical Areas Act of 1973), or Minn. Stat. § 116C.04(2)(b) (1974) (the Environmental Quality Council Act of 1973).

3. When, and so long as, a public agency denies a governmental approval required for the action.

4. When an imminent and substantial danger to the public health, safety or welfare makes it necessary to undertake a major action that has the potential for significant environmental effects and application of these Rules would be impracticable. In such cases, the proposer shall consult with the Chairman of the Council to arrange an alternative means of environmental review before taking the action.

B. State agencies developing procedural guidelines may develop EAW and EIS exemption categories. Such categories shall be submitted for Council review and approval and shall be subject to Minn. Stat., Chapter 15 [1974] Rule making procedures.

C. EAW Exemptions. Unless an action is included under MEQC 24 B.1, the following items are categories for which an EAW shall not be required. This listing may be used as a guideline for developing other state agency exemption categories under MEQC 26 B. The following listing is not intended to imply that EAWs must be prepared on actions not included in this listing. In cases where EAWs are neither exempt nor mandatory, the public agency should prepare EAWs only where it is probable that the actions will cause significant environmental effects and an EAW is needed to guide the decision on whether an EIS is required.

1. Operation, maintenance, or repair work involving no substantial change in existing structures, land uses, or water quality.

2. Construction or alteration of a single or multiple residence with four dwelling units or less and accessory appurtenant structures and utilities, when not in conjunction with the construction or alteration of two or more such residences.

3. Construction or alteration of a store, office, or restaurant designed for an occupancy of 20 persons or less, if not in conjunction with the construction or alteration of two or more stores, offices, or restaurants accumulating an occupancy load of more than 30 persons, unless designated to be an historical structure.

4. Restoration or reconstruction of a structure in whole or in part being increased or expanded by less than 25 percent of its original size, square footage, or capacity, and aggregating less than 5,000 square feet, provided that such structure has not been designated to be of historical, cultural, archeological, or recreational value by a public agency.

5. Repaving or reconstruction of existing highways not involving the addition of new travel lanes or acquisition of additional right-of-way.

6. Installation of traffic control devices on existing streets, roads, and highways other than installation of multiple fixtures on extended stretches of highway.

7. Licensing or permitting decisions relating to individual persons or activities directly connected with an individual's household, livelihood, transportation, recreation, health, safety, and welfare, such as motor vehicle licensing, hunting licenses, professional licenses, and individual park entrance permits.

8. Purchase of operating equipment, maintenance equipment, or operating supplies.

9. Sales or lease of surplus governmental property other than land, radioactive material, pesticides, or buildings.

10. Loan, mortgage, guarantee, or insurance transactions in connection with new or existing structures or uses as defined in subparagraphs MEQC 26 C.2, 3 or 4.

11. Borrowing for purposes other than capital construction or land purchase.

12. Maintenance of existing landscaping, native growth, and water supply reservoirs, excluding the use of pesticides.

13. Utility extensions as follows: water service mains of 500 feet or less and one and a half inches diameter or less; sewer lines of 500 feet or less and eight inch diameter or less; electrical service lines of 500 feet or less and 240 volts or less; gas service mains of 500 feet or less and one inch diameter or less; and telephone service lines of 500 feet or less.

14. Construction of accessory appurtenant structures including garages, carports, patios, swimming pools, fences, barns, or other similar agricultural structures, excluding feedlots; or other similar buildings not changing land use or density.

15. Grading or filling of 750 cubic yards or less.

16. Local bus stops and bus shelters or transit signs, which do not require accessory parking facilities.

17. Minor temporary uses of land having negligible or no permanent effect on the environment, including such things as carnivals and sales of Christmas trees.

18. Filling of earth into previously excavated land with materials compatible with the natural material on the site.

19. 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.

20. Basic data collection, training programs, research, experimental management, and resource evaluation projects which 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.

21. Accessory signs appurtenant to any commercial, industrial, or institutional facility not regulated by an agency of the State.

CHAPTER THIRTEEN

PROCEDURAL REQUIREMENTS

MEQC 27 SELECTION OF PREPARERS, PREPARATION OF EAW, AND NOTICE OF EAW CONCLUSIONS

A. Selection of Preparers. The following procedures will be followed to determine the Responsible Agency or Responsible Person for the preparation of an EAW.

1. When a private person proposes to carry out an action which does not require any governmental permits, that person shall be the Responsible Person.

2. For any action in MEQC 24 B.1 the agency designated in parentheses shall be the Responsible Agency.

3. For any action not included in MEQC 24 B.1 or which falls into more than one category of MEQC 24 B.1, the Responsible Agency shall be determined as follows:

a. When a single public agency proposes to carry out or has jurisdiction to approve an action, it shall be the Responsible Agency.

b. When two or more public agencies propose to carry out or approve an action, the Responsible Agency shall be the public agency with the greatest responsibility for supervising or approving the action as a whole. Where two or more public agencies have an equal claim to be Responsible Agency, the public agencies shall either:

(1) By agreement, designate which agency shall be the Responsible Agency; or

(2) Submit the question to the Council, which shall designate the Responsible Agency based on consideration of the above principles.

c. To assist local governmental units in determining which public agency is the Responsible Agency, proposers of actions which are included in MEQC 24 B.1 shall provide a list of the other state and local permits known at the time to be required on the action.

4. When a private person proposes to carry out an action which in whole or in part requires a governmental permit, that person may prepare an EAW to be submitted to the appropriate Responsible Agency for its consideration and conclusion.

a. For any action in MEQC 24 B.1, a private person may voluntarily submit an EAW to the Responsible Agency. The agency will then have 30 days to add supplementary material if necessary and to prepare an EIS Preparation Notice or issue a Negative Declaration Notice and to submit the document to the Council with appropriate notices for publication in the EQC Monitor.

b. For any action which is not included in MEQC 24 B.1, a private person may voluntarily submit an EAW to the agency which appears to have the most approval authority on the project. If the agency and the proposer cannot agree on an appropriate Responsible Agency, the question shall be submitted to the Council for resolution. The agency will then have 30 days to add supplementary material if necessary and to prepare an EIS Preparation Notice or issue a Negative Declaration Notice and to submit the document to the Council with appropriate notices for publication in the EQC Monitor.

c. If an EAW determines an EIS is needed, the agency filing the EIS Preparation Notice shall be the Responsible Agency for preparation of the EIS.

5. Notwithstanding subparagraphs 1-4 above, for any action the Council may designate a Responsible Agency or Responsible

Person for preparation of environmental documents.

B. Preparation of EAW.

1. The EAW shall be prepared as early as practicable in the development of the action. Early in the preparation of the EAW, the Responsible Agency shall consult with all other public agencies which have the jurisdiction to approve the action or a part of the action. When a local agency is the Responsible Agency, it shall consult with local agencies which so request and local agencies likely to be directly impacted by the proposed action. The Responsible Agency or Responsible Person may consult with appropriate reviewing agencies and other interested persons.

2. The format of an EAW shall be a worksheet and checklist in a form to be provided by the MEQC. The EAW shall include, as a minimum, the information outlined in MEQC 30 A.

C. Notice of EAW Conclusions.

1. After an EAW is prepared, the Responsible Agency or Responsible Person shall file with the Council either an EIS Preparation Notice or a Negative Declaration Notice, with a copy of the EAW attached. A Negative Declaration Notice shall not be filed before official public review of the proposed action commences.

2. The Notices shall contain the information listed in MEQC 30 B and C.

3. The Notices filed shall not be published until the Council has determined that a copy of the EAW has been mailed to all points on the official MEQC distribution list and to the city and county directly impacted by the proposed action.

4. When an EAW has been waived pursuant to MEQC 24 C, an EIS Preparation Notice shall still be required.

MEQC 28 REVIEW OF EIS PREPARATION NOTICES AND NEGATIVE DECLARATION NOTICES

A. Review of EIS Preparation Notices.

1. When an EIS Preparation Notice is published, an EIS shall be required on an action unless within 30 days of EQC Monitor publication of the Notice, a member agency of the MEQC, a public agency with the jurisdiction to approve the action, or the proposer files objections with the Responsible Agency, the proposer of the action, and the Council.

2. The Council, at its first meeting held more than 30 days after the filing of an objection, shall determine whether an EIS shall be prepared. This time limit shall be waived if a hearing is ordered pursuant to MEQC 28 A.3.

3. The Council may hold a public hearing or informational meeting to assist it in its determination. When a hearing is held, it shall follow the following procedures:

a. The hearing shall be held as expeditiously as practicable in a county to be affected by the proposed action. Notice of the hearing shall be given at least 30 days in advance of the hearing to the proposer of the action, to all public agencies with jurisdiction over the action, and to the representative of the petitioners, if any. The hearing shall be conducted by a hearing officer, shall be transcribed, and shall continue until all persons have had an opportunity to be heard.

b. At the first monthly meeting at least 20 days after receipt by the Council and by requesting persons of the hearing officer's findings and recommendation (which receipt shall occur within 20 days of the hearing's conclusion), the Council shall consider the recommendation and any written briefs or argument filed by interested parties to the hearing, and shall decide whether to accept, reject, or modify the recommen-

dation. Failure of the Council to act at this meeting shall be deemed acceptance of the recommendation of the hearing officer.

B. Review of Negative Declaration Notices.

1. When a Negative Declaration Notice is published, an EIS shall not be required on an action unless within 30 days of EQC Monitor publication of the Notice, a member agency of the EQC, a public agency with the jurisdiction to approve the action, a representative of 500 original petitioners pursuant to MEQC 32 E.1, or a representative of 500 new petitioners pursuant to MEQC 32 E.2, files objections with the Responsible Agency or the Responsible Person, the proposer of the action, and the Council.

2. The Council, at its first meeting held more than 30 days after the filing of an objection, shall determine whether an EIS shall be prepared. This time limit shall be waived if a hearing is ordered pursuant to MEQC 28 B.3.

3. The Council may hold a public hearing or informational meeting to assist in its determination. When a hearing is held, it shall follow the procedures outlined in MEQC 28 A.3.

MEQC 29 PREPARATION AND REVIEW OF EISs

A. Preparation and Review of Draft EIS.

1. The Responsible Agency or Responsible Person shall prepare and file the Draft EIS within 120 days of the EIS Preparation Notice publication date. This time limitation may be extended by the Council only for good cause upon written request by the Responsible Agency or Responsible Person.

2. The Responsible Agency may require the proposer to submit any relevant data or information that the proposer has in its possession or to which it has reasonable access.

3. The Responsible Agency or Responsible Person may consult with and request comments of public agencies with jurisdiction by law or special expertise and the public regarding the environmental effects of an action, including the appropriate regional development commission.

4. Reviewing agencies may comment in writing to the Responsible Agency or the Responsible Person within 30 days of receiving the EIS.

5. The Draft EIS is filed when it is delivered to the Council in a form and manner acceptable to it together with evidence that copies were mailed to all appropriate Council-designated distribution points, all approving agencies, reviewing agencies, the proposer, and, to the extent practicable, requesting persons.

6. Between 30 and 45 days after the Draft EIS is filed, an informational meeting shall be held by the Responsible Agency, or by the MEQC if there is no Responsible Agency, in a county affected by the proposed action as part of the Draft EIS review process. Notice shall be given at least 20 days in advance of the meeting and shall be mailed to recipients of the Draft EIS and published in a newspaper of general circulation in the counties affected by the action. The Draft EIS meeting may be consolidated with any hearing required by law to be held before approval of the action. A typewritten or audio-recorded transcription of the meeting shall be made, and the public record shall remain open for 20 days after the last day of the hearing to allow any person to submit additional information or opinions. All written and oral statements received into the record, or summaries thereof, shall be included in the Final EIS.

B. Preparation and Review of Final EIS.

1. The Responsible Agency or Responsible Person shall have 30 days from the close of the Draft EIS record to prepare and file the Final EIS. The Council may extend

this time limitation upon written request showing good cause by the Responsible Agency or Responsible Person.

2. The Final EIS is filed when it is delivered to the Council in a form and manner acceptable to it together with evidence that copies were mailed by the preparer to all appropriate Council-designated distribution points, the proposer, all approving and reviewing agencies, and, to the extent practicable, requesting persons.

3. Council Review.

a. The Council may review any Final EIS to determine whether the procedures and policies of the Act and these Rules have been adequately complied with. Failure to review a Final EIS in the time specified in b constitutes its acceptance.

b. If the Council decides to review a Final EIS, it shall commence the review at or before its first meeting held more than 30 days following filing of the Final EIS. The Council shall determine EIS adequacy at or before its first meeting held more than 45 days after commencing review. All persons receiving the Final EIS shall be notified of the Council's decision and of the time and place of any information meetings which it may hold to aid its review.

4. If the Council determines that a Final EIS is inadequate, it shall so notify the Responsible Agency or Responsible Person and shall identify in writing within 15 days the improvements or additions necessary for Council acceptance of the Final EIS. The Responsible Agency or Responsible Person shall file a revised EIS in the manner provided in subparagraph MEQC 29 A.5 within 30 days of receipt of the Council's written comments. Reviewing agencies and other persons shall comment in writing on the revised EIS within 15 days of receipt of the revised EIS. The Final EIS

shall be submitted to the Council within 15 days after the close of the comment period in the form and manner provided in subparagraph MEQC 29 B.2. The Council may extend these time limitations upon written request and a showing of good cause by the Responsible Agency or Responsible Person.

5. The Council shall make a final decision on the adequacy of the Final EIS prior to any governmental approval of the action.

MEQC 30 CONTENT REQUIREMENTS

A. Content of an EAW. The EAW shall address at least the following major categories in the concise form provided on the worksheet:

1. SUMMARY

a. Finding of Negative Declaration or Positive Declaration (EIS Required);

b. Activity Identification (name, sponsors, Responsible Agency, EAW contact person, reason for preparation, any federal jurisdiction, governmental permits);

c. Activity Description Summary (location, proposal, construction schedule, estimated costs).

2. ACTIVITY DESCRIPTION

a. U.S.G.S. Map 1:24,000 Scale, Diagrams;

b. Land Use Categories Affected;

c. Size and Dimensions of Project.

3. ASSESSMENT OF POTENTIAL ENVIRONMENTAL IMPACT

a. Ecological Effects (topography, wetlands, water systems, wildlife, vegetation);

b. Environmental Hazards (toxic materials, floodplains, steep slopes, geologic hazards);

c. Water Quality and Quantity (surface and ground water impacts);

d. Resource Conservation, Energy, and Usage

(agricultural or forest lands, minerals, energy sources and use);

e. Planning, Land Use, Community Services (compatibility with plans, regional impacts, population, employment, housing, utilities, transportation);

f. Open Space and Recreation (parks, federal, state, local);

g. Historic Resources [landmarks (federal or state), historic sites, archaeologic sites, paleontologic sites];

h. Air Quality (pollutants);

i. Noise (vibration and sound);

j. Other Environmental Concerns.

4. MITIGATION OF ADVERSE ENVIRONMENTAL EFFECTS

5. FINDINGS AND CERTIFICATION (private or governmental action, time for EIS preparation, EQC distribution certification).

B. Content of Negative Declaration Notice. Each Negative Declaration Notice shall include:

1. A brief description of the proposed action.

2. A statement that no EIS is required because the action is not a major action with the potential for significant environmental effects, and in the case of private actions is not of more than local significance, supported by reasons.

3. Where the EAW and supporting documentation is available for public inspection and copying.

C. Content of EIS Preparation Notice. Each EIS Preparation Notice shall include:

1. A brief description of the action requiring the EIS.

2. The Responsible Agency or Responsible Person for EIS preparation.

3. The recommended time requirements for preparation.

4. Recommendations, if applicable, as to the extent to which the action may proceed during the EIS process.

5. Where the EAW and supporting documentation is available for public inspection and copying.

D. Content of Draft EIS. A Draft EIS shall contain the following information:

1. Summary. A summary sheet which describes the action, major environmental impacts (adverse and beneficial), reasonable alternatives, and the federal, state, and local permits outstanding shall be included. Also, federal, state, or local agencies, other organizations, and private individuals consulted in the preparation of the EIS shall be identified.

2. Description. A description of the action, including type, size and location, and the environmental setting of the action. A regional and site-specific map should be included to assist in identification of the project.

3. Environmental Impact of the Proposed Action. All phases of an action shall be considered when evaluating an action: planning, acquisition, construction, implementation, development, operation, and conclusion of operation. Special consideration shall be given to pollution, impairment, or destruction of the air, water, land, or other natural resources located within the State resulting from the proposed action, without limitation by the definitions of "action" and "environment" in these Rules. This discussion shall also include a description of all resources in the area and how they will be affected by the action, with emphasis placed on resources that are rare or unique to the region or that possess important historical, cultural, natural, ecological, or aesthetic values, without limitation by the definitions of "action" and "environment" in these Rules.

4. Any direct or indirect environmental, economic, energy, and employment effects that cannot be avoided if the proposed action is implemented. This discussion shall describe the adverse and beneficial environmental, economic, energy, and employment effects that will result directly from the action, as well as the effects that may be reasonably expected to

result from the action. Mitigation measures that have been or may be incorporated into the action to reduce or minimize significant adverse environmental, economic, energy, and employment effects shall be discussed.

5. Any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented. This discussion shall include the proposed use of non-renewable resources, long term or irreversible commitments of resources to a particular use and any irreversible and irretrievable damage that may result from the action.

6. The relationship between local short term uses of the environment and the maintenance and enchancement of long term productivity, including the environmental impact of predictable increased future development of an area if the action is implemented. This discussion shall include the extent that the proposed action involves trade-offs between short term environmental gains or losses versus long term gains or losses, including potential risks to health and safety, and the extent that the proposed action forecloses future options. The impact of predictable increased future development in the area that may be stimulated, directly or indirectly, by the proposed action shall be discussed.

7. Alternatives to the Proposed Action. An objective evaluation of all reasonable alternatives to the action and the environmental impact of each and the reasons for their rejection in favor of the recommended choice shall be made. Reasonable modifications of the proposed action that may avoid or reduce adverse environmental effects shall be discussed, including the expected benefits, costs, and effects on the objective of the proposed action.

8. The impact on state government of any federal controls associated with the proposed action. Federal actions pending which may affect the final outcome of the project should be discussed, including those actions which may result in the expenditure of additional state funds.

9. The multi-state responsibilities associated with the proposed action. Impacts of the proposed action upon multi-state responsibilities shall be discussed, including the environmental effects of the action upon adjacent states.

D. Content of Final EIS. The Final EIS shall consist of the Draft EIS, the comments or summaries thereof received through consultation and public comment, including public meetings or hearings held on the EIS, and the response of the Responsible Agency or Responsible Person to the significant environmental issues raised in the consultation, comment, and review process. The response of the Responsible Agency or Responsible Person to constructive comments received may take the form of a revision of the Draft EIS or may be an attachment to the Draft EIS.

MEQC 31 FINAL DECISIONS AND ACTIONS

A. No decisions granting or denying a permit application for which notice is required to be published in MEQC 35 shall be effective until 30 days following publication of the notice.

B. No public agency proposing an action for which notice is required to be published in MEQC 35 shall begin to implement that action until 30 days following publication of the notice.

C. When an EAW is prepared on any action, no final decision to approve or commence the action shall be made until 30 days following publication of a Negative Declaration Notice.

D. On any action for which an EIS Preparation Notice has been published, no final decision to approve or commence the action shall be made until the Council has completed its review of the Final EIS. Where public hearings are required by law to precede issuance of a governmental permit or other implementation of a governmental action, public hearings shall not be held until after filing of a Draft EIS, except for projects reviewed under MEQC 24G.

E. When an EIS is required on an action, any physical construction on the action or operation of the action shall be halted from

the time the EIS Preparation Notice is published until the Final EIS is accepted by the Council, unless the Council determines that construction or operation may begin or continue. In that case, the Council shall specify the extent to which construction or operation shall be allowed, and the specific reasons for that determination. This Rule shall in no way limit the Council's statutory authority to halt actions or impose other temporary relief.

MEQC 32 PETITION FOR AN EIS

A. Petition. Any person or group of persons may file with the Council a petition that contains the signatures and addresses of 500 or more individuals and requests the Council to require an EIS on an action.

B. Content. In addition to the signatures, the petition shall include the following written information:

1. Description of the action;

2. Proposer of the action;

3. The anticipated environmental effects of the action;

4. The name and address of a representative of the petitioner for the purpose of this section;

5. Any additional information that may be used in the EAW to determine whether the proposed action is a major action with the potential for significant environmental effects, and in the case of private actions whether the action is of more than local significance.

C. Council Action.

1. The petition shall qualify for the remedies provided by these Rules and Minn. Stat. § 116D.04, subdivision 3 (1974), unless the Council determines that:

a. The petition lacks 500 signatures; or

b. The action is one to which these Rules do not apply, pursuant to MEQC 26; or

c. An EIS Negative Declaration Notice has been filed in accord with these Rules and the time for objections or

appeal has passed; or

d. The petition is frivolous or clearly outside the scope of these Rules and the Council disqualifies the petition by order.

2. In all other cases, the Council shall refer the petition to a Responsible Agency for preparation of an EAW or, where appropriate, arrange for a Council review pursuant to MEQC 28 A.3.

D. Responsible Agency Duties. The Responsible Agency shall have 45 days in which to prepare the EAW referred to it by the Council pursuant to MEQC 32 C.2 and shall thereupon publish an EIS Preparation Notice or Negative Declaration Notice.

E. Challenge of Negative Declaration Notice by Petitioners.

1. If a Negative Declaration Notice is published, a representative of the original petitioners for an EIS may, within 30 days, request Council review of the decision pursuant to MEQC 28 B.

2. Any person or group of persons may request Council review of a Negative Declaration Notice on any action by submitting a new petition signed by 500 or more individuals.

a. Content: The petition shall state on each page, "NEGATIVE DECLARATION CHALLENGE-PETITION FOR A STATE EIS". The petition shall also include the items described in MEQC 32 B above.

3. Review: On all petitions received within 30 days of publication of a Negative Declaration Notice as provided in MEQC 35, the Council shall conduct a public hearing to facilitate the Council's review of whether an EIS must be prepared. The hearing shall be held as expeditiously as practicable in a county to be affected by the proposed action. The review procedure is specified in MEQC 28 B.

CHAPTER FOURTEEN

EARLY NOTICE RULES

MEQC 33 AUTHORITY AND PURPOSE

A. To provide early notice of impending actions which may have significant environmental effects, the Council shall, pursuant to Minn. Stat. § 116D.04, subdivision 8 (1974), publish a bulletin with the name of "EQC Monitor" containing all notices as specified in MEQC 35. The Council may prescribe the form and manner in which the agencies submit any material for publication in the EQC Monitor, and the Chairman of the Council may withhold publication of any material not submitted according to the form or procedures the Council has prescribed.

B. These Rules are intended to provide a procedure for notice to the MEQC and to the public of natural resource management and development permit applications, and impending governmental and private actions that may have significant environmental effects. The notice given through the early notice procedures is in addition to public notices otherwise required by law or regulations.

