

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 1317 Docket No. 05.0009.0908

DATE RECEIVED 9/22
REVIEW DATE 10-1
DUE DATE 10-6

APPROVED 10.2.86 mjc
DISAPPROVED
WITHDRAWN

ADOPTED W/O HEARING ✓
EMERGENCY RULE

REVISOR APPROVED 9/25
REVISOR DISAPPROVED
FILED W/SEC. STATE 10/3
RETURNED TO AGENCY 10/6

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion
Jan. 13, 1986 Date published in State Register
Yes Comments

~~Petition for Adoption of a Rule~~

✓ Board's Authorizing Resolution

✓ Proposed rule
Yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule
116D.04 subd 5a Statutory Authority
Yes Small business statement
no Expenditure of public money statement
Yes Signature

✓ Statement of Need and Reasonableness

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
July 8, 1986 Date 30/25 days before adoption

✓ Publication in State Register
July 14, 1986 Date 30/25 days before adoption

✓ Resolution Adopting

✓ Findings of Fact, Conclusions & Order Adopting
Sept 18, 1986 Date

✓ Written requests, submissions or comments

✓ Declaration of attorney
Christine B Eller Name of SAAG representing agency

~~Notice of Submission to Attorney General~~

~~Affidavit of Mailing Notice to Attorney General~~

✓ Order for Notice of Intent to Adopt

✓ Certificate

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: MICHAEL SULLIVAN, Executive Director
Minnesota Environmental Quality Board

DATE: 10/3/86

ATTN: CHRISTIE B. ELLER
Special Assistant Attorney General

FROM: MARTHA J. CASSERLY
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: Adopted Permanent Rules Relating to Environmental Review Programs

The above-referenced rule has been approved as to its legality by the Attorney General on October 2, 1986.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJC/rmk
Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

RR#1317

Environmental Quality Board

Adopted Permanent Rules Relating to Environmental Review Programs

Rules as Adopted

4410.0200 DEFINITIONS AND ABBREVIATIONS.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Attached units.** "Attached units" means in groups of four or more units each of which shares one or more common walls with another unit.

Subp. 6. to 29. [Unchanged.]

Subp. 30. **Flood plain.** "Flood plain" has the meaning given in Minnesota Statutes, section 104.02.

Subp. 31. to 81. [Unchanged.]

Subp. 82. **Shoreland.** "Shoreland" has the meaning given in parts 6120.0100 to 6120.3900 of the Department of Natural Resources.

Subp. 83. to 96. [Unchanged.]

4410.0500 RGU SELECTION PROCEDURES.

Subpart 1. **RGU for mandatory categories.** For any project listed in part 4410.4300 or 4410.4400, the governmental unit specified in those rules shall be the RGU unless the project will be carried out by a state agency, in which case that state agency shall be the RGU. For any project listed in both parts 4410.4300 and 4410.4400, the RGU shall be the unit specified in part 4410.4400. For any project listed in two or more subparts of part 4410.4300 or two or more subparts of part 4410.4400, the RGU shall be determined as specified in subpart 5.

Subp. 2. [Unchanged.]

Subp. 3. **RGU for petition EAW's.** If an EAW is ordered in response to a petition, the RGU that was designated by the EQB to act on the petition shall be responsible for the preparation of the EAW. The EQB chair or designee shall determine an RGU to act on the petition as follows:

A. if a state agency proposes to carry out the project, it shall be the RGU;

B. for any project of a type for which a mandatory category is listed in part 4410.4300, the RGU shall be the governmental unit specified by the mandatory category for projects of that type, unless the project will be carried out by a state agency; or

C. for any project of a type for which there is no mandatory category listed in part 4410.4300 and which will not be carried out by a state agency, the RGU shall be selected in accordance with subpart 5.

Subp. 4. and 5. [Unchanged.]

Subp. 6. **Exception.** Notwithstanding subparts 1 to 5, the EQB may designate, within five days of receipt of the completed data portions of the EAW, a different RGU for the project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.

4410.3100 PROHIBITION ON FINAL GOVERNMENTAL DECISIONS.

Subpart 1. to 5. [Unchanged.]

Subp. 6. **Granting variance.** At its first meeting more than ten days after the comment period expires, the EQB shall grant or deny the variance. A variance shall be granted if:

A. the RGU consents to a variance;

B. on the basis of the variance application and the comments, construction is necessary in order to avoid excessive and unusual economic hardship, or avoid a serious threat to public health or safety. Unusual economic hardship is hardship caused by unique conditions and circumstances which are peculiar to the project and are not characteristic of other similar projects or general economic conditions of the area or state. It does not include hardship caused by the proposer's own action, or inaction, if the hardship was reasonably foreseeable;

C. on the basis of the variance application and the comments, the construction for which the variance is sought will not have a serious adverse effect on the environment; and

D. on the basis of the variance application and the comments, the construction for which the variance is sought is separable from the remainder of the project and would not have the effect of eliminating from consideration any feasible and prudent alternatives or mitigation measures likely to be presented in an EIS.

Subp. 7. to 9. [Unchanged.]

4410.3600 ALTERNATIVE REVIEW.

Subpart 1. **Implementation.** Governmental units may request EQB approval of an alternative form of environmental review for categories of projects which undergo environmental review under other governmental processes. The governmental processes must address substantially the same issues as the EAW and EIS process and use procedures similar in effect to those of the EAW and EIS process. The EQB shall approve the governmental process as an alternative form of environmental review if the governmental unit demonstrates the process meets the following conditions:

A. the process identifies the potential environmental impacts of each proposed project;

B. the aspects of the process that are intended to substitute for an EIS process address substantially the same issues as an EIS and uses procedures similar to those used in preparing an EIS but in a more timely or more efficient manner;

C. alternatives to the proposed project are considered in light of their potential environmental impacts in those aspects of the process that are intended to substitute for an EIS process;

D. measures to mitigate the potential environmental impacts are identified and discussed;

E. a description of the proposed project and analysis of potential impacts, alternatives (in those aspects of the process intended to substitute for an EIS), and mitigating measures are provided to other affected or interested governmental units and the general public;

F. to H. [Unchanged.]

Subp. 2. [Unchanged.]

4410.4300 MANDATORY EAW CATEGORIES.

Subpart 1. **Threshold test.** An EAW must be prepared for projects that meet or exceed the threshold of any of subparts 2 to 31, unless the project meets or exceeds any thresholds of part 4410.4400, in which case an EIS must be prepared.

Subp. 2. to 13. [Unchanged.]

Subp. 14. **Industrial, commercial, and institutional facilities.** Items A and B designate the RGU for the type of project listed, except as provided in items C and D:

A. and B. [Unchanged.]

C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2 to 10, 12, 13, 15, or 17 for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EAW. If the project meets or exceeds the thresholds specified in any other subpart as well as that of item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.

D. This subpart does not apply to projects for which there is a single mandatory category specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2 to 10, 12, 13, 15, or 17, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an EAW must be determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.

Subp. 15. **Air pollution.** Items A and B designate the RGU for the type of project listed:

A. For construction of a stationary source facility that generates 100 tons or more per year of any single air pollutant after installation of air pollution control equipment, the PCA shall be the RGU.

B. For construction of a new parking facility for 1,000 or more vehicles, the PCA shall be the RGU, except that this category does not apply to any parking facility which is part of a project reviewed pursuant to part 4410.4300, subpart 14 or 19, or part 4410.4400, subpart 11 or 14.

Subp. 16. and 17. [Unchanged.]

Subp. 18. **Sewage systems.** Items A and B designate the RGU for the type of project listed:

A. For expansion, modification, or replacement of a municipal or domestic sewer system resulting in an increase in hydraulic capacity of any part of that system by:

(1) 500,000 gallons per day or more in a first or second class city and in any city served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System;

(2) 100,000 gallons per day or more in a third class city not served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System;

(3) 50,000 gallons per day or more in a fourth class city not served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System; or

(4) 50,000 gallons per day or more in an unincorporated sewered area, the PCA shall be the RGU.

B. For expansion or reconstruction of an existing municipal or domestic wastewater treatment facility which results in an increase of 50 percent or more of its average wet weather design flow capacity, or construction of a new municipal or domestic wastewater treatment facility with an average wet weather design flow capacity of 30,000 gallons per day or more, the PCA shall be the RGU.

Subp. 19. **Residential development.** Items A and B designate the RGU for the type of project listed. If a development consists of both attached and unattached units, each individual unit in a group of attached units shall be considered as an unattached unit.

A. and B. [Unchanged.]

Subp. 20. to 31. [Unchanged.]

4410.4400 MANDATORY EIS CATEGORIES.

Subpart 1. to 10. [Unchanged.]

Subp. 11. **Industrial, commercial, and institutional facilities.** Items A and B designate the RGU for the type of project listed, except as provided in items C and D:

A. and B. [Unchanged.]

C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 10, 12, 13, 15, or 17, or part 4410.4300, subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29 for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EIS. If the project meets or exceeds the thresholds specified in any other subparts as well as those in item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.

D. This subpart does not apply to projects for which there is a single mandatory category specified in subparts 2 to 10, 12, 13, 15, or 17, or part 4410.4300, subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an EIS or an EAW must be determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.

Subp. 12. and 13. [Unchanged.]

Subp. 14. **Residential development.** Items A and B designate the RGU for the type of project listed. If a development consists of both attached and unattached units, each individual unit in a group of attached units must be considered as an unattached unit.

A. and B. [Unchanged.]

Subp. 15. to 20. [Unchanged.]

4410.4600 EXEMPTIONS.

Subpart 1. **Scope of exemption.** Projects within subpart 2 are exempt from parts 4410.0200 to 4410.7800. Projects within subparts 3 to 26 are exempt from parts 4410.0200 to 4410.7800, unless they have characteristics which meet or exceed any of the thresholds specified in part 4410.4300 or 4410.4400.

Subp. 2. to 26. [Unchanged.]

4410.7500 ENVIRONMENTAL REPORT AT CERTIFICATE OF NEED STAGE.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Alternative review.** The PUC may request EQB approval of an alternative form of environmental review on a HVTL subject to parts 4410.7400 to 4410.7800. The EQB shall approve the governmental process as an alternative form of environmental review if the PUC demonstrates the process meets the following conditions:

A. the process must satisfy the content requirements of part 4410.7500, subpart 3, but in a more timely or more efficient manner;

B. the process must provide that the information required to satisfy the content requirements of part 4410.7500, subpart 3, is prepared for and included in the record of the Certificate of Need hearing conducted on the HVTL under Minnesota Statutes, section 216B.243; and

C. the process must provide that the information required to satisfy the content requirements of part 4410.7500, subpart 3, is reveiwed in the manner provided in part 4410.7100, subparts 5 to 12.

Subp. 5. **Exemption.** If the EQB accepts the PUC's process

as an adequate alternative environmental review procedure, the PUC is exempt from the requirements under part 4410.7500, subparts 1 to 3, for preparing an environmental report on an HVTL. On approval of the alternative review procedure, the EQB shall provide for periodic review of the procedure to ensure continuing compliance with the requirements and intent of the environmental report requirement. The EQB shall withdraw its approval if review indicates that the procedure no longer fulfills the intent and requirements of the Minnesota Environmental Policy Act and parts 4410.7400 to 4410.7800. A project in the process of undergoing review under an approved alternative review process shall not be affected by the EQB's withdrawal of approval.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT - 3 1986
Joan Anderson Growe
Secretary of State
3:25 pm

APPROVED AS TO FORM AND LEGALITY
October 2 1986
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Aitkin County

Notice of Filing Fees for County Law Library

Effective January 1, 1986, a $5 law library fee will be assessed on all criminal convictions including misdemeanors, gross misdemeanors, and felonies, pursuant to Minnesota Statutes 140.422 subdivision 3. The sentencing judge may waive the library fee at his discretion. This is in addition to current county law library filing fees on civil actions.

Environmental Quality Board

Outside Opinion Sought Regarding Proposed Rules Governing Environmental Review

Notice is hereby given that the Environmental Quality Board (Board) is seeking information or opinions from sources outside the agency in preparing to propose the adoption, amendment, suspension, or repeal of the rules governing environmental review. The adoption of the rules is authorized by Minnesota Statutes, sections 116D.04 and 116D.045, which require the Board to promulgate rules governing mandatory categories for environmental assessment worksheets and environmental impact statements, environmental review procedures, alternative forms of environmental review and environmental impact statement cost assessments.

The existing rules are published at Minnesota Rules pts. 4410.0200-4410.7800. The Environmental Quality Board is considering amending sections of the existing environmental review rules, in accordance with its responsibility to monitor the rules and to take appropriate measures to improve their effectiveness under Minnesota Rules pt. 4410.0400 subp. 1.

The Board has determined that at least the following topics will be considered for amendment: (1) mandatory thresholds for environmental assessment worksheets and environmental impact statements; (2) the selection process for the responsible governmental unit in cases where the project fits two or more mandatory categories; (3) the generic environmental impact statement process; (4) the substitute review processes; and (5) the environmental impact statement cost assessment formula and procedures.

The Environmental Quality Board requests information and comments concerning the subject matter of the rules. Interested or affected persons or groups may submit data or views on the subject matter of concern orally or in writing. Written statements should be addressed to:

Gregg Downing
Environmental Review Program
Minnesota Environmental Quality Board
110 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-8253 and in person at the above address.

