MINNESOTA ENVIRONMENTAL QUALITY BOARD

GUIDEBOOK

JANUARY 1983

CONTENTS

BOARD COMPOSITION AND FUNCTION

The Minnesota Environmental Quality Board was created, in part, as a forum within state government for the resolution of environmental problems. The composition of the Board makes it particularly well-suited for addressing environmental issues of an interdisciplinary nature. The Board is composed of 12 members, including a representative of the Governor's Office, the Director of the Pollution Control Agency, and the Commissioners of Natural Resources; Agriculture; Health; Transportation; and Energy, Planning and Development. The remaining five members are citizens appointed by the Governor, subject to the advice and consent of the Minnesota Senate. Citizen members are appointed to four year terms ending on the first Monday in January. As nearly as possible, the citizen members are appointed to overlapping terms. The representative of the Governor's Office serves as Chairman of the Board.

The Board has established two standing committees to focus on programmatic and review functions. Historically, these committees have been chaired by citizen members of the Board. The Long Range Planning Committee is charged with formulating the policies and objectives that guide the development of the Board's work program and budget. The Legislative Rules and Regulatory Committee reviews proposed legislation and rules submitted by member agencies or Board staff and makes recommendations to the Board regarding consistency, resolution of conflicting provisions, and Board endorsement. In addition, temporary committees are established when appropriate to assist with particular issues before the Board. In the past, these special committees have addressed the Board's environmental review rulemaking, the scientific analyses of DC transmission line health impacts, and staff participation in the Sherco 3 certificate of need proceedings.

The Board meets once a month. Technical representatives of the member agencies meet prior to the regular Board meetings to review the agenda items. All meetings are open to the public. Meeting notices and other environmental review announcements appear in the "EQB Monitor", a biweekly publication of the Board.

STATUTORY POWERS AND DUTIES

The enabling legislation establishing the Minnesota Environmental Quality Board (see Appendix), as well as subsequent legislation addressing topics affecting the Board (see Appendix for Environmental Rights Act, Environmental Policy Act, Power Plant Siting Act, and Critical Areas Act), sets forth certain programmatic powers and duties. The powers and duties of the Board are summarized below.

The Board shall:

1. Determine which environmental problems of interdepartmental concern should be considered by the Board and initiate interdepartmental investigations into those matters it decides are in need of study (Minn. Stat. § 116.04, Subd. 2).

2. Receive from state agencies all proposed legislation of major significance related to the environment and submit a report on environmental proposals to the Governor and Legislature (Minn. Stat. § 116.04, Subd. 2).

3. Review state agency programs that significantly affect the environment and coordinate those that it determines are interdepartmental in nature (Minn. Stat. § 116.04, Subd. 2).

4. Assist and advise the Governor on all environmental issues in which action or comment by the Governor is required by law or otherwise appropriate (Minn. Stat. § 116C.04, Subd. 6).

5. Have the authority to request and require staff support from all other agencies of state government as needed for the execution of the responsibilities of the Board (Minn. Stat. § 116C.03, Subd. 4).

6. Present its position regarding need for large energy facilities and par ticipate in the public hearing process prior to the issuance or denial of a Certificate of Need (Minn. State § 116H.13, Subd. 7).

7. Hold public hearings on matters that it determines to be of major environmental impact and make recommendations to the Governor and Legislature regarding administrative and legislative actions (Minn. Stat. § 116C.06, Subd. 1).

8. Prescribe rules and regulations for the preparation of environmental impact statements (Minn. Stat. § 116D.04, Subd. 2).

9. Cooperate with regional development commissions in appropriate matters of environmental concern (Minn. Stat. § 116C.04, Subd. 3).

In addition, the Board may:

1. Review environmental regulations and criteria for granting and denying permits by state agencies and resolve conflicts involving state agencies (Minn. Stat. § 116C.04, Subd. 2).

2. Establish interdepartmental or citizen task forces or subcommittees to study particular problems (Minn. Stat. § 116.04, Subd. 4).