MEQC 34 EXEMPTIONS

A. All National Pollutant Discharge Elimination System Permits granted by the Minnesota Pollution Control Agency, under the authority given it by the Environmental Protection Agency, of the United States of America , shall be exempt from these Rules unless otherwise provided by resolution of the Council.

B. Where, in the opinion of any public agency, strict observance of MEQC 33-35 would jeopardize the public health, safety, or welfare, or would otherwise generally compromise the public interest, the agency shall comply with these Rules as far as practicable. In such cases, the agency shall carry out alternative means of public notification

and shall communicate the same to the Council Chairman.

C. Any federal permits for which review authority has been delegated to a non-federal public agency by the federal government may be exempted by resolution of the Council.

MEQC 35 EQC MONITOR PUBLICATION REQUIREMENTS

A. Public agencies are required to publish the following in the EQC Monitor except that this section constitutes a request and not a requirement with respect to federal agencies.

1. Notice of receipt of applications or government proposals for the natural resources management and development permits listed below. When an action has been noticed pursuant to MEQC 35 A.3 separate notice of individual permits required by that action need not be made unless changes in the action are proposed which will involve new and potentially significant environmental effects not considered previously.

a. Navigational obstructions within designated state or federal Wild and Scenic River land use districts.

b. Commercial and industrial wharves used for cargo transfer.

c. Channelization of one or more miles of designated Class I or II public water courses.

d. Any marina and harbor project of more than 20,000 square feet of water surface area.

e. Any new or additional impoundment of water creating a water surface in excess of 200 acres.

f. Filling of ten or more acres of public waters.

g. Dredging of ten or more acres of public waters.

h. All public hearings conducted pursuant to water resources permit applications [Minn. Stat., Chapter 105 (1974)].

i. A new appropriation for commercial or industrial purposes of either surface water or ground water averaging 30 million gallons per month, or exceeding two million gallons in any day during the period of use; or a new appropriation of either ground water or surface water for irrigation of 640 acres or more in one continuous parcel from one source of water.

j. Application for the underground storage of gas or liquids.

k. County, state or federal auctions for sale of publicly owned timber on any tract adjacent to a public highway.

l. County, state or federal auctions for sale of publicly owned timber on any tract adjacent to public waters of the State.

m. County, state or federal auctions for sale of publicly owned timber on any tract, any part of which is within one quarter (¼) mile of an organized public, private or non-profit recreation area or camp.

n. Notice of all public permit and lease sales for state permits and leases to prospect for and mine iron ore, copper nickel, or other minerals as required by Minn. Stat. §§ 93.16, 93.335, and 93.351 (1974) and Copper-Nickel Rules and Regulations.

o. Permits and leases for iron ore in non-merchantable deposit areas [(Minn. Stat. 93.283)].

p. New leases and permits for use of state forest lands for summer cabins, commercial recreational facilities and gravel pits.

q. Roads through state forest lands exceeding five miles in length.

r. Facility plans for new or expansion of industrial treatment works not covered by NPDES permits [Minn. Stat. § 115.07 subdivision 1 (1974)].

s. Facility plans for new or expansion of liquid storage facilities equal to or exceeding 50,000 gallons [Minn. Stat. § 115.43, subdivision 3(2)(1974)].

t. New or expansion of solid waste disposal systems handling 100 cubic yards or more of solid waste per day [Minn. Stat. § 116.07, subdivision 4A (1974)].

u. Installation permit application for new or expansion of incinerators with capacity equal to or in excess of one ton per hour of solid waste [Minn. Stat. § 116.07, subdivision 4A (1974)].

v. Installation permit application for new or expansion of an emission facility emitting 100 tons or more per year of any restricted air contaminant [Minn. Stat. § 116.07, subdivision 4A (1974)].

w. New or expansion of a feedlot designed for 1,000 cattle or more equivalent animal units [Minn. Stat. § 116.07, subdivision 7 (1974)].

x. Construction of a public use airport [Minn. Stat. § 360.018, subdivision 6 (1974)].

2. Impending actions proposed by state agencies when the proposed action may have the potential for significant environmental effects.

3. EIS Preparation Notices and Negative Declaration Notices.

4. Notice of Draft EIS informational meetings or hearings to be held pursuant to MEQC 29 A.6.

5. Notice of other actions that the Council may specify by resolution.

6. Notice of the application for a Certificate of Need for a large energy facility, pursuant to Minn. Stat. § 116H.03 (1974).

B. Public agencies may publish notices of general interest or information in the EQC Monitor, including notices of consolidated state permit applications, the latter to be commenced at the discretion of the Council.

C. The MEQC is required to publish the following in the EQC Monitor:

1. Receipt of valid petitions, pursuant to MEQC 32, and assignment of a Responsible Agency therefore.

2. Receipt of Draft or Final EIS.

3. Notice of any public hearing held pursuant to Minn. Stat. § 116D.04, subdivision 9 (1974).

4. Receipt by the Council of notice of objections to a negative declaration by petitioners or a public agency, and the time and place at which the Council will review the matter, including notice of public hearings, if any.

5. The Council's decision to hold public hearings on a recommended Critical Area pursuant to Minn. Stat. §§ 116G.06, subdivision 1(c) (1974) (Critical Areas Act, 1973).

6. Notice of application for a Certificate of Corridor Compatibility or Site Compatibility, or a High-Voltage Transmission Line Construction Permit pursuant to Minn. Stat. §§ 116C.51 et seq. (Power Plant Siting Act of 1973).

MEQC 36 CONTENT OF NOTICE

A. The information to be included in the notice for natural resources management and development permit applications and other items in MEQC 35 A.1 and 2 shall be submitted by the public agency on a form approved by the Council. This information shall include but not be limited to:

1. Identification of applicant, by name and mailing address.

2. The location of the proposed project, or description of the area affected by the action by county, minor civil division, public land survey township number, range number, and section number.

3. The name of the permit applied for, or a description of the proposed project or other action to be undertaken in sufficient detail to enable other state agencies to determine whether they have jurisdiction over the proposed action.

4. A statement of whether the agency intends to hold public hearings on the proposed action, along with the time and place of the hearings if they are to be held in less than 30 days from the date of this notice.

5. The identification of the agency publishing the notice, including the manner and place at which comments on the action can be submitted and additional information can be obtained.

MEQC 37 STATEMENT OF COMPLIANCE

Each governmental permit or agency authorizing order subject to the requirements of these Rules issued or granted by a public agency shall contain a statement by the agency concerning whether these Rules have been complied with, and publication dates of the Notices, if any, concerning that permit or authorization.

MEQC 38 PUBLICATION

A. The Council shall publish the EQC Monitor whenever it is necessary, except that material properly submitted to the Council shall not remain unpublished for more than ten working days.

B. The EQC Monitor shall have a distinct and permanent masthead with the title "EQC Monitor" and the words "State of Minnesota" prominently displayed. All issues of the EQC Monitor shall be numbered and dated.

MEQC 39 COST AND DISTRIBUTION

A. When an agency properly submits material to the Council for publication, the Council shall then be accountable for the publication of the same in the EQC Monitor. The Council shall require each agency which is required to publish material or requests the publication of material in the EQC Monitor, including the Council itself, to pay its proportionate cost of the EQC Monitor unless other funds are provided and are sufficient to cover the cost of the EQC Monitor.

B. The Council may organize and distribute contents of the EQC Monitor according to such categories as will provide economic publication and distribution and will offer easy access to information by any interested party.

C. The Council may further provide at least one copy to the Documents Division for the mailing of the EQC Monitor to any person, agency, or organization if so requested, provided that reasonable costs are borne by the requesting party. Ten copies of each issue of the EQC Monitor, however, shall be provided without cost to the legislative reference library and ten copies to the state law library, and at least one copy to designated MEQC depositories.

D. The MEQC shall provide adequate office space, personnel, and supply necessary equipment for the operation of the EQC Monitor without cost to the agencies.

MEQC 40 GENERAL

A. Publication duties of the EQC Monitor may be transferred to the State Register upon resolution of the Council.

MEQC 41 EFFECTIVE DATE

The amendments to these Rules (MEQC 21-41) shall become effective upon filing with the Secretary of State. All petitions received, environmental assessments ordered or received, and EISs ordered before the effective date of the amendments shall at the request of the preparer of the document be processed and reviewed as if these amendments were not in effect. Projects previously reviewed or exempted by the MEQC are not subject to these Rules except for those actions included in MEQC 25 F.1.

APPROVED AS TO FORM AND LEGALITY

DEC 27 1976 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY /s/ Michael B. Miller

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 27 1976 4:00 pm
Joan Anderson Growe
Secretary of State

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5. Appendix 2, Proposed Rules showing all deletions and additions to the Rules as noticed for hearing and known as Exhibit 7 and dated September 25, 1975.

6. The Proposed Rules (dated September 25, 1975,)showing all deletions and additions recommended by the Agency after hearing, including substantive changes and errata (Appendix 3)

(Appendix 4)
7. Proposed Rules for hearing dated September 25, 1975 (Exhibit 7 to the record)

WILL HARTFELDT
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Suite 434, Hamm Building
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Telephone (612) 222-0708

January 8, 1976

Peter Vanderpoel, Chairman
Minnesota Environmental Quality
Council
Room 100
State Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Dear Mr. Vanderpoel:

This confirms that the Hearing Examiner's Findings and Recommendations are transmitted herewith, having been preceded by earlier transmittal to your Agency of appendices 1 through 4, to expedite reproduction.

Respectfully yours,

Will Hartfeldt

WILL HARTFELDT
Hearing Examiner

WH:ss

STATE OF MINNESOTA MINNESOTA ENVIRONMENTAL QUALITY COUNCIL

COUNTY OF RAMSEY

In the Matter of Amendment Rules, Environmental Quality Council, Relating to Preparation, Review and Publication of Environmental Documents (Minn. Reg. MEQC 21-50

FINDINGS AND RECOMMENDATIONS OF HEARING OFFICER

Based on study and consideration of the entire hearing record, together with the existing Rules and enabling legislation, the Hearing Examiner makes these

GENERAL FINDINGS

I. Allocation of Environmental Document Preparation to Other State Agencies and Local Government

The basic concept of the proposed amendments to the Rules is that of allocating preparation of the environmental documents to the Agency or persons most responsible for the action or its regulation. The rationale for this concept according to Agency testimony and Haworth-Anderson, Inc. is that by so doing, the optimum educational and self-policing benefits from preparing these documents will occur. This concept is consistent with and authorized by Minn. Stat. § 116D and § 116C. Further, all units of government and persons are obliged to do their utmost with regard to preparation of environmental documents under Minn. Stat. § 116D, and the Environmental Rights Act, Minn. Stat. § 116B.01, to affirmatively protect the environment.

The legislature has provided generic environmental duties to all branches of government and to others as our Supreme Court has recognized in MPIRG v. EQC, et. seq.*, p. 3 referring to Minn. Stat. § 116B.01. It is in this statutory context that the expressed coordinative authority of the Environmental Quality Council is adequate to support the concept of allocated preparation responsibility for environmental documents. The Agency is not prescribing duties on its own initiative for other units of government; the Rules build on the generic authority granted to all by the Legislature.

By MEQC 24(a)(1)(cc) the EQC retains its statutory authority to override Negative Declarations which it finds wanting, by MEQC 26(b)(3) and (4) no authority to halt actions or deny permits during EIS proceedings is delegated, MEQC 26(a)(2)(cc) reserves the EQC's right to require an EAW, and MEQC 21(a) reserves all other statutory powers to the EQC, especially the last two sentences of Minn. Stat. 116D.04, Subd. 2 which authorize the EQC to require an EIS for an action outside its Rules.

II. Narrow Scope of Proposed Rules

By defining "Action" and "Environment", so as to require physical impact from the conduct, excludes all governmental conduct in the nature of planning and zoning. It also excludes from EIS jurisdiction all projects, whether public or private, whose impact will be solely cultural, or social, unless a physical alteration is part of it. The scope of the proposed Rules is dramatically narrower than the scope of environmental concern and protection

* MPIRG v. MEQC, MPCA and AMAX Exploration, Inc., ____ Minn. ____, ____ N.W.2d ____, decided Dec. 19, 1975.

set forth in Minn. Stat. § 116D both with respect to the Agency and all others. In response, the EQC raises two points in its testimony. First, it stresses that the entire environmental impact statement procedure is not in the nature of a permitting or regulatory procedure; rather it is in the nature of an information gathering and disclosure function. Second, it argues that the Agency has program development and coordinative authority under its statutes through which it intends to address programmatic problems which in its view do not lend themselves as well to the EIS format. This is a discretionary decision which the Agency proposes. It views the EIS Rules as not intending to cover all of its responsibilities, by any means. The Agency acknowledges that even within the scope of the Rules it proposes, additional standards will have to be added as its data becomes manageable and other related matters are better defined, particularly relationships with other levels of government and funding of the duties under these proposed Rules.

Testimony was offered that the federal government has been admonished by the Federal Courts that it may not treat the broad and all-encompassing environmental language in a crimped fashion: when the Congress said that all efforts were to be made to check the environment, that is just what it meant. The Sierra Club stresses that comparable, if not identical language in the State Act puts the same burden on the Agency and that if it does not make the EIS rules all-encompassing, it will be vulnerable to suit. Even if that vulnerability exists, the Agency has elected to take the chance for the time being and to address its energies to those kinds of situations where it has determined in its discretion and experience that the environmental impact statement process will best work. It has developed this proposed system of procedures and standards to maximize the likelihood the system will work. Finally, the limited scope of these Regulations acknowledges the difficulty and complexity of this regulatory system which unlike NEPA reaches out over not only all other state agencies, but all other levels of government, as well as those over those few private actions for which there is no government regulation. It includes not only projects which government itself is doing, but private projects which require government permits; it even includes private projects which require no government regulations at all. To suggest therefore that an enforceable legislative imperative exists which requires that all aspects of the jurisdiction granted by Minn. Stat. § 116B be simultaneously and immediately exercised via the EIS process is less than reasonable. Conversely should the EQC show by an omission to follow through on programmatic fronts and continued elaboration of these Rules, it may become vulnerable to attack.

III. Paying for Environmental Document Preparation

While the Legislature has authorized the Agency to spell out duties and responsibilities to other units of government with respect to preparing environmental documents, to date no express provision has been made by law for payment of the related costs and expenses. While no testimony was offered of specific instances in which payment proved a hardship or in which no governmental unit was willing to pay the related expenses, or in which private developers were unwilling to pay related expenses, nevertheless there was testimony to the effect that the absence of such provision would constitute a deterrent to the effective institutionalization of this environmental document process and that it should be resolved. The Agency has not been delegated authority to allocate payment responsibilities and even if it were, such delegation could be a doubtful legality. This problem

V. Environmental Assessment Worksheet (EAW)

The basic guidelines and standards in the proposed EAW are an integral part of the Rules themselves, and substantial testimony was offered to the effect that the EAW (Environmental Assessment Worksheet) should be part of the Rules under Minn. Stat. Ch. 15, as amended. The Agency's authority to act outside its Rules under Minn. Stat. 116D.04, Subd. 2 can support detailing of and some changes in the EAW after Rule adoption despite the generic language of Minn. Stat. 15.0412 as amended. Subsequent to the hearings, the Agency itself has proposed EAW provisions for inclusion in the Rules and that proposal, though not inclusive of all detail, incorporated as MEQC 26 (a)(3), is more than adequate in light of this unique enabling legislation and is a big improvement over present MEQC 27, CONTENT OF ENVIRONMENTAL ASSESSMENT.

The proposed EAW form, including all language in MEQC 26 (a)(3), was part of the September 25th Proposed Rules draft by reference and was available at the hearing together with the Proposed Rules. These provisions were adequately noticed out by the hearing procedure and, within the scope of same, the Agency offered adequate supporting testimony as to the derivation of the EAW from its own experience with Environmental Assessments under existing MEQC 25 and 27, from experience in other States with similar environmental impact statement statutory authority, and from the recommendations of Hayworth-Anderson, Inc.

MPIRG v. MEQC, MPCA and AMAX Exploration, Inc., ____ Minn. ____, filed December 19, 1975, noted the present Environment Assessment procedure with approval even though not statutorily prescribed, thus confirming the validity of an established administrative practice which these EAW provisions detail and improve.*

VI. "Major" Actions

Several witnesses expressed dissatisfaction with the lack of guidelines and standards as to what constitutes major significant actions, but none offered more detailed and meaningful guideline language. The proposed language (MEQC 27) does not elaborate on the bare bones standards offered in the statute. Additional guidelines or details will have to apply to an incredible variety of settings of geography, culture and natural resources. The Haworth-Anderson, Inc. study, EQC Exhibit 12, suggests the development of criteria on a "scenario" basis. For example, a prototype involving development in a shoreland setting on a lake of a certain classification would be used to derive quantitative standards for undertakings of major significance, and, where appropriate, of more than local significance. The Agency has decided not to go to such a structured basis at this time, presumably because of the absence of data and time to develop the same for the endless variety of settings in which environment document needs arise.

The whole object of the EAW Program is to gather data around certain criteria for the purpose of determining whether in light of those particular criteria and that kind of project the statutory threshhold terms have been crossed. In addition, some detailing has occurred in MEQC 28 (b), wherein the location, area and quantity permits and approvals form a beginning test for the new statutory language with regard to private actions which may be of "more than local significance". The mandatory categories for EAW's provide guidance as to what constitutes a major significant action. So the proposed Rules have some structure regarding these criteria. More structure should be offered with the scenario concept as model ordinances or as substantive Rules by other state agencies.

* MPIRG v. MEQC, supra, at 4, footnote 2.

Concurrently the EQC could meet its obligations under Minn. Stat. 83.29, Subd. 3 to establish the state environmental quality standards which shall apply to subdivided land registrations.

VII. Omitted Guidelines for Inadequacy Alternatives and Municipal Procedures

Testimony was offered to the effect that only nominal standards and guidelines are offered by the proposed regulations with regard to the consideration in evaluation of alternatives to the action as part and parcel of preparation of environmental documents. The language of Minn. Stat. 116D with regard to alternatives is similar to NEPA. The evaluation of alternatives is required expressly by the State Act. Over time this aspect of environmental impact statements and other environmental documents will become all the more important because it will remain a great variable. For example, while the proposed rules contemplate that eventually the criteria for a standard development such as a high-rise building can become well established and not require individual studies or impact statements but rather measurement against accepted standards, the surrounding alternatives which may be available to such a standard project will continue to vary greatly.

The Rules may be vulnerable insofar as they fail to detail such guidelines. Study and attention should be devoted to future Rules amendment.

The same rationale applies to the meager guidelines as to inadequacy of an EIS. However, these omissions do not invalidate the proposed Rules. Elaboration by the Hearing Examiner would take the Rules outside the scope of notice, and the testimony is not adequate to support the drafting of such guidelines anyway.

Testimony was offered that the Agency should adopt model ordinances governing the preparation of environmental documents by various kinds of governmental agencies, particularly counties and municipalities; such models could then be adapted by individual communities. Similarly, the Agency could adopt certain standard scenarios or work with state agencies regarding the same as tailored to their particular regulatory functions. Concurrently the mandatory categories as applied to particular kinds of local agencies and kinds of projects within them could have more realistic, lower threshholds as urged by the Sierra Club's testimony. While of importance, the absence of such provisions at this time is not fatal to these proposed Rules.

VIII. Adequacy of Agency Testimony

MACI and NSP testified that "Justifications" of the Agency for the Proposed Rule changes are inadequate. Inadequacy with regard to particular proposed Rule changes was not articulated, however. The complaint is based on the language of Minn. Stat. Ch. 15.0412, Subd. 4 as amended by Laws 1975, Ch. 380, which requires an affirmative statement of reasons for the proposed Rules at hearing. The Agency states that the "Justifications" are adequate, that its answers to questions and testimony at the hearings constitutes more of the same, and stresses that introduction into the record of the Haworth and Anderson study constitutes a statement of even more reasons for even more amendments than were noticed for hearing and all of which have been part of an ongoing, public process.

The novelty and complexity of this proposed rule-system, the time demands on the Agency, the newness of the Chapter 15 amendments, the comprehensiveness and knowledgibility of testimony at hearing and after, the responsiveness of the Agency to the hearing testimony as shown by Appendix 3, the comprehensiveness of the "Justifications" which were read into the record in full and the introduction of the Haworth-Anderson, Inc. study refute this complaint and meet the requirements of Chapter 15 fully.

requires resolution by the Legislature itself and the Rules correctly make no provision for payment of environmental document preparation.

IV. Time Frames for Environmental Documents, Preparation and Review

The Sierra Club testified that time frames in the proposed Rules were too short for effective public reaction in many cases, the Minnesota Association of Commerce and Industry stressed the need for specificity and brevity of time requirements and National Biocentrics, Inc. presented a chart showing that the EIS procedure could continue almost two years. The Hearing Examiner has proposed time deadline where none exist in the proposed Rules, particularly with regard to submission of negative declarations and EIS Preparation Notices by Responsible Agencies and initial processing of citizen's petitions by EQC; only EAW's not originating by petition have no time limits in Appendix 1. In addition, the Hearing Examiner has proposed the shortening of review and processing times by the EQC wherever it seemed possible and the standardization of all notices for hearing to thirty (30) days and all times for records remaining open and for filing of Hearing Officer's findings to twenty (20) days; the thirty and twenty day requirements are consistent with Minn. Stat. Ch.15. This framework was urged by the City of Fridley in Paragraph 7 of its written testimony.

With these new time frames, it would seem that a proposer who has prepared its EAW and filed the same concurrently with the first regulatory review of the proposed action (such as with the first building permit or curb cutting permits), can expect EQC determination as to need for an EIS in no more than 70 days despite objections by interested parties and in no more than 115 days if the objections are brought by means of a petition by 500 citizens. If the proposer had not availed itself of its right under the Rules to initiate an EAW, then an additional 65 days need be added to the 70 day and 115 day figures; further, in the case of objections by petition an additional 65 days (representing 20 days processing time for the petition plus 45 days for the Responsible Agency to prepare the EAW) must be allowed. If no petition is involved and the Responsible Agency determines the need for an EAW, the Rules impose no time limits for preparation of such EAW and the Hearing Officer finds no testimony to support such time limit, especially since it would become intimately involved with the calendars of municipalities and so should be coordinated with great care.

Once the EIS Preparation Notice has been filed, then it appears a process of about 235 days follows to the deadline for the final Environmental Impact Statement, assuming everything goes wrong but no extensions are granted. Considering that this includes 120 days for preparing the Draft EIS, time for review and comment by reviewing agencies, for an informational meeting on the record and for an open record for submission of additional information, the time total does not seem onerous. In the event the EQC at its option determines that a review of the final EIS need to be commenced, then a process of about 160 additional days ensues, including enough time for consideration of the matter before the EQC at two regular meetings, time to resubmit the Final EIS to conform to the inadequacy notice requirements, and time for publication plus the final 30 day wait required to commencing the action.