All statements of information and comment shall be accepted until February 21, 1986. Any written material received by the Environmental Quality Board shall become part of the rulemaking record in the event that the rules are adopted.

John C. Ditmore
Chairman

Department of Finance

Maximum Interest Rate for Municipal Obligations, January, 1986

Pursuant to Minnesota Statutes, Section 475.55, Subdivision 4, Commissioner of Finance, Jay Kiedrowski, announced today that the maximum interest rate for municipal obligations in the month of January will be ten (10) percent per annum. Obligations which

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, John C. Ditmore, do hereby certificate that I am a member and the Chairperson of the Environmental Quality Board, a board 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 EQB duly and properly called and held on the 19th day of June, 1986, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "NOW, THEREFORE BE IT RESOLVED that John C. Ditmore, Chair of the Environmental Quality Board, be and he hereby is granted the authority and directed to sign an Order of the Board directing that Notice be given of the Board's intent to adopt without a public hearing amendments to rules governing the environmental review program, to sign the Notice thereof, and to perform any and all acts incidental thereto. In the event a public hearing becomes necessary, John C. Ditmore hereby is granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Board's representative at all hearings."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 19TH day of June, 1986.

John C. Ditmore

John C. Ditmore, Chairman

Attest by one other Board member

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Environmental Review Programs

AGENCY: Environmental Quality Board

MINNESOTA RULES: Chapter 4410

The attached rules are approved for publication in the State Register

Paul M. Marinac
Assistant Deputy Revisor

Environmental Quality Board

Proposed Permanent Rules Relating to Environmental Review Programs

Rules as Proposed

4410.0200 DEFINITIONS AND ABBREVIATIONS.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Attached units.** "Attached units" means in groups of four or more units each of which shares one or more common walls with another unit. ~~Developments consisting of both attached and unattached units shall be considered as an unattached unit development.~~

Subp. 6. to 29. [Unchanged.]

Subp. 30. **Flood plain.** "Flood plain" has the meaning given in ~~part 6120.5000 of the Department of Natural Resources~~ Minnesota Statutes, section 104.02.

Subp. 31. to 81. [Unchanged.]

Subp. 82. **Shoreland.** "Shoreland" has the meaning given in parts ~~6120.0200 to 6120.0500~~ 6120.0100 to 6120.3900 of the Department of Natural Resources.

Subp. 83. to 96. [Unchanged.]

4410.0500 RGU SELECTION PROCEDURES.

Subpart 1. **RGU for mandatory categories.** For any project listed in part 4410.4300 or 4410.4400, the governmental unit specified in those rules shall be the RGU unless the project will be carried out by a state agency, in which case that state agency shall be the RGU. For any project listed in both parts 4410.4300 and 4410.4400, the RGU shall be the unit specified in part 4410.4400. For any project listed in two or more subparts of part 4410.4300 or two or more subparts of part 4410.4400, the RGU shall be determined as specified in subpart 5.

Subp. 2. [Unchanged.]

Subp. 3. **RGU for petition EAW's.** If an EAW is ordered in response to a petition, the RGU that was designated by the EQB

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

to act on the petition shall be responsible for the preparation of the EAW. The EQB chair or designee shall determine an RGU to act on the petition as follows:

A. if a state agency proposes to carry out the project, it shall be the RGU;

B. for any project of a type for which a mandatory category is listed in part 4410.4300, the RGU shall be the governmental unit specified by the mandatory category for projects of that type, unless the project will be carried out by a state agency; or

C. for any project of a type for which there is no mandatory category listed in part 4410.4300 and which will not be carried out by a state agency, the RGU shall be selected in accordance with subpart 5.

Subp. 4. and 5. [Unchanged.]

Subp. 6. **Exception.** Notwithstanding subparts 1 to 5, the EQB may designate, within five days of receipt of the completed data portions of the EAW, a different RGU for the ~~preparation of an EAW~~ project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.

4410.3100 PROHIBITION ON FINAL GOVERNMENTAL DECISIONS.

Subpart 1. to 5. [Unchanged.]

Subp. 6. **Granting variance.** At its first meeting more than ten days after the comment period expires, the EQB shall grant or deny the variance. A variance shall be granted if:

A. the RGU consents to a variance; ~~and~~

B. on the basis of the variance application and the comments, construction is necessary in order to avoid excessive and unusual economic hardship, or avoid a serious threat to public health or safety. Unusual economic hardship ~~means that the~~ is hardship ~~is~~ caused by unique conditions and circumstances which are peculiar to the project and are not characteristic of other similar projects or general economic conditions of the area or state ~~and that the hardship is~~. It does not include hardship caused by the proposer's own action, or inaction, if

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

the hardship was reasonably foreseeable;

C. on the basis of the variance application and the comments, the construction for which the variance is sought will not have a serious adverse effect on the environment; and

D. on the basis of the variance application and the comments, the construction for which the variance is sought is separable from the remainder of the project and would not have the effect of eliminating from consideration any feasible and prudent alternatives or mitigation measures likely to be presented in an EIS.

Subp. 7. to 9. [Unchanged.]

4410.3600 ALTERNATIVE REVIEW.

Subpart 1. **Implementation.** Governmental units may request EQB approval of an alternative form of environmental review for categories of projects which undergo environmental review under other governmental processes. The governmental processes must address substantially the same issues as the EAW and EIS process and use procedures similar in effect to those of the EAW and EIS process. The EQB shall approve the governmental process as an alternative form of environmental review if the governmental unit demonstrates the process meets the following conditions:

A. the process identifies the potential environmental impacts of each proposed project;

B. the aspects of the process **addresses** that are intended to substitute for an EIS process address substantially the same issues as an EIS and uses procedures similar to those used in preparing an EIS but in a more timely or more efficient manner;

C. alternatives to the proposed project are considered in light of their potential environmental impacts in those aspects of the process that are intended to substitute for an EIS process;

D. measures to mitigate the potential environmental impacts are identified and discussed;

E. a description of the proposed project and analysis

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

of potential impacts, alternatives (in those aspects of the process intended to substitute for an EIS), and mitigating measures are provided to other affected or interested governmental units and the general public;

F. to H. [Unchanged.]

Subp. 2. [Unchanged.]

4410.4300 MANDATORY EAW CATEGORIES.

Subpart 1. **Threshold test.** An EAW must be prepared for projects that meet or exceed the threshold of any of subparts 2 to 31, unless the project meets or exceeds any thresholds of part 4410.4400, in which case an EIS must be prepared.

Subp. 2. to 13. [Unchanged.]

Subp. 14. **Industrial, commercial, and institutional facilities.** Items A and B designate the RGU for the type of project listed, except as provided in items C and D:

A. and B. [Unchanged.]

C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2 to 10, 12, 13, 15, or 17 for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EAW. If the project meets or exceeds the thresholds specified in any other subpart as well as that of item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.

D. This subpart does not apply to projects for which there is a single mandatory category specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2 to 10, 12, 13, 15, or 17, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an EAW must be

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.

Subp. 15. **Air pollution.** Items A and B designate the RGU for the type of project listed:

A. For construction of a stationary source facility that generates 100 tons or more per year of any single air pollutant after installation of air pollution control equipment, the PCA shall be the RGU.

B. For construction of a new parking facility for 1,000 or more vehicles, the PCA shall be the RGU, except that this category does not apply to any parking facility which is part of a project reviewed pursuant to part 4410.4300, subpart 14 or 19, or part 4410.4400, subpart 11 or 14.

Subp. 16. and 17. [Unchanged.]

Subp. 18. **Sewage systems.** Items A and B designate the RGU for the type of project listed:

A. For ~~construction of a new municipal or domestic wastewater treatment facility or sewer system with a capacity of 30,000 gallons per day or more, the PCA shall be the~~ RGU expansion, modification, or replacement of a municipal or domestic sewer system resulting in an increase in hydraulic capacity of any part of that system by:

(1) 500,000 gallons per day or more in a first or second class city and in any city served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System;

(2) 100,000 gallons per day or more in a third class city not served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System;

(3) 50,000 gallons per day or more in a fourth class city not served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System; or

(4) 50,000 gallons per day or more in an

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

unincorporated sewered area, the PCA shall be the RGU.

B. For expansion or reconstruction of an existing municipal or domestic wastewater treatment facility ~~or sewer system by~~ which results in an increase ~~in capacity~~ of 50 percent or more ~~over existing capacity or by 50,000~~ of its average wet weather design flow capacity, or construction of a new municipal or domestic wastewater treatment facility with an average wet weather design flow capacity of 30,000 gallons per day or more, the PCA shall be the RGU.

Subp. 19. **Residential development.** Items A and B designate the RGU for the type of project listed~~:~~. If a development consists of both attached and unattached units, each individual unit in a group of attached units shall be considered as an unattached unit.

A. and B. [Unchanged.]

Subp. 20. to 31. [Unchanged.]

4410.4400 MANDATORY EIS CATEGORIES.

Subpart 1. to 10. [Unchanged.]

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C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 10, 12, 13, 15, or 17, or part 4410.4300, subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29 for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EIS. If the project meets or exceeds the thresholds specified in any other subparts as well as those in item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.

D. This subpart does not apply to projects for which

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

there is a single mandatory category specified in subparts 2 to 10, 12, 13, 15, or 17, or part 4410.4300, subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an EIS or an EAW must be determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.

Subp. 12. and 13. [Unchanged.]

Subp. 14. **Residential development.** Items A and B designate the RGU for the type of project listed~~:~~. If a development consists of both attached and unattached units, each individual unit in a group of attached units must be considered as an unattached unit.

A. and B. [Unchanged.]

Subp. 15. to 20. [Unchanged.]

4410.4600 EXEMPTIONS.

Subpart 1. **Scope of exemption.** Projects within ~~subparts~~ subpart 2 ~~to 26~~ are exempt from parts 4410.0200 to 4410.7800. Projects within subparts 3 to 26 are exempt from parts 4410.0200 to 4410.7800, unless they have characteristics which meet or exceed any of the thresholds specified in part 4410.4300 or 4410.4400.

Subp. 2. to 26. [Unchanged.]

4410.7500 ENVIRONMENTAL REPORT AT CERTIFICATE OF NEED STAGE.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Alternative review.** The PUC may request EQB approval of an alternative form of environmental review on a HVTL subject to parts 4410.7400 to 4410.7800. The EQB shall approve the governmental process as an alternative form of environmental review if the PUC demonstrates the process meets the following conditions:

A. the process must satisfy the content requirements of part 4410.7500, subpart 3, but in a more timely or more efficient manner;

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B. the process must provide that the information required to satisfy the content requirements of part 4410.7500, subpart 3, is prepared for and included in the record of the Certificate of Need hearing conducted on the HVTL under Minnesota Statutes, section 216B.243; and

C. the process must provide that the information required to satisfy the content requirements of part 4410.7500, subpart 3, is reveiwed in the manner provided in part 4410.7100, subparts 5 to 12.

Subp. 5. **Exemption.** If the EQB accepts the PUC's process as an adequate alternative environmental review procedure, the PUC is exempt from the requirements under part 4410.7500, subparts 1 to 3, for preparing an environmental report on an HVTL. On approval of the alternative review procedure, the EQB shall provide for periodic review of the procedure to ensure continuing compliance with the requirements and intent of the environmental report requirement. The EQB shall withdraw its approval if review indicates that the procedure no longer fulfills the intent and requirements of the Minnesota Environmental Policy Act and parts 4410.7400 to 4410.7800. A project in the process of undergoing review under an approved alternative review process shall not be affected by the EQB's withdrawal of approval.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Minnesota
Environmental Quality Board
100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Phone _____

In the Matter of the Proposed Adoption of Amendments to the Rule of the State Environmental Quality Board Governing the Environmental Review Program

Notice of Intent to Adopt Amendments Without a Public Hearing

Notice is hereby given that the State Environmental Quality Board proposes to adopt amendments to the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The specific statuatory authority to adopt the rule is Minnesota Statutes, section 116D.04, subd. 5(a).

Persons interested in this rule shall have 30 days in which to submit comments in support of or in opposition to the proposed amendments to the existing rule or any part or subpart of the amendments, and comment is encouraged. Each comment should identify the portion of the proposed amendments addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the amendments within the 30-day comment period. If twenty-five or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the board will proceed pursuant to Minnesota Statutes, section 14.131 to 14.20.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or request to:

Michael Sullivan, Executive Director
Minnesota Environmental Quality Board
110 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
(612) 296-9027

The proposed amendments may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed amendments as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available from the board at the above address upon request.

The impact that the amendments will have on small businesses has been considered by the board pursuant to Minnesota Statutes, section 14.115. The board's position is contained in the Statement of Need and Reasonableness. Any person wishing to comment on the impact of the proposed amendments on small businesses may do so by contacting Mr. Sullivan.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent that the form relates to legality. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted amendments, must submit a written request to the board at the above address.

State of Minnesota
Environmental Quality Board

June 27, 1986
Date

John C. Ditmore
Chair

Environmental Quality Board

Proposed Permanent Rules Relating to Environmental Review Programs

Rules as Proposed

4410.0200 DEFINITIONS AND ABBREVIATIONS.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Attached units.** "Attached units" means in groups of four or more units each of which shares one or more common walls with another unit. ~~Developments consisting of both attached and unattached units shall be considered as an unattached unit development.~~

Subp. 6. to 29. [Unchanged.]