3. Convene an annual environmental quality congress (Minn. Stat. § 116.04, Subd. 7).

STAFF FUNCTION

The Environmental Quality Board staff are employed by the Board on a continuous basis. An Executive Director, in the unclassified service, is responsible for staff administration, work program, budget, and other duties delegated by the Board. In addition to the Director, the staff includes 16 professionals, two clerical employees, and five part-time student employees. A Board Administrator is responsible for Board communications and meeting coordination. The Board Administrator also chairs the meetings of the Technical Representatives. (The organizational structure is shown in the accompanying chart.)

Staff assignments are divided among three program areas: Policy Analysis and Review, Power Plant Siting, and Critical Areas:

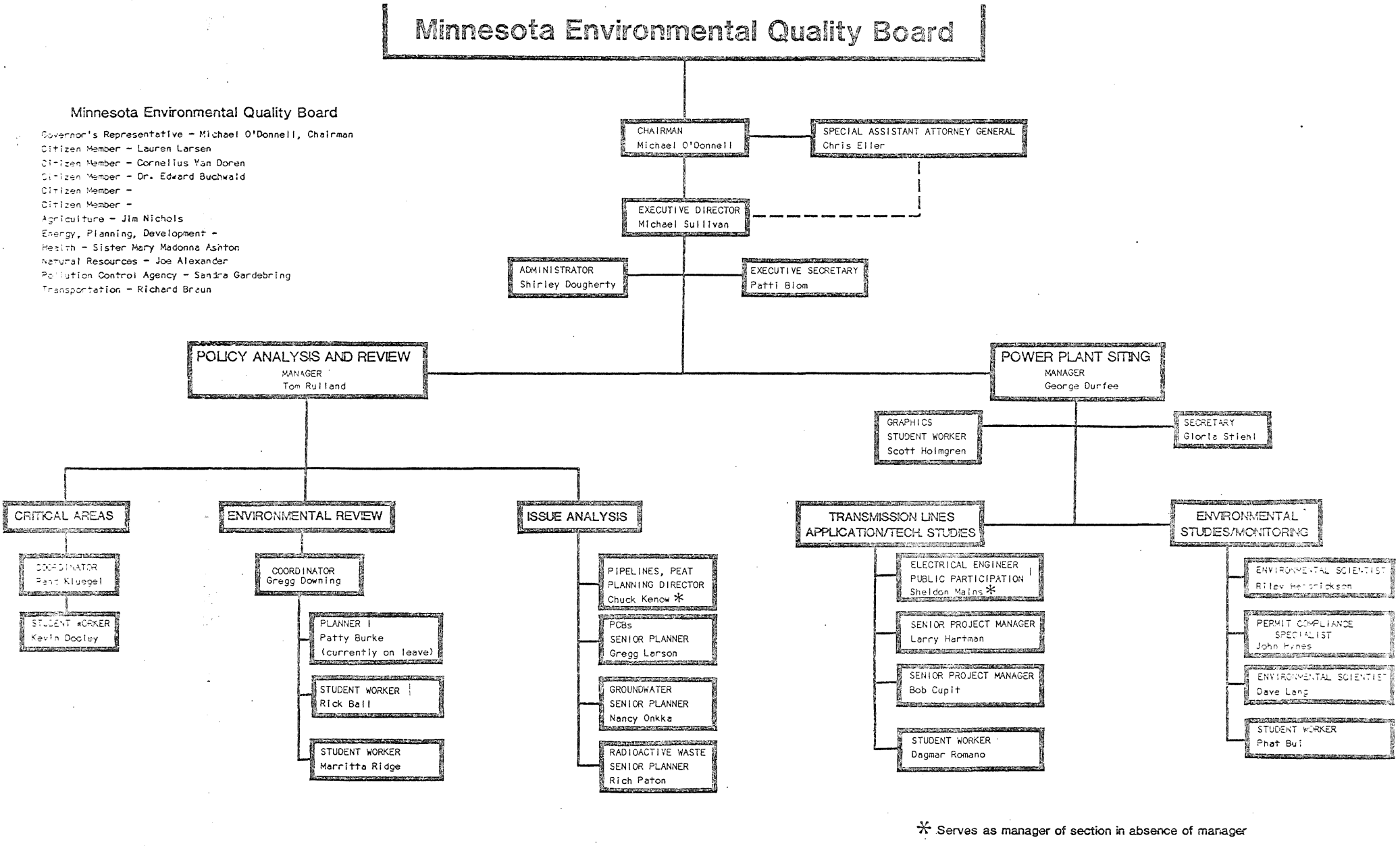
- The Policy Analysis and Review staff administer the state's environmental review process, which includes preparation of Environmental Assessment Worksheets (EAWs) and Environmental Impact Statements (EISs). Other responsibilities include publishing the "EQB Monitor", a biweekly bulletin containing notices and other announcements, and managing short-term or special environmental analyses assigned by the Board.