The Audubon Chapter of Minneapolis testified that 30 days from publication of a Negative Declaration is too little time to put together a 500 citizen petition to object. The burden seems proportionate to that of proposers who need to go to hearing on complex matters in 30 days and to that of the Agency which has virtually no agenda breathing room under this timetable. A balance between convenience and duration of the entire process requires shared hardship.

IX. Notice and Procedure

The captioned matter came on for hearing before Will Hartfeldt appointed Hearing Examiner by Order dated November 6, 1975, of Peter Vanderpoel, Chairman, Minnesota Environmental Quality Council. The hearings were conducted at St. Paul, Minnesota, November 12 and 13, in Mankato on November 17, and in Duluth on November 19 in accordance with the published Notice of Hearing. The hearing was continued at each location until such time as all persons who expressed a desire to be heard were heard. A stenographic record was made of all testimony at all hearing locations.

In addition to exhibits received at the hearings, written statements by the public and the Agency received through December 9, 1975 have been included in the record. Sixteen persons testified at the hearing and many others questioned the Agency about proposed Rule meanings and objectives. The exhibits introduced by the EQC included the Haworth-Anderson, Inc. consultant report together with the EQC's section-by-section "Justification" of the proposed amendments. The record also indicates that the EQC gave notice to all municipalities with populations over 1,000 in recognition of the substantial municipal involvement proposed in the Rules. TR 8, referring to Exhibit 5. This notice was in addition to that required by law. The Rules as proposed for hearing are made a part of these Findings as Appendix 4.

Notice of hearings in this matter was given in accordance with Minn. Stat. 15.0412 as amended; see TR 8, Exhibit 3. Minn. Stat. § 116D.04, Subds. 2 and 8 authorize these Rules, together with the other provisions of Minn. Stat. Chapters 116D, 116C and 116B. Further, Minn. Stat. § 116D.04, Subd. 2 authorizes expressly the Agency to require EIS's even though the actions are outside the standards provided by these proposed Rules.

Based on study and consideration of the entire hearing record, together with the existing Rules and enabling legislation, the Hearing Examiner makes these

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FINDINGS WITH RESPECT TO SPECIFIC PROPOSED RULES
(These Finding paragraph numbers correspond to footnote numbers in appendices 1 and 2)

1a. MEQC 23(b)(2) is redrafted to enlarge the exclusion from "Actions" to include not only the Rules, Orders, or Recommendations of State Agencies, but the Rules, Orders, or Recommendations of public agencies. This amendment was submitted after hearing by the Agency based on testimony of several witnesses.

1b. District Court judges when executing their duties, with respect to judicial ditches are acting in an administrative capacity. DNR in its testimony has requested therefore that orders related to ditches be excluded from the exclusions from "action" in MEQC 23(b)(4). However, the concept of these exclusions from "action" is that the activity itself is the "action" and not the governmental process of approving the activity. This rationale would apply to ditch orders, as well as other judicial orders in the same fashion as it applies to the order or recommendations of public agencies under MEQC 23(b)(2). Therefore, the recommendation of DNR is not proposed for inclusion.

2, 3, MEQC 23 is amended by the Agency after hearing based on the testimony of Metropolitan Council by adding a new subdivision "(v)" for purposes of defining "regional development commission." Former MEQC 23(v) is re-numbered MEQC 23(w). and is amended by draft by striking the second sentence thereof; that sentence purported to define the function of "responsible agency" under certain circumstances, the same being done elsewhere in the Rules in greater detail and possibly in a contradictory fashion. Basically, the amendment is for clarity.

4. Various generic duties of the Environmental Quality Council are set forth in MEQC 24(a)(1). These provisions are not only repetitive, but in some cases contradictory. They are deleted on the basis of testimony, concurrence of the Agency, and for the sake of clarity; substituted is the phrase that the Council's duties and responsibilities include "those set forth elsewhere in these Rules, as well as "the following. Similarly as in the case with MEQC 24(a)(2)(3), it is repetitive of duties available to the EQC under statute and saved by MEQC 21.

5. The added language proposed by the Hearing Examiner is in response to testimony of the League of Minnesota Municipalities which is most concerned that an argument could be made under the language of the Rules as proposed that payment or funding procedures available to a municipality would be blocked by the EQC's Rules. Therefore, the disclaimer is added.

6. MEQC 24(b)(4) and MEQC 24(c) are proposed to conform to testimony by MACI and municipalities. The proposed language introduces the standard of reasonably accessible data and reasonable requests for it. Further, this language would conform MEQC 24(c) with respect to unprivileged data of MEQC 24(b)(4). St. Louis County has inquired as to the enforceability of these information provisions. Minn. Stat. 116B.01 imposes affirmative environmental duties on all persons. Minn. Stat. 116D.04, subd. 2 authorizes these procedural Rules; the information provisions are enforceable against all persons.

7. MEQC 25(a) is proposed for amendment to limit responsibilities of a local Agency to consult only with its neighbors who request consultation or are likely to be affected by the proposed action rather than all contiguous local agencies. This amendment is made at the request of the City of St. Paul which testified that the contiguous requirement would lead to unproductive and unnecessary paper work, particularly for a large city.

8. MEQC 25, including the introductory paragraph and subparagraphs (a) and (b) have been re-arranged for the sake of clarity and specificity into two functional sub-paragraphs, namely duties and determinations of Responsible Agency and Person, rather than descriptive material arranged around Responsible Agency and Responsible Person. In summary, the object of the new language is to make plainer that the Responsible Agency make plain the selection of public agencies as responsible agencies for each EIS preparation, except where it is expressly provided otherwise.

9. MEQC 25(b)(3) is amended by the Agency after hearing and testimony of the municipalities and others that proposers should not be held accountable for a list of all state and local permits required by the action because they may legitimately not be known at the time. Consequently the agency proposes to limit such responsibility to those permits known at the time to be required on the action.

10. MEQC 25(c)(1) constitutes a simplification and restructuring by the Hearing Examiner of the general description of actions requiring an EIS. MEQC 25(c)(1) has not been changed substantively, but has been rewritten for clarity and brevity. The change is strictly a matter of style aimed at making the Rules crisper.

11. Based on extensive complaints in the testimony of numerous witnesses at the hearing, the Agency proposes a more detailed and articulate provision for considering the environmental documentation of two or more related actions. The amended language meets

the complaints of users and environmentalists alike, is responsive to the testimony, and is within the scope of the Rules as noticed for hearing.

12a. The Agency was persuaded at hearing that having permits in hand is not enough to exempt an action from environmental documents. The hearing examiner concurs; the standard in footnote 1(b) is more appropriate.

12b. Written testimony of the Sierra Club confirmed all testimony at hearing that a fairly precise definition exists in law as to just when in the construction process an owner develops a vested right to continue construction despite changes in zoning. Consequently the hearing examiner finds that MEQC 25(d)(1) is more workable and precise for all parties in interest involved if added is the caveat that all cases are excluded from preparation of environmental documents where zoning rights have vested under state law, and the sole permitting and approval by public agencies is for local grading and building permits. In support of the same position, the Agency, subsequent to hearing, proposed amendment of the same sections by striking an earlier provision in the Rules as noticed for hearing which waived environmental documents simply when governmental permits had been issued and without regard to when rights to proceed vested at common law in Minnesota. The hearing examiner concurs.

13. MEQC 25(d)(4) which in part provides for the supplementation of federal EIS's where these Rules and the state Act require more than NEPA does, is proposed for amendment by the Agency subsequent to hearing by adding language to expressly include in the Federal EIS alternatives and modifications which could be implemented by state and local agencies. In addition, the section goes on to make plain that in the circumstance of a Federal Agency being requested to prepare a State EIS because the Federal EIS is not required on the proposed Federal action, no EAW shall be required, although an EIS Preparation Notice shall be published in the EQC Monitor. The gist of these modifications, all recommended by the Agency after testimony at hearing, is to mitigate the scope of claimed jurisdiction over proposed federal action and to maximize the coordinative function between the jurisdictions. Whatever arguments the Federal Government may wish to raise with respect to immunity from state EIS jurisdiction should be raised, if at all, at the time and in the circumstance of the particular demand for a State EIS; the proposed Rules have been tailored to impose on the Federal Government only where circumstances may make it most essential.

14. MEQC 26(a)(1) is proposed for amendment by the Agency based on testimony urging (a) that the EAW be prepared as early as practicable in the development of the action, (a request made by MACI and others), (b) the insistence by the Sierra Club that if a Negative Declaration Notice is filed and published way before any actual activity or permitting is done with regard to the proposed action it will sneak by interested parties and (c) that if the Responsible Agency and the proposer agree an EIS is required, the preparation notice should be published and the EAW should be skipped. In addition, the hearing examiner has edited for clarity. These alternations are within the scope of the Rules as noticed for hearing.

15. MEQC 26(a)(2)(aa) makes plain that what is to be done with the preparation notice or a negative declaration is that it be "filed"; earlier drafts used less definitive language.

16a. In MEQC 26(a)(2)(aa), not the Council, but the Council Chairman may determine that all public agencies with jurisdiction over the action have in fact received a copy of the EAW. This change is concurred in by testimony, the Agency and the hearing examiner.

16b. MEQC 26(a)(3) constitutes the inclusion of EAW provisions into the Rules as proposed by the Agency after testimony at hearing; see the General Findings for full discussion of this matter.

17. MEQC 26(a)(4)(bb) is amended by the Agency--after hearing in response to the testimony of the Sierra Club--to include a mixture of commercial, industrial and retail floor space, totalling 500,000 square feet as well as the previously provided for 500,000 square feet of commercial or retail floor space. Testimony was offered by the State Planning Agency, TR151, as to the infrequency of developments of this size even in their mixed format and urging this change.

18a. Testimony of the Sierra Club stressed that back lot developments often are themselves not in the 1,000 feet of shoreland but funnel across shoreland to public waters; this is the basis of the Agency's proposal after hearing to amend MEQC 26(a)(4)(vv) by striking the word residential and adding the clause, "any part of which" is within a shoreland area. The hearing examiner proposes the same language addition in MEQC 26(a)(4)(dd) which relates to construction of commercial or industrial development within a shoreland area.

18b. DNR in its written testimony has urged substantial changes to MEQC 26(a)(4)(nn) and (oo). Unfortunately, no factual testimony is given to support such changes. Nevertheless, it would seem that the basic objective of the changes proposed, namely, that DNR have some say with respect to peat land development, can be accomplished by amending the specified preparer in sub-paragraph (oo) to read, "local, except DNR with respect to peat fields". Such a change is possible within the scope of the testimony and of the notice of hearing and is recommended by the Hearing Examiner. Further, DNR requested in its testimony that it, and not the local Agency, be the preparer with regard to MEQC 26(a)(4)(qq) involving the additional impoundment of water creating a water surface in excess of 200 acres. DNR asserts that it is the primary authority and this change is recommended by the Hearing Examiner.

18c. Under the present regulations, MEQC 25(b)2(jj) mandatory categories for outside the metro areas were 100 units unsewered, 500 units sewered; and in the metro area, apparently in contemplation of the more common larger units, the sizes were 200 units unsewered, 1,000 or more sewered. The proposed rules noticed for hearing reduce the maximum units in the sewered metropolitan area to 500 units, but do not reduce the unsewered units proportionately. As a result, the Metropolitan Council in its written testimony points out that the Rule, MEQC 26(a)(4)(tt) permits only 100 unsewered units without a mandatory EAW in rural areas, but in metropolitan areas with presumably greater density of individual wells and greater proximity of septic systems, the Rule would permit twice as many, or 200 units to escape a mandatory EAW. Consequently, based on this testimony, the Metropolitan Council and Hearing Examiner propose that 200 or more units in unsewered areas be reduced to 100 or more units in unsewered areas; probably the figure should be even lower, but factual testimony would be required to sustain such an additional change.

18d. To the written testimony of William S. Borchers, the Agency responded with rebuttal testimony. Borchers had claimed that consultation with DNR indicated that the purpose of this mandatory category was to study the impact of converting sections of forest land to other uses, such as grazing and to study the conversion of forest land sections to other uses with regard to wildlife. The Agency denies that those are the exclusive purposes of this mandatory category and in support of

its position attaches an excerpt from the January, 1975, Journal of Forestry, the official publication of the Society of American Foresters. Said article recites PL 92500, Sec. 208 which requires states to establish area-wide and state-wide planning and management organization with respect to non-point sources of pollution and has set forth procedures and methods for controlling the extent of such sources, including silviculturally related non-point sources. The Agency, therefore, recommends striking the qualifying clause in MEQC 26(a)(4)(aaa) to make plain that permanent removal of 640 or more contiguous acres of forest cover for any purpose require a mandatory EAW, a conclusion in which the hearing examiner concurs.

19. The hearing examiner has clarified MEQC 26(b) by bringing within its scope all procedures in this Rule for Notification of EIS Determination, appeal therefrom, and interim relief. This means that, Sections (g) and (f) in the Rules as proposed to the hearing have been incorporated as sub-paragraphs (3) and (4) under MEQC 26(b). Further, MEQC 26(b) (1) makes plain that upon completion of an EAW, the preparer has to file with the Council either an EIS Preparation Notice, or a Negative Declaration Notice. In addition, the Metropolitan Council in its carefully considered testimony has urged that the related EAW should be attached to that filed notice and the same is recommended by the hearing examiner by the addition of the language "with a copy of the EAW attached". Since the implication of the language is that such filing should be done upon completion, a caveat is added by the hearing examiner giving license to public agencies to so file forthwith after their first subsequent regular meeting, or within 30 days of completion, whichever occurs first.

20. In MEQC 26(b)(3) formerly MEQC 26(f) the last portion thereof is re-drafted for clarity; no substantive changes intended.

21. In response to State Planning Agency testimony and its own re-evaluation, the Agency after hearing has recommended with respect to MEQC 26(b) (4), formerly MEQC 26(g), that only state agencies and the council be able to specify the extent to which the action will not be halted during the pendency of EIS preparation. A reading of the statute makes plain that the authority to halt the action may not be delegable to other state agencies. Even if partial permission to proceed with an action is authorized by the permissive "may" in Minn. Stat.116D.04 Subd.9, such discretion cautiously given is best viewed as non-delegable. Therefore, the phrase, "and the Responsible Agency" is proposed for deletion by the hearing examiner, together with the caveat making plain that in no way does this proposed Rule limit the Council's statutory authority to halt actions or impose other temporary relief.

22. The general testimony at the hearing and the written submissions make plain a concern that MEQC 26(b)(5)(bb) could become a meaningless statement. MEQC 26(b)(5)(bb) as proposed by the hearing examiner enlarges the content of a negative declaration notice to include supporting reasons for the statements that no EIS is required. Since the Minnesota Supreme Court's Decision in MPIRG v. MEQC MPCA, and AMAX Exploration Inc. filed December 19, 1975, it appears that a Negative Declaration Notice is subject to judicial review as a contested case under the Administrative Procedure Act. The statement of reasons for the negative declaration both at the time of its making and after administrative appeal becomes most important.

23. MEQC 26(b)(4) regarding EIS Preparation Notices Publication, is deleted by the Hearing Examiner, because it is repetitive of material set forth in more detail in MEQC 31 and subsequent sections.

24. Many complaints were registered by hearing witnesses with regard to the long and sometimes indefinite time span for the EIS process. In the opinion of the Hearing Examiner, many of these time spans cannot be shortened because of due process requirements or impossibility. However, with regard to MEQC 26 (b)(5), it would seem that the agency could live with reviewing negative declarations at or before the first meeting it holds more than 45 days following publication of the negative declaration. The publication process may take up to 10 days under these rules. If the first meeting should come on the 60th day from publication, then a period of almost 2 1/2 months would occur before decision on the Negative Declaration Notice appeal would be made. On the short side, the Agency would always have a total of 55 days for staff preparation and recommendation with regard to determining at its meeting whether an EIS is to be prepared. While the Hearing Examiner recognizes that this is certainly in the area within the discretion of the Agency, nevertheless in light of the fervent testimony about lengthy time periods, this amendment is urged on the agency as being in its interest in having operative, acceptable Rules.

25. MEQC 26(c)(4) had provided for reviewing agencies to "consult" and request the comments of public agencies which by the language used in that subdivision are themselves reviewing agencies. The hearing examiner recommends that a clear requirement of comment in writing be instituted, that it be received within 30 days of the reviewing agency's receipt of the EIS for comments and that no more need be said.

26. Re MEQC 26(c)(6), the rationale set forth in Finding 24 also applies to MEQC 26 (c)(6). As proposed by the hearing examiner this requires that the informational meeting after draft EIS filing must occur during a 15 day period instead of within a one month period.

27. The Agency proposed amendment after hearing is based on testimony that transcription of the meeting be made which is typewritten or audio recorded because of the cost-saving of the latter.

28. Based on testimony presented by MACI and on the rationale set forth in Finding 24 above, the requirement that the public record remain open between 20 and 90 days is recommended to be 20 days. A Draft EIS is most important and complex. However, it is no more important or complex than these Rules. The record in accordance with Chapter 15 remained open 20 days with regard to this rule-making proceeding. It would seem that all parties should be able to live with the same requirements with regard to the Draft EIS.

29. Testimony of NSP and the State Energy Agency favored this change to allow that Agency's Certificates of Need and Compatibility to issue prior to filing not just the Draft of, but of the final EIS. Testimony also showed that this provision should not be limited to categories in MEQC 26(a)(3)(bbb), (ccc) and (ddd). The EQC concurs and the hearing examiner has no objection. Reasons are set forth at length in the transcript.

30. MEQC 27(a)(4) has been redrafted by the Hearing Examiner, so that the language with regard to "cumulative effect" is consistent with the language proposed by the agency regarding "related actions".

31. MEQC 27 (b)(3) had required a listing of government permits required on the action and the public agencies from which they are required. As with regard to the earlier provisions requiring a listing of all other permits, substantial testimony from all quarters objected to the practicality and usefulness of this language as a criteria to determine whether a major private action is of more than local significance. The object of the subdivision being, apparently, to quantify the action by the amount and kind of regulatory attention it has coming, the Hearing Examiner suggests the amending language at footnote 31, namely a listing of permits and approvals required in addition to that of one primary local agency.

32. MEQC 27 (c)(3) as proposed for amendment after hearing by the Agency, properly enlarges the concept of mitigation of harmful environmental effects to include those which may be provided by all regulatory authority, not just state regulatory authority.

33. With respect to MEQC 28 (c) the last phrase in the second paragraph thereof alluded to non-physical natural resources as the proper subjects for consideration in a Draft EIS. In order to distinguish the validity of these concerns by the draft EIS even though they do not qualify as threshold or jurisdictional grounds for commencement of the process under the definition of "action", and "environment", the Hearing Examiner proposes the addition of the clarifying language that these considerations are to be made without limitation by those definitions. This is consistent with the testimony of the City of Minneapolis, MPIRG, and others.

34. With respect to MEQC 28 (d) representatives of the Minnesota Energy Agency, including its Director, John Milhous, testified to the importance of including energy factors among those that must be considered if the proposed action is implemented. The Agency has proposed to do the same, and the Hearing Examiner concurs.

35. The changes proposed by the EQC after hearing to MEQC 28 (g) include the first sentence thereof which is in the present effective Rules and was deleted by error. The balance of the change was urged by the State Energy Agency and others as an appropriate way to mitigate duplication of effort by proposers and agencies alike. This change gives meaning to all governing legislation. As noted by PCA testimony, this can and must be done without exemption from the EIS process, and it can be done. Exemption would require legislation. The time demands due to inclusion in the EIS process are shortened by possible omission of the EAW step in the Rules as here proposed and by the concerted effort herein to abbreviate time tables right to the brink of due process and administrarive impossibility.

36. MEQC 30 (c)(1) has been amended by the Hearing Examiner and Agency after hearing to provide that the council chairman not the council or the council staff shall make the determination as to qualification of petitions jurisdictionally. The same substitution of chairman for staff is proposed by the Agency in paragraph MEQC 30 (c)(2) and concurred in by the hearing examiner.

37a. The new language proposed by the Hearing Examiner in MEQC 30 (c)(1)(cc) is intended to make more specific that criterion for disqualification of a petition so that disqualification under this section does not require the exercise and discretion, but simply involves a check for compliance or noncompliance with the criterion.

37b. Under MPIRG, v. MEQC etal, it is quite possible that disqualification of a petition under MEQC 30(c)(1) is judicially appealable. Nevertheless, few problems exist with respect to the criteria for disqualification in (aa), (bb) and (cc). However, (dd) and (ee) could be construed as requiring decisions on the merits of the petition. Judicial appeals taken from disqualifications under these two sections could result in substantive litigation

which would frustrate the very timetable that the sections are intended to expedite. Testimony of the Agency has made plain that the object of these sections is to avoid frivolous petitions. The hearing examiner recommends that such language be used and that disqualifications for these grounds be reviewed by the full Council; such an arrangement is much more in keeping with the statutory provision.

As in the case of halting actions, the delegation from the council in this important function should be limited as much as possible. Consequently, the Hearing Examiner offers the following language: "(dd) the petition is frivolous or clearly outside the scope of these Rules and the Council concurs and disqualifies the petitionby order". Such determination will provide some sort of record for appeal and the formal order from which to appeal and is consistent with PCA testimony TR.79. It will also insure that a disqualification has been properly reviewed, so the decision should carry more weight with the Court.

In keeping with Finding 24 regarding time limitations, the Hearing Examiner proposes that all agency action in paragraph (c) be completed within twenty days of receipt of the petition with the exception that the Council shall perform its duties under sub-paragraph (d) at its first meeting subsequent to the chairman's determination.

37c. The provisions in MEQC 30(d) with respect to Responsible Agency Duties have been reduced by removing therefrom the language regarding the right of petitioners' representative to request review. That provision properly belongs in MEQC 30(e) which has been captioned by the hearing examiner as "Hearing Procedure".

38. In MEQC 30(e), the hearing examiner recommends that a proposer have the right to request Council review of an EIS Preparation Notice by the Responsible Agency. Several witnesses noted that such a right to review should exist so that it parallels the right of petitioners to review a Negative Declaration Notice within the same 30 day time.

39. Assuming a request to review, the language proposed by the Hearing Examiner goes on to make a subsequent hearing mandatory rather than optional, with notice of hearing to be given on a thirty (30) day basis rather than three (3) weeks, consistent with Minn. Stat. Chapter 15.

40. Also added to MEQC 30(e) by the hearing examiner is the requirement imposed elsewhere on hearings that they be conducted by a hearing officer, be transcribed and continued until all persons have been heard who wish to be heard. These changes are responsive to MPIRG v. MEQC, etal which makes plain that a negative declaration and an administrative appeal therefrom constitutes a contested case. Therefore, it is advisable to institute the basic due process characteristics of a hearing at this point in the procedure and in all cases where such requests for review are made.