Subp. 30. **Flood plain.** "Flood plain" has the meaning given in ~~part 6120.5000 of the Department of Natural Resources~~ Minnesota Statutes, section 104.02.

Subp. 31. to 81. [Unchanged.]

Subp. 82. **Shoreland.** "Shoreland" has the meaning given in parts ~~6120.0200 to 6120.0500~~ 6120.0100 to 6120.3900 of the Department of Natural Resources.

Subp. 83. to 96. [Unchanged.]

4410.0500 RGU SELECTION PROCEDURES.

Subpart 1. **RGU for mandatory categories.** For any project listed in part 4410.4300 or 4410.4400, the governmental unit specified in those rules shall be the RGU unless the project will be carried out by a state agency, in which case that state agency shall be the RGU. For any project listed in both parts 4410.4300 and 4410.4400, the RGU shall be the unit specified in part 4410.4400. For any project listed in two or more subparts of part 4410.4300 or two or more subparts of part 4410.4400, the RGU shall be determined as specified in subpart 5.

Subp. 2. [Unchanged.]

Subp. 3. **RGU for petition EAW's.** If an EAW is ordered in response to a petition, the RGU that was designated by the EQB

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to act on the petition shall be responsible for the preparation of the EAW. The EQB chair or designee shall determine an RGU to act on the petition as follows:

A. if a state agency proposes to carry out the project, it shall be the RGU;

B. for any project of a type for which a mandatory category is listed in part 4410.4300, the RGU shall be the governmental unit specified by the mandatory category for projects of that type, unless the project will be carried out by a state agency; or

C. for any project of a type for which there is no mandatory category listed in part 4410.4300 and which will not be carried out by a state agency, the RGU shall be selected in accordance with subpart 5.

Subp. 4. and 5. [Unchanged.]

Subp. 6. **Exception.** Notwithstanding subparts 1 to 5, the EQB may designate, within five days of receipt of the completed data portions of the EAW, a different RGU for the ~~preparation of an EAW~~ project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.

4410.3100 PROHIBITION ON FINAL GOVERNMENTAL DECISIONS.

Subpart 1. to 5. [Unchanged.]

Subp. 6. **Granting variance.** At its first meeting more than ten days after the comment period expires, the EQB shall grant or deny the variance. A variance shall be granted if:

A. the RGU consents to a variance; ~~and~~

B. on the basis of the variance application and the comments, construction is necessary in order to avoid excessive and unusual economic hardship, or avoid a serious threat to public health or safety. Unusual economic hardship ~~means that the~~ is hardship ~~is~~ caused by unique conditions and circumstances which are peculiar to the project and are not characteristic of other similar projects or general economic conditions of the area or state ~~and that the hardship is~~. It does not include hardship caused by the proposer's own action, or inaction, if

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the hardship was reasonably foreseeable;

C. on the basis of the variance application and the comments, the construction for which the variance is sought will not have a serious adverse effect on the environment; and

D. on the basis of the variance application and the comments, the construction for which the variance is sought is separable from the remainder of the project and would not have the effect of eliminating from consideration any feasible and prudent alternatives or mitigation measures likely to be presented in an EIS.

Subp. 7. to 9. [Unchanged.]

4410.3600 ALTERNATIVE REVIEW.

Subpart 1. **Implementation.** Governmental units may request EQB approval of an alternative form of environmental review for categories of projects which undergo environmental review under other governmental processes. The governmental processes must address substantially the same issues as the EAW and EIS process and use procedures similar in effect to those of the EAW and EIS process. The EQB shall approve the governmental process as an alternative form of environmental review if the governmental unit demonstrates the process meets the following conditions:

A. the process identifies the potential environmental impacts of each proposed project;

B. the aspects of the process addresses that are intended to substitute for an EIS process address substantially the same issues as an EIS and uses procedures similar to those used in preparing an EIS but in a more timely or more efficient manner;

C. alternatives to the proposed project are considered in light of their potential environmental impacts in those aspects of the process that are intended to substitute for an EIS process;

D. measures to mitigate the potential environmental impacts are identified and discussed;

E. a description of the proposed project and analysis

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of potential impacts, alternatives (in those aspects of the process intended to substitute for an EIS), and mitigating measures are provided to other affected or interested governmental units and the general public;

F. to H. [Unchanged.]

Subp. 2. [Unchanged.]

4410.4300 MANDATORY EAW CATEGORIES.

Subpart 1. **Threshold test.** An EAW must be prepared for projects that meet or exceed the threshold of any of subparts 2 to 31, unless the project meets or exceeds any thresholds of part 4410.4400, in which case an EIS must be prepared.

Subp. 2. to 13. [Unchanged.]

Subp. 14. **Industrial, commercial, and institutional facilities.** Items A and B designate the RGU for the type of project listed, except as provided in items C and D:

A. and B. [Unchanged.]

C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2 to 10, 12, 13, 15, or 17 for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EAW. If the project meets or exceeds the thresholds specified in any other subpart as well as that of item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.

D. This subpart does not apply to projects for which there is a single mandatory category specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2 to 10, 12, 13, 15, or 17, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an EAW must be

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determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.

Subp. 15. **Air pollution.** Items A and B designate the RGU for the type of project listed:

A. For construction of a stationary source facility that generates 100 tons or more per year of any single air pollutant after installation of air pollution control equipment, the PCA shall be the RGU.

B. For construction of a new parking facility for 1,000 or more vehicles, the PCA shall be the RGU, except that this category does not apply to any parking facility which is part of a project reviewed pursuant to part 4410.4300, subpart 14 or 19, or part 4410.4400, subpart 11 or 14.

Subp. 16. and 17. [Unchanged.]

Subp. 18. **Sewage systems.** Items A and B designate the RGU for the type of project listed:

A. For ~~construction of a new municipal or domestic wastewater treatment facility or sewer system with a capacity of 30,000 gallons per day or more, the PCA shall be the~~ RGU expansion, modification, or replacement of a municipal or domestic sewer system resulting in an increase in hydraulic capacity of any part of that system by:

(1) 500,000 gallons per day or more in a first or second class city and in any city served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System;

(2) 100,000 gallons per day or more in a third class city not served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System;

(3) 50,000 gallons per day or more in a fourth class city not served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System; or

(4) 50,000 gallons per day or more in an

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unincorporated sewered area, the PCA shall be the RGU.

B. For expansion or reconstruction of an existing municipal or domestic wastewater treatment facility ~~or sewer system by~~ which results in an increase ~~in capacity~~ of 50 percent or more ~~over existing capacity or by 50,000~~ of its average wet weather design flow capacity, or construction of a new municipal or domestic wastewater treatment facility with an average wet weather design flow capacity of 30,000 gallons per day or more, the PCA shall be the RGU.

Subp. 19. **Residential development.** Items A and B designate the RGU for the type of project listed~~:~~. If a development consists of both attached and unattached units, each individual unit in a group of attached units shall be considered as an unattached unit.

A. and B. [Unchanged.]

Subp. 20. to 31. [Unchanged.]

4410.4400 MANDATORY EIS CATEGORIES.

Subpart 1. to 10. [Unchanged.]

Subp. 11. **Industrial, commercial, and institutional facilities.** Items A and B designate the RGU for the type of project listed, except as provided in items C and D:

A. and B. [Unchanged.]

C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 10, 12, 13, 15, or 17, or part 4410.4300, subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29 for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EIS. If the project meets or exceeds the thresholds specified in any other subparts as well as those in item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.

D. This subpart does not apply to projects for which

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there is a single mandatory category specified in subparts 2 to 10, 12, 13, 15, or 17, or part 4410.4300, subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an EIS or an EAW must be determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.

Subp. 12. and 13. [Unchanged.]

Subp. 14. **Residential development.** Items A and B designate the RGU for the type of project listed~~:~~. If a development consists of both attached and unattached units, each individual unit in a group of attached units must be considered as an unattached unit.

A. and B. [Unchanged.]

Subp. 15. to 20. [Unchanged.]

4410.4600 EXEMPTIONS.

Subpart 1. **Scope of exemption.** Projects within ~~subparts~~ subpart 2 ~~to 26~~ are exempt from parts 4410.0200 to 4410.7800. Projects within subparts 3 to 26 are exempt from parts 4410.0200 to 4410.7800, unless they have characteristics which meet or exceed any of the thresholds specified in part 4410.4300 or 4410.4400.

Subp. 2. to 26. [Unchanged.]

4410.7500 ENVIRONMENTAL REPORT AT CERTIFICATE OF NEED STAGE.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Alternative review.** The PUC may request EQB approval of an alternative form of environmental review on a HVTL subject to parts 4410.7400 to 4410.7800. The EQB shall approve the governmental process as an alternative form of environmental review if the PUC demonstrates the process meets the following conditions:

A. the process must satisfy the content requirements of part 4410.7500, subpart 3, but in a more timely or more efficient manner;

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B. the process must provide that the information required to satisfy the content requirements of part 4410.7500, subpart 3, is prepared for and included in the record of the Certificate of Need hearing conducted on the HVTL under Minnesota Statutes, section 216B.243; and

C. the process must provide that the information required to satisfy the content requirements of part 4410.7500, subpart 3, is reveiwed in the manner provided in part 4410.7100, subparts 5 to 12.

Subp. 5. **Exemption.** If the EQB accepts the PUC's process as an adequate alternative environmental review procedure, the PUC is exempt from the requirements under part 4410.7500, subparts 1 to 3, for preparing an environmental report on an HVTL. On approval of the alternative review procedure, the EQB shall provide for periodic review of the procedure to ensure continuing compliance with the requirements and intent of the environmental report requirement. The EQB shall withdraw its approval if review indicates that the procedure no longer fulfills the intent and requirements of the Minnesota Environmental Policy Act and parts 4410.7400 to 4410.7800. A project in the process of undergoing review under an approved alternative review process shall not be affected by the EQB's withdrawal of approval.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Minnesota
Environmental Quality Board
100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Phone _____

Statement of Need and Reasonableness
for
Proposed Amendments to Environmental Review Program Rules
Minnesota Rules Parts 4410.0200 to 4410.7800

June, 1986

AN EQUAL OPPORTUNITY EMPLOYER

I. SCOPE OF PROPOSED AMENDMENTS

Amendments are being proposed at this time only for selected sections of the existing environmental review program rules, Minnesota Rules, parts 4410.0200 to 4410.7800. The existing rules were adopted in 1982. The EQB staff has monitored the implementation of the 1982 edition of the program rules to determine whether the objectives of the 1982 revision had been achieved, and has reported annually to the EQB on the results of the monitoring. Although the EQB has found that the program is working well in general, several problem areas have been identified. These problem areas are the focus of this present rule amendment process. In January, 1986 the EQB published notice in the State Register that it was soliciting outside information and opinions about revision of the environmental review program rules. A number of suggestions for revisions were received in response to this notice. Some of these have been included in this set of proposed amendments. Others have been deferred for consideration later, as explained in a later paragragh.

The following sections of the rules are proposed for amendment:

4410.0200, subp. 5: definition of "attached units"
4410.0200, subp. 30: definition of "flood plain"
4410.0200, subp. 82: definition of "shoreland"
4410.0500, subp. 1: RGU for mandatory categories
4410.0500, subp. 3: RGU for petition EAWs
4410.0500, subp. 6: EQB authority to change RGU
4410.3100, subp. 6: criteria for granting of variances by EQB
4410.3600, subp. 1: criteria for approval of alternative review
4410.4300, subp. 1: how to interpret mandatory EAW thresholds
4410.4300, subp. 14: industrial, commercial, and institutional mandatory EAW category
4410.4300, subp. 14: parking space mandatory EAW category
4410.4300, subp. 18: sewage systems mandatory EAW category
4410.4400, subp. 11: industrial, commercial, and institutional mandatory EIS category
4410.4600, subp. 1: scope of exemptions
4410.7500, subp. 4: environmental review at the certificate of need stage for high voltage tranmission lines

The EQB expects to consider amendment to mandatory category thresholds and other provisions of the rules at a later time. Consideration of mandatory category threshold changes has been deferred due to the need for additional research and negotiation to arrive at proposed amendments. The only amendment to the thresholds for mandatory EAWs and EISs proposed at this time occurs in part 4410.4300, subp. 18, regarding sewage systems. The other amendments in parts 4410.4300 and 4410.4400 clarify the scope of the categories but do not alter the thresholds. Revisions to the sewage system EAW category thresholds have been included in the present amendment process because these changes will largely resolve the problem of overlapping jurisdiction of local units and the MPCA for residential and commercial projects involving sewer extensions.

II. AUTHORITY

The EQB is authorized to promulgate rules for the environmental review program under Minnesota Statutes ch. 116D.04, subd. 5 (a) and Minn. Stat. ch. 116D.045. General rule-making authority is granted the EQB under Minn. Stat. ch. 116C.04 and 116D.

The EQB is directed by Minn. Rules part 4410.0400, subp. 1 to monitor the effectiveness of the environmental review program rules and to modify them as appropriate to improve their effectiveness.