- The Power Plant Siting Program staff process applications from electric utilities for power plant sites and transmission line routes. The program also monitors permit compliance, undertakes research related to siting and routing issues, and provides technical assistance to the Power Plant Siting Citizen Advisory Committee.

- The Critical Areas Program staff administer the Critical Areas Act by assisting local units of government in resolving environmental and resource issues that affect designated areas (areas with greater than local significance or areas affected by major government development).

The Board contracts with the Department of Energy, Planning, and Development for the administrative services necessary to the Board's activities. These services include personnel, budget, payroll, and contract administration. The Board also retains consultants, where cost effective or technically necessary, to assist the Board in executing its programs.

Minnesota Environmental Quality Board



* Serves as manager of section in absence of manager

PAST ACTIVITIES

The predecessor to the Board, the Governor's Council on Environmental Quality, was created by executive order in 1972 in an effort to concentrate environmental policy formulation and coordination in the Governor's Office. The order designated the Governor, the Directors of the State Planning Agency and the Pollution Control Agency, and the Commissioners of Natural Resources and Highways as Council members.

In 1973, the legislature broadened the Council's membership by creating a new Environmental Quality Council that was a combination of an interagency committee and an independent council. Membership included four citizens as well as six agency heads (the Directors of the State Planning Agency and the Pollution Control Agency and the Commissioners of Agriculture, Health, Natural Resources, and Transportation) and a representative of the Governors office. The legislation also specified that the State Planning Agency Director would be the Board Chairman.

In 1975, the Environmental Quality Council was renamed the Environmental Quality Board and, in 1982, further legislative changes resulted in the current Board composition and designated the representative of the Governor's office as Board Chairman.

Past Board activities have included special assignments, at the request of the Governor or Legislature, as well as those regulatory activities manadated by statute. The following brief summaries denote representative work and noteworthy projects.

- Policy Analysis and Review Program

Since initiation of the environmental review program in 1973, the Board has received and processed over 650 environmental assessments (EAs and EAWs) and over 100 environmental impact statements (EISs). This process has often involved responding to citizen petitions and conducting informal or contested case proceedings to enable the Board to assess the adequacy of the environmental review. Occasionally, the Board is directly involved in the preparation of major EISs such as those for large pipelines, the Reserve Mining case, or the Minneapolis domed stadium. In addition to these statutory responsibilities, the Board has staffed and completed work on special projects for the Governor and the Legislature. These have included the Copper-Nickel Regional Study, the Uranium Mining Study, the Solid and Hazardous Waste Study, the Pesticide Task Force Report, and the Governor's Task Force on Low-Level Radioactive Waste. The Board also has published a variety of informational materials in response to public interest in pipelines, animal feedlots, pesticides, and barge fleeting on the Mississippi River. Most recently, the Program completed new rules (see Appendix) that were promulgated by the Board to decentralize and streamline the environmental review procedures.