41. These proposed amendments to MEQC 30 (e) go on to set deadlines of twenty (20) days for the hearing officers to conclude and submit their Findings and Recommendations and for Council consideration at the first monthly meeting more than twenty (20) days after receiving the Findings and Recommendations.

42. The language in MEQC 30 (e) as proposed for hearing forbade oral argument before the council. It is deleted for reasons stated above; however no requirement of such oral argument is included.

42 contd.

With regard to all proposed changes to MEQC 30, it is the view of the Hearing Examiner that they are required for purposes of consistency with enabling legislation and the recent Supreme Court decision; that these proposed changes are within the scope of the Rules as noticed and that they sharpen in detail the standards and procedural rights without substantial detriment to any segment of the public. In addition, they are responses to the lengthy and complex testimony offered with regard to this proposed Rule.

43a. The Federal Government, through the Forest Service, United States Department of Agricultural, by James F. Torrence, Forest Supervisor, has made plain that it is most reluctant to be bound to do anything by these Rules which basic principles of constitution law would bar. For that reason, the caveat is added to MEQC 34(a), so that the requirements to publish with regards to the Federal Government becomes instead a request made in the spirit of coordination and cooperation evidenced elsewhere in the Rules and in the Act.

43b. MEQC 34(a)(3) is proposed for amendment by the Agency in response to testimony by the Sierra Club and others to the effect that limiting publishable natural resource management development permit applications to Critical Areas and Wild and Scenic River Areas as proposed was an unreasonable classification, that the same should apply to all the areas listed in proposed (aa) through (nn) and that the same should also apply to actions proposed within a one (1) mile zone extending outward from the boundaries of these places. The one (1) mile extra territorial extension is identical with long standing Minnesota statutory authority for municipalities to zone such distance outside their boundaries into un-incorporated abutting property. The Hearing Examiner concurs in the Agency proposal and finds it within the scope of the Rules as noticed for hearing.

44. In light of the substantial testimony from various witnesses against the Agency taking onto itself the right to amend these regulations by resolution, particularly with regard to MEQC 40, (which relates to the early notice provisions set forth in Minn. Stat. 116D.Subd.8 and purports to authorized later supplementation of these Rules to include consolidated state permit applications) the Hearing Examiner recommends striking MEQC 40(b) and in its stead placing the proposed language in MEQC 34(b), phrased so as not to become effective until the Agency in its discretion activates the publication of these consolidated state permit applications.

45. Proposed Agency changes in MEQC 34(c)(5) and (7) are the result of testimony at the hearing which stressed that the publication requirements proposed with regard to certifying critical area plans and issuance of compatability certificates for power lines come too late. Consequently (5) as now proposed by the Agency provides for publication of the Council's decision to hold public hearings on the recommended critical area. Similarly new sub-paragraph (7) requires publication of notice of the Energy Agency's public hearing prior to issuing a certificate of need for a large energy facility. The hearing examiner concurs.

RECOMMENDATIONS

Based on the FINDINGS, the Hearing Examiner makes the

following Recommendations:

1. That the rules as set forth in Appendix 1 hereto be adopted by the EQC. Appendix 1 consists of Exhibit 7, the proposed Regulations draft dated September 25, 1975, plus all changes recommended by the Agency after hearing and approved by the Hearing Examiner, and all changes recommended by the Hearing Examiner. Footnotes correlate to the Findings with Respect to Specific Proposed Rules. All substantive changes are footnoted; (clarity changes bear an asterik as do errata, appendix 2. Appendix 3 shows all changes proposed by the EQC itself after hearing by strike-through and underline. Appendix 4 is the Sept. 25, 1975 draft noticed for hearing, Exhibit 7.

2. The complex nature of these proposed regulations has made efforts toward simplification and clarity only partially successful. A concise table of contents together with an analytical index would be a great help to the reader, especially if the index would feature several main headings; such as (a) times for filing, appeal, and preparation of all environmental documents, (b) catalogue of all EQC duties and responsibilities, and (c) catalogue of all Responsible Agency duties. While this requires additional effort, it would be an important part of a good and workable set of Regulations understandable to all publics and thus perhaps more acceptable to all publics.

3. While the concept of omitting at this time programatic EIS's, non-physical thresholds, guidelines on EIS "adequacy," model environmental ordinances, scenario standards for significance, and implementation of other authority under this broad enabling legislation does not invalidate the Rules as proposed, they may become vulnerable if such other authority is not systemized soon. Such continued omission would make available the attack that these regulations are intended to constitute full exercise of the Agency's review and coordinative powers and as such are unlawfully narrow. Perhaps an annual rule-making hearing as urged by NSP and other utilities, TR 450, should be considered seriously.

4. The broad duties imposed on the Agency and on other public agencies by Minn. Stat. 116B, 116C and 116D, together with the specific coordinative function of the Agency are adequate to support these proposed Rules; arguably they would support a detailed system of model ordinances and rules proposed by the Agency, adopted by the public agencies within timetables specified by the Agency and subject to approval by the Agency. If the delegation and its purposes are to be met successfully, (interestingly, MPIRG urged the proposed Rules not be adopted until such systemizations are worked out) some such systemic, detailed structure will be essential, including stronger elements of compulsion and specific enabling legislation. The legislation should include provisions for payment for environmental document preparation whether it be the Responsible Agency or on a charge-back basis to the proposer. The budget planning difficulties arising from the unpredictable demand for environmental document preparation should also be addressed.

Respectfully submitted,

Will Hartfeldt

WILL HARTFELDT
Hearing Examiner

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

COUNTY OF RAMSEY

In The Matter of the Amendment of the Rules of the Minnesota Environmental Quality Council Relating to the Preparation and Review of Environmental Impact Statements (Minn. Reg. MEQC 21-50).

FINDINGS OF FACT

The above-entitled matter came on for hearing before a hearing officer appointed by the Minnesota Environmental Quality Council in Room 81 of the State Office Building at 1:00 p.m. on November 12, 1975, and was continued pursuant to the Notice of Hearing after proper notice required by Minn. Stat. § 15.0412 (1974) was served upon all persons, associations, and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards and criteria, the Minnesota Environmental Quality Council, in its March 16, 1976 meeting, adopted by resolution the attached Findings of Fact.

Dated: March 29, 1976

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

Peter Vanderpoel

Peter Vanderpoel, Chairman

MINNESOTA ENVIRONMENTAL QUALITY COUNCIL

In the Matter of Amendment
Rules, Environmental Quality
Council, Relating to Preparation,
Review and Publication of Environ-
mental Documents (Minn. Reg.
MEQC 21-50).

FINDINGS

These findings are referenced to the September 25, 1975 Draft Rules, and include a combination of the Council's testimony presented in support of the original Draft Rules as noticed for public hearing; Hearing Examiner's findings and the EQC's final modifications which include the Technical Committee's recommendations. Where there is no substantive change from the existing regulations, the references are to the current regulations.

The Council in adopting these Rules has not entirely accepted all of the Hearing Examiner's recommendations, but rather has selectively accepted hearing testimony and recommendations to produce a final format which responds to much of the testimony and is consistent with the hearing record.

CHAPTER ELEVEN
AUTHORITY, PURPOSE, DEFINITIONS, GENERAL PROVISIONS

MEQC 21 -- AUTHORITY AND PURPOSE

1. No major content change--only reorganization, combining MEQC 21 and MEQC 22 of the September 25, 1975 Draft Rules.

This section emphasizes the statement that the environmental impact statement does not expand the existing authority of public agencies but, rather, serves an information function. The authority of public agencies is in fact restricted by MEPA, in Minn. Stat. 116D.04, subd. 6, which provides that no action may be approved which will pollute, impair, or destroy the natural resources of the state as long as there is a prudent and feasible alternate course of action. The information in the environmental impact statement enables public agencies to determine whether the restriction of Subdivision 6 applies and enables the public to guarantee that the restriction of Subdivision 6 is observed by public agencies. Thus, if a public agency refuses to issue a permit for a project, or requires modification of proposed plans, the legal authority for those actions is the existing regulatory-permit authority of the agency, as modified by Subdivision 6, and not any new authority inherent in the environmental impact statement process.

Similarly, if the information in the environmental impact statement discloses that a project has some adverse effects which are unavoidable, or is a poor project from a social or planning point of view (i.e. something short of a Subdivision 6 situation), a public agency is not legally authorized by the environmental impact statement process to deny a permit on the project but must look to its existing regulatory authority.

This section is not intended to detract from the value of the environmental impact statement as a planning tool; but, again, we emphasize that, in this planning aspect, the environmental impact statement serves as an informational and not a regulatory tool.

This section clearly states that the procedures in these Rules do not constitute the exclusive method of the EQC in dealing with environmental problems. The section is intended to clearly imply that the substantive powers may be exercised independent of whether review, under the environmental impact statement process, has been undertaken. The statutory sections mentioned are ones in which questions have arisen concerning their relationship to the environmental impact statement process -- these are set out specifically for emphasis.

MEQC 22 DEFINITIONS

2. a) "Act": No change from the existing regulations (MEQC 23(a)).

3. b) "Action": The definition of action has been expanded from the existing Rules so that it will be possible to more clearly initiate review of a project when there is to be a physical manipulation of the environment. "Action" then refers to the physical activity to be undertaken and not the governmental process of approving the action.

The EIS has been defined as a detailed informational document for decision makers that addresses specific environmental concerns and identifies alternative actions which may minimize adverse environmental effects.

The format of the EIS requires, therefore, that a specific action be known in sufficient detail to evaluate the physical impacts of that action.

The present and proposed regulations include mandatory categories for environmental review. These categories include projects which directly impact an area or produce secondary effects; they also indicate sensitive resource areas which should be avoided.

Therefore, the Council's major review of projects, to date, has been appropriately focused on those physical project actions. However, the potential existed for many non-physical actions to be submitted to the EQC under the present definition. In the past, when the EQC received these actions for review, such as zoning changes or future proposals which may or may not occur, these actions could not be substantively quantified by the Responsible Agency writing the EIS or adequately evaluated by the EQC.

Haworth and Anderson, Inc., also notes (See Report #1, pg. 43)that the problem is inherent in the National Environmental Policy Act (NEPA), and in other state Acts, causing considerable frustration and non-productive paperwork.

The non-project actions that need to be evaluated by the EQC can be evaluated more effectively with other mechanisms. More often, these non-project actions may generally be of only local concern and therefore more appropriately reviewed with a sensitive local environmental planning process. Should the EQC identify a non-project action, which is of state significance, the Council has the authority to order an environmental review in the context of "Program Review" or some other format which can be more effectively adopted to evaluating the particular action. It is important to recognize that having this flexibility does not "lock" the EQC into the time restraints built into the EIS. Many non-project actions may not be able to be evaluated in the 120 days specified for preparation of the Draft EIS, and may need considerably more public participation and research for adequate review.

The primary effect of restricting the meaning of "action" to quantifiable physical projects, is the exclusion from environmental impact statement process restrictions of the issuance of permits and promulgation of rules by public agencies. This conforms to the current practice of the EQC and clarifies current EQC interpretation of MEPA.

It is not the issuance of a permit on a physical project which is the proper subject of environmental review, but the physical action for which the permit is issued which is the "action" as it is used in the statute. Of course, the environmental impact statement, if required, is prepared prior to issuance of the permit, so the result is the same in this situation. The distinction does become important where there is a governmental regulatory activity or permit which is not directly associated with a specific physical project. In this situation, the environmental impact statement is an inappropriate mechanism through which to consider adverse environmental effects. An example would be a rezoning of a large parcel of land for future possible uses as an industrial park. If there was no specific physical proposal existing at the time of rezoning, then an environmental impact statement would not be required to precede the rezoning. The major questions involved at that time would be conceptual questions concerning the best use of the parcel, and other planning oriented tools should be utilized to reach these questions. Only after the rezoning, when the first physical plant is proposed, would the environmental impact statement be triggered; so, in fact, no construction is allowed until environmental effects are considered.

On the other hand, if the rezoning is to facilitate a particular physical project, such as some parts of the proposed industrial park, then an environmental impact statement on the physical project may be required; and, according to other provisions of these rules, the environmental impact statement would be required to precede the rezoning, and to discuss as far as possible the impact of the entire industrial park. Thus, where a specific project is proposed, there is little practical difference between "action", meaning the physical development, or the act of rezoning. Only in the former example would the definition of "action" make a significant difference, and in that case an environmental impact statement would not be an efficient or practicable method of considering environmental aspects of the decision in question.

The other major category of governmental activities not included in "Action" is governmental planning and regulatory activity. Examples are management plans and groundwater pollution regulations. These activities are primarily environmentally protective in nature and it is doubtful if they could result in pollution or impairment of the state's natural resources. MEPA is intended to restrict governmental and private activity only when the activity may result in adverse environmental effects. In addition, the environmental impact statements that have been done on these types of activities, at the federal level, are often discussions of what could have been done rather than what is proposed. The Council believes that these returns are minimal for the substantial added time and expense, over and above formal rule-making procedures, that public agencies must follow before undertaking these activities. There appears to be no good reason to read the MEPA to discourage any public agency from undertaking valid environmentally protective activities. In addition, the Council has other authority available to review and regulate any non-physical agency activities found to be in non-compliance with state environmental policy. Also, any such activities done in anticipation of pending physical activities will be considered permits and treated as discussed above.

4. "Action" does not include the following:

New changes in "Action" exemption: The enumeration of activities not included in "action" are not exceptions to the definition, but rather are activities that are excluded from environmental impact statement requirements because they are not actions. They are enumerated separately to eliminate any possible confusion.

5. No change from MEQC 23(b)(2).

6. No change from MEQC 23(b)(5), except addition of "recommendations" of public agencies, based on hearing testimony.

7. Addition (same reasons as 1 and 2 above)

8. Addition of "Judicial Orders", except orders establishing judicial ditches pursuant to Minn. Stat. Chapter 106 (1974).

This addition was testified by the DNR to be included for clarification so that the court's establishing ditches would not be misinterpreted as a final word on excluding environmental review of the proposal, if warranted.

9. No change from MEQC 23(b)(6) in existing regulations.

10. c) "Approval" New definition for clarification.

11. d) "Council" No change from MEQC 23(c) of existing regulations.

12. e) "Days" No change from MEQC 23(d).

Note that the existing regulations have been changed in those instances where the EQC is required to act within a specified time. These provisions have caused scheduling difficulties because the EQC customarily meets only monthly. Time limitations are retained to ensure expeditious consideration of EQC matters although the limitations have been expressed in a manner to coincide with EQC meetings (e.g. "at the first Council meeting 30 days following...")

13. f) "Environmental Impact Statement" Replaces definition of Draft EIS and Final EIS since these are defined in the regulations and the law specifically.

14. g) "EIS Preparation Notice" No change from (MEQC 23(k)).

15. h) "Environment" The definition of environment has been redefined slightly to coincide with "actions" and to more clearly define the EQC's review of projects. This definition emphasizes impact on the "physical" conditions which exist in an area which will be affected by the proposed action, including land, air, water, minerals, flora, fauna, ambient noise, energy resources available to the area, and man-made objects or natural features of historic, geologic or aesthetic significance.

The primary purpose for clarifying the definition was to focus the environmental review by the EQC to those quantifiable project actions which the Council can effectively review. The consideration of social and economic effects are still requirements to be addressed in the format for the EIS, as secondary impacts of a physical impact on the environment (e.g. MEQC 30(d). If an EIS could be triggered on purely social grounds, as the present definition may be interpreted, the Council could be inundated with many social and political projects over which the Council has no clear jurisdiction or expertise for reviewing these actions. The provision in the existing law, allowing a 500 signature petition to be submitted to the EQC for an EIS, leaves open the possibility of the Council becoming involved in many more future neighborhood social issues if the definition of environment was not more clearly directed. Testimony provided at the hearings by the Energy Agency supported the need to clearly indicate "energy resources" as a factor of the environment which could be quantified. Since the Energy Agency is a member of the EQC, with special expertise in this area, the Council accepts this addition.

16. i) "Environmental Assessment Worksheet (EAW)". New definition: this form will replace the environmental assessment as a more definitive environmental checklist.

The previous format for an Environmental Assessment (EA) only defined broad categories within these categories was often left to the discretion of the preparer. Consequently, documents were at times found to be inadequate, causing them to be returned for more information and delaying final decision on the need for an EIS. It is intended the EAW will provide a brief and basic format for preliminary evaluation of a project.

The EAW will contain specific questions which should be asked when deciding whether a project may have significant environmental effects. This format not only provides guidelines to the Responsible Person or Agency for a comprehensive project review, it also provides a public record for reviewing the steps considered in the decision to prepare an EIS or no EIS (Negative Declaration).

The conclusions of the EAW (EIS or no EIS) will be published according to the early notice procedure and will appear in the EQC Monitor. The EAW itself will be available for public review at the EQC office and with the Responsible Agency or Responsible Person.

The actual document itself will not be enacted as a rule by the EQC but will be supplied by the EQC and revised as experience dictates. A sample of the EAW was provided at the Hearing and a major topic outline is included in MEQC 30.

17. j) "Environmental Documents" New definition: encompassing Environmental Assessment Worksheets, EISs, Negative Declaration Notices and EIS Preparation Notices.

18. k) "EQC Monitor" This is a new definition which defines the state publication which will be used in the early notice program.

19. l) "Governmental Action" -- Testimony was presented at the hearing that the intent of the Legislature, in passing the Minnesota Environmental Policy Act, was to include all actions requiring a governmental permit in the category of government actions. The effect of this inclusion is to limit the judgment as to whether an environmental document should be prepared on a private action requiring a governmental permit to two criteria: The action must be a major action and must have the potential for significant environmental effects. The more constraining standard of more than local significance would thus not apply. We concur with the testimony and recommend that the "government action" definition be expanded to include private actions requiring governmental permits.

20. m) "Governmental Permit" No change from MEQC 23(n) of existing regulations.

21. n) "Inadequate EIS" Removed "procedural" requirements from old definition, since this is covered under the statement in the new definition; "or an EIS not prepared in compliance with the Act and these Rules."

22. o) "Local Agency" New definition: means any general or special purpose unit of government of the state, with less than state-wide jurisdiction, including but not limited to regional development commissions, counties, municipalities, townships, port authorities, housing authorities, and all agencies, committees and boards thereof.

This definition was necessary to define those local governmental units which may become Responsible Agencies for the preparation of environmental documents. The intent of assigning local agencies to mandatory categories for environmental review was to create local environmental awareness on those local types of projects which may have regional or ultimately state impacts. Furthermore, on specific projects, the local agency will be the first agency aware of projects and then can appropriately incorporate the environmental considerations and public participation at the earliest point in the planning process. The definition is intended to clearly include both general and special purpose governments.

23. p) "Negative Declaration Notice" New definition: means a written notice that a proposed action need not be preceded by an EIS.

The Negative Declaration Notice is for publication in the EQC Monitor to allow time for public review of decision and challenge if appropriate.

24. q) "Other Approving Agencies" New definition: means all public agencies other than the Responsible Agency that must approve a project which has environmental documents prepared on it.

This definition is necessary to clearly define the responsibilities of other agencies which may not be the Responsible Agency or issue specific permits, but who do have reviewing authority and an interest in the project.

25. r) "Person" Addition of public agency

26. s) "Petition" No change from MEQC 23(s) of existing regulations

27. t) "Private Action" The Council finds the changes in this definition necessary to be compatible with (e) "Governmental Action".

28. u) "Proposer" Addition: means the private person or public agency that will itself undertake an action or that will direct others to undertake the action.

This addition is to clarify the responsibility of the proposer who, as defined, actually is responsible for allowing the action to proceed. It makes clear that general contractors or those physically doing the activity as agents or employees are not "Proposers".

29. v) "Public Agency" Additions: means a state, regional or local agency, board, commission, or other special purpose unit of government. "Public Agency" includes all public educational institutions and agencies of the federal government but does NOT include the courts of this state.

These additions reflect the concern that public educational institutions may, in effect, create environmental impacts, like any other private or public development. They, therefore, should also evaluate the potential environmental consequences of their own actions, if necessary.

Special purpose units of government include those units which operate independently of the local governmental structure and can initiate and implement actions on their own, e.g., Watershed Districts, Park Boards, Sewer Board.

Federal agencies are included since they may be requested to supply additional information on federal actions which should be reviewed under MEPA.

30. w) "Regional Development Commission" The Council finds the need to define the use of the term Regional Development Commission as referenced in the statutes and to include the Metropolitan Council in this same terminology.

31. x) "Responsible Agency" Additions: means the public agency which as the principal responsibility for preparing the environmental documents required by the Act and these Rules.

The responsible agency will not be required to make a decision on the need to prepare an EIS. The Council previously made all of these decisions. The intent of having the agency prepare the EAW is to establish accountability for decision-making at the appropriate level of government which may allow an action to proceed. If the agency is a public agency and recommends an EIS, it will do the EIS unless there are circumstances which exist, such as lack of expertise; then the Council will consider appointing another agency.

32. y) "Responsible Person" The Council found that persons not requiring governmental permits are still responsible for completing environmental documents if the project proposed falls under these Rules. This is specified by Minn. Stat. 116D.04, subd. 1.

33. z) "Reviewing Agencies" The Council found that this definition was basically the same as MEQC 23(aa) of the existing rules. The addition of the last sentence is for clarity and to assure all EQC member agencies receipt of environmental documents for comments.

34. Deletions: The Council found the following definitions are no longer significant; they have been incorporated into new language or are obsolete and therefore will be dropped from these Rules.

Existing Regulations

e. Draft EIS -- See MEQC 30

g. Environmental Assessment -- obsolete, see EAW

h. Environmental effect -- see enumeration of contents of environmental impact statement in MEQC 30

j. EIS Completion Notice -- see MEQC 29(5)

l. Existing Action -- obsolete, see MEQC 41

p. Material Evidence -- definition did not clarify meaning

q. New Action -- obsolete, see MEQC 41

x. Regulations -- all Regulations are now Rules by Minnesota Laws, 1975

(bb) "Significant" -- definition cannot clarify common understanding of the word.

MEQC 23 -- GENERAL RESPONSIBILITIES

(a)
(1) Environmental Quality Council

35. (aa) The Council finds that many of the specific duties set forth in the first Rule Draft, under MEQC 24, were repetitive. Therefore, these duties were combined under (aa) Coordinate the EIS Program, as set forth in these Rules.

36. (bb) The Council finds the EQC has the authority, through MEPA Minn. Stat. 116D,04, subd. 2, to coordinate the processing of EISs among local, state, and federal agencies. Additionally, the Council may require the revision of an EIS which is found to be inadequate. The option to conduct additional public informational meetings on a federal EIS is to facilitate the EQC's review of these documents where necessary to meet the state's guidelines (if inadequate) and, if possible, to reduce duplication of effort.

37. (cc) The Council has the responsibility to assist in implementing these Rules. Therefore, the Council will provide guidance through a procedural manual to those parties responsible for preparation of environmental documents.

38. (2)

(aa) The Council has authority under Minn. Stat. 116D.04, subd. 2.