III. DISCUSSION OF PROPOSED AMENDMENTS

4410.0200, subp. 5. "Attached units" definition:

This amendment involves the deletion of a sentence in the definition of "attached units" and the addition of a similar sentence to the mandatory category descriptions for residential projects, as follows:

> 4410.0200 subp. 5. Attached units. "Attached units" means in groups of four or more units each of which shares one or more common walls with another unit. ~~Developments consisting of both attached and unattached units shall be considered as an unattached unit development.~~
>
> 4410.4300, subp. 19. Residential development. Items A and B designate the RGU for the type of project listed~~.~~. If a development consists of both attached and unattached units, each individual unit in a group of attached units shall be considered as an unattached unit.[continue with remainder of subpart 19.]
>
> 4410.4400, subp. 14. Residential development. Items A and B designate the RGU for the type of project listed~~.~~. If a development consists of both attached and unattached units, each individual unit in a group of attached units shall be considered as an unattached unit.[continue with remainder of subpart 14.]

DISCUSSION:

The sentence being amended does not define "attached units," but rather is an instruction for how to compare developments consisting of both attached and unattached units to the mandatory category thresholds for residential projects. Because this instruction is isolated from the thresholds, RGUs are frequently unaware of the instruction and consequently sometimes make errors in determining whether a mixed development meets or exceeds a threshold. Moving the

instruction into the category descriptions will minimize the opportunities for errors of this kind. In addition, changes in the wording of the sentence are proposed to make it clearer that each individual attached unit is to be counted as if it were an unattached unit for projects which include both kinds of units.

4410. 0200, subp. 30. "Floodplain" definition.

Subp. 30. Flood plain. "Flood plain " has the meaning given in ~~part 6120.5000 of the Department of Natural Resources~~ Minnesota Statutes, section 104.02.

DISCUSSION:

The definition cited in the existing rule and the proposed citation in Minnesota Statutes are identical. The reason for the proposed amendment is to avoid possible future confusion which would result if the cited rules should be renumbered. Some rules cited in the environmental review program rules have been renumbered several times over the years, resulting in confusion.

4410.0200, subp. 82. "Shoreland " definition.

Subp. 82. Shoreland. "Shoreland" has the meaning given in parts ~~6120.0200 to 6120.0500~~ 6120.0100 to 6120.3900 of the Department of Natural Resources.

DISCUSSION:

Because of several editorial errors during the renumbering and revision of DNR rules, the numbers given for the DNR rules defining shoreland are not correct any longer. The amendment would give the proper citations.

4410.0500, subp. 1. RGU for mandatory categories.

Subp. 1. RGU for mandatory categories. For any project listed in part 4410.4300 or 4410.4400, the governmental unit specified in those rules shall be the RGU unless the project will be carried out by a state agency, in which case that state agency shall be the RGU. For any project listed in both parts 4410.4300 and 4410.4400, the RGU shall be the unit specified in part 4410.4400. For any project listed in two or more subparts of 4410.4300 or two more subparts of 4410.4400, the RGU shall be determined as specified in subp. 5.

DISCUSSION:

The proposed amendment has three aspects to it. The first involves a change in the assignment of an RGU for certain projects which will be carried out by state agencies. The second involves a simplification

of the RGU selection process for projects meeting or exceeding the thresholds for a mandatory EIS and mandatory EAWs, where the categories list different units as RGU. The third aspect is a more explicit statement of the selection procedure for projects meeting or exceeding the thresholds for EAWs in two or more categories with different RGU designations or EISs in two or more categories with different RGU designations.

The 1977 edition of the environmental review program rules assigned responsibility for review to any state agency for its own projects. Under the 1982 rule edition, state agencies are assigned as RGU for projects requiring mandatory review only if the appropriate mandatory category names that public agency as the RGU. (A state agency would be RGU for discretionary environmental review of its own projects, however.) The record from the 1982 rule revision does not indicate that this change was intentional, and it is suspected by EQB staff that it resulted inadvertently and was overlooked because of the extent of the revisions. According to the principle that the governmental unit with the greatest responsibility for supervising or approving a project is the appropriate RGU, state agencies ought to serve as RGU for their own projects. It should be noted that most state agency projects are highway projects, for which MnDOT is assigned as RGU by the mandatory highway project categories.

The second proposed change is intended to avoid delays in the initiation of a mandatory EIS. The existing rules do not distinguish between a situation where a project fits both an EIS category and an EAW category for which different RGUs are named, and a situation where a project fits two EAW categories with different RGUs named. In either case, an RGU must be selected by agreement of the prospective RGUs or by action of the EQB Chair. While this selection procedure is appropriate where two (or more) EAW categories are involved, it imposes an unnecessary additional step at the start of an EIS. This additional step has sometimes caused delays in the EIS process while the prospective RGUs negotiated about which would be RGU and about how the EIS would be done. In addition, in some cases the RGU assigned by the EAW category has relinquished its claim to serve as RGU contingent upon being given review authority over draft and final EIS documents and the scoping decision prior to the documents being approved by the RGU for public distribution. This prior review has sometimes delayed the EIS process and, in the view of EQB staff, gives the agency insisting on prior review a degree of control over the EIS process neither contemplated during the development of the rules nor necessary to the preparation of an adequate EIS.

The proposed amendment would eliminate negotiation between governmental units as the method of RGU selection in cases where projects fit both a mandatory EIS and mandatory EAW categories (unless it fit two or more mandatory EIS categories with different RGUs named). Instead, the RGU named by the EIS category would automatically serve as RGU, and any governmental units named as RGUs by EAW categories would simply participate in the EIS process as

would any other party. This change will result in a more efficient and less confusing way of determining which unit is RGU for an EIS and will therefore expedite the initiation of the EIS process. It should be noted that should an inappropriate RGU ever be assigned due to this amendment, the RGU responsibility could be changed by the EQB under its authority given in part 4410.0500, subp. 6.

The third aspect of the amendment is intended to direct prospective RGUs to the section of the rules explaining how to resolve which unit is RGU for projects in multiple EAW or multiple EIS categories. An explicit statement of the need to consult subp. 5 in subp. 1 will reduce the chances of review being initiated by the wrong unit.

4410.0500, subp. 3. RGU for petition EAWs.

Subp. 3. RGU for petition EAW's. If an EAW is ordered in response to a petition, the RGU that was designated by the EQB to act on the petition shall be responsible for the preparation of the EAW. The EQB Chairperson or designee shall determine an RGU to act on the petition as follows:

A. if a state agency proposes to carry out the project, it shall be the RGU;

B. for any project of a type for which a mandatory category is listed in part 4410.4300, the RGU shall be the governmental unit specified by the mandatory category for projects of that type, unless the project will be carried out by a state agency; or

C. for any project of a type for which there is no mandatory listed in part 4410.4300 and which will not be carried out by a state agency, the RGU shall be selected in accordance with subp. 5.

DISCUSSION:

The existing rules leave some "loose ends" regarding to which governmental unit a petition should be assigned. This proposed amendment would give the EQB Chair or designee complete guidance in assigning an RGU.

The amendment would make the RGU the unit which would have been RGU had the project been large enough in scale to fit a mandatory category, unless the project will be conducted by a state agency, in which case that agency will become RGU. If there is no mandatory category for projects of the type, the RGU will be the unit with the greatest responsibility for supervising or approving the project pursuant to subp. 5.

4410.0500, subp. 6. Exception [to normal RGU selection].

Subp. 6. Exception. Notwithstanding subparts 1 to 5, the EQB may designate, within five days of receipt of the completed data portions of the EAW, a different RGU for the ~~preparation of an EAW~~ project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.

DISCUSSION:

The current wording leaves it ambiguous whether the RGU assigned by EQB for preparation of an EAW would also serve as RGU for an EIS, if an EIS is required for the project. The proposed amendment clarifies this ambiguity.

4410.3100, subp. 6. Granting variance.

Proposed amendment:

Subp. 6. Granting variance. At its first meeting more than ten days after the comment period expires, the EQB shall grant or deny the variance. A variance shall be granted if:

A. the RGU consents to the variance; ~~and~~

B. on the basis of the variance application and the comments, construction is necessary in order to avoid excessive and unusual economic hardship, or to avoid a serious threat to public health and safety. Unusual economic hardship is ~~means that the~~ hardship ~~is~~ caused by unique conditions and circumstances which are peculiar to the project and are not characteristic of other similar projects or general economic conditions of the area or state ~~and that the hardship is~~. It does not include hardship caused by the proposer's own action, or inaction, if the hardship was reasonably foreseeable;

C. on the basis of the variance application and the comments, the construction for which the variance is sought will not have a serious adverse effect on the environment; and

D. on the basis of the variance application and the comments, the construction for which the variance is sought is separable from the remainder of the project and would not have the effect of eliminating from consideration any feasible and prudent alternatives or mitigation measures likely to be presented in an EIS.

DISCUSSION:

The criteria for granting a variance were developed for the 1982 rule revision in a theoretical context because there were no criteria specified in the former rules and only one case in which a construction variance was sought had ever arisen. Consequently, the EQB did not have the benefit of actual experience in granting variances in drafting the criteria. Within the past year, however, the EQB has acted on two variance applications. Experience with both applications has revealed that the criteria are incomplete with respect to consideration of the environmental consequences of a

proposed variance, and unreasonably restrictive with respect to the extent to which the project proposer is responsible for an economic hardship.

The existing rule requires, at subp. 4, that the variance application contain information about the environmental consequences of the variance and how the variance would affect the purposes of environmental review and subsequent approvals. However, this information is not made part of the consideration of whether the variance should be granted in the criteria of subp. 6. In light of the two variance cases handled recently by EQB, it is clear that the extent of environmental effects which could result from the construction to be allowed by the variance should be a very important factor in a decision; after all, the purpose of the entire program is protection against avoidable environmental effects. Before a variance is granted, there should be a reasonable assurance that significant environmental effects will not result. This is addressed in the proposed amendment by the requirement that the construction "will not have a serious adverse effect on the environment."

The extent to which the granting of a variance would subvert the purposes of environmental review should also be considered in the granting of a variance. In the two cases dealt with by the EQB, the potential environmental effects of the construction requested were not major issues being addressed by the EIS, and therefore whether or not the variance was granted made little difference to the EIS process. On the other hand, a variance could be requested for construction which would make the EIS a meaningless exercise by precluding a reasoned consideration of alternatives and mitigation measures. The proposed amendment seeks to distinguish between these two cases through the provisions that the construction be "separable from the remainder of the project" and that it would "not have the effect of eliminating from consideration any feasible and prudent alternatives or mitigation measures likely to be presented in an EIS." Variances would be evaluated with respect to this concept in two phases. First, the construction requested would need to be separable from the rest of the project; if the construction were not separable, the variance would represent a commitment to construction of the entire project without benefit of the information from the environmental review process. Second, only if the separable construction does not foreclose consideration of alternatives and mitigation measures for significant issues will a variance be allowed. This second test is necessary because the separable part of the project for which the variance is sought could be the very part with the significant environmental effects. The two part criteria would assure that any construction allowed by a variance would not impair the use of the EIS process as a tool for rational decision-making with respect to significant environmental issues.

The amendment refers to feasible and prudent alternatives and mitigation measures "likely to be presented in an EIS," as opposed to other wording referring more definitely to the content of an EIS. This is because theoretically a variance could be requested on a

project for which an EIS is not mandatory and has not been ordered, and because a variance could be requested early in EIS preparation, before the EIS scope has been set. In such a case, the EQB would consider alternatives and mitigation measures likely to be included in an EIS, based information available at the time.

The proposed amendment would modify the requirement that "the hardship is not caused by the proposer's own action or inaction" by adding the qualifier that if the hardship resulted from the proposer's inaction, the need for taking action to prevent the hardship must have been "reasonably foreseeable." Experience with two variance applications suggests that in one way or another almost all hardships could have been avoided if the proposer had taken certain actions. The current rule fails to distinguish between cases where the proposer could have foreseen the need to act but failed to do so, and those where the proposer could not have been reasonably expected to have foreseen the need to take action. The proposed amendment would allow the EQB to distinguish between these two cases, and would disallow a variance where the proposer brought the hardship upon himself by failure to take action when the need for action was "reasonably foreseeable".

4410.3600, subp. 1. Alternative review approval criteria.

Proposed amendment:

A. [Unchanged.]

B. the aspects of the process that are intended to substitute for an EIS process addresses substantially the same issues as an EIS and uses procedures similar to those used in preparing as EIS but in a more timely or more efficient manner;

C. alternatives to the proposed project are considered in light of their potential environmental impacts in those aspects of the process that are intended to substitute for an EIS process;

D. [Unchanged.]

E. a description of the proposed project and analysis of potential impacts, alternatives (in those aspects of the process intended to substitute for an EIS process), and mitigating measures are provided to other affected or interested governmental units and the general public;

F to H. [Unchanged.]

DISCUSSION:

These proposed amendments are intended to clarify that an approvable alternative review process need treat projects with the depth of an EIS only where the project is subject to an EIS under the normal environmental review process. All examples of possible alternative review processes of which the EQB staff is aware include the two-tiered type of approach similar to the EAW/EIS system, in which there is some type of case-by-case decision process to decide if projects which do not fit mandatory EIS categories need an EIS.

Until such projects have been determined to require preparation of an EIS, there is no basis for requiring that their review use procedures like those of an EIS or that alternatives be analyzed. The existing language suggests that these features should be part of the alternative process' screening procedures. Since these features are not required in an EAW process, it is unreasonable to require them for the EAW-substitute aspects of an alternative review process. The proposed amendments would rectify this situation.