- Power Plant Siting Program

The major function of this Program is certification of power plant sites and transmission line routes. The Board has sited three power plants

and routed 900 miles of large transmission lines since enactment of the Power Plant Siting Act in 1973. Preparation of EISs for these plants and sites is also the responsibility of the Board. In order to develop independent information on related issues, a study program has produced staff and consultant reports addressing cogeneration, district heating, electric generation from solid waste combustion, power plant economies of scale, underground transmission lines, and transmission line use of existing rights-of-way. Staff members have represented the Board in Certificate of Need proceedings for large energy facilities and prepared rules (see Appendix) on prime farmland preservation that were recently adopted by the Board. In 1980, the Program sponsored an international Crop Loss Symposium that focused on biotic and abiotic (e.g., pollution) factors affecting crop production. The staff also provide assistance to the Board's Power Plant Siting Citizen Advisory Committee and monitor compliance with siting and routing permits. During the past year, the Program has worked on a number of projects associated with the UPA-CPA direct current (DC) line. These have included staffing the Scientific Advisory Committee on Health Impacts of DC Transmission Lines, monitoring the DC electrical environment, and coordinating a survey of the dairy herd records of farms near the DC line to assess the effect of the line on herd performance.

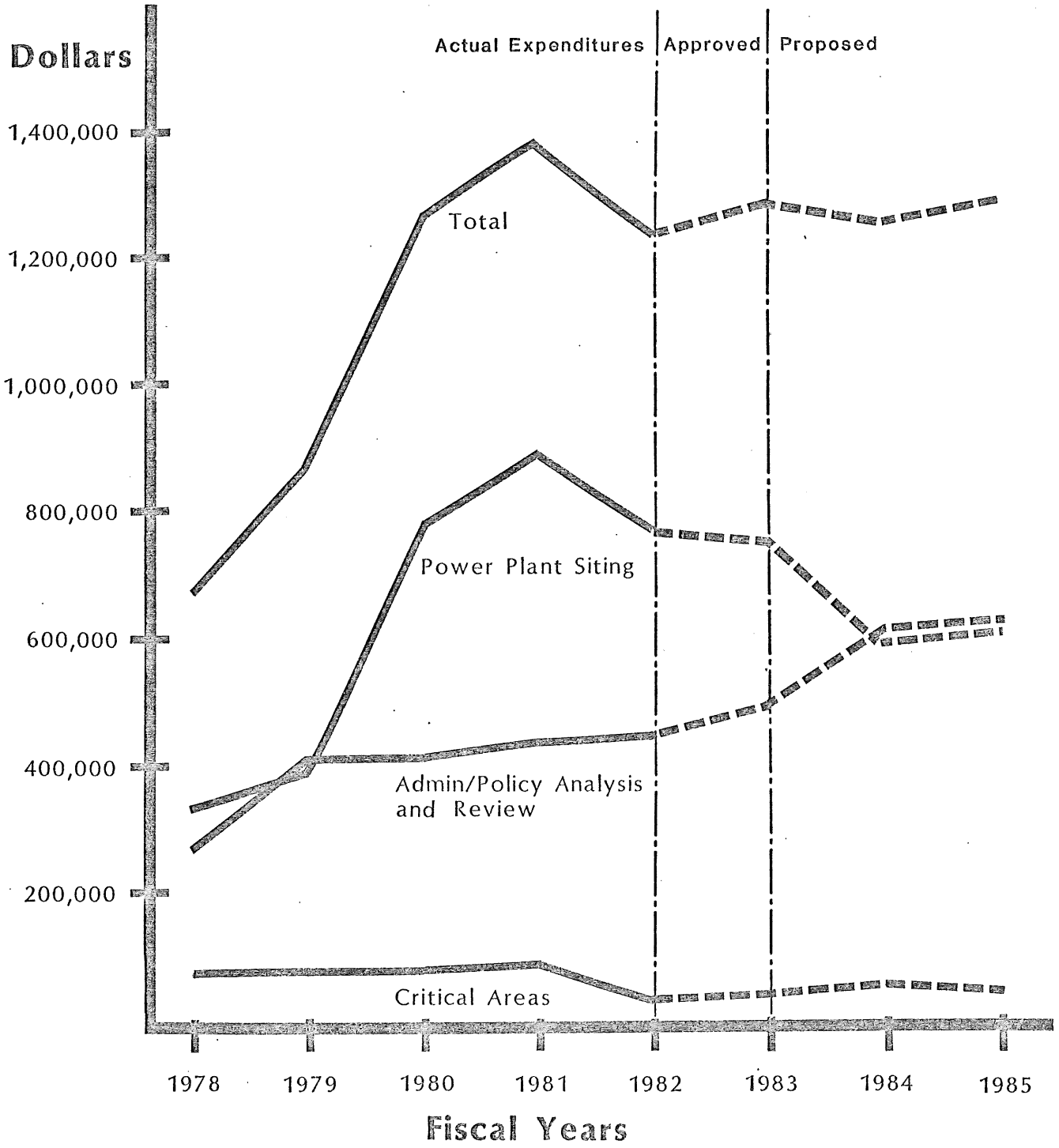
- Critical Areas Program

Following passage of the 1973 Critical Areas Act, the Critical Areas Program staff developed an inventory of areas that might be eligible for this classification. Based on Board recommendations, two Critical Areas have since been designated by the Governor. The Lower St. Croix Critical Area was temporarily designated in 1974; the designation was later withdrawn when protection was extended to the area under the National Wild and Scenic Rivers Program. In 1976, the Mississippi River Corridor in the metropolitan area was designated a critical area. Grants were made available to affected units of government for preparation of comprehensive plans and zoning ordinances. Most of those local plans and regulations have now been completed.

BUDGET