39. (bb) The Council recognized the broad responsibilites assigned to all departments and agencies of state government in implementing MEPA and, under Minn. Stat. 116D.03, subd. 2(c) and (d), finds it has authority to require alternative or additional environmental reviews of proposals.

40. (cc) The Council found this provision appropriate since MEPA Minn. Stat. 116D.02, subd. 1, Declaration of State Environmental Policy, "declares that it is the continuing policy of the state government, in cooperation with federal and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of the state's people."

41. (dd) The Council has the authority, under Minn. Stat. 116D.04, subd. 2, to coordinate the processing of an EIS and assure this procedure is consistent with the MEPA and these Rules. Therefore, public agencies may wish to establish procedures and guidelines to clearly set out to their constituents the manner in which environmental documents will be prepared and reviewed and the manner in which the public agency will review environmental documents prepared by other public agencies. Public agencies are encouraged to do so to make the environmental impact statement process more predictable and understandable at every level of government. This paragraph is necessary to allow the EQC to assist in preparing those guidelines and to enable the EQC to advise agencies concerning the consistency of those procedures with these Rules.

42. (ee) The Council found it necessary to conduct public hearings in coordinating or administering the environmental impact statement program. The purpose is to increase public participation in the environmental impact statement program and for the purpose of reviewing certain petitions and agency decisions, the EQC will utilize the hearing process to facilitate the fact-finding of the Council. Utilization of a hearing procedure will also allow the EQC to more efficiently spend its time at the monthly meetings, the fact-gathering already having been done in a hearing process.

(b) Public Agencies

43. (1) The Council found it necessary to clarify the responsibilities of the public agencies who will begin to implement these Rules. The specific methodology for implementation will vary for each level of government; however, whatever procedure is chosen shall be clearly defined so the project proposer and the public knows what steps are to be followed. The public agency is held responsible for the adequacy and objectivity of environmental documents since they will implement the law. It also found that these rules do not limit existing authorities of public agencies to change proposers reasonable fees for document preparation.

44. (2) No change from (MEQC 24(b)(2)) of existing rules.

45. (3) (aa), (bb) and (cc) - No major content change from (MEQC 24(b)(3)) of existing regulations.

46. (4) The Council found there is a slight change from MEQC 24(b)(4) of the existing rules, by adding the standard of reasonably accessible data to the type of information to be furnished by a public agency.

47. (5) The Council found this paragraph necessary to define the role of the Responsible Agency in implementing MEQC 32 of these Rules. This responsibility is documented in the discussion of MEQC 32.

48. (6) The Council found that on many projects involved with the EIS process, there may be multiple permits or approvals needed from various levels of government. Therefore, this paragraph emphasizes the need for close cooperation and coordination among local governments and state agencies. It requires that once an EAW, Negative Declaration, or EIS is prepared, that those other agencies which have jurisdiction over the project have an opportunity to review the environmental analysis prepared prior to making an "isolated" decision. This procedure facilitates the environmental educational process across jurisdictional boundaries and complements the early notice procedure.

49. (7) The Council found that public agencies who are state agencies can only make a copy of the environmental documents available for reproduction, since all purchases for documents must go through the Department of Administration, Documents Section. Therefore, one copy will be provided to each agency according to the EQC distribution list for reproduction internally or for public copy. Local agencies may select alternate methods for handling reproduction, however, will be required to submit only one free copy to each person or agency on the official EQC distribution list. This will reduce costs to local governments, but will still provide the necessary information for review.

50. (c) Private Persons - The Council found that in order to prepare adequate and timely environmental documents, the proposer must cooperate with the Responsible Agency and provide information on the proposal. The Council also recognized that this request for information should meet a standard of reasonableness.

CHAPTER TWELVE
SUBSTANTIVE REQUIREMENTS

51. MEQC 24 ACTIONS REQUIRING ENVIRONMENTAL ASSESSMENT WORKSHEETS - The Council found it was necessary to reorder and reorganize chapters twelve and thirteen for the sole purpose of clarity and simplification.

52. (a) General - The Council found the EAW is a more structured replacement for the environmental assessment which was required under the previous regulations. The responsibility for its preparation has not changed, except with the mandatory categories assigned to specific agencies, the Council now will not have to assign the Responsible Agency at its monthly meeting. The environmental review process

is now more predictable and clearly indicates the public agencies responsible for initiating environmental review at the earliest point in the planning and permitting process.

53. (b) EAW Required

(1) The Council found that the mandatory categories for triggering environmental review are basically the same as the existing regulations, with the exception of those emphasized below.

The responsibility for preparation of the EAW has not changed. What has changed is the specific assignment of public agencies to categories.

The considerations for assigning these agencies were based on several fa

1. Existing statutory authority over the action or permits required through that agency.

2. Technical expertise and staff for reviewing and writing environmenta documents.

3. The level of government most likely to become aware of the project f which may have the primary authority for allowing the action to proce (i.e. zoning changes, preliminary plat approvals).

4. The frequency of the resource being impacted by specific types of projects, which are often locally initiated, but having regional or state effects. (i.e. drainage ditches, residential developments, condominium campgrounds, commercial/industrial developments). The primary intent is to educate the localities on the long term effects certain local land use decisions.

The order has been organized to assist the reader in locating projects under one general category which may fall under several requirements. (i.e. industrial, residential, water oriented impacts, etc.)

54. The Council found the mandatory categories adequate and recognized the similarities with the existing regulations as referenced below.

The Council also accepts specific changes based on hearing testimony as explained i greater detail below

Mandatory Categories

55. (aa) No major content change from (MEQC 25(b)(2)(ii)).

56. (bb) is modified in two ways. First, in response to testimony of the State Planning Agency, a mixture of commercial, industrial, and retail floor space, is included as a category. Testimony indicated that many ti developments include several combinations of uses, which in total would exceed the square footage allowed in the individual categories, and have similar or larger effects than a model purpose center. Thus, a combinati category with comparable square footage is appropriate. Second, the sizes of the categories here are reduced by fifty percent (50%). The initial square footage values set forth in this regulation were developed for mandatory EISs when the Rules were proposed in 1973. Testimony by the

Sierra Club indicated that in 1973 the Metropolitan Council had suggested reducing these square footage figures and that the retail or commercial facilities represented by these sizes were extremely large and of a nature which occurred in the State only very infrequently. For purposes of a mandatory EAW, a lower threshold, covering shopping centers, office parks, and industrial facilities of a size less than that of the largest enclosed mall shopping center is appropriate. The initial sizes represented developments of a size comparable to the Ridgedale or Southdale development. Also noted in the record was the fact that other states, e.g., Maine, under their state-wide siting law, established substantially lower thresholds.

57. (cc) No major content change from (MEQC 25(b)(2)(xx)). However the Responsible Agency has been changed to Local due to local jurisdiction over projects in these areas where floodplain zoning has been established.

58. (dd) The Council found through its experience and the testimony of the Sierra Club which indicated that back lot developments often are themselves not in the 1,000 feet of shoreland but funnel across shoreland to public waters; this is the basis of the Council's proposal after hearing to amend MEQC 24(b)(2)(vv) by striking the word residential and adding the clause, "any part of which" is within a shoreland area. The Hearing Examiner proposed the same language addition in MEQC 24(b)(2)(dd) which relates to construction of commerical or industrial development within a shoreland area.

59. (ee) is reduced in size by fifty percent (50%) with respect to auto trip generation for various time periods. This is to make the figures comparable to the estimated traffic generated by a retail or a commercial facility of the smaller size set forth in MEQC 24(b)(1)(bb) and is responsive to the same testimony that trip generation figures as set forth in this category are far larger than levels at which a mandatory assessment should be prepared. It is also responsive to the State indirect source standards, APC 19, which require indirect source permits on facilities with a parking capacity of 2,000 cars or which will result in an increase in average daily traffic volume by 10,000 or more vehicles per day. These numbers are more analogous to the levels at which serious indirect source problems have been found to exist by the PCA. In addition, evidence was offered that other states, e.g., New York, in their EIS regulations, require an assessment and suggest an EIS is likely when an indirect source permit is required.

60. (ff) No major content change from (MEQC 25(b)(2)(dd)).

61. (gg) New Change: This category contains all pipelines greater than 6 inches in diameter; rather than only crude petroleum fuels oil or derivatives and synthetic natural gas. (MEQC 25(b)(2)(pp)). The Council found that a major impact of pipelines is the right-of-way traversed; therefore, in considering future alternate energy sources and commodity transportation modes, it is more appropriate to include all pipelines of this size regardless of product transported.

62. (hh) No major content change from (MEQC 25(b)(2)(gg)).

63. (ii) No major content change from (MEQC 25(b)(2)(mm)).

64. (jj) New Change: Extraction has been separated from a new processing facility here and included under (nn). Additionally, "fuel" has been added to include all alternative future energy sources (i.e. peat or solid waste).

The projects which are strictly for fuel processing can have similar impacts on air quality, water supply, public health and land use.

65. (kk) No major content change from (MEQC 25(b)(2)(gg)).

66. (ll) No major content change from (MEQC 25(b)(2)(oo)).

67. (mm) No major content change from (MEQC 25(b)(2)(hh)).

68. (nn) New Change: A new mine of metallic minerals have been separated here from processing in the old regulations. This change was only to facilitate assignment of the DNR as the Responsible Agency due to their statutory authority in this area.

69. (oo) New Addition: "Fuels" has been added to (yy) of the old regulations to clearly include peat mining. The Council also found the addition of DNR as the Responsible Agency relative to peat mining since their agency must approve the leasing of these lands.

70. (pp) No major content change from (MEQC 25(b)(2)(ff)).

71. (qq) No major content change from (MEQC 25(b)(2)(rr)). The Responsible Agency has been changed to the DNR based on hearing testimony since they maintain the primary authority.

72. (rr) No major content change from (MEQC 25(b)(2)(ss)).

73. (ss) The Council found it necessary to remove other conditional requirements from (MEQC 25(b)(2)); these were confusing and were not necessary to address the major impact area, which is the marina harbor construction.

74. (tt) Under the present regulations, MEQC 25(b)(jj) mandatory categories for outside the metro areas were 100 units unsewered, 500 units sewered; and in the metro area, apparently in contemplation of the more common larger units, the sizes were 200 units unsewered, 1,000 or more sewered. The proposed rules noticed for hearing reduced the maximum units in the sewered metropolitan area to 500 units, but do not reduce the unsewered units proportionately. As a result, the Metropolitan Council in its written testimony points out that the Rules, MEQC 24(b)(2)(tt) permits only 100 unsewered units without a mandatory EAW in rural areas, but in metropolitan areas with presumably greater density of individual wells and greater proximity of septic systems, the Rule would permit twice as many, or 200 units to escape a mandatory EAW. Consequently, based on this testimony, the Metropolitan Council and Hearing Examiner proposed that 200 or more units in unsewered areas be reduced to 100 or more units in unsewered areas.

75. (uu) No major content change from (MEQC 25(b)(2)(zz)).

76. (vv) This is a new mandatory category.

The EQC has found an ever-increasing amount of "condominium type" campground projects or other semi-permanent residential and/or recreational developments being constructed throughout the state. Often, these projects occur in areas which do not have public utilities such as sewer and water, or adequate public services. The size of these projects have varied from hundreds of acres to thousands of acres. Land use impacted generally involves areas of high water tables, such as wetlands or forests, lake shores, river courses, and floodplaines. In the past, the EQC has loosely interpreted these developments under the existing mandatory residential requirements.

This mandatory category will clarify to the developer and the locality the concern the EQC has for these actions and therefore will eliminate last minute delays in reviewing these projects.

The Commissioner of Securities has also occasionally requested from the EQC environmental information on specific projects of this type which are subject to the Subdivided Land Sales Practices Act. By including this category and informing the localities of the State's responsibility under both of these Acts, projects can be more adequately and expeditiously processed through all levels of government and agencies within the state.

77. (ww) No change from (MEQC 25(b)(2)(ww)).

78. (xx) No change from (MEQC 25(b)(2)(kk)).

79. (yy) No change from (MEQC 25(b)(2)(ll)).

80. (zz) No change from (MEQC 25(b)(2)(uu)).

81. (aaa) The Council found it necessary to clarify the meaning of this category to include commercial forestry operations. The rationale for this change follows:

> To the written testimony of William S. Borchers, the Council responded with rebuttal testimony. Borchers had claimed that consultation with DNR indicated that the purpose of this mandatory category was to study the impact of converting sectio of forest land to other uses, such as grazing and to study the conversion of forest land sections to other uses with regard to wildlife. The Council denies that those are the exclusive purposes of this mandatory category and in support of its position provided the Hearing Examiner with an excerpt from the January, 1975, Journal of Forestry, the official publication of the Society of American Foresters. Said article recites PL 92500, Sect. 208 which requires states to establish area-wide and state-wide planning and management organization with respect to non-point sources of pollution and has set forth procedures and methods for controlling the extent of such sources, including silviculturally related non-point sources. The Council, therefore, is striking the qualifying clause in MEQC 24(b)(2)(aaa) to make plain that permanent removal of 640 or more continguous acres of forest

cover for any purpose requires a mandatory EAW, a conclusion in which the Hearing Examiner concurs.

82. (bbb) The addition of this category is based on testimony presented at the Hearing by the Boise-Cascade Corporation and clarified to the EQC's Technical Committee.

83. (ccc) No change from (MEQC 25(b)(2)(aa)).

84. (ddd) No change from (MEQC 25(b)(2)(bb)).

85. (eee) New Category: The Council found based on PCA testimony that these facilities have potential for environmental effects and should be evaluated. This mandatory category has been included in anticipation of future energy needs. Within the midwest area, there are enough nuclear power plants existing and proposed that some type of nuclear fuel processing plant may be a future reality. The plants themselves absorb more land area than nuclear power plants and require greater exclusion safety zones. The facilities also require large electrical demands and water supplies. Additionally, the handling and chemical processing of the high concentrated radioactive waste material is more difficult than use of fuel in a nuclear electrical generating facility. These potential environmental impacts associated with this type of facility necessitate a detailed environmental analysis of any such proposal.

86. (2) The Council recognized the usefulness of the EAW in evaluating the potential environmental effects of a project. Therefore, it found this format may be used on any action to determine the need for an EIS.

87. (c) Waiver of EAW - The Council found that an EAW may be waivered under the circumstances provided in this paragraph. This will reduce unnecessary and duplicative steps in the review process, while assuming adequate environmental review.

MEQC 25 ACTIONS NOT REQUIRING ENVIRONMENTAL IMPACT STATEMENTS

88. (a) General Criteria - Language has been added which generally related the evaluation of significance to an impact upon the environmental criteria evaluated in the EAW. This key significance to an impact upon a number of defined areas of the environment and should channel debate about the environmental significance of projects to arguments about impact on the area set forth in the EAW. The denomination of these substantive areas will provide guidance to the decentralized agencies on matters requiring particular consideration in deciding whether an EIS is needed. The language "material" effect, will indicate that there has to be an impact that is large or significant in one or more of these areas in order to require an EIS. Such guidance was recommended by the Sierra Club and a number of local governments in testimony on the regulations. A list of such factors is found in the EIS regulations of virtually every state, e.g. New York, California, Washington, as was indicated by testimony in the record and was recommended by Haworth and Anderson in their study, also in the record. While it would still be necessary for the decentralized agencies and the EQC to determine if the effects of a project in a particular area are material and serious, the focusing of debate by indicating areas of impact should clarify discussions

of when impact statements are required.

(b) Major Action:

89. (1) No change from existing regulations.

90. (2) No change from existing regulations.

91. (3) No change from existing regulations.

92. (4) Addition of cumulative "related" actions as defined in MEQC 25(e) to assist in this determination.

93. (5) Addition of "anticipated" growth and development. This was added to address those issues reasonably predictable in the future.

94. (6) The Council found this criteria was more useful in evaluating major, rather than local as was previously noticed with the first Rule Draft.

(c) Local Significance:

95. (1) No change from existing regulations.

96. (2) The Council found the size and type of action to be less a measure of locality than the geographical area to be impacted.

(d) Potential for Significant Environmental Effects:

97. (1) The Council found those actions which are not reversible and cannot be minimized have greater potential for long-term consequences and have more significant environmental effects.

98. (2) The Council found that cumulative impacts as defined in MEQC 25(e) are more significant than an individual action and therefore should be considered in greater detail.

99. (3) The Council found in reviewing a project if all existing state regulations are adequate to resolve specific problem areas, it is recognized that the EIS may not provide any additional safeguards and therefore would not be necessary.

100. (4) The Council found that potential for significant environmental effects is reduced if those effects can be controlled or resolved by other regulatory authority or environmental studies previously undertaken. An EIS on the same type of project may not be necessary in every case if enough information has been provided to the decision maker by previous studies. Since the EIS is only an informational document, other measures must be used to control a reoccurring impact, such zoning changes or other regulatory safeguards.

101. (e)(1) & (2) Related Actions - The Council was persuaded by numerous testimony to provide a more detailed procedure for handling cumulative action projects. The Council found the procedure in this section within the scope of the Rules as noticed for hearing.

102. (3) Language has been added indicating that in a related action EIS, the amount of detail on individual projects may be less and the use of scenario alternatives will be appropriate. This change is for clarification to assist preparers of EISs in recognizing the flexibility of the EIS adequacy standards depending on the scale and nature of the EIS action covered. It recognizes the appropriateness of preparing EISs earlier in the process and covering broader programs or geographical area issues so as to allow meaningful consideration of alternatives. The standard of lessor detail and use of more generalized scenario type alternatives was supported by a number of witnesses at the Hearing and by the submission of federal case law which indicates this standard, e.g. Scientists Institute for Public Information v. Atomic Energy Commission, 5 ERC 1418 (D.C. Cir. 1973).

103. (f) The Council found this paragraph will eliminate duplication of effort by not subjecting the same project to local, state, and federal EIS procedures if the one document is adequate; or if no major changes have occurred from the date of review of the Responsible Agency or EQC until the project is actually ready to be constructed.

104. (2) Single EIS - The Council found the EIS is intended as an informational and decision-making document if one EIS is properly prepared, in accordance with these guidelines, no additional document should be necessary.

It is recognized that costs of preparation of an EIS, in manpower and research, is not inexpensive; although, it may be only a small percentage of the capitol investment on a praticular project. Therefore, if sufficient public participation is provided in the process, and agencies coordinate closely and receive cooperation from the project proposer, these costs can be minimized by reducing duplication of effort.

105. (3) The Council found that expansions or modifications may be as significant as a new action, and therefore if it meets the criteria set forth in these Rules, environmental documents should be prepared. The EQC has under its previous regulations incorporated conditions to "grandfather" certain actions which may have commenced prior to the Act. The majority of these conditions no longer apply.

The Council also was often faced with phased development projects which were, in part, exempt, while others may not have received plat approval or the necessary permits to commence construction.

Many times a single phase of an expansion was of sufficient scale and impact to fall within the mandatory requirements for an environmental assessment. Often, some proposals may have never received any environmental review, since at their conception conditions may not have been as sensitive. This procedure will provide for cumulative environmental effects and assure these concerns are considered throughout the planning and dvelopment process.

The existing system of exemptions from environmental review in (MEQC 26(c)(1-4)) of the existing rules has worked unevenly and is not continued in these amendments on actions that require governmental approvals. The Council's experience was that some projects were technically exempted where in fact enough of the project remained to be completed, that there was still an opportunity for modification to avoid adverse environmental effects. Now

these expansions will be treated as new actions when a substantial portion of the action remains to be completed or implemented, and an EIS on the action may be able to influence remaining implementation or construction of the action to minimize adverse environmental effects.

106. (4) Federal EIS - The Council found that this section is basically the same as the existing rules with the following exceptions; for the supplementation of federal EISs where these Rules and the State Act require more than NEPA does, is proposed for amendment by the Council based upon testimony at the hearing and adding language to expressly require alternatives and modifications which could be implemented by state and local agencies be included in the federal EIS. In the circumstance that Federal Agency's requested to prepare a state EIS where a federal EIS is not required on the proposed federal action, no EAW shall be required, although an EIS Preparation Notice shall be published in the EQC Monitor. The thrust of these modifications, based upon testimony at hearing, is to mitigate the scope of claimed jurisdiction over proposed federal action and to maximize the coordinative function between the jurisdictions. Secondly, the paragraph requiring federal agencies to prepare state EIS is deleted because it is superfluous. The EQC cannot order a federal agency to do an environmental impact statement. The EQC has the residual authority to request federal agency cooperation, participation and EIS preparation in any case and the adoption of a rule to this effect is unnecessary.

107. (g) Environmental Review of Proposed Large Electric Power Generating Plants and High Voltage Transmission Lines.

Reserved For Future Use - Following additional hearings on this section, as resolved by the Council on March 16, 1976.

MEQC 26 ACTIONS NOT REQUIRING ENVIRONMENTAL DOCUMENTS

108. (a) General Exemptions - The original Draft Rules, first paragraph under this section was dropped. The Council found that having permits in hand is not enough to exempt an action from environmental documents. Instead a standard analogous to the federal case law standard, that EISs can be required up to the point where action on a project has proceeded to a point where meaningful change is impossible in response to information developed in the EIS has been adopted. The use of the same criteria as under the National Environmental Policy Act should make application easier for agencies and project proposers alike. See generally Arlington Coalition v. Volpe, 458 F.2d 1323 (4th Cir. 1972), and the CEQ Regulations, both in the record.

109. (1) No change from (MEQC 26(c)(6)(bb)).

110. (2) The Council found the major point in including this procedure is to encourage environmentally sensitive planning. The intent of this paragraph is to exclude the administrative plan for management of an area from the EIS process. Actions within this plan may still be subject to an EIS. It is recognized that the Critical Areas process is an effective mechanism for dealing with large areas of environmental sensitivity. If this process is adequate, local and state management plans for these areas can collectively consider the environmental effects of development within these areas. Therefore, if proposals are in conformance with the recommended land

or water uses for the Critical Area, EISs on specific projects may not be necessary.

If adequate environmental review of a development is not possible, then the Council still may order an EIS or some other form of analysis.

111. (3) The Council found that unnecessary expenditures of resources on a project should be reduced and can be if a public agency is going to deny approving an action. Therefore, an EIS would be meaningless.

112. (4) No major change, except requiring consultation with the Chairman of the Council prior to taking an action.

113. (b) The Council found it beneficial for state agencies to develop procedural guidelines for EAW and EIS exemption categories.

This will provide a more predictable process to all parties who must follow these Rules and should not require environmental documents since the Council will review and approve these procedures.