4410.4300, subp. 1. Mandatory EAW threshold test.

Proposed amendment:

Subpart 1. Threshold test. An EAW must be prepared for projects that meet or exceed the threshold of any of subparts 2 to 31, unless the project meets or exceeds any thresholds of part 4410.4400, in which case an EIS must be prepared.

DISCUSSION:

The proposed amendment is intended to alert officials of RGUs, project proposers, and other persons to the fact that some projects meeting or exceeding the thresholds of mandatory EAW categories also meet or exceed thresholds of mandatory EIS categories, and that therefore it is an EIS not merely an EAW which must be prepared. Although persons with some familiarity with the program are unlikely to make this sort of error, newcomers to the process are not always aware of the need to check mandatory EIS as well as mandatory EAW categories. The amendment would reduce the chances that the need for an EIS would be overlooked.

4410.4300, subp. 14. Industrial, commercial, and institutional projects.

Proposed amendment:

Subp. 14. Industrial, commercial, and institutional facilities. Items A and B designate the RGU for the type of project listed, except as provided in items C and D:

A. [Unchanged.]

B. [Unchanged.]

C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2 to 10, 12, 13, 15, or 17 for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EAW. If the project meets or exceeds the thresholds specified in any other subpart as well as that of item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.

D. This subpart does not apply to projects for which there is a single mandatory category specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2 to 10, 12, 13, 15, or 17, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an EAW shall be determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.

DISCUSSION:

This proposed amendment would make explicit in the rules how to interpret the general mandatory categories for industrial, commercial, and institutional projects. This amendment is needed to avoid confusion about how this category should applied in two types of situations: (1) where the project consists of several components, some of which may be of types for which mandatory EAW categories have been established; and (2) where the project is of an industrial, commercial, or institutional nature, but of a single specific type for which there is a mandatory EAW category. An example of the former situation is a horse racing track, which includes elements of a retail commercial facility, a parking facility, a feedlot, and perhaps highway improvements. All of the specific industrial and commercial facilities for which specific mandatory EAW categories have been established--the subparts are listed in the proposed amendments--represent examples of the latter situation, e.g., power plants, storage facilities, marinas, feedlots, etc. The addition of items C and D is intended to make explicit the proper application of the general industrial, commercial, institutional category in both types of situation.

The amendments would make explicit the interpretation which EQB staff has used over the history of the program, i.e., that the general industrial, commercial, and institutional category is meant to apply to industrial, commercial, and institutional projects for which no other specific category has been established and to projects which include more than one type of facility. When there is a specific category or categories for a type of project, the decision on whether or not a project requires review should be based on the thresholds established in the specific category or categories because those thresholds were set to take into account the unique features and potential effects of that class of project. The thresholds in the specific categories are better indicators of the potential for significant environmental effects than are the thresholds in the general industrial, commercial, and institutional categories, which rely on square footage as an measure of potential for significant environmental effects regardless of the nature of the project. The language of proposed item D would make this explicit.

It should be noted that the supercession of the general by specific categories would include the situation where a project exceeds the square footage threshold of the general EAW or EIS category but fails to meet or exceed the thresholds of its appropriate specific category. E.g., if a project exceeded the general threshold for an EIS but was less than the EAW threshold for its specific category, no environmental review would be mandatory.

Proposed item C would make explicit the applicability of the general industrial, commercial, and institutional category to mixed projects, and the need to compare the total project to the thresholds. This item is needed to make it clear to RGUs that the total project must be considered in determining the need for environmental review, and that if a mixed project in total exceeds the thresholds specified in A or B of this subpart, review is necessary even if none of the components exceeds the threshold of any other mandatory categories. This approach is reasonable because the cumulative environmental effects of mixed projects are greater than the effects of any single component. Application of the general industrial, commercial, and institutional category to the project as a whole provides a way to assess the overall need for environmental review.

4410.4300, subp 15, item B. Air pollution, parking spaces EAW category.

Proposed amendment:

B. For construction of a new parking facility for 1,000 or more vehicles, the PCA shall be the RGU, except that this category does not apply to any parking facility which is part of a project reviewed pursuant to part 4410.4300, subp. 14 or 19 or part 4410.4400, subp. 11 or 14.

DISCUSSION:

This proposed amendment is intended to eliminate one of the two most frequently occurring "dual RGU situations." In this case, the MPCA is named as RGU by the air pollution, parking space category and a local unit of government is named as RGU by either the industrial, commercial, and institutional category or the residential category. Frequently, in these situations the local unit initiates the EAW without realizing that it is the RGU only if the MPCA agrees that it should be. (Pursuant to the RGU selection provisions of the rules, in these situations a RGU is selected by consent of all prospective RGUs, or by action of the EQB Chair.) Although the MPCA is normally willing to let the local unit serve as RGU, MPCA must review the proposed EAW to see if the content is satisfactory. This sometimes causes confusion and can lead to delays in the EAW comment period.

The proposed amendment would eliminate the dual RGU situation caused by the air pollution, parking space category. Any project involving parking for 1,000 or more vehicles which meets or exceeds the thresholds for review in the residential or industrial, commercial, and institutional categories would be exempted from the air

pollution, parking space category. Therefore, MPCA would no longer be named as a prospective RGU, and there would be no need for prior negotiation between the local unit and MPCA to determine which will serve as RGU. This change will result in a more efficient and less confusing way of determining which unit is RGU for these projects and will therefore eliminate a source of confusion and delays.

Air quality concerns would continue to be covered in the EAW process. The amendment would affect the stage of review at which the MPCA could review the relevant information, but it would not alter the ability of MPCA to perform its review. Moreover, it should be noted that MPCA can require an air quality permit for any parking facility over 1,000 spaces so that if the EAW process should fail to adequate handle an air quality issue to the satisfaction of MPCA, the issue can be resolved in the permitting process.

4410.4300, subp. 18. Sewage systems mandatory category.

Proposed amendment:

Subp. 18. Sewage systems. Items A and B designate the RGU for the type of project listed:

A. For ~~construction of a new municipal or domestic wastewater treatment facility or sewer system with a capacity of 30,000 gallons per day or more, the PCA shall be the RGU~~ expansion, modification, or replacement of a municipal or domestic wastewater sewer system resulting in an increase in hydraulic capacity of any part of that system by:

(1) 500,000 gallons per day or more in a first or second class city and in any city served by the Metropolitan Waste Control Commission system or the Western Lake Superior Sanitary Sewer District system;

(2) 100,000 gallons per day or more in a third class city not served by the Metropolitan Waste Control Commission system or the Western Lake Superior Sanitary Sewer District system;

(3) 50,000 gallons per day or more in a fourth class city not served by the Metropolitan Waste Control Commission system or the Western Lake Superior Sanitary Sewer District system; or

(4) 50,000 gallons per day or more in an unincorporated sewered area, the PCA shall be the RGU.

B. For expansion or reconstruction of an existing municipal or domestic wastewater treatment facility ~~or sewer system by~~ which results in an increase ~~in capacity~~ of 50% or more ~~over existing capacity or by 50,000~~ of its average wet weather design flow capacity, or construction of a new municipal or domestic wastewater treatment facility with an average wet weather design flow capacity of 30,000 gallons per day or more, the PCA shall be the RGU.

DISCUSSION:

This proposed amendment is intended to resolve two problems with the existing rules. The first is a "dual RGU" problem involving projects fitting both the mandatory EAW category for sewer system expansions (assigned to MPCA) and that for residential or industrial, commercial, and institutional facilities (assigned to a local unit). The problem here is analogous to that discussed previously for subpart 15. The second problem is that three years of experience shows that the thresholds for sewer system and wastewater treatment expansions or improvements were set too low in 1982, and therefore that sewer and wastewater projects too small to warrant mandatory EAWs are now subject to mandatory EAWs. By raising the thresholds to solve the second problem, most of the dual RGU situations will be automatically eliminated.

Prior to the 1982 rule revision, there was no EAW category related to sewer or wastewater projects, and therefore the threshold was set without benefit of prior experience. As a result of this change, the percentage of all EAWs which are for sewage projects went from essentially zero to 20%, making sewage projects the second-most frequently reviewed type of project (residential is first). This drastic increase was not expected nor intended. Many of the projects necessitating review are rather minor sewer extensions or are improvements to municipal wastewater facilities mandated by the federal Clean Water Act. Moreover, many of the wastewater facilities are reviewed through the federal environmental review process in order to receive federal grants. All of the projects are reviewed and permitted by MPCA.

The specific threshold changes are based on the recommendations of the MPCA staff, the staff which is responsible for environmental review of sewage projects as well as the review and permitting of sewers and wastewater treatment facilities. For sewer system expansions, the thresholds are tied to the class of the city and to whether the sewer is tributary to the large systems operated by the sewage authorities of the Twin Cities area or the Duluth area. This differentiation is reasonable because generally speaking, a given sewer extension's significance would be dependent on the size of the system of which it would become a part. The thresholds represent the best judgement of the MPCA staff, based on experience with dozens of sewer extension EAWs over the past three years, as to the cut-off points for the potential for significant environmental effects from such projects in cities of the various sizes.

For wastewater treatment facilities, the thresholds are not altered for new facilities. However, for expansions and reconstructions the threshold is changed by deletion of one of the two existing thresholds, namely that the work will increase capacity by 50,000 or more gallons per day, measured as average wet weather design flow. The threshold of whether capacity will be increased by 50% or more over previous capacity is retained. This change will automatically take into account the size of the expansion relative to the size of the former facility.

Wastewater treatment facility capacities are proposed to be measured in terms of "average wet weather design flow." The current rule uses the very general term "capacity." Because capacity can be measured in several different ways, the term capacity is ambiguous and can lead to confusion about whether the threshold is exceeded. The proposed amendment would clarify the particular measure of capacity to be used in comparing the project to the thresholds.

4410.4300, subp. 19. Residential development. See discussion of 4410.0200, subp. 5.

4410.4400, subp. 11. Industrial, commercial, and institutional projects.

Proposed amendment:

Subp. 11. Industrial, commercial, and institutional facilities. Items A and B designate the RGU for the type of project listed, except as provided in items C and D:

A. [Unchanged.]

B. [Unchanged.]

C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 10, 12, 13, 15, or 17, or part 4410.4300, subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29 for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EIS. If the project meets or exceeds the thresholds specified in any other subparts as well as those in item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.

D. This subpart does not apply to projects for which there is a single mandatory category specified in subparts 2 to 10, 12, 13, 15, or 17, or part 4410.4300, subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an EIS or an EAW must be determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.

DISCUSSION:

This amendment is proposed for the same reasons as the amendment to pt. 4410.4300, subp. 14.

4410.4400, subp. 14. Residential Development. See discussion of 4410.0200, subp. 5.

4410.4600, Subp. 1. Scope of Exemption.

Proposed amendment:

Subpart 1. Scope of Exemption. Projects within subparts 2 to 26 are exempt from parts 4410.0200 to 4410.7800, unless they have characteristics which meet or exceed any of the thresholds specified in parts 4410.4300 or 4410.4400.

DISCUSSION:

The purpose of this proposed amendment is to make explicit the fact that a mandatory category provision supercedes an exemption provision in situations where a project has aspects which fit the descriptions of both. This amendment is necessary to clarify the proper application of the rules to such situations in order to avoid confusion and errors by RGUs.

4410.7500 Environmental Report at Certificate of Need Stage.

Proposed amendment:

Subp. 4. Alternative Review. The PUC may request EQB approval of an alternative form of environmental review on an HVTL subject to parts. 4410.7400 to 4410.7800. The EQB shall approve the governmental process as an alternative form of environmental review if the PUC demonstrates the process meets the following conditions:

A. the process must satisfy the content requirements of part 4410.7500. subp. 3 but in a more timely or more efficient manner;

B. the process must provide that the information required to satisfy the content requirements of part 4410.7500, subp. 3 is prepared for and included in the record of the Certificate of Need hearing conducted on the HVTL under Minnesota Statutes 216B.243; and

C. the process must provide that the information required to satisfy the content requirements of part 4410.7500, subp. 3 is reviewed in the manner provided in part 4410.7100, subps. 5 to 12.

Subp. 5. Exemption. If the EQB accepts the PUC's process as an adequate alternative environmental review procedure, the PUC shall be exempt from the requirement under part 4410.7500, subps. 1 to 3, for preparing an environmental report on an HVTL. On approval of the alternative environmental review procedure, the EQB shall provide for periodic review of the procedure to ensure continuing complicance with the requirements and intent of the environmental report requirement. The EQB shall withdraw its approval if review indicates that the procedure no longer fulfills the intent and requirements of the Minnesota Environmental Policy Act and parts 4410.7400 to 4410.7800. A project in the process of undergoing review under an approved alternative environmental review process shall not be affected by the EQB's withdrawal of approval.

DISCUSSION:

This amendment would add two subparts to this rule establishing a new alternative review process which could be applied to the environmental report requirements for high voltage transmission lines (HVTL's) at the certificate of need stage. The intent of the process set out in these subparts is to eliminate duplication by reducing repeated consideration of similar issues in the environmental report and the certificate of need application at the need certification stage for HVTL facilities. As this proposed amendment eliminates unnecessary duplication of environmental information, it will provide for more efficient use of staff time in the certificate of need process, while allowing the PUC to make the certificate of need decision within the six month time frame required by statute. The proposed amendmend also retains the integrity of the environmental report requirements in the PUC alternative review process.