The accompanying graph indicates program budgets for the Board for the fiscal years 1978 through 1985. While the amounts for the years 1978 through 1982 represent actual expenditures, the amounts for the years 1983 through 1985 represent proposed expenditures. The growth in Power Plant Siting Program expenditures during 1978-1981 reflected actual permit work as well as study program work in anticipation of an increase in permit applications. Conversely, the 1982 reduction was due to completion of many of the study program tasks and a decrease in utility siting and routing applications. The reduction in the Critical Areas Program that same year was attributable to completion of the grant administration tasks and most of the municipal plans and regulations for the Mississippi River Corridor Critical Area. The proposed increase in the budget for the Administration/Policy Analysis and Review category is based on broadened Board involvement in future environmental issue resolution.

Environmental Quality Board Budget



CURRENT ISSUES

A number of issues are currently before the Environmental Quality Board or expected to be so in the immediate future. They include regulatory and study activities, as well as program monitoring and litigation, and are described in the following summaries:

1) Follow-up to Environmental Review Rulemaking

On September 28, 1982, the Board's new environmental review rules became effective. Prior to their promulgation, the rules were reviewed by the Legislative Commission to Review Administrative Rules (LCRAR). The Commission requested that the Board take certain actions to reduce duplication in the review process, to insure that the local units of government can efficiently manage review responsibilites, and to determine whether the mandatory categories will adversely burden business and industry. Among the Board actions requested by the Commission were the following:

1) The Board should request that agencies under its jurisdiction identify programs or other agency activities that might qualify as substitute review procedures and submit those procedures for Board approval.

2) The Board should monitor the fiscal impact of the rules on local units of government and report to the Commission by December 31, 1983.

3) The Board should monitor the implementation of the rules and report to the Commission by December 31, 1983.

During 1983, the Policy Review and Analysis Program will work with the Board's member agencies on substitute review procedures and will study the implications of the new rules in response to the Commissions requests.

2) Environmental Review Financing

Certain provisions of the Minnesota Environmental Policy Act that pertain to financing environmental review need to be revised, particularly now that the new environmental review rules have been implemented.