114. (c) EAW Exemptions - The Council accepts the testimony offered by the Sierra Club and a number of local governments that to assist public agencies in making the determination as to when environmental documents need not be prepared on a proposed action, the Council should develop a list of exempt actions indicating cases in which the action was presumptively not significant and no environmental documents should be prepared. This section establishes such categories. The categories indicated are taken from the Haworth and Anderson report and the New York State proposed regulations, both in the record. Provision of such a list of exemptions will be most valuable to local governments, because most of the actions enumerated are governed by local governmental permitting. Such a list has been part of the regulations adopted by other states in their EIS regulations, e.g., California, New York, Washington. In addition, this section provides that state agencies may establish additional exemption categories as long as the categories are consistent with the Act and these Rules. The EQC is authorized to review and approve exempt categories established by other state agencies. This authority is limited to state agencies because of the difficulty of maintaining consistency throughout the state if such adoption by local government agencies were possible. State agencies, having statewide jurisdiction, will provide exemptions of general applicability.

CHAPTER THIRTEEN
PROCEDURAL REQUIREMENTS

MEQC 27 SELECTION OF PREPARERS, PREPARATION OF EAW, AND NOTICE OF EAW CONCLUSIONS

115. (a)(1-3) Selection of Preparers - The Council found it was necessary to provide predictability to the determination of Responsible Persons and Agencies. The procedure outlined in this section will provide sufficient guidance in the determination.

116. (4) This section has been expanded based on testimony from NSP, DNR, National Biocentrics, and others to provide a mechanisim for the voluntary submission of environmental documents, but at the same time to insure the participation of the designated Responsible Agency. Again, the intent of this section is to provide an opportunity to eliminate unnecessary time

delays in the EIS process. By providing for the voluntary submission of environmental documents, the proposer of an action is given the opportunity to decrease the time necessary for the preparation.

117. (5) The Council found it can designate a Responsible Agency or Responsible Person to prepare environmental documents on any action that qualifies under the authority specified in MEPA.

118. (b) Preparation of an EAW - The Council found that the most appropriate time for environmental review is early in the planning process. Public agencies should consult with each other in the review of projects. This paragraph would limit responsibilities of a local agency to consult only with its neighbors who request consultation or are likely to be affected by the proposed action rather than all contiguous local agencies. This amendment is made at the request of the City of St. Paul and Minneapolis which testified that the contiguous requirement would lead to unproductive and unnecessary paperwork, particularly for a large city. (b)(1) is proposed for amendment by the Council based on testimony urging (a) that the EAW be prepared as early as practicable in the development of the action, (a request made by Minnesota Association of Commerce and Industry (MACI) and others), (b) the insistence by the Sierra Club that if a Negative Declaration Notice is filed and published long before any action activity or permitting is done with regard to the proposed action it could become unnoticed by interested parties.

119. (2) This paragraph indicates where the EAW format can be found which is required under this paragraph.

120. (c) Notice of EAW Conclusions - The Council found it necessary to explain in greater detail the procedures to be followed after completing the EAW.

These procedures will assure all persons interested in the project will receive proper notice of the action.

MEQC 28 REVIEW OF EIS PREPARATION NOTICES AND NEGATIVE DECLARATION NOTICES

121. (a)

(1) The Council accepts the Hearing Examiner's recommendations that a proposer has the right to request Council review of an EIS Preparation Notice by the Responsible Agency. Several witnesses noted that such a right to review should exist so that it parallels the right of petitioners to review a Negative Declaration within the same 30 day time. This section provides a procedure for review by all parties.

122. (2) The Council found the need to specify review times more specifically to provide a predictable process. This has been done in this paragraph.

123. (3) The Council found a hearing if held must be the requirements of state law, and have therefore been incorporated in this section.

124. (b) Many complaints were registered by hearing witnesses with regard to the long and sometimes indefinite time span for the EIS process. In the opinion of the Hearing Examiner, many of these time spans could not be shortened because of due process requirements or impossibility. However, it would seem the Council could live with reviewing negative declarations at or before the first meeting it holds more than 30 days following publication of the negative declaration. The publication process may take up to 10 days under these Rules.

If the first meeting should come on the 60th day from publication, then a period of almost 2-1/2 months would occur before decision on the Negative Declaration Notice appeal would be made. On the short side, the Agency would always have a total of 55 days for staff preparation and recommendation with regard to determining at its meeting whether an EIS is to be prepared. While the Council recognized that this is certainly in the area within the discretion of the EQC, nevertheless in light of the fervent testimony about lengthy time periods, it is in the Council's interest to have operative, acceptable Rules.

MEQC 29 PREPARATION AND REVIEW OF DRAFT EIS

125. (a)(1-3) The Council found no basic change from the existing regulations.

126. (4) This section had provided for reviewing agencies to "consult" and request the comments of public agencies which by the language used in the subdivision are themselves reviewing agencies. The Council found that a clear requirement of comment in writing be instituted, that it be received within 30 days of the reviewing agency's receipt of the EIS for comments, and that no more need be said.

127. (5) The Council found the Draft EIS should be circulated in accordance with this procedure.

128. (6) The Council found the need to specify the type of public notice required on Draft EIS and the procedure to be followed. This is a clarification of the existing regulations to make the process more predictable and assure citizen participation.

129. (b) Preparation and Review of Final EIS

(1) No major change from existing regulations MEQC 26(i).

130. (2) The Council found that receipt of the Final EIS in the manner described here is sufficient guidance to preparers.

131. (3) Council Review

(aa) The Council may review any Final EIS for adequacy under Minn. Stat. 116D.04 subd. 2.

132. (bb) Concern was expressed at the Hearing that the EIS process was not totally predictable. The time requirement for identification of an adequate final EIS has been included to be no more than 45 days after commencing review. Time limits for responding to an inadequate EIS has been limited to 15 days from the Council's decision of inadequacy.

133 (4) This section adds a requirement that when an EIS is found inadequate, the revised EIS be submitted for review and comment by agencies and interested persons, and then a final EIS with responses to the comments be filed. This is based on the clear requirement of the law that EISs be circulated for comment by agencies, Minn. Stat. § 116D.04, subd. 4, and the precedents established in a number of federal court cases, e.g. N.R.D.C. v. Morton, 335 F. Supp. 170, (D.D.C. 1972), I-291 Why? v. Burns, 372 F. Supp. 223, F. 2d, (2nd Cir. 1975). The EQC has exercised its power to review the adequacy of impact statements sparingly to date, finding only

one impact statement inadequate. It is expected that a finding of inadequacy will be based on substantial omissions in the final EIS. In such cases, the need for comments on the revised EIS is important, since significant new information will be presented for the first time in the revised draft EIS.

134. (5) Since MEPA mandates environmental considerations in all governmental actions, and requires a detailed statement on major actions with potential for significant environmental effects, it is only appropriate that governmental approvals of actions not commence until the Council's final review of the action is completed.

MEQC 30 CONTENT REQUIREMENTS

135. (a) Content of an EAW - The Council found the EAW's major topics should be outlined in the Rules to provide guidance to those persons doing EAWs.

The basic guidelines and standards for the proposed EAW are an integral part of the Rules themselves, and substantial testimony was offered to the effect that the EAW (Environmental Assessment Worksheet) should be part of the Rules under Minn. Stat. Ch. 15, as amended. The Hearing Examiner indicated the Council's authority to act outside its Rules under Minn. Stat. 116D.04, subd. 2 can support detailing of and some changes in the EAW after Rule adoption despite the generic language of Minn. Stat. 15.0412 as amended. Based upon testimony, the Council found that the proposed EAW provisions for inclusion in the Rules and that proposal, though not inclusive of all detail is more than adequate in light of this unique enabling legislation.

The proposed EAW form, including all language in MEQC 30(a), was part of the Council's September 25th Proposed Rules draft by reference and was available at the Hearing together with the Proposed Rules. The Hearing Examiner found that these provisions were adequately noticed out by the hearing procedure and, within the scope of same, the Council offered adequate supporting testimony as to the derivation of the EAW from its own experience in other states with Environmental Assessments under existing MEQC 25 and 27, from experience in other states with similar environmental impact statement statutory authority, and from the recommendations of Haworth-Anderson, Inc., we concur.

(b) Content of the Negative Declaration Notice

136. (1) No major content change from existing regulations.

137. (2) The general testimony at the Hearing and the written submissions make plain a concern that MEQC 30(b)(2) could become a meaningless statement. MEQC 30(b)(2) as proposed by the Hearing Examiner enlarges the content of a Negative Declaration Notice to include supporting reasons for the statements that no EIS is required. Since the Minnesota Supreme Court's decision in MPIRG et al. v. MEQC et al., filed December 19, 1975, it appears that a Negative Declaration Notice is subject to judicial review as a contested case under the Administrative Procedure Act if a petition by 500 persons requesting preparation of an EIS was submitted. The statement of reasons for the negative declaration both at the time of its making and after administrative appeal becomes most important.

138. (3) The Council found it necessary to indicate the location where citizens

may review the EAW to determine if they agree or disagree with the decision of the Responsible Agency.

139. (c) Content of EIS Preparation Notice - The Council found this paragraph included the minimum information necessary for citizens and agencies to recognize a project when published in the EQC Monitor.

140. (d) Content of Draft EIS - This chapter is basically the same as the existng regulations MEQC 31 with minor word changes to clarify the type of information requested under each major heading. A summary sheet has been added to the beginning of the report to provide the reader with a concise summary of the report and indicate the agencies and persons contacted. The description also specifies the need for a map of the site and area to graphically aid the reviewer in locating the project.

The requirement of considering energy resources has been appropriately added to the content of the EIS, based on the Energy Agency's testimony.

141. (e) Content of Final EIS - The Responsible Agency must have the option to include the original comments or summarize the comments depending on the content of the response and the budget of that agency.

Often, on large controversial projects, the comments themselves could exceed the technical document. Distribution of many of these large reports would be economically unfeasible. The agency may find many duplications of the same concerns which can be summarized the referenced in the EIS. The agency should also have the flexibility to incorporate the entire comment if this reduced time in trying to summarize and response. On small projects, this procedure would be more practical.

MEQC 31 FINAL DECISIONS AND ACTIONS

142. (a-d) The Council found the procedures outlined in these sections are consistent with the requirements of the Early Notice procedure and expand the level of citizen participation in the review process.

143. (e) In response to State Planning Agency testimony and its own reevaluation, we determine that only state agencies and the Council should be able to specify the extent to which the action will not be halted during the pending of EIS preparation. A reading of the statute makes it plain that the authority to halt the action may not be delegable to other state agencies. Therefore, the phrase, "and the Responsible Agency" is deleted, together with the caveat making plain that in no way does this proposed Rule limit the Council's statutory authority to halt actions or impose other temporary relief.

MEQC 32 PETITION FOR AN EIS

144. (a) Petition: No change from existing regulations.

(b) Content:

145. (1) No change from existing regulations.

146. (2) No change from existing regulations.

147. (3) No change from existing regulations.

148. (4) Change to provide person for correspondence on the proposal.

149. (5) Since the EQC and Responsible Agency makes an EIS decision based on the information provided by the EAW, the petitioners should utilize these same guidelines to facilitate the review of the project and aid the EQC in its determination of the need for an EIS.

150. (c) Council Action

(1) (aa-cc) This paragraph primarily lists the reasons in which a petition may be determined to be invalid and therefore should not be automatically brought to the Council.

The procedure allows for taking no formal Council action on those petitions which could not result in preparation of an environmental impact statement.

(dd) This provision has been inserted to reflect the 1975 amendment to Minn. Stat. 116D.04, subd. 3. The legislative intent seems clear that the Council's former practice of dealing with all citizen petitions was counter-productive, and some initial screening must be expeditiously performed. This screening becomes even more crucial in these Rules with the addition of a hearing process for petitioners. The result under these Rules will be to eliminate consideration of the least meritorious petitions while providing more opportunity for public participation for the others.

151. (2) The petition process has been the most difficult for the EQC to effectively deal with. The provision in the law for allowing any 500 persons to request an EIS on a project has brought over 35% of the actions to the Council. Only 7 out of 51 (14%) of these petitions resulted in the EQC ordering an EIS at the time these Rules were noticed for hearing. Nevertheless, the time consumed by the Council and staff in reviewing these petitions, obtaining sufficient information for analysis, hearing the petitioners at an EQC meeting and ordering an Environmental Assessment and reviewing the document is often extremely unproductive for the Council as well as the concerned citizens. The Council found this revised procedure will gather information on a project before it goes to the EQC, either by the Responsible Agency or through a public meeting held in the locality affected, thereby making the Council meetings more efficient.

152. (d) Responsible Agency Duties - This paragraph merely explains the time requirements for preparation of the EAW required under (c)(2) above.

153. (e) Challenge of Negative Declaration Notice by Petitioners - This section is an attempt to clarify the potential situations as they occur and also to indicate the process the petitions are subject to. The Council's intent was to provide citizen access to the decision process by allowing for two separate and distinct petitions. A petition can initiate the request for an EIS and a separate petition may challenge the Negative Declaration Notice, thereby essentially requesting an EIS. The Council found this procedure is consistent with the Rules noticed for hearing.

CHAPTER FOURTEEN
EARLY NOTICE RULES

154. MEQC 33 AUTHORITY AND PURPOSE - The Council found that a change is necessary to combine the Authority and Purpose statements into one section. The reorganization and word changes are for clarity and are not intended to have a substantive effect.

155. MEQC 34 EXEMPTIONS

Subd. (a): This section used three categories of permits which are exempted from following the early notice procedures. The first is the National Pollutant Discharge Elimination System Permits (NPDES) which are permits that the Minnesota Pollution Control Agency grants for the Environmental Protection Agency. These permits were exempted because the Environmental Protection Agency currently publishes and distributes public notice for all NPDES permit applications.

Subd. (b) The second category of exemptions are on permits where, in the opinion of any public agency, the strict observance of the early notice rules would jeopardize the public health, safety or welfare, or would generally compromise the public interest. Alternative methods of notification must be employed in these cases, and the Council must be notified as to what they are.

This provision allows emergency measures to be taken without the otherwise required waiting period. To compensate for not giving notice through the early notice system, other methods of notification must be employed and the Council must be informed of them. Because the use of the exemption and the method of substitute notice is brought to the Council's attention, it is assumed that if further notice of other action, if needed, the Council will take appropriate action.

Subd. (c): The third class of exemptions are those federal permits administered by the state that the Council resolves to be exempted at its discretion. The federal permits administered by the state may be exempted because the Environmental Policy Act does not allow for their inclusion or exclusion in the early notice procedure. Exempting them by resolution of the Council permits future flexibility.

MEQC 35 EQC MONITOR PUBLICATION REQUIREMENTS

156. (a) The Federal Government, through the Forest Service, United States Department of Agricultural, by James F. Torrence, Forest Supervisor, Superior National Forest has made plain that it is most reluctant to be bound to do anything by these Rules which basic principles of constitution law would bar. For that reason, the caveat is added to MEQC 35(a), so that the requirements to publish with regards to the Federal Government becomes instead a request made in the spirit of coordination and cooperation evidenced elsewhere in the Rules and in the Act.

157. (1) Notice is required on these actions because they are environmentally significant. This was determined by the findings of fact for the EIS regulations drafted in 1973, and as determined in MEQC 24(b)(1).

158. (2) EIS Preparation Notices and Negative Declaration Notices. Publication of these Council decisions is required as a public information service.

159. (3) The Council found in response to testimony by the Sierra Club and others to the development permit applications to Critical Areas and Wild and Scenic River Areas as proposed was an unreasonable classification, that the same should apply to all the areas listed in proposed (aa) through (nn) since these areas are also officially designated and recognized as areas of local, state and national significance.

160. (4) This provides the Council the option to notify the public on special

issues of state significance.

161. (5) This provides additional public notice of EIS reviews and increases citizen involvement.

162. (6) The Council found that the Energy Agency's review of large energy facilities should be well noticed to the public to provide additional citizen and agency participation.

163. (b) The Council found this provision provides flexibility for public agencies to publish notices of general interest or information which may be of environmental concern throughout the state.

164. (c) The Council found all of the procedures in this paragraph are items of public interest, related to state environmental issues, and therefore should be published to inform the state citizens.

165. MEQC 36 CONTENT OF NOTICE - The Council found the procedure submitted in this section to public hearing is adequate with no major conflict at the hearings.

166. MEQC 37 STATEMENT OF COMPLIANCE - The Council found this section is necessary to assure compliance with these Rules.

167. MEQC 38 PUBLICATION - The Council found these procedures for publication timely and workable.

168. MEQC 39 COST AND DISTRIBUTION - The Council found no major opposition to these procedures, and therefore adopts them.

169. MEQC 40 GENERAL

(a) No major conflict.

170. MEQC 41 EFFECTIVE DATE - The Council found this section sufficient to inform all persons using these Rules as to what EIS procedures should be followed.

CERTIFICATE OF COUNCIL'S

AUTHORIZING RESOLUTION

I, Mary Sullivan, do hereby certify that I am Administrator of the Minnesota Environmental Quality Council, a council duly authorized under the laws of the State of Minnesota, and that the following are true, complete and correct copies of resolutions adopted at a meeting of the Minnesota Environmental Quality Council duly and properly called and held on the 16th day of March, 1976; that a quorum was present at said meeting; and that a majority of the members of the Council voted for the resolutions.

Mr. Herbst moved:

> RESOLVED, that the rules relating to Environmental Impact Statements, as amended, be and they hereby are approved and adopted by the Environmental Quality Council pursuant to authority vested in it by Minn. Stat. § 116D.04, subd. 2 (1974), and that Peter Vanderpoel, Chairman of the Minnesota Environmental Quality Council, be and hereby is authorized to sign an order adopting those rules.

Seconded by Mr. Magnuson, the motion carried unanimously (10-0) with Vanderpoel, Gove, Herbst, Kozak, Millhone, Lukermann, Magnuson, Lawson, Wefald and Ohman voting aye.

Ms. Lukermann moved:

> THAT the Environmental Quality Council accept the Findings and Recommendations of the Environmental Quality Council's Technical Committee as submitted.

Seconded by Mr. Herbst, the motion carried unanimously (10-0) with Vanderpoel, Gove, Herbst, Kozak, Millhone, Lukermann, Magnuson, Lawson, Wefald and Ohman voting aye.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 23rd day of November, 1976.

Mary Sullivan
Mary Sullivan
Administrator

Subscribed and sworn to before me this 23rd day of November, 1976.

Notary Public

JEANNE HERBERTSON
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOV. 30, 1982

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

COUNTY OF RAMSEY

In the Matter of the Amendment of the Rules of the Minnesota Environmental Quality Council Relating to the Preparation and Review of Environmental Impact Statements (Minn. Reg. MEQC 21-50).

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before a hearing officer appointed by the Minnesota Environmental Quality Council in Room 81 of the State Office Building at 1:00 p.m. on November 12, 1975, and was continued pursuant to the Notice of Hearing after proper notice required by Minn. Stat. § 15.0412 (1974) was served upon all persons, associations, and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards and criteria, and having confirmed the need for the above-captioned rules, the Minnesota Environmental Quality Council, in its March 16, 1976 meeting, adopted the above-captioned and attached rules.

NOW THEREFORE, IT IS ORDERED that these rules identified as MEQC 21 through MEQC 41 are adopted this 16th day of March, 1976, pursuant to authority vested in me by law and resolution of the Minnesota Environmental Quality Council.

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

Peter Vanderpoel

Peter Vanderpoel, Chairman

MINNESOTA ENVIRONMENTAL QUALITY COUNCIL

ENVIRONMENTAL IMPACT STATEMENT RULES

CHAPTER ELEVEN

AUTHORITY, PURPOSE, DEFINITIONS, GENERAL PROVISIONS

MEQC 21 AUTHORITY AND PURPOSE

(a) Authority. The Rules contained herein are prescribed by the Minnesota Environmental Quality Council to implement the Environmental Impact Statement provisions pursuant to authority granted in Minnesota Statutes, Section 116D.04, subdivision 2 (1974), and shall be followed by all persons in implementation of the Minnesota Environmental Policy Act of 1973. The procedures specified in these Rules are in addition to the other procedures and substantive responsibilities of public agencies and private persons contained in the Act, and do not limit the authority of the Council to review, study, or resolve any matter of environmental concern authorized by law.

(b) Purpose of Environmental Impact Statement. The purpose of an Environmental Impact Statement is to provide information for agencies and private persons to evaluate proposed actions which have the potential for significant environmental effects, to consider alternatives to the proposed actions, and to institute methods for reducing adverse environmental effects. An Environmental Impact Statement is not a document to justify an action, nor shall indications of adverse environmental effects necessarily require that an action be disapproved. It is to be utilized as a guide in issuing, amending, and denying permits and carrying out the other responsibilities of public agencies to avoid or minimize adverse environmental effects and to restore or enhance environmental quality consistent with the Act.

MEQC 22 DEFINITIONS

The following terms have the meanings ascribed to them in these Rules.

(a) "Act" means the Minnesota Environmental Policy Act of 1973, as amended, Minn. Stat. § 116D.01 et seq. (1974).

(b) "Action" means the whole of a project which will cause physical manipulation of the environment, directly or indirectly. The determination of whether an action requires environmental documents shall be made by reference to the physical activity to be undertaken and not to the governmental process of approving the activity. "Action" does not include the following:

(1) Proposals and enactments of the Legislature.

(2) The rules, orders, or recommendations of public agencies.

(3) Executive Orders of the Governor, or their implementation by public agencies.

(4) Judicial orders, except orders establishing judicial ditches pursuant to Minn. Stat. Chapter 106 (1974).

(5) Submissions of proposals to a vote of the people of the State.

(c) "Approval" means the issuance of a governmental permit, or any review of a proposed action required by state or federal law or regulations.

(d) "Council" means the Minnesota Environmental Quality Council (MEQC).

(e) "Days." In computing any period of time prescribed or allowed in these Rules, the day of the act or the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is 15 days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(f) "Environmental Impact Statement (EIS)" is defined by Minn. Stat. § 116D.04, subdivision 1 (1974) and these Rules.

(g) "EIS Preparation Notice" means a written statement by the Responsible Agency or Responsible Person which requires an EIS to be prepared.

(h) "Environment" means the physical conditions existing in the area which

will be affected by the proposed action, including land, air, water, minerals, flora, fauna, ambient noise, energy resources available to the area, and man-made objects or natural features of historic, geologic or aesthetic significance.

(i) "Environmental Assessment Worksheet (EAW)" means a worksheet provided by the Council to determine whether an EIS is required.

(j) "Environmental Documents" means EAWs, Draft EISs, Final EISs, Negative Declaration Notices, and EIS Preparation Notices.

(k) "EQC Monitor" means an early notice bulletin containing all notices of impending actions that may have significant environmental effects.

(l) "Governmental Action" means an action proposed to be undertaken by a public agency directly or an action supported or licensed, in whole or in part, by a governmental permit issued by a public agency.

(m) "Governmental Permit" means a lease, permit, license, certificate, variance, or other entitlement of use, or the commitment to issue or the issuance of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, by a public agency to another public agency or to a private person.

(n) "Inadequate EIS" means an EIS that fails sufficiently to examine potential environmental effects, alternatives, or desirable modifications, or an EIS not prepared in compliance with the Act and these Rules.