The proposed subpart 4 would allow the PUC to request EQB approval of an alternative form of environmental review for an HVTL. However, before the EQB approves of an alternative form of environmental review the PUC must demonstrate that their process meets certain conditions. These conditions include: satisfying the content requirements of the environmental report identified in 4410.7500 Subp. 3., preparation of and inclusion of the information required in Subp. 3., in the record of the certificate of need hearing, and that the process provide for review and circulation of the information required in Subp.3, in the manner provided in part 4410.7100, subps. 5 to 12.

The proposed subpart 5 would exempt the PUC from the prescribed environmental report requirements on HVTL's during the certificate of need stage, if the EQB determines that the PUC's review process is adequate. This amendment also provides for periodic review by the EQB of the alternative review procedure to insure compliance with the requirements and intent of the environmental report. The EQB may also withdraw its support if the procedure no longer fulfills the intent and requirements of the Minnesota Environmental Policy Act and the environmental report requirements at the certificate of need stage.

IV. IMPACT OF AMENDMENTS ON SMALL BUSINESSES

Minnesota Statute, section 14.115 requires special consideration of the impacts of proposed rules on small businesses, unless the rule is exempt under Minnesota Statutes, section 14.115, subd. 7. These proposed amendments, with the single exemption of the variance criteria, do not directly affect small businesses because they relate to review requirements imposed on units of government. The indirect effects of the amendments on small businesses are anticipated to be positive or negligible, because most changes are merely clarifications of the existing rules, and the one change in the thresholds for doing EAWs and EISs covers only municipal sewage treatment systems and raises the thresholds so that fewer EAWs will

result.

The proposed amendment to the variance criteria theoretically affects small businesses directly. However, it is unlikely that any small business will actually be affected by amendments to these criteria because it is very unlikely that any small business will request a variance; to date only three variances have been requested, all by large businesses. The proposed change in the variance criteria are intended to clarify and improve the explicit criteria for granting a variance. As such, the amendments should have a positive impact toward all businesses by improving the EQB's capacity to handle variance requests. It is impossible to quantify the effects of the changes.

The nature of the variance criteria automatically provides a flexibility in application which allows consideration of the needs of small businesses. In particular, the language requires consideration of whether economic hardship necessitating the variance request is "excessive" and "unusual," where "unusual" in part relates to the peculiar characteristics of the project's proposer. These terms allow the EQB to consider the hardship in the context of the proposer's unique economic situation. In consequence, it is unnecessary to provide separate provisions for variances for small businesses.

V. FISCAL IMPACTS

The proposed rule amendments will result in a decrease in the overall costs of environmental review, because of the increases in the thresholds for mandatory EAWs for sewage systems. The other amendments should not alter the costs of review because they are clarifications of the responsibility for review, not changes in the need for review.

The amendments will have a positive impact on the costs to businesses for environmental review by eliminating sources of confusion and delay.

In the Matter of the Proposed Adoption of Rules of the State Environmental Quality Board Governing the Environmental Review Program

AFFIDAVIT OF MAILING

STATE OF MINNESOTA

COUNTY OF RAMSEY

Daniel R. McGarthwaite, being first duly sworn deposes and says:

That on the eighth day of July, 1986, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State Environmental Quality Board for the purposes of receiving notice of the proposed adoption rules by this board.

Daniel R. McGarthwaite

Subscribed and sworn to before me
this 17th day of September 1986.

Linda A. Ratay

Linda A. Ratay
NOTARY PUBLIC — MINNESOTA
WASHINGTON COUNTY
My commission expires Feb. 28, 1991

Minnesota
Environmental Quality Board
100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Phone _____

In the Matter of the Proposed Adoption of Amendments to the Rule of the State Environmental Quality Board Governing the Environmental Review Program

Notice of Intent to Adopt Amendments Without a Public Hearing

Notice is hereby given that the State Environmental Quality Board proposes to adopt amendments to the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The specific statuatory authority to adopt the rule is Minnesota Statutes, section 116D.04, subd. 5(a).

Persons interested in this rule shall have 30 days in which to submit comments in support of or in opposition to the proposed amendments to the existing rule or any part or subpart of the amendments, and comment is encouraged. Each comment should identify the portion of the proposed amendments addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the amendments within the 30-day comment period. If twenty-five or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the board will proceed pursuant to Minnesota Statutes, section 14.131 to 14.20.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or request to:

Michael Sullivan, Executive Director
Minnesota Environmental Quality Board
110 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
(612) 296-9027

The proposed amendments may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed amendments as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available from the board at the above address upon request.

The impact that the amendments will have on small businesses has been considered by the board pursuant to Minnesota Statutes, section 14.115. The board's position is contained in the Statement of Need and Reasonableness. Any person wishing to comment on the impact of the proposed amendments on small businesses may do so by contacting Mr. Sullivan.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent that the form relates to legality. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted amendments, must submit a written request to the board at the above address.

State of Minnesota
Environmental Quality Board

June 27, 1986
Date

John C. Ditmore
Chair

Environmental Quality Board

Proposed Permanent Rules Relating to Environmental Review Programs

Rules as Proposed

4410.0200 DEFINITIONS AND ABBREVIATIONS.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Attached units.** "Attached units" means in groups of four or more units each of which shares one or more common walls with another unit. ~~Developments consisting of both attached and unattached units shall be considered as an unattached unit development.~~

Subp. 6. to 29. [Unchanged.]

Subp. 30. **Flood plain.** "Flood plain" has the meaning given in ~~part 6120.5000 of the Department of Natural Resources~~ Minnesota Statutes, section 104.02.

Subp. 31. to 81. [Unchanged.]

Subp. 82. **Shoreland.** "Shoreland" has the meaning given in parts ~~6120.0200 to 6120.0500~~ 6120.0100 to 6120.3900 of the Department of Natural Resources.

Subp. 83. to 96. [Unchanged.]

4410.0500 RGU SELECTION PROCEDURES.

Subpart 1. **RGU for mandatory categories.** For any project listed in part 4410.4300 or 4410.4400, the governmental unit specified in those rules shall be the RGU unless the project will be carried out by a state agency, in which case that state agency shall be the RGU. For any project listed in both parts 4410.4300 and 4410.4400, the RGU shall be the unit specified in part 4410.4400. For any project listed in two or more subparts of part 4410.4300 or two or more subparts of part 4410.4400, the RGU shall be determined as specified in subpart 5.

Subp. 2. [Unchanged.]

Subp. 3. **RGU for petition EAW's.** If an EAW is ordered in response to a petition, the RGU that was designated by the EQB

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

to act on the petition shall be responsible for the preparation of the EAW. The EQB chair or designee shall determine an RGU to act on the petition as follows:

A. if a state agency proposes to carry out the project, it shall be the RGU;

B. for any project of a type for which a mandatory category is listed in part 4410.4300, the RGU shall be the governmental unit specified by the mandatory category for projects of that type, unless the project will be carried out by a state agency; or

C. for any project of a type for which there is no mandatory category listed in part 4410.4300 and which will not be carried out by a state agency, the RGU shall be selected in accordance with subpart 5.

Subp. 4. and 5. [Unchanged.]

Subp. 6. **Exception.** Notwithstanding subparts 1 to 5, the EQB may designate, within five days of receipt of the completed data portions of the EAW, a different RGU for the ~~preparation of an EAW~~ project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.

4410.3100 PROHIBITION ON FINAL GOVERNMENTAL DECISIONS.

Subpart 1. to 5. [Unchanged.]

Subp. 6. **Granting variance.** At its first meeting more than ten days after the comment period expires, the EQB shall grant or deny the variance. A variance shall be granted if:

A. the RGU consents to a variance; ~~and~~

B. on the basis of the variance application and the comments, construction is necessary in order to avoid excessive and unusual economic hardship, or avoid a serious threat to public health or safety. Unusual economic hardship ~~means that~~ the is hardship ~~is~~ caused by unique conditions and circumstances which are peculiar to the project and are not characteristic of other similar projects or general economic conditions of the area or state ~~and that the hardship is~~. It does not include hardship caused by the proposer's own action, or inaction, if

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the hardship was reasonably foreseeable;

C. on the basis of the variance application and the comments, the construction for which the variance is sought will not have a serious adverse effect on the environment; and

D. on the basis of the variance application and the comments, the construction for which the variance is sought is separable from the remainder of the project and would not have the effect of eliminating from consideration any feasible and prudent alternatives or mitigation measures likely to be presented in an EIS.

Subp. 7. to 9. [Unchanged.]

4410.3600 ALTERNATIVE REVIEW.

Subpart 1. **Implementation.** Governmental units may request EQB approval of an alternative form of environmental review for categories of projects which undergo environmental review under other governmental processes. The governmental processes must address substantially the same issues as the EAW and EIS process and use procedures similar in effect to those of the EAW and EIS process. The EQB shall approve the governmental process as an alternative form of environmental review if the governmental unit demonstrates the process meets the following conditions:

A. the process identifies the potential environmental impacts of each proposed project;

B. the aspects of the process addresses that are intended to substitute for an EIS process address substantially the same issues as an EIS and uses procedures similar to those used in preparing an EIS but in a more timely or more efficient manner;

C. alternatives to the proposed project are considered in light of their potential environmental impacts in those aspects of the process that are intended to substitute for an EIS process;

D. measures to mitigate the potential environmental impacts are identified and discussed;

E. a description of the proposed project and analysis

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of potential impacts, alternatives (in those aspects of the process intended to substitute for an EIS), and mitigating measures are provided to other affected or interested governmental units and the general public;

F. to H. [Unchanged.]

Subp. 2. [Unchanged.]

4410.4300 MANDATORY EAW CATEGORIES.

Subpart 1. **Threshold test.** An EAW must be prepared for projects that meet or exceed the threshold of any of subparts 2 to 31, unless the project meets or exceeds any thresholds of part 4410.4400, in which case an EIS must be prepared.

Subp. 2. to 13. [Unchanged.]

Subp. 14. **Industrial, commercial, and institutional facilities.** Items A and B designate the RGU for the type of project listed, except as provided in items C and D:

A. and B. [Unchanged.]

C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2 to 10, 12, 13, 15, or 17 for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EAW. If the project meets or exceeds the thresholds specified in any other subpart as well as that of item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.

D. This subpart does not apply to projects for which there is a single mandatory category specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2 to 10, 12, 13, 15, or 17, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an EAW must be

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determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.

Subp. 15. **Air pollution.** Items A and B designate the RGU for the type of project listed:

A. For construction of a stationary source facility that generates 100 tons or more per year of any single air pollutant after installation of air pollution control equipment, the PCA shall be the RGU.

B. For construction of a new parking facility for 1,000 or more vehicles, the PCA shall be the RGU, except that this category does not apply to any parking facility which is part of a project reviewed pursuant to part 4410.4300, subpart 14 or 19, or part 4410.4400, subpart 11 or 14.

Subp. 16. and 17. [Unchanged.]

Subp. 18. **Sewage systems.** Items A and B designate the RGU for the type of project listed:

A. For ~~construction of a new municipal or domestic wastewater treatment facility or sewer system with a capacity of 30,000 gallons per day or more, the PCA shall be the~~ RGU expansion, modification, or replacement of a municipal or domestic sewer system resulting in an increase in hydraulic capacity of any part of that system by:

(1) 500,000 gallons per day or more in a first or second class city and in any city served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System;

(2) 100,000 gallons per day or more in a third class city not served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System;

(3) 50,000 gallons per day or more in a fourth class city not served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System; or

(4) 50,000 gallons per day or more in an

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

unincorporated sewered area, the PCA shall be the RGU.

B. For expansion or reconstruction of an existing municipal or domestic wastewater treatment facility ~~or sewer system by~~ which results in an increase ~~in capacity~~ of 50 percent or more ~~over existing capacity or by 50,000~~ of its average wet weather design flow capacity, or construction of a new municipal or domestic wastewater treatment facility with an average wet weather design flow capacity of 30,000 gallons per day or more, the PCA shall be the RGU.

Subp. 19. **Residential development.** Items A and B designate the RGU for the type of project listed~~:~~. If a development consists of both attached and unattached units, each individual unit in a group of attached units shall be considered as an unattached unit.

A. and B. [Unchanged.]

Subp. 20. to 31. [Unchanged.]

4410.4400 MANDATORY EIS CATEGORIES.

Subpart 1. to 10. [Unchanged.]

Subp. 11. **Industrial, commercial, and institutional facilities.** Items A and B designate the RGU for the type of project listed, except as provided in items C and D:

A. and B. [Unchanged.]

C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 10, 12, 13, 15, or 17, or part 4410.4300, subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29 for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EIS. If the project meets or exceeds the thresholds specified in any other subparts as well as those in item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.

D. This subpart does not apply to projects for which

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there is a single mandatory category specified in subparts 2 to 10, 12, 13, 15, or 17, or part 4410.4300, subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an EIS or an EAW must be determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.

Subp. 12. and 13. [Unchanged.]

Subp. 14. **Residential development.** Items A and B designate the RGU for the type of project listed~~:~~. If a development consists of both attached and unattached units, each individual unit in a group of attached units must be considered as an unattached unit.