One proposed revision would alter the procedure for funding EISs prepared by state agencies. Current rules and statute require the project proposer to make payments to the EQB, which in turn deposits the money in the State's general fund. The state agency must then apply to the Legislative Advisory Committee, which meets quarterly, for the funds needed to prepare the EIS. This procedure can result in extended delays. The statute and rules should be amended to provide that the proposer's EIS cost payments be made directly to the preparing agency, in the same manner that such proposer payments are currently made to local units of government that prepare EISs.

A second proposed revision would alter the current "chargeback" rules pertaining to EIS preparation. These rules provide that only private proposers are responsible for EIS preparation costs. Difficulties occur when a government agency proposes a project requiring preparation of an EIS by another government agency. Under these existing rules, the proposing agency is relieved of the EIS cost responsibility. The revision should require that a project proposer, whether a private concern or a public agency, be responsible for the costs of preparing and distributing an EIS.

Additional proposed revisions should eliminate the current exemption from the chargeback rules for the first million dollars of a project cost and should extend the chargeback provisions to EAW preparation.

3) UPA-CPA DC Line Construction Permit

At the December, 1982, Board meeting, the Board refused to modify the construction permit for the UPA-CPA DC line. Opponents of the line argued that the line is harmful to the health of nearby residents, that the construction permit does not adequately protect public health and safety, and that the construction permit provisions rearding the strength of the electric field have been exceeded. Based on the work of the Board's Science Advisors, the results of electrical monitoring, and the results of a study of dairy herd performance near the line, the Board found there was insufficient evidence to warrant modification of the permit. Opponents have indicated they will appeal this decision administratively, through the newly appointed Board, and in the courts.

4) Byron Substation Exemption Application

Northern States Power Company (NSP) and the Southern Minnesota Municipal Power Agency (SMMPA) have requested an exemption from the provisions of the Power Plant Siting Act for construction of a substation near Byron, Minnesota. The substation and 1,390 feet of new 345 kV line, will connect an existing NSP 345 kV line to SMMPA's planned 161 kV transmission system in southeastern Minnesota. The substation also is expected to serve other new lines proposed for construction later in the 1980's and early 1990's. The Board may conduct a public hearing to determine whether the proposed facilities will cause any significant human or environmental impact and may exempt the facilities, with any appropriate conditions, if no significant impacts are identified.

5) Meadow Lakes Addition

The Meadow Lakes Addition is a 224 unit housing development proposed for a site in Minnetonka. The City of Minnetonka determined that an environmental impact statement was not necessary, but area residents petitioned the Board, under the old rules, to review the City's negative declaration. A contested case hearing will be scheduled and Hearing Examiner's findings will be provided to the Board for consideration prior to a Board decision. This will most likely be the last proceeding brought by petition before the Board under the old environmental review rules.

6) Final Environmental Impact Statements

Some final environmental impact statements remain to be acted upon by the Board under the old environmental review rules. Most address highway construction projects.

7) Profiles of Environmental Quality

As part of an effort to identify indices that would provide a measure of environmental change in Minnesota, the Board has initiated two research projects. These projects concentrate on air and water quality and certain benchmark characteristics or particularly sensitive species that could indicate change over time.

The biological air quality indices project will establish a biological air quality assessment system. This system will provide information relevant to power plant siting decisions. The assessment system consists of ground plots of pollution sensitive plants that are maintained as a cost effective means of monitoring long-term trends in air quality, acid rain impact, and toxic or carcinogenic particulate deposition. Seven pilot plots were established in 1982, one of which was established cooperatively with the National Park Service. A final study report, including recommendations for the future use of biological indicators, will be completed in the spring of 1983.

A second project will develop profiles on groundwater use and characteristics to enable determination of environmental trends. The profiles will be developed first for sensitive groundwater areas in southeastern Minnesota and will include information on withdrawals, unique geological features, and chemical properties. Completion of the profiles and data base is expected by the latter half of 1983.