(o) "Local Agency" means any general or special purpose unit of government of the state with less than state-wide jurisdiction, including but not limited to regional development commissions, counties, municipalities, townships, port authorities, housing authorities, and all agencies, committees, and boards thereof.

(p) "Negative Declaration Notice" means a written statement by the Responsible Agency or Responsible Person that a proposed action does not require the preparation of an EIS.

(q) "Other Approving Agencies" means all public agencies other than the Responsible Agency that must approve a project for which environmental documents are prepared.

(r) "Person" means a human being, unincorporated association, partnership, trust, corporation, or public agency.

(s) "Petition" means a document that contains at least 500 signatures and requests the preparation of an EIS.

(t) "Private Action" means an action proposed to be undertaken by a private person that does not require a governmental permit.

(u) "Proposer" means the private person or public agency that will undertake an action or that will direct or authorize others to undertake the action.

(v) "Public Agency" means a federal, state, regional or local agency, board, commission, or other special purpose unit of government. "Public Agency" includes all public educational institutions but does not include the courts of this State.

(w) "Regional Development Commission" means any regional development commission created pursuant to Minn. Stat. §§ 462.381-396 (1974) inclusive and the Metropolitan Council established by Minn. Stat. Chapter 473 (Supp. 1975).

(x) "Responsible Agency" means that public agency which has the principal responsibility for preparing the environmental documents required by the Act and these Rules.

(y) "Responsible Person" means the person who proposes to undertake an action and who is responsible for the preparation of the environmental documents required by the Act and these Rules.

(z) "Reviewing Agencies" means all public agencies which have either jurisdiction by law or special expertise with regard to the environmental effects of an action for which an EIS is prepared. All agencies that are members of the Council shall be considered reviewing agencies.

MEQC 23 GENERAL RESPONSIBILITIES

(a) Environmental Quality Council.

(1) The Council's duties and responsibilities include the following:

(aa) Coordinate the EIS program as set forth in these Rules.

(bb) Coordinate among public agencies, when appropriate, review of EISs prepared pursuant to the National Environmental Policy Act. The coordination may include requests to the preparer or to a public agency to undertake additional environmental analysis, to hold informational meetings, or to conduct any other review consistent with the Act and these Rules.

(cc) Provide a manual of procedure to guide public agencies, Responsible Agencies, and Responsible Persons in the implementation of this Act and these Rules; and assist on request in determining whether the specific action requires an EIS.

(2) In addition, the Council may, where it deems necessary:

(aa) Require revision of any EIS that it finds inadequate.

(bb) Require preparation of alternative or additional environmental review before allowing commencement of any action or approval of any action by a public agency.

(cc) Provide technical assistance on request of a public agency, Responsible Agency or Responsible Person.

(dd) Review any rules, guidelines, procedures, or local ordinances adopted to implement the Act and these Rules.

(ee) Hold hearings or informational meetings to facilitate implementation of the Act and these Rules.

(b) Public Agencies.

(1) All public agencies are responsible for complying with the requirements of the Act and these Rules. Public agencies shall inform a proposer, and a representative of the petitioners when a petition is involved, of the operating procedures that they will follow in implementing the Act and these Rules for each EAW they prepare. Such operating procedures shall also be available to the public at the offices of the Responsible Agency. Whether a public agency prepares environmental documents itself or contracts with private experts for the preparation, the public

agency is solely responsible for the adequacy and objectivity of the environmental documents. Nothing in these Rules shall limit existing authority of public agencies to charge proposers reasonable fees for document preparation.

(2) All public agencies shall retain their existing statutory authority subject to the policies of the Act and the authority of the Council to reverse or modify decisions or proposals or to require preparation of environmental documents.

(3) Under the Act, these Rules shall not affect the specific statutory obligations of any public agency to perform the following:

(aa) To comply with criteria or standards of environmental quality regardless of whether an EIS is required for an action.

(bb) To coordinate or consult with any federal or state agency.

(cc) To act or refrain from acting contingent upon the recommendations or certification of any public agency or federal agency.

(4) A public agency, at the request of a Responsible Agency, shall provide any unprivileged data or information to which it has reasonable access concerning a particular action and shall assist in the preparation of environmental documents on any action for which it has special expertise or access to information.

(5) A public agency shall prepare the environmental documents on an action which is the subject of a petition upon the direction of the Council.

(6) When environmental documents are prepared on an action by a Responsible Agency, every public agency which has jurisdiction to approve the action shall consider the environmental documents prepared on that action before approving the action.

(7) Public agencies shall provide one free reproducible copy of all environmental documents to each location on the official

MEQC distribution list, except as otherwise provided herein. These will be available for internal agency distribution and for public copying.

(c) Private Persons. When environmental documents are required on an action that is subject to a governmental permit, the proposer shall supply in the prescribed manner any unprivileged data or information reasonably requested by the Responsible Agency that that person has in his possession or to which he has reasonable access.

CHAPTER TWELVE

SUBSTANTIVE REQUIREMENTS

MEQC 24 ACTIONS REQUIRING ENVIRONMENTAL ASSESSMENT WORKSHEETS

(a) General. The purpose of an EAW is to assess rapidly, in a worksheet format, whether a proposed action is a major action with the potential for significant environmental effects and additionally in the case of a private action, whether it is of more than local significance.

(b) EAW Required.

(1) An EAW shall be prepared on any action which is not exempted by MEQC 26 and which falls within one of the following categories. The Responsible Agency is shown in parenthesis for each category except that when a proposer of an action is a public agency that agency shall be the Responsible Agency. The Council may specify a different Responsible Agency for good cause.

(aa) Construction of a new industrial park of over 320 acres in size -- (Local);

(bb) Construction of a facility or integral group of facilities with at least 250,000 square feet of commercial or retail floor space or 175,000 square feet of industrial floor space, or a mixture of commercial, industrial and retail floor space totaling 250,000 square feet, unless located in an industrial park for which an EIS has already been prepared -- (Local);

(cc) Any industrial, commercial or residential development of 40 or more acres, any part of which is within a floodplain area, as defined by the "Statewide Standards and Criteria for Management of Floodplain Areas of Minnesota" -- (Local);

(dd) Construction of a commercial or industrial development, any part of which is within a shoreland area (as defined by Minn. Stat. § 105.485 (1974)), covering 20,000 or more square feet of ground space, not including access roads or

parking areas, and located on a parcel of land having 1,500 feet or more of shoreline frontage -- (Local);

(ee) Construction of a facility that generates more than a maximum of 2,500 vehicle trips per hour or a maximum of 12,500 vehicle trips per eight-hour period -- (Local);

(ff) Construction of a new oil refinery, or an expansion of an existing refinery that shall increase capacity by 10,000 barrels per day or more -- (PCA);

(gg) Construction of a pipeline greater than six inches in diameter and 50 miles in length -- (DNR);

(hh) Construction of facilities on a single site that are designed for, or capable of, storing a total of one million or more gallons of liquid natural gas, liquid petroleum gas, or other liquid fuels -- (PCA);

(ii) Construction of an underground storage facility for gases and liquids that requires a permit, pursuant to Minn. Stat. § 84.57 (1974) -- (DNR);

(jj) Construction of a new mineral or fuel processing or refining facility, including, but not limited to, smelting and hydrometallurgical operations -- (PCA or DNR);

(kk) Construction of a facility if the cumulative emissions of particulate matter and sulfur oxides exceed 50 tons per day -- (PCA);

(ll) Main roadway grading construction of a four-or-more lane, divided highway with at least partial control of access of ten route miles or more in length and carrying 10,000 vehicles ADT (Average Daily Traffic) -- (Hwys);

(mm) Construction of a new airport that is within the key system, pursuant to Minn. Stat § 360.305, subdivision 3 (1974) -- (Aeronautics);

(nn) Construction or opening of a new facility for mining metallic minerals -- (DNR);

(oo) Construction or opening of a facility for mining gravel, other non-metallic minerals, and fuels involving more than 320 acres -- (Local, except DNR with respect to peat fuels).

(pp) A new appropriation for commercial or industrial purposes of either surface water or ground water averaging 30 million gallons per month, or exceeding 2 million gallons in any day during the period of use; or a new appropriation of either ground water or surface water for irrigation of 640 acres or more in one continuous parcel from one source of water -- (DNR);

(qq) Any new or additional impoundment of water creating a water surface in excess of 200 acres -- (DNR);

(rr) An action that will eliminate or significantly alter a wetland of Type 3, 4, or 5 (as defined in U.S. Department of Interior, Fish and Wildlife Service, Circular 39, "Wetlands of the U.S., 1956") of five or more acres in the seven-county metropolitan area, or of 50 or more acres outside the seven-county metropolitan area, either singly or in a complex of two or more wetlands -- (Local);

(ss) Any marina and harbor project of more than 20,000 square feet of water surface area -- (Local);

(tt) Construction of a new or additional residential development that includes 100 or more units in an unsewered area or 500 or more units in a sewered area -- (Local);

(uu) Construction of a residential development consisting of 50 or more residential units, any part of which is

within a shoreland area (as defined by Minn. Stat. § 105.485 (1974)) -- (Local);

(vv) Construction of a development consisting of "condominium-type" campgrounds, mobile home parks, or other semi-permanent residential and/or recreational facilities, any part of which is within a shoreland area (as defined by Minn. Stat. § 105.485 (1974)) or floodplain (as defined by the "Statewide Standards and Criteria for Management of Floodplain Areas of Minnesota") exceeding a total of 50 units or, if located in areas other than the above, exceeding a total of 100 units -- (Local);

(ww) Construction of a sanitary landfill for an excess of 100,000 cubic yards per year of waste fill, or any sanitary landfill located in an area characterized by soluble bedrock, where leachates may significantly change groundwater quality -- (PCA);

(xx) Construction of a new paper and pulp processing mill -- (PCA);

(yy) The application of restricted use pesticides over more than 1,500 contiguous acres -- (Agriculture);

(zz) Harvesting of timber within the Boundary Waters Canoe Area Portal Zone or in a State Park or Historical Area, that is not included in an annual timber management plan filed with the Council -- (DNR);

(aaa) Permanent removal of 640 or more contiguous acres of forest cover -- (DNR);

(bbb) Conversion of 40 or more contiguous acres of forest cover to a different land use -- (Local);

(ccc) Construction of electric generating plants at a single site designed for, or capable of,

operation at a capacity of 200 or more megawatts (electrical) -- (PCA);

(ddd) Construction of electric transmission lines and associated facilities designed for, or capable of, operation at a nominal voltage of 200 kilovolts AC or more, or operation at a nominal voltage of ± 200 kilovolts DC or more, and are 50 miles or more in length -- (EQC);

(eee) Construction of nuclear material processing plants and facilities -- (PCA).

(2) An EAW may be prepared on any proposed action to determine if the action is a major action with the potential for significant environmental effects and for a private action if the action is of more than local significance.

(c) Waiver of EAW. In cases where the magnitude and environmental impact of a project allow a Responsible Agency or Responsible Person to determine that an EIS is necessary without preparation of an EAW, or if a federal agency is preparing a state EIS pursuant to MEQC 25 (f)(4), an EAW need not be prepared. Publication of the EIS Preparation Notice shall be required. In cases where the Responsible Agency is not the proposer, if the project proposer does not concur in the determination of need for an EIS without the preparation of an EAW, the agency shall prepare an EAW.

MEQC 25 ACTIONS REQUIRING ENVIRONMENTAL IMPACT STATEMENTS

(a) General Criteria. An EIS shall be required whenever it is determined that an action is major and has the potential for significant environmental effects. In making this determination, material effects on the environmental variables specified in MEQC 30(a)(3) will indicate that an EIS should be prepared. In the case of a private action, it must also be determined that the action is of more than local significance.

(b) Major Action. In determining whether an action is major, the following factors shall be considered:

(1) Type of action;

(2) Scope of action, including size and cost;

(3) Location and nature of surrounding area;

(4) The totality of cumulative related actions, as defined by MEQC 25(e);

(5) Relation of the action to anticipated growth and development; and

(6) Permit(s) and approval(s) required in addition to those of one primary, local agency.

(c) Local Significance. In determining whether a major private action is of more than local significance, the following factors shall be considered:

(1) Location of the action; and

(2) Area affected by the action.

(d) Potential for Significant Environmental Effects. In determining whether an action has the potential for significant environmental effects, the following factors shall be considered:

(1) Type, extent, and reversibility of environmental effects;

(2) Cumulative potential effects of related or anticipated future actions, as defined by MEQC 25(e);

(3) The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and

(4) The extent to which environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, or of EISs previously prepared on similar actions.

(e) Related Actions.

(1) When two or more actions are related, they shall be considered as a single action and their cumulative potential effects on the environment shall be considered in determining whether an EIS is required. Actions are related if:

(aa) They are of a similar type, and are planned or will occur at the same time, and will affect the same geographic area; or

(bb) They are interdependent and not independently viable stages or segments of development of the same project and would not be undertaken if subsequent stages or segments would not also occur; or

(cc) It can be determined, based on a comprehensive plan or on the precedent that would be established by a public agency's undertaking or approving an action, that one of the actions will induce other actions of the same type or affecting the same geographic area.

(2) A comprehensive plan for a geographic area or other public agency overall program or plan document may be considered as a Related Actions EIS.

(aa) The geographic area must contain possible actions each with the potential for significant environmental effects or actions whose cumulative potential environmental effect is significant.

(bb) For an individual action in the geographic area, the need for an individual action EIS or a modification of the Related Actions EIS shall be judged by the guidelines for a Subsequent EIS.

(3) A Related Actions EIS shall meet the content requirement of MEQC 30(d); however, the data may be more generalized and not as exhaustive as an individual action EIS. Additionally, the alternatives may be more in the nature of prototypes or alternate scenarios.

(f) Miscellaneous.

(1) Subsequent EIS. When an EIS has been prepared on an action, no additional EIS need be prepared on the action unless changes in the action are proposed which will involve new and potentially significant environmental effects not considered in the previous EIS.

(2) Single EIS. When an action is to be carried out or approved by more than one public agency, only one EIS shall be prepared

pursuant to the Act.

(3) Expansions or Modifications. The expansion or modification of an ongoing action which requires new or modified governmental permits shall be subject to the same requirements in the Act and these Rules for the preparation of environmental documents as a new action.

(4) Federal EIS. When these Rules require the preparation of a state EIS on an action, and a federal EIS is required for the same action, pursuant to the requirements of the National Environmental Policy Act (NEPA) and the implementing regulations thereto, all or any part of the federal EIS may be submitted in lieu of all or any part of a state EIS. However, when the federal EIS is used, the elements of the EIS that are required by the Act and these Rules, but are not required by NEPA, shall be added to the federal EIS, including alternatives and modifications which can be implemented by state and local agencies. When a federal EIS is prepared in lieu of a state EIS, the state Responsible Agency shall independently review the federal EIS and ascertain that the conclusions and recommendations are those that the state agency would reach. Insofar as practicable, the Responsible Agency shall consult with the federal agency and coordinate all environmental reviews to the end that the requirements of state law are met by a single Draft EIS, single Final EIS, and a single hearing process, in which the state agency actively participates and adds supplementary material as necessary. In such circumstances, an EAW shall not be required; however, an EIS Preparation Notice shall be published in the EQC Monitor.

(g) Environmental Review of Proposed Large Electric Power Generating Plants and High Voltage Transmission Lines.

RESERVED FOR FUTURE USE

MEQC 26 ACTIONS NOT REQUIRING ENVIRONMENTAL DOCUMENTS

(a) General Exemptions. The preparation of environmental documents shall not be required:

(1) When a substantial portion of the action has been completed or implemented and an EIS on the action would not be able to influence remaining implementation or construction of the action to minimize adverse environmental consequences.

(2) When there has been adequate environmental review of an action within the jurisdiction of the Council pursuant to Minn. Stat. § 116G.01 et seq. (1974) (the Critical Areas Act of 1973), or Minn. Stat. § 116C.04(2)(b) (1974) (the Environmental Quality Council Act of 1973).

(3) When, and so long as, a public agency denies a governmental approval required for the action.

(4) When an imminent and substantial danger to the public health, safety or welfare makes it necessary to undertake a major action that has the potential for significant environmental effects and application of these Rules would be impracticable. In such cases, the proposer shall consult with the Chairman of the Council to arrange an alternative means of environmental review before taking the action.

(b) State agencies developing procedural guidelines may develop EAW and EIS exemption categories. Such categories shall be submitted for Council review and approval.

(c) EAW Exemptions. Unless an action is included under MEQC 24(b)(1), the following items are categories for which an EAW shall not be required. This listing may be used as a guideline for developing other state agency exemption categories under MEQC 26(b). The following listing is not intended to imply that EAWs must be prepared on actions not included in this listing. In cases where EAWs are neither exempt nor mandatory, the public agency should prepare EAWs only where it is probable that the actions will cause significant environmental effects and an EAW is needed to guide the decision on whether an EIS is required.

(1) Operation, maintenance, or repair work involving no substantial change in existing structures, land uses, or water quality.

(2) Construction or alteration of a single or multiple residence with four dwelling units or less and accessory appurtenant structures and utilities, when not in conjunction with the construction or alteration of two or more such residences.

(3) Construction or alteration of a store, office, or restaurant designed for an occupancy of 20 persons or less, if not in conjunction with the construction or alteration of two or more stores, offices, or restaurants accumulating an occupancy load of more than 30 persons, unless designated to be an historical structure.

(4) Restoration or reconstruction of a structure in whole or in part being increased or expanded by less than 25 percent of its original size, square footage, or capacity, and aggregating less than 5,000 square feet, provided that such structure has not been designated to be of historical, cultural, archeological, or recreational value by a public agency.

(5) Repaving or reconstruction of existing highways not involving the addition of new travel lanes or acquisition of additional right-of-way.

(6) Installation of traffic control devices on existing streets, roads, and highways other than installation of multiple fixtures on extended stretches of highway.

(7) Licensing or permitting decisions relating to individual persons or activities directly connected with an individual's household, livelihood, transportation, recreation, health, safety, and welfare, such as motor vehicle licensing, hunting licenses, professional licenses, and individual park entrance permits.

(8) Purchase of operating equipment, maintenance equipment,

or operating supplies.

(9) Sales or lease of surplus governmental property other than land, radioactive material, pesticides, or buildings.

(10) Loan, mortgage, guarantee, or insurance transactions in connection with new or existing structures or uses as defined in subparagraphs MEQC 26(c)(2)(3) or (4).

(11) Borrowing for purposes other than capital construction or land purchase.

(12) Maintenance of existing landscaping, native growth, and water supply reservoirs, excluding the use of pesticides.

(13) Utility extensions as follows: water service mains of 500 feet or less and one and a half inches diameter or less; sewer lines of 500 feet or less and eight inch diameter or less; electrical service lines of 500 feet or less and 240 volts or less; gas service mains of 500 feet or less and one inch diameter or less; and telephone service lines of 500 feet or less.

(14) Construction of accessory appurtenant structures including garages, carports, patios, swimming pools, fences, barns, or other similar agricultural structures, excluding feedlots; or other similar buildings not changing land use or density.

(15) Grading or filling of 750 cubic yards or less.

(16) Local bus stops and bus shelters or transit signs, which do not require accessory parking facilities.

(17) Minor temporary uses of land having negligible or no permanent effect on the environment, including such things as carnivals and sales of Christmas trees.

(18) Filling of earth into previously excavated land with materials compatible with the natural material on the site.

(19) 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.

(20) Basic data collection, training programs, research, experimental management, and resource evaluation projects which 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.

(21) Accessory signs appurtenant to any commercial, industrial, or institutional facility not regulated by an agency of the State.

CHAPTER THIRTEEN

PROCEDURAL REQUIREMENTS

MEQC 27 SELECTION OF PREPARERS, PREPARATION OF EAW, AND NOTICE OF EAW CONCLUSIONS

(a) Selection of Preparers. The following procedures will be followed to determine the Responsible Agency or Responsible Person for the preparation of an EAW.

(1) When a private person proposes to carry out an action which does not require any governmental permits, that person shall be the Responsible Person.

(2) For any action in MEQC 24(b)(1), the agency designated in parentheses shall be the Responsible Agency.

(3) For any action not included in MEQC 24(b)(1), or which falls into more than one category of MEQC 24(b)(1), the Responsible Agency shall be determined as follows:

(aa) When a single public agency proposes to carry out or has jurisdiction to approve an action, it shall be the Responsible Agency.

(bb) When two or more public agencies propose to carry out or approve an action, the Responsible Agency shall be the public agency with the greatest responsibility for supervising or approving the action as a whole. Where two or more public agencies have an equal claim to be Responsible Agency, the public agencies shall either:

(i) By agreement, designate which agency shall be the Responsible Agency; or

(ii) Submit the question to the Council, which shall designate the Responsible Agency based on consideration of the above principles.

(cc) To assist local governmental units in determining which public agency is the Responsible Agency, proposers of actions which are included in MEQC 24(b)(1) shall provide a list of the other state and local permits known at the time to be required on the action.

(4) When a private person proposes to carry out an action which in whole or in part requires a governmental permit, that person may prepare an EAW to be submitted to the appropriate Responsible Agency for its consideration and conclusion.

(aa) For any action in MEQC 24(b)(1), a private person may voluntarily submit an EAW to the Responsible Agency. The agency will then have 30 days to add supplementary material if necessary and to prepare an EIS Preparation Notice or issue a Negative Declaration Notice and to submit the document to the Council with appropriate notices for publication in the EQC Monitor.

(bb) For any action which is not included in MEQC 24(b)(1), a private person may voluntarily submit an EAW to the agency which appears to have the most approval authority on the project. If the agency and the proposer cannot agree on an appropriate Responsible Agency, the question shall be submitted to the Council for resolution. The agency will then have 30 days to add supplementary material if necessary and to prepare an EIS Preparation Notice or issue a Negative Declaration Notice and to submit the document to the Council with appropriate notices for publication in the EQC Monitor.

(cc) If an EAW determines an EIS is needed, the agency filing the EIS Preparation Notice shall be the Responsible Agency for preparation of the EIS.

(5) Notwithstanding subparagraphs 1-4 above, for any action the Council may designate a Responsible Agency or Responsible

Person for preparation of environmental documents.

(b) Preparation of EAW.

(1) The EAW shall be prepared as early as practicable in the development of the action. Early in the preparation of the EAW, the Responsible Agency shall consult with all other public agencies which have the jurisdiction to approve the action or a part of the action. When a local agency is the Responsible Agency, it shall consult with local agencies which so request and local agencies likely to be directly impacted by the proposed action. The Responsible Agency or Responsible Person may consult with appropriate reviewing agencies and other interested persons.

(2) The format of an EAW shall be a worksheet and checklist in a form to be provided by the MEQC. The EAW shall include,as a minimum, the information outlined in MEQC 30(a).

(c) Notice of EAW Conclusions.

(1) After an EAW is prepared, the Responsible Agency or Responsible Person shall file with the Council either an EIS Preparation Notice or a Negative Declaration Notice, with a copy of the EAW attached. A Negative Declaration Notice shall not be filed before official public review of the proposed action commences.