A. and B. [Unchanged.]

Subp. 15. to 20. [Unchanged.]

4410.4600 EXEMPTIONS.

Subpart 1. **Scope of exemption.** Projects within ~~subparts~~ subpart 2 ~~to 26~~ are exempt from parts 4410.0200 to 4410.7800. Projects within subparts 3 to 26 are exempt from parts 4410.0200 to 4410.7800, unless they have characteristics which meet or exceed any of the thresholds specified in part 4410.4300 or 4410.4400.

Subp. 2. to 26. [Unchanged.]

4410.7500 ENVIRONMENTAL REPORT AT CERTIFICATE OF NEED STAGE.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Alternative review.** The PUC may request EQB approval of an alternative form of environmental review on a HVTL subject to parts 4410.7400 to 4410.7800. The EQB shall approve the governmental process as an alternative form of environmental review if the PUC demonstrates the process meets the following conditions:

A. the process must satisfy the content requirements of part 4410.7500, subpart 3, but in a more timely or more efficient manner;

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

B. the process must provide that the information required to satisfy the content requirements of part 4410.7500, subpart 3, is prepared for and included in the record of the Certificate of Need hearing conducted on the HVTL under Minnesota Statutes, section 216B.243; and

C. the process must provide that the information required to satisfy the content requirements of part 4410.7500, subpart 3, is reveiwed in the manner provided in part 4410.7100, subparts 5 to 12.

Subp. 5. **Exemption.** If the EQB accepts the PUC's process as an adequate alternative environmental review procedure, the PUC is exempt from the requirements under part 4410.7500, subparts 1 to 3, for preparing an environmental report on an HVTL. On approval of the alternative review procedure, the EQB shall provide for periodic review of the procedure to ensure continuing compliance with the requirements and intent of the environmental report requirement. The EQB shall withdraw its approval if review indicates that the procedure no longer fulfills the intent and requirements of the Minnesota Environmental Policy Act and parts 4410.7400 to 4410.7800. A project in the process of undergoing review under an approved alternative review process shall not be affected by the EQB's withdrawal of approval.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Environmental Quality Board

Proposed Permanent Rules Relating to Environmental Review Programs

Notice of Intent to Adopt Amendments without a Public Hearing

Notice is hereby given that the State Environmental Quality Board proposes to adopt amendments to the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes, section 116D.04, subd. 5(a).

Persons interested in this rule shall have 30 days in which to submit comments in support of or in opposition to the proposed amendments to the existing rule or any part or subpart of the amendments, and comment is encouraged. Each comment should identify the portion of the proposed amendments addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the amendments within the 30-day comment period. If twenty-five or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the board will proceed pursuant to Minnesota Statutes, section 14.131 to 14.20.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or request to:

Michael Sullivan, Executive Director
Minnesota Environmental Quality Board
110 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
(612) 296-9027

The proposed amendments may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed amendments as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available from the board at the above address upon request.

The impact that the amendments will have on small businesses has been considered by the board pursuant to Minnesota Statutes, section 14.115. The board's position is contained in the Statement of Need and Reasonableness. Any person wishing to comment on the impact of the proposed amendments on small businesses may do so by contacting Mr. Sullivan.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent that the form relates to legality. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted amendments, must submit a written request to the board at the above address.

Dated: 27 June 1986

John C. Ditmore, Chair
Environmental Quality Board

Rules as Proposed

4410.0200 DEFINITIONS AND ABBREVIATIONS.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Attached units.** "Attached units" means in groups of four or more units each of which shares one or more common walls with another unit. ~~Developments consisting of both attached and unattached units shall be considered as an unattached unit development.~~

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Subp. 6. to 29. [Unchanged.]

Subp. 30. **Flood plain.** "Flood plain" has the meaning given in ~~part 6120.5000 of the Department of Natural Resources~~ Minnesota Statutes, section 104.02.

Subp. 31. to 81. [Unchanged.]

Subp. 82. **Shoreland.** "Shoreland" has the meaning given in parts ~~6120.0200 to 6120.0500~~ 6120.0100 to 6120.3900 of the Department of Natural Resources.

Subp. 83. to 96. [Unchanged.]

4410.0500 RGU SELECTION PROCEDURES.

Subpart 1. **RGU for mandatory categories.** For any project listed in part 4410.4300 or 4410.4400, the governmental unit specified in those rules shall be the RGU unless the project will be carried out by a state agency, in which case that state agency shall be the RGU. For any project listed in both parts 4410.4300 and 4410.4400, the RGU shall be the unit specified in part 4410.4400. For any project listed in two or more subparts of part 4410.4300 or two or more subparts of part 4410.4400, the RGU shall be determined as specified in subpart 5.

Subp. 2. [Unchanged.]

Subp. 3. **RGU for petition EAW's.** If an EAW is ordered in response to a petition, the RGU that was designated by the EQB to act on the petition shall be responsible for the preparation of the EAW. The EQB chair or designee shall determine an RGU to act on the petition as follows:

A. if a state agency proposes to carry out the project, it shall be the RGU;

B. for any project of a type for which a mandatory category is listed in part 4410.4300, the RGU shall be the governmental unit specified by the mandatory category for projects of that type, unless the project will be carried out by a state agency; or

C. for any project of a type for which there is no mandatory category listed in part 4410.4300 and which will not be carried out by a state agency, the RGU shall be selected in accordance with subpart 5.

Subp. 4. and 5. [Unchanged.]

Subp. 6. **Exception.** Notwithstanding subparts 1 to 5, the EQB may designate, within five days of receipt of the completed data portions of the EAW, a different RGU for the ~~preparation of an EAW~~ project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.

4410.3100 PROHIBITION ON FINAL GOVERNMENTAL DECISIONS.

Subpart 1. to 5. [Unchanged.]

Subp. 6. **Granting variance.** At its first meeting more than ten days after the comment period expires, the EQB shall grant or deny the variance. A variance shall be granted if:

A. the RGU consents to a variance; ~~and~~

B. on the basis of the variance application and the comments, construction is necessary in order to avoid excessive and unusual economic hardship, or avoid a serious threat to public health or safety. Unusual economic hardship ~~means that the~~ is hardship ~~is~~ caused by unique conditions and circumstances which are peculiar to the project and are not characteristic of other similar projects or general economic conditions of the area or state ~~and that the hardship is~~. It does not include hardship caused by the proposer's own action, or inaction, if the hardship was reasonably foreseeable;

C. on the basis of the variance application and the comments, the construction for which the variance is sought will not have a serious adverse effect on the environment; and

D. on the basis of the variance application and the comments, the construction for which the variance is sought is separable from the remainder of the project and would not have the effect of eliminating from consideration any feasible and prudent alternatives or mitigation measures likely to be presented in an EIS.

Subp. 7. to 9. [Unchanged.]

4410.3600 ALTERNATIVE REVIEW.

Subpart 1. **Implementation.** Governmental units may request EQB approval of an alternative form of environmental review for categories of projects which undergo environmental review under other governmental processes. The governmental processes must address substantially the same issues as the EAW and EIS process and use procedures similar in effect to those of the EAW and EIS process. The EQB shall approve the governmental process as an alternative form of environmental review if the governmental unit demonstrates the process meets the following conditions:

A. the process identifies the potential environmental impacts of each proposed project;

B. the aspects of the process ~~addresses~~ that are intended to substitute for an EIS process address substantially the same issues as an EIS and uses procedures similar to those used in preparing an EIS but in a more timely or more efficient manner;

C. alternatives to the proposed project are considered in light of their potential environmental impacts in those aspects of the process that are intended to substitute for an EIS process;

D. measures to mitigate the potential environmental impacts are identified and discussed;

E. a description of the proposed project and analysis of potential impacts, alternatives (in those aspects of the process intended to substitute for an EIS), and mitigating measures are provided to other affected or interested governmental units and the general public;

F. to H. [Unchanged.]

Subp. 2. [Unchanged.]

4410.4300 MANDATORY EAW CATEGORIES.

Subpart 1. **Threshold test.** An EAW must be prepared for projects that meet or exceed the threshold of any of subparts 2 to 31, unless the project meets or exceeds any thresholds of part 4410.4400, in which case an EIS must be prepared.

Subp. 2. to 13. [Unchanged.]

Subp. 14. **Industrial, commercial, and institutional facilities.** Items A and B designate the RGU for the type of project listed, except as provided in items C and D:

A. and B. [Unchanged.]

C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2 to 10, 12, 13, 15, or 17 for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EAW. If the project meets or exceeds the thresholds specified in any other subpart as well as that of item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.

D. This subpart does not apply to projects for which there is a single mandatory category specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2 to 10, 12, 13, 15, or 17, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an EAW must be determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.

Subp. 15. **Air pollution.** Items A and B designate the RGU for the type of project listed:

A. For construction of a stationary source facility that generates 100 tons or more per year of any single air pollutant after installation of air pollution control equipment, the PCA shall be the RGU.

B. For construction of a new parking facility for 1,000 or more vehicles, the PCA shall be the RGU, except that this category does not apply to any parking facility which is part of a project reviewed pursuant to part 4410.4300, subpart 14 or 19, or part 4410.4400, subpart 11 or 14.

Subp. 16. and 17. [Unchanged.]

Subp. 18. **Sewage systems.** Items A and B designate the RGU for the type of project listed:

A. For ~~construction of a new municipal or domestic wastewater treatment facility or sewer system with a capacity of 30,000 gallons per day or more, the PCA shall be the RGU~~ expansion, modification, or replacement of a municipal or domestic sewer system resulting in an increase in hydraulic capacity of any part of that system by:

(1) 500,000 gallons per day or more in a first or second class city and in any city served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System;

(2) 100,000 gallons per day or more in a third class city not served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System;

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

(3) 50,000 gallons per day or more in a fourth class city not served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System; or

(4) 50,000 gallons per day or more in an unincorporated sewered area, the PCA shall be the RGU.

B. For expansion or reconstruction of an existing municipal or domestic wastewater treatment facility ~~or sewer system by~~ which results in an increase ~~in capacity~~ of 50 percent or more ~~over existing capacity or by~~ 50,000 of its average wet weather design flow capacity, or construction of a new municipal or domestic wastewater treatment facility with an average wet weather design flow capacity of 30,000 gallons per day or more, the PCA shall be the RGU.

Subp. 19. **Residential development.** Items A and B designate the RGU for the type of project listed~~:~~. If a development consists of both attached and unattached units, each individual unit in a group of attached units shall be considered as an unattached unit.

A. and B. [Unchanged.]

Subp. 20. to 31. [Unchanged.]

4410.4400 MANDATORY EIS CATEGORIES.

Subpart 1. to 10. [Unchanged.]

Subp. 11. **Industrial, commercial, and institutional facilities.** Items A and B designate the RGU for the type of project listed, except as provided in items C and D:

A. and B. [Unchanged.]

C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 10, 12, 13, 15, or 17, or part 4410.4300, subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29 for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EIS. If the project meets or exceeds the thresholds specified in any other subparts as well as those in item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.

D. This subpart does not apply to projects for which there is a single mandatory category specified in subparts 2 to 10, 12, 13, 15, or 17, or part 4410.4300, subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an EIS or an EAW must be determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.

Subp. 12. and 13. [Unchanged.]

Subp. 14. **Residential development.** Items A and B designate the RGU for the type of project listed~~:~~. If a development consists of both attached and unattached units, each individual unit in a group of attached units must be considered as an unattached unit.

A. and B. [Unchanged.]

Subp. 15. to 20. [Unchanged.]

4410.4600 EXEMPTIONS.

Subpart 1. **Scope of exemption.** Projects within ~~subparts~~ subpart 2 ~~to 26~~ are exempt from parts 4410.0200 to 4410.7800. Projects within subparts 3 to 26 are exempt from parts 4410.0200 to 4410.7800, unless they have characteristics which meet or exceed any of the thresholds specified in part 4410.4300 or 4410.4400.

Subp. 2. to 26. [Unchanged.]

4410.7500 ENVIRONMENTAL REPORT AT CERTIFICATE OF NEED STAGE.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Alternative review.** The PUC may request EQB approval of an alternative form of environmental review on a HVTL subject to parts 4410.7400 to 4410.7800. The EQB shall approve the governmental process as an alternative form of environmental review if the PUC demonstrates the process meets the following conditions:

A. the process must satisfy the content requirements of part 4410.7500, subpart 3, but in a more timely or more efficient manner;

B. the process must provide that the information required to satisfy the content requirements of part 4410.7500, subpart 3, is prepared for and included in the record of the Certificate of Need hearing conducted on the HVTL under Minnesota Statutes, section 216B.243; and

C. the process must provide that the information required to satisfy the content requirements of part 4410.7500, subpart 3, is reveiwed in the manner provided in part 4410.7100, subparts 5 to 12.

Subp. 5. **Exemption.** If the EQB accepts the PUC's process as an adequate alternative environmental review procedure, the PUC is exempt from the requirements under part 4410.7500, subparts 1 to 3, for preparing an environmental report on an HVTL. On approval of the alternative review procedure, the EQB shall provide for periodic review of the procedure to ensure continuing compliance with the requirements and intent of the environmental report requirement. The EQB shall withdraw its approval if review indicates that the procedure no longer fulfills the intent and requirements of the Minnesota Environmental Policy Act and parts 4410.7400 to 4410.7800. A project in the process of undergoing review under an approved alternative review process shall not be affected by the EQB's withdrawal of approval.