8) Generic Environmental Impact Statements

The Board may consider whether or not generic environmental impact statements (EISs) are advisable for peat mining and for PCB incineration in power plants. Both actions involve complex environmental issues and public opposition. The major issues could be dealt with in generic EISs that would permit later incorporation and consideration in the permitting processes for specific projects, actions, or areas.

In addition, the City of Bloomington has requested that a generic EIS be ordered for the Airport South area, which includes the old Metropolitan Stadium site and adjacent areas.

9) Risk Acceptability Conference

In November, 1982, the Board approved arrangements for a conference on risk acceptability. The conference, scheduled for October 28 and 29, 1983, will be jointly sponsored by the Board and by the Science, Technology, and Public Policy Process Committee of Carleton College.

The conference will be held on the Carleton College Campus and will focus on risk acceptability and its political and social aspects in decisionmaking.

10) Critical Areas Designation

Public interest has been expressed regarding critical areas designation for a portion of the Minnesota River Valley, from Fort Snelling to Carver, and for the Lake Mille Lacs watershed. Further action is dependent on completion of additional study or on further pursual of such designation by local residents.

11) Water Planning Board Sunset

The Water Planning Board is scheduled to "sunset" at the end of the 1983 fiscal year. Unless the legislature authorizes continued operation, essential water planning activities will be reassigned. Past proposals for such reassignment have included assumption of some of these water planning responsibilities and activities by the Environmental Quality Board.

12) Litigation

Litigation is currently pending on three challenges to actions taken by the Board. The Attorney General's Office is representing the Board in these proceedings.

In a suit filed in federal court on August 31, 1981, the Upper Mississippi Waterway Association challenged the constitutionality of the Critical Areas Act and the Board's 1976 designation of the Mississippi Corridor as a critical area. The Association objects to the length of time required to obtain barge fleeting permits. To date, the Board staff have responded to discovery requests; however, court dates have not been determined.

A suit challenging the Board's ruling on the adequacy of an environmental impact statement for the Ridgewood Mall in Hermantown is on appeal to the Minnesota Supreme Court following a state court affirmation of the ruling. The appellants represent downtown Duluth business interests who oppose construction of the suburban shopping center because of the effect it might have on the downtown area. The Supreme Court has not yet determined whether it will hear the case.

A suit filed in Ramsey County District Court on November 19, 1982, challenges the Board decision that an environmental impact statement was not necessary for the proposed Long Lake Regional Park in New Brighton. The suit was brought by the Long Lake Improvement Association, which represents area residents who oppose the park proposal.

LONG RANGE ENVIRONMENTAL ISSUES

The Environmental Quality Board and the staff have considered a wide range of environmental topics in the process of preparing a long-range plan (see Appendix). The plan addresses current issues before the Board and issues that could potentially involve the Board in the future.

In June of 1982, Board members attended a two day review session in Duluth to discuss past Board activities, the Board's redefined role, and anticipated areas of future activity (for meeting minutes, see Appendix). The first day of the session included participants from the legislature, environmental organizations, industry, and the legal profession, as well as Board members. Many of these participants were familiar with the Board's evolution since its establishment in 1973. Board members spent the second day of the session identifying and prioritizing the areas with significant potential for new or continued Board involvement. The areas selected, in order of their priority, were as follows:

1. Groundwater Coordination
2. Peat Development
3. Acid Rain
4. Rivers, Lakes, Wetlands, and Drainage
5. Agricultural Land as a Resource

At the Board's request, staff members prepared issue papers on these and other environmental topics. These issue papers have been condensed to form the basis for the summaries that follow. Each summary briefly describes the issue, key parties, and state agency activities. These summaries provide a guide to topics that may be, or already are, on the Board's agenda.

Although the issues vary with regard to subject, they all share one characteristic. They all involve, or have the potential to involve, more than one state agency or department represented on the Board. As such, they demonstrate the continued need for cooperation and coordination among these agencies if issue resolution is to be accomplished in an efficient manner that precludes duplicative work and conflicting state policies.

A second characteristic common to many of these issues is a lack of adequate funding. The financial resources needed to address some of these issues will be even more difficult to secure in the immediate future because of state budget restrictions, the cutbacks in federal aid to state and local governments, and the reduced federal role in environmental research and enforcement.

GROUNDWATER COORDINATION

Groundwater use and protection issues are expected to increase in importance in future years. Recent allocation and contamination problems, both in Minnesota and throughout the country, have brought this "invisible resource" growing attention.

Groundwater occurs throughout most of Minnesota. Groundwater aquifers, which are formations that yield enough water to be considered an adequate source of water, occur in two broad geologic categories: unconsolidated rock and bedrock. There are 14 major aquifer groupings in Minnesota.

Yields from surficial and bedrock aquifers vary widely. Potential surficial aquifers yields vary from over 500 gallons per minute in the Minnesota and Mississippi river valleys in the metro area, to 100-500 gallons per minute in north central Minnesota and other stretches of the Minnesota and Mississippi Rivers, to less than 100 gallons per minute for the rest of the state. Bedrock aquifers in southeastern Minnesota can consistently provide over 500 gallons per minute. Other bedrock formations vary widely and no consistent predictions can be made. The Minnesota Geological Survey estimates that 1.1 - 2.0 trillion gallons of groundwater are available, almost half of that in the upper Mississippi River watershed. The central and southeastern sections of the state serve as a recharge area for bedrock aquifers that provide water for a multi-state region that includes Minnesota, Iowa, Wisconsin, and Illinois.

Problem

Groundwater quality is important because nearly two-thirds of Minnesota's population obtains its drinking water from groundwater. In most cases, the Pollution Control Agency has found that the quality of the 318 wells/springs in its ambient monitoring system are above established drinking water standards. However, the Health Department has noted that municipal water supplies in southwestern Minnesota deviate most from currently accepted standards. The Pollution Control Agency and the Health Department also have documented many cases of localized water quality problems, including those associated with the Ironwood landfill near Spring Valley, the former Reilly Tar and Chemical Plant in St. Louis Park, and other rural domestic water supplies polluted by surface wastes. The Agency has identified 400 potential point sources of pollution in the metropolitan area alone and is especially concerned about the Karst region in southeastern Minnesota where limestone solution fractures allow rapid infiltration and dispersal of pollutants.

Minnesota groundwater use is growing. Groundwater consumption is concentrated in the metropolitan area and irrigation areas such as Bonanza Valley in west-central Minnesota. Irrigation has increased from 36,000 acres in 1969 to 433,000 in 1978. In just 10 years, average daily use has increased by over 100 million gallons, although recent figures indicate that the rate of increase is slowing.

Historic data on groundwater are often limited, partially due to the past emphasis on surface water. For example, the Pollution Control Agency's ambient groundwater quality monitoring program began in 1978. Other reasons for the limited data relate to the natural obstacles characteristic of this resource. Unlike the relatively inexpensive surface water data collection systems, costly wells or soil borings are needed to collect groundwater data. In addition, conditions can vary widely between locations, so a substantial amount of data are needed to fully assess conditions. The inter-relationship of groundwater with surface activities and geologic formations also complicates analyses by varying the pollutant seepage rates or water yield.

Current Activities

A number of state agencies have been, or are currently, involved in groundwater study and analysis. Most noteworthy is the development of a Groundwater Protection Strategy by the Pollution Control Agency and the Water Planning Board's revision of the 1979 Framework Plan. The Pollution Control Agency's work is funded by the Environmental Protection Agency and is expected to be completed by June, 1983. The Water Planning Board's revisions will provide an agenda for future action by the state in the coming biennium. The Metropolitan Council also is revising their Metropolitan Development Guide to better define the Council's role in groundwater management. In addition to these planning efforts, the Department of Energy, Planning and Development's Land Management Information Center (LMIC), the Minnesota Geological Survey, and the Department of Natural