(2) The Notices shall contain the information listed in MEQC 30(b) and (c).

(3) The Notices filed shall not be published until the Council has determined that a copy of the EAW has been mailed to all points on the official MEQC distribution list and to the city and county directly impacted by the proposed action.

(4) When an EAW has been waived purusant to MEQC 24(c), an EIS Preparation Notice shall still be required.

MEQC 28 REVIEW OF EIS PREPARATION NOTICES AND NEGATIVE DECLARATION NOTICES

(a) Review of EIS Preparation Notices.

(1) When an EIS Preparation Notice is published, an EIS shall be required on an action unless within 30 days of EQC Monitor publication of the Notice, a member agency of the MEQC, a public agency with the jurisdiction to approve the action, or the proposer files objections with the Responsible Agency, the proposer of the action, and the Council.

(2) The Council, at its first meeting held more than than 30 days after the filing of an objection, shall determine whether an EIS shall be prepared. This time limit shall be waived if a hearing is ordered pursuant to MEQC 28(a)(3).

(3) The Council may hold a public hearing or informational meeting to assist it in its determination. When a hearing is held, it shall follow the following procedures:

(aa) The hearing shall be held as expeditiously as practicable in a county to be affected by the proposed action. Notice of the hearing shall be given at least 30 days in advance of the hearing to the proposer of the action, to all public agencies with jurisdiction over the action, and to the representative of the petitioners, if any. The hearing shall be conducted by a hearing officer, shall be transcribed, and shall continue until all persons have had an opportunity to be heard.

(bb) At the first monthly meeting at least 20 days after receipt by the Council and by requesting persons of the hearing officer's findings and recommendation (which receipt shall occur within 20 days of the hearing's conclusion), the Council shall consider the recommendation and any written briefs or argument filed by interested parties to the hearing, and shall decide whether to accept, reject, or modify the recommen-

dation. Failure of the Council to act at this meeting shall be deemed acceptance of the recommendation of the hearing officer.

(b) Review of Negative Declaration Notices.

(1) When a Negative Declaration Notice is published, an EIS shall not be required on an action unless within 30 days of EQC Monitor publication of the Notice, a member agency of the EQC, a public agency with the jurisdiction to approve the action, a representative of 500 original petitioners pursuant to MEQC 32(e)(1), or a representative of 500 new petitioners pursuant to MEQC 32(e)(2), files objections with the Responsible Agency or the Responsible Person, the proposer of the action, and the Council.

(2) The Council, at its first meeting held more than 30 days after the filing of an objection, shall determine whether an EIS shall be prepared. This time limit shall be waived if a hearing is ordered pursuant to MEQC 28(b)(3).

(3) The Council may hold a public hearing or informational meeting to assist in its determination. When a hearing is held, it shall follow the procedures outlined in MEQC 28(a)(3).

MEQC 29 PREPARATION AND REVIEW OF EISs

(a) Preparation and Review of Draft EIS.

(1) The Responsible Agency or Responsible Person shall prepare and file the Draft EIS within 120 days of the EIS Preparation Notice publication date. This time limitation may be extended by the Council only for good cause upon written request by the Responsible Agency or Responsible Person.

(2) The Responsible Agency may require the proposer to submit any relevant data or information that the proposer has in its possession or to which it has reasonable access.

(3) The Responsible Agency or Responsible Person may consult with and request comments of public agencies with jurisdiction by law or special expertise and the public regarding the environmental effects of an action, including the appropriate regional development commission.

(4) Reviewing agencies may comment in writing to the Responsible Agency or the Responsible Person within 30 days of receiving the EIS.

(5) The Draft EIS is filed when it is delivered to the Council in a form and manner acceptable to it together with evidence that copies were mailed to all appropriate Council-designated distribution points, all approving agencies, reviewing agencies, the proposer, and, to the extent practicable, requesting persons.

(6) Between 30 and 45 days after the Draft EIS is filed, an informational meeting shall be held by the Responsible Agency, or by the MEQC if there is no Responsible Agency, in a county affected by the proposed action as part of the Draft EIS review process. Notice shall be given at least 20 days in advance of the meeting and shall be mailed to recipients of the Draft EIS and published in a newspaper of general circulation in the counties affected by the action. The Draft EIS meeting may be consolidated with any hearing required by law to be held before approval of the action. A typewritten or audio-recorded transcription of the meeting shall be made, and the public record shall remain open for 20 days after the last day of the hearing to allow any person to submit additional information or opinions. All written and oral statements received into the record, or summaries thereof, shall be included in the Final EIS.

(b) Preparation and Review of Final EIS.

(1) The Responsible Agency or Responsible Person shall have 30 days from the close of the Draft EIS record to prepare and file the Final EIS. The Council may extend

this time limitation upon written request showing good cause by the Responsible Agency or Responsible Person.

(2) The Final EIS is filed when it is delivered to the Council in a form and manner acceptable to it together with evidence that copies were mailed by the preparer to all appropriate Council-designated distribution points, the proposer, all approving and reviewing agencies, and, to the extent practicable, requesting persons.

(3) Council Review.

(aa) The Council may review any Final EIS to determine whether the procedures and policies of the Act and these Rules have been adequately complied with. Failure to review a Final EIS in the time specified in (bb) constitutes its acceptance.

(bb) If the Council decides to review a Final EIS, it shall commence the review at or before its first meeting held more than 30 days following filing of the Final EIS. The Council shall determine EIS adequacy at or before its first meeting held more than 45 days after commencing review. All persons receiving the Final EIS shall be notified of the Council's decision and of the time and place of any information meetings which it may hold to aid its review.

(4) If the Council determines that a Final EIS is inadequate, it shall so notify the Responsible Agency or Responsible Person and shall identify in writing within 15 days the improvements or additions necessary for Council acceptance of the Final EIS. The Responsible Agency or Responsible Person shall file a revised EIS in the manner provided in subparagraph MEQC 29(a)(5) within 30 days of receipt of the Council's written comments. Reviewing agencies and other persons shall comment in writing on the revised EIS within 15 days of receipt of the revised EIS. The Final EIS

shall be submitted to the Council within 15 days after the close of the comment period in the form and manner provided in subparagraph MEQC 29(b)(2). The Council may extend these time limitations upon written request and a showing of good cause by the Responsible Agency or Responsible Person.

(5) The Council shall make a final decision on the adequacy of the Final EIS prior to any governmental approval of the action.

MEQC 30 CONTENT REQUIREMENTS

(a) Content of an EAW. The EAW shall address at least the following major categories in the concise form provided on the worksheet:

(1) SUMMARY

(aa) Finding of Negative Declaration or Positive Declaration (EIS Required);

(bb) Activity identification (name, sponsors, Responsible Agency, EAW contact person, reason for preparation, any federal jurisdiction, governmental permits);

(cc) Activity Description Summary (location, proposal, construction schedule, estimated costs).

(2) ACTIVITY DESCRIPTION

(aa) U.S.G.S. map 1:24,000 scale, diagrams;

(bb) Land use categories affected;

(cc) Size and dimensions of project.

(3) ASSESSMENT OF POTENTIAL ENVIRONMENTAL IMPACT

(aa) Ecological Effects (topography, wetlands, water systems, wildlife, vegetation);

(bb) Environmental Hazards (toxic materials, floodplains, steep slopes, geologic hazards);

(cc) Water Quality and Quantity (surface and ground water impacts);

(dd) Resource Conservation, Energy, and Usage

(agricultural or forest lands, minerals, energy sources and use);

(ee) Planning, Land Use, Community Services (compatibility with plans, regional impacts, population, employment, housing, utilities, transportation);

(ff) Open Space and Recreation (parks, federal, state, local);

(gg) Historic Resources [landmarks (federal or state), historic sites, archaeologic sites, paleontologic sites];

(hh) Air Quality (pollutants);

(ii) Noise (vibration and sound);

(jj) Other Environmental Concerns.

(4) MITIGATION OF ADVERSE ENVIRONMENTAL EFFECTS

(5) FINDINGS AND CERTIFICATION (private or governmental action, time for EIS preparation, EQC distribution certification).

(b) Content of Negative Declaration Notice. Each Negative Declaration Notice shall include:

(1) A brief description of the proposed action.

(2) A statement that no EIS is required because the action is not a major action with the potential for significant environmental effects, and in the case of private actions is not of more than local significance, supported by reasons.

(3) Where the EAW and supporting documentation is available for public inspection and copying.

(c) Content of EIS Preparation Notice. Each EIS Preparation Notice shall include:

(1) A brief description of the action requiring the EIS.

(2) The Responsible Agency or Responsible Person for EIS preparation.

(3) The recommended time requirements for preparation.

(4) Recommendations, if applicable, as to the extent to which the action may proceed during the EIS process.

(5) Where the EAW and supporting documentation is available for public inspection and copying.

(d) Content of Draft EIS. A Draft EIS shall contain the following information:

(1) Summary. A summary sheet which describes the action, major environmental impacts (adverse and beneficial), reasonable alternatives, and the federal, state, and local permits outstanding shall be included. Also, federal, state, or local agencies, other organizations, and private individuals consulted in the preparation of the EIS shall be identified.

(2) Description. A description of the action, including type, size and location, and the environmental setting of the action. A regional and site-specific map should be included to assist in identification of the project.

(3) Environmental Impact of the Proposed Action. All phases of an action shall be considered when evaluating an action: planning, acquisition, construction, implementation, development, operation, and conclusion of operation. Special consideration shall be given to pollution, impairment, or destruction of the air, water, land, or other natural resources located within the State resulting from the proposed action, without limitation by the definitions of "action" and "environment" in these Rules. This discussion shall also include a description of all resources in the area and how they will be affected by the action, with emphasis placed on resources that are rare or unique to the region or that possess important historical, cultural, natural, ecological, or aesthetic values, without limitation by the definitions of "action" and "environment" in these Rules.

(4) Any direct or indirect environmental, economic, energy, and employment effects that cannot be avoided if the proposed action is implemented. This discussion shall describe the adverse and beneficial environmental, economic, energy, and employment effects that will result directly from the action, as well as the effects that may be reasonably expected to

result from the action. Mitigation measures that have been or may be incorporated into the action to reduce or minimize significant adverse environmental, economic, energy, and employment effects shall be discussed.

(5) Any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented. This discussion shall include the proposed use of non-renewable resources, long term or irreversible commitments of resources to a particular use and any irreversible and irretrievable damage that may result from the action.

(6) The relationship between local short term uses of the environment and the maintenance and enchancement of long term productivity, including the environmental impact of predictable increased future development of an area if the action is implemented. This discussion shall include the extent that the proposed action involves trade-offs between short term environmental gains or losses versus long term gains or losses, including potential risks to health and safety, and the extent that the proposed action forecloses future options. The impact of predictable increased future development in the area that may be stimulated, directly or indirectly, by the proposed action shall be discussed.

(7) Alternatives to the Proposed Action. An objective evaluation of all reasonable alternatives to the action and the environmental impact of each and the reasons for their rejection in favor of the recommended choice shall be made. Reasonable modifications of the proposed action that may avoid or reduce adverse environmental effects shall be discussed, including the expected benefits, costs, and effects on the objective of the proposed action.

(8) The impact on state government of any federal controls associated with the proposed action. Federal actions pending which may affect the final outcome of the project should be discussed, including those actions which may result in the expenditure of additional state funds.

(9) The multi-state responsibilities associated with the proposed action. Impacts of the proposed action upon multi-state responsibilities shall be discussed, including the environmental effects of the action upon adjacent states.

(d) Content of Final EIS. The Final EIS shall consist of the Draft EIS, the comments or summaries thereof received through consultation and public comment, including public meetings or hearings held on the EIS, and the response of the Responsible Agency or Responsible Person to the significant environmental issues raised in the consultation, comment, and review process. The response of the Responsible Agency or Responsible Person to constructive comments received may take the form of a revision of the Draft EIS or may be an attachment to the Draft EIS.

MEQC 31 FINAL DECISIONS AND ACTIONS

(a) No decisions granting or denying a permit application for which notice is required to be published in MEQC 35 shall be effective until 30 days following publication of the notice.

(b) No public agency proposing an action for which notice is required to be published in MEQC 35 shall begin to implement that action until 30 days following publication of the notice.

(c) When an EAW is prepared on any action, no final decision to approve or commence the action shall be made until 30 days following publication of a Negative Declaration Notice.

(d) On any action for which an EIS Preparation Notice has been published, no final decision to approve or commence the action shall be made until the Council has completed its review of the Final EIS. Where public hearings are required by law to precede issuance of a governmental permit or other implementation of a governmental action, public hearings shall not be held until after filing of a Draft EIS, except for projects reviewed under MEQC 24(g).

(e) When an EIS is required on an action, any physical construction on the action or operation of the action shall be halted from

the time the EIS Preparation Notice is published until the Final EIS is accepted by the Council, unless the Council determines that construction or operation may begin or continue. In that case, the Council shall specify the extent to which construction or operation shall be allowed, and the specific reasons for that determination. This Rule shall in no way limit the Council's statutory authority to halt actions or impose other temporary relief.

MEQC 32 PETITION FOR AN EIS

(a) Petition. Any person or group of persons may file with the Council a petition that contains the signatures and addresses of 500 or more individuals and requests the Council to require an EIS on an action.

(b) Content. In addition to the signatures, the petition shall include the following written information:

(1) Description of the action;

(2) Proposer of the action;

(3) The anticipated environmental effects of the action;

(4) The name and address of a representative of the petitioner for the purpose of this section;

(5) Any additional information that may be used in the EAW to determine whether the proposed action is a major action with the potential for significant environmental effects, and in the case of private actions whether the action is of more than local significance.

(c) Council Action.

(1) The petition shall qualify for the remedies provided by these Rules and Minn. Stat. § 116D.04, subdivision 3 (1974), unless the Council determines that:

(aa) The petition lacks 500 signatures; or

(bb) The action is one to which these Rules do not apply, pursuant to MEQC 26; or

(cc) An EIS Negative Declaration Notice has been filed in accord with these Rules and the time for objections or

appeal has passed; or

(dd) The petition is frivolous or clearly outside the scope of these Rules and the Council disqualifies the petition by order.

(2) In all other cases, the Council shall refer the petition to a Responsible Agency for preparation of an EAW or, where appropriate, arrange for a Council review pursuant to MEQC 28(a)(3).

(d) Responsible Agency Duties. The Responsible Agency shall have 45 days in which to prepare the EAW referred to it by the Council pursuant to MEQC 32(c)(2) and shall thereupon publish an EIS Preparation Notice or Negative Declaration Notice.

(e) Challenge of Negative Declaration Notice by Petitioners.

(1) If a Negative Declaration Notice is published, a representative of the original petitioners for an EIS may, within 30 days, request Council review of the decision pursuant to MEQC 28(b).

(2) Any person or group of persons may request Council review of a Negative Declaration Notice on any action by submitting a new petition signed by 500 or more individuals.

(aa) Content: The petition shall state on each page, "NEGATIVE DECLARATION CHALLENGE-PETITION FOR A STATE EIS". The petition shall also include the items described in MEQC 32(b) above.

(3) Review: On all petitions received within 30 days of publication of a Negative Declaration Notice as provided in MEQC 35, the Council shall conduct a public hearing to facilitate the Council's review of whether an EIS must be prepared. The hearing shall be held as expeditiously as practicable in a county to be affected by the proposed action. The review procedure is specified in MEQC 28(b).

CHAPTER FOURTEEN

EARLY NOTICE RULES

MEQC 33 AUTHORITY AND PURPOSE

(a) To provide early notice of impending actions which may have significant environmental effects, the Council shall, pursuant to Minn. Stat. § 116D.04, subdivision 8 (1974), publish a bulletin with the name of "EQC Monitor" containing all notices as specified in MEQC 35. The Council may prescribe the form and manner in which the agencies submit any material for publication in the EQC Monitor, and the Chairman of the Council may withhold publication of any material not submitted according to the form or procedures the Council has prescribed.

(b) These Rules are intended to provide a procedure for notice to the MEQC and to the public of natural resource management and development permit applications, and impending governmental and private actions that may have significant environmental effects. The notice given through the early notice procedures is in addition to public notices otherwise required by law or regulations.

MEQC 34 EXEMPTIONS

(a) All National Pollutant Discharge Elimination System Permits granted by the Minnesota Pollution Control Agency, under the authority given it by the Environmental Protection Agency, of the United States of America , shall be exempt from these Rules unless otherwise provided by resolution of the Council.

(b) Where, in the opinion of any public agency, strict observance of MEQC 33-35 would jeopardize the public health, safety, or welfare, or would otherwise generally compromise the public interest, the agency shall comply with these Rules as far as practicable. In such cases, the agency shall carry out alternative means of public notification

and shall communicate the same to the Council Chairman.

(c) Any federal permits for which review authority has been delegated to a non-federal public agency by the federal government may be exempted by resolution of the Council.

MEQC 35 EQC MONITOR PUBLICATION REQUIREMENTS

(a) Public agencies are required to publish the following in the EQC Monitor except that this section constitutes a request and not a requirement with respect to federal agencies affected by subparagraph (3) below:

(1) Notice of natural resources management and development permit applications for actions or all actions proposed by public agencies which are included in MEQC 24(b)(1).

(2) EIS Preparation Notices and Negative Declaration Notices.

(3) Notice of receipt of permit applications or government proposals for natural resources management and development permit applications (Minn. Stat. § 116D.04, subdivision 5 (1974)) or impending major actions proposed by government agencies when the proposed action will occur within the boundaries of:

(aa) An area designated a Critical Area by the Governor or an area recommended for designation for which public hearings have been noticed pursuant to Minn. Stat. §§ 116G.06, subdivision 1(c) (1974) (Critical Areas Act, 1973).

(bb) An area designated a State Wild and Scenic River Area by the Commissioner of Natural Resources.

(cc) An area designated a State Wildlife Management Area or a State Game Refuge by the Commissioner of Natural Resources.

(dd) An area designated a State Scientific and Natural Area by the Commissioner of Natural Resources.

(ee) An area designated a State Park by the Legislature.

(ff) An area designated a State Wilderness Area by the Legislature.

(gg) An area designated a State Historic Site by the Legislature.

(hh) An area designated a National Park by the United States Congress.

(ii) An area designated a National Wildlife Refuge by the United States Congress.

(jj) An area designated a National Wilderness Area by the United States Congress.

(kk) An area designated a National Wild and Scenic River area by the United States Congress.

(ll) An area designated a National Monument by the United States Congress.

(mm) An area included on the National Historic Register by the Secretary of Interior.

(nn) An area designated a National Natural Landmark by the Secretary of Interior.

(4) Notice of other actions that the Council may specify by resolution.

(5) Notice of Draft EIS informational meetings or hearings to be held pursuant to MEQC 29(a)(6).

(6) Notice of the application for a Certificate of Need for a large energy facility, pursuant to Minn. Stat. § 116H.13 (1974).

(b) Public agencies may publish notices of general interest or information in the EQC Monitor, including notices of consolidated state permit applications, the latter to be commenced at the discretion of the Council.

(c) The MEQC is required to publish the following in the EQC Monitor:

(1) Receipt of valid petitions, pursuant to MEQC 32, and assignment of a Responsible Agency therefore.

(2) Receipt of Draft or Final EIS.

(3) Notice of any public hearing held pursuant to Minn. Stat. § 116D.04, subdivision 9 (1974).

(4) Receipt by the Council of notice of objections to a negative declaration by petitioners or a public agency, and the time and place at which the Council will review the

matter, including notice of public hearings, if any.

(5) The Council's decision to hold public hearings on a recommended Critical Area pursuant to Minn. Stat. §§ 116G.06, subdivision 1(c) (1974) (Critical Areas Act, 1973).

(6) Notice of application for a Certificate of Corridor Compatibility or Site Compatibility, or a High-Voltage Transmission Line Construction Permit pursuant to Minn. Stat. §§ 116C.51 et seq. (Power Plant Siting Act of 1973).

MEQC 36 CONTENT OF NOTICE

(a) The information to be included in the notice for natural resources management and development permit applications and other items in MEQC 35(a)(1) and (3) shall be submitted by the public agency on a form approved by the Council. This information shall include but not be limited to:

(1) Identification of applicant, by name and mailing address.

(2) The location of the proposed project, or description of the area affected by the action by county, minor civil division, public land survey township number, range number, and section number.

(3) The name of the permit applied for, or a description of the proposed project or other action to be undertaken in sufficient detail to enable other state agencies to determine whether they have jurisdiction over the proposed action.

(4) A statement of whether the agency intends to hold public hearings on the proposed action, along with the time and place of the hearings if they are to be held in less than 30 days from the date of this notice.

(5) The identification of the agency publishing the notice, including the manner and place at which comments on the action can be submitted and additional information can be obtained.

MEQC 37 STATEMENT OF COMPLIANCE

Each governmental permit or agency authorizing order subject to the requirements of these Rules issued or granted by a public agency shall contain a statement by the agency concerning whether these Rules have been complied with, and publication dates of the Notices, if any, concerning that permit or authorization.

MEQC 38 PUBLICATION

(a) The Council shall publish the EQC Monitor whenever it is necessary, except that material properly submitted to the Council shall not remain unpublished for more than 10 working days.

(b) The EQC Monitor shall have a distinct and permanent masthead with the title "EQC Monitor" and the words "State of Minnesota" prominently displayed. All issues of the EQC Monitor shall be numbered and dated.

MEQC 39 COST AND DISTRIBUTION

(a) When an agency properly submits material to the Council for publication, the Council shall then be accountable for the publication of the same in the EQC Monitor. The Council shall require each agency which is required to publish material or requests the publication of material in the EQC Monitor, including the Council itself, to pay its proportionate cost of the EQC Monitor unless other funds are provided and are sufficient to cover the cost of the EQC Monitor.

(b) The Council may organize and distribute contents of the EQC Monitor according to such categories as will provide economic publication and distribution and will offer easy access to information by any interested party.

(c) The Council may further provide at least one copy to the Documents Division for the mailing of the EQC Monitor to any person, agency, or organization if so requested, provided that reasonable costs are borne by the requesting party. Ten copies of each issue of the EQC Monitor, however, shall be provided without cost to the legislative reference library and ten copies to the state law library, and at

least one copy to designated MEQC depositories.

(d) The MEQC shall provide adequate office space, personnel, and supply necessary equipment for the operation of the EQC Monitor without cost to the agencies.

MEQC 40 GENERAL

(a) Publication duties of the EQC Monitor may be transferred to the State Register upon resolution of the Council.

MEQC 41 EFFECTIVE DATE

The amendments to these Rules (MEQC 21-41) shall become effective upon filing with the Secretary of State. All petitions received, environmental assessments ordered or received, and EISs ordered before the effective date of the amendments shall at the request of the preparer of the document be processed and reviewed as if these amendments were not in effect. Projects previously reviewed or exempted by the MEQC are not subject to these Rules except for those actions included in MEQC 25(f)(1).