Department of Human Services

Proposed Rules Relating to Administration of the Medical Assistance Prepaid Demonstration Project in Minnesota

Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer Than Twenty-Five Persons Request a Hearing in Response to Notice of Intent to Adopt Rules without a Public Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in the State Office Building, Room 500 North, 435 Park, St. Paul, Minnesota, 55155 on August 22, 1986 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between August 14, 1986 and August 21, 1986 at 612/297-1489.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Howard Kaibel, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone 612/341-7608, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge, may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, sections 14.15 and 14.50. The rule hearing is governed by Minnesota Statutes, section 14.14 to 14.20 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Minnesota Rules, parts 9500.1450 to 9500.1465 govern operation of the Medical Assistance Demonstration Project. The purpose of the project is to determine whether prepayment of medical assistance can be a cost-effective alternative to the current system of paying for medical assistance. The project affects medical assistance recipients in Hennepin, Dakota, and Itasca counties.

Parts 9500.1450 to 9500.1465 are proposed for adoption as permanent rules to replace parts 9500.1450 to 9500.74 (Emergency). The proposed permanent rules implement recommendations of the Medical Assistance Prepaid Administration Project advisory committees and the requirements of the Minnesota Legislature. The proposed permanent rules are substantially the same as the emergency rules.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, John C. Ditmore, do hereby certify that I am a member and the Chairperson of the Environmental Quality Board, a board 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 Environmental Quality Board, duly and properly called and held on the 18th day of September, 1986, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the amendments to rules relating to the environmental review program be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes 116D.04, subd. 5(a) and that John C. Ditmore, the Chairperson of the Environmental Quality Board, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide and these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereto subscribed my name this 18TH day of September, 1986.

John C. Ditmore

John C. Ditmore, Chairperson

Barbara L Heyler

Attest by one other Board member

In the Matter of the Proposed Adoption of Amendments to the Rules of the State Environmental Quality Board (EQB) Governing the Environmental Review Program

Findings of Fact, Conclusions of Law, and Order Adopting the Proposed Rules Without Modifications

Based on the entire record of the proceeding, the EQB makes the following

FINDINGS OF FACT

1. The EQB is authorized to adopt rules governing the environmental review program ("Program") by Minnesota Statutes, section 116D.04, subd. 5(a).

2. The EQB is charged by Minnesota Rules, part 4410.0400, subp. 1, with the responsibility to monitor the effectiveness of the Program and take appropriate measures to modify the program to improve its effectiveness.

3. The EQB has monitored and evaluated the performance of the Program since the date of effectiveness of new rules in September, 1982 through a series of annual reports from staff based on records kept on each project subject to review. These reports indicated a number of areas in which the Program was not operating as intended or in an efficient manner.

4. On January 13, 1986 the EQB published notice in the State Register that outside opinions and information was being sought in connection with preparation to revise the Program rules, Minn. Rules,, pts. 4410.0200 to 4410.7800. The notice specifically indicated that the following topics were being considered for revisions: (1) mandatory thresholds for environmental assessment worksheets and environmental impact statements; (2) the selection process for responsible governmental units; (3) the generic environmental impact statement process; (4) the substitute review processes; and (5) the environmental impact statement cost assessment formula and procedures.

5. In response to the notice, EQB received comments from the Minnesota Department of Public Service regarding the rule governing environmental reports at the Certificate of Need stage for high voltage transmission lines, Minn. Rules pt. 4410.7500. Because these comments concerned a section of the rules not specifically listed as being under consideration for revision in the January 13 notice, the EQB published a notice in the State Register on April 28, 1986 soliciting opinions and information in preparation to revise the rules governing environmental reports at the Certificate of Need stage for high voltage transmission lines and large electric power generating stations, Minn. Rules pts. 4410.7100 and 4410.7500.

6. In responses to the two notices, the EQB received 11 written comments and one verbal comment by telephone. In addition, the EQB accepted a staff report from the House of Representatives, Committee on the Environment and Natural Resources as a letter of comment.

7. On April 17, 1986 the EQB approved a list of rule sections for revision. The factors considered in developing the list included: the importance of the change to the operation of the Program; the degree to which the perceived problem had been documented to have occurred; and the estimated level of effort needed to develop a revision which would resolve the perceived problem and be acceptable to interested parties. The sections included for revision were as itemized on page 1 of the Statement of Need and Reasonableness.

8. On June 19, 1986, after reviewing the proposed amendments and a proposed Statement of Need and Reasonableness, the EQB approved proposed amendments to the rule sections chosen for revision and authorized its Chairperson, John C. Ditmore, to initiate noncontroversial rulemaking procedures for those proposed amendments.

9. On July 14, 1986 the EQB published notice in the State Register of its intent to adopt amendments without a public hearing and the text of the proposed amendments.

10. On July 8, 1986 the EQB mailed to all persons on the EQB's list of persons interested in EQB rulemaking activities a copy of the notice of intent to adopt amendments without a public hearing and a copy of the proposed amendments.

11. The 30-day comment period on the proposed amendments expired on August 13, 1986. During the comment period, the EQB received four written comments.

12. No person requested a public hearing on the proposed amendments.

13. No person requested to be notified of the submission of the adopted rule and supporting material to the Attorney General for review of legality.

14. One written comment suggested a modification in the amendments as proposed. The letter of Mr. Kenneth B. Peterson of the staff of the Department of Public Service suggests that the words "but in a more timely or more efficient manner" be deleted from the proposed amendment to Minn. Rules, pt. 4410.7500, subp. 4A.

15. The phrase "but in a more timely or more efficient manner" used in the proposed amendment to Minn. Rules, pt. 4410.7500, subp. 4A, is identical to the language of Minn. Rules pt. 4410.3600, subp. 1, after which the amendment to pt. 4410.7500 was modeled.

16. The purpose of the proposed amendment to Minn. Rules, pt. 4410.7500 was to establish criteria for approving an alternative review process for the environmental report at the Certificate of Need stage for high voltage transmission lines which would be analogous to the criteria for approving alternative review processes for review of other types of projects as established in Minn. Rules, pt. 4410.3600, subp. 1.

17. The statute directing the EQB to adopt rules providing for alternative forms of environmental review states that "[t]he Board shall by rule identify alternative forms of environmental review which will address the same issues and utilize similar procedures as an EIS in a more timely or more efficient manner to be utilized in lieu of an EIS." (Minn. Stat., ch. 116D.04, subd. 4a.)

18. Deletion of the words "in a more timely or efficient manner" from the proposed amendments to Minn. Rules, pt. 4410.7500, subp. 4A would be inconsistent with the statute authorizing alternative review processes.

CONCLUSIONS OF LAW

A. The EQB is authorized to adopt amendments to the rules governing the environmental review program.

B. The EQB developed proposed amendments to the environmental review program rules in accordance with legal requirements for rulemaking and in consideration of the input of interested parties.

C. The EQB provided the public with proper notice of its intent to adopt rule amendments without a public hearing and afforded interested and affected persons the opportunity to comment on the amendments and to request a public hearing for a period of 30 days.

D. No public hearing is required prior to the adoption of amendments to these rules because fewer than twenty-five persons requested a hearing.

E. The EQB has reviewed and considered the comments received.

F. The only suggested modification of the proposed rules, that of Mr. Peterson regarding the deletion of certain wording from Minn. Rules, pt. 4410.7500, subp. 4A, is rejected on the basis of Findings 15 to 18.

G. The proposed amendments are needed and reasonable, as documented in the Statement of Need and Reasonableness.

ORDER

Based on the Findings of Fact and Conclusions of Law contained herein and the entire record of this proceeding:

The Environmental Quality Board hereby adopts the amendments to the rules governing the environmental review program as proposed, without modification.

Approved and adopted SEPTEMBER 18, 1986.

State of Minnesota
Environmental Quality Board

John C. Ditmore

John C. Ditmore, Chair

In the Matter of the Proposed Adoption of Amendments to the Rules of the State Environmental Quality Board (EQB) Governing the Environmental Review Program

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15. The phrase "but in a more timely or more efficient manner" used in the proposed amendment to Minn. Rules, pt. 4410.7500, subp. 4A, is identical to the language of Minn. Rules pt. 4410.3600, subp. 1, after which the amendment to pt. 4410.7500 was modeled.

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17. The statute directing the EQB to adopt rules providing for alternative forms of environmental review states that "[t]he Board shall by rule identify alternative forms of environmental review which will address the same issues and utilize similar procedures as an EIS in a more timely or more efficient manner to be utilized in lieu of an EIS." (Minn. Stat., ch. 116D.04, subd. 4a.)

18. Deletion of the words "in a more timely or efficient manner" from the proposed amendments to Minn. Rules, pt. 4410.7500, subp. 4A would be inconsistent with the statute authorizing alternative review processes.

CONCLUSIONS OF LAW

A. The EQB is authorized to adopt amendments to the rules governing the environmental review program.

B. The EQB developed proposed amendments to the environmental review program rules in accordance with legal requirements for rulemaking and in consideration of the input of interested parties.

C. The EQB provided the public with proper notice of its intent to adopt rule amendments without a public hearing and afforded interested and affected persons the opportunity to comment on the amendments and to request a public hearing for a period of 30 days.

D. No public hearing is required prior to the adoption of amendments to these rules because fewer than twenty-five persons requested a hearing.

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F. The only suggested modification of the proposed rules, that of Mr. Peterson regarding the deletion of certain wording from Minn. Rules, pt. 4410.7500, subp. 4A, is rejected on the basis of Findings 15 to 18.

G. The proposed amendments are needed and reasonable, as documented in the Statement of Need and Reasonableness.

ORDER

Based on the Findings of Fact and Conclusions of Law contained herein and the entire record of this proceeding:

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Approved and adopted SEPTEMBER 18, 1984.

State of Minnesota
Environmental Quality Board

John C. Ditmore

John C. Ditmore, Chair

In the Matter of the Proposed Adoption of Amendments of the Rules of the Environmental Quality Board Governing the Environmental Review Program

CERTIFICATE OF COUNSEL

I, Christie B. Eller, Special Assistant Attorney General, do hereby declare and I have examined the above-captioned rule, and the rulemaking record, and that, based on my examination, the Administrative Procedure Act and the rules of the Attorney General have been followed. Any exceptions are note below.

Dated: September 19, 1986.

Christie B. Eller

CHRISTIE B. ELLER
Special Assistant
Attorney General

Minnesota
Environmental Quality Board
100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Phone _____

In the Matter of the Proposed Adoption of Amendments to Existing Rules of the State Environmental Quality Board Governing the Environmental Review Program

Order for Notice of Intent to Adopt Amendments to Existing Rules Without Public Hearing

IT IS ORDERED this 27TH day of June, 1986 that a Notice of Intent to Adopt Amendments to Existing Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Environmental Quality Board for that purpose and be published in the State Register.

State of Minnesota
Environmental Quality Board

John C. Ditmore
Chair

STATE OF MINNESOTA
COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption
of Rules of the State Environmental Quality
Board Governing the Environmental Review
Program.

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1, that their names be placed on file with and maintained by the State Environmental Quality Board for the purpose of receiving notice of the proposed adoption of rules by this Board is accurate and complete as of 2:00 p.m. this 8th day of July, 1986.

Patricia Blom

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Bremer

Office Memorandum

TO: MARTY CASSERLY
Special Assistant Attorney General
Administration Division

DATE: September 19, 1986

FROM: CHRISTIE B. ELLER CBE
special Assistant Attorney General

PHONE: 296-9200

SUBJECT: PROPOSED ADOPTION OF AMENDMENTS OF THE RULES OF THE ENVIRONMENTAL QUALITY BOARD GOVERNING THE ENVIRONMENTAL REVIEW PROGRAM

Enclosed please find copies of the following rule making documents necessary for review of the above-entitled rules.

Notices of Intent to Solicit Outside Opinion
Comments Received in Response to Notice to Solicit Outside Opinion
Certificate of Board's Authorizing Resolution
Order for Publication
Copy of Proposed Rule
Notice of Adoption of the Proposed Rule
Statement of Need and Reasonableness
Affidavit of Mailing Notice of Proposed Adoption
Mailing List Certificate
Copy of State Register
Four Copies of Rule as Adopted
Certificate of Board's Resolution Adopting the Rule
Two Copies of the Findings of Fact, Conclusions and Order
Copy of all comments received by the Board
Certificate of Compliance with Rule Making Procedures

The Attorney General Docket Number for the project is 40 A527 0908. If you have any questions regarding this matter, please do not hesitate to contact me.

CBE/smo
Enclosures

Notice & Intent
Rule was enclosed in mailing
Statement of expenditure not included

116D.04 subd 5a ok

Findings: 2- MN Rules 4410.0400 subp 1 *
no changes from proposed to adopted.
Findings of fact explain various steps of the Rule making process + addresses why it did not accept a suggested comment
K- 4410.3600 subp 1. ok

Rule- Not all new material
Statute Authority:
116D.045 *
116C.04 * - authority to review, investigate, mtgs, + subd 1
114D ✓
4410.0400 sup 1 ✓
116D.04 Subd 5a ✓

p3 line 1 "reasonably foreseeable" vague?

p7 line 33 "but in a more timely or more efficient manner" vague but already in statute at Findings of Fact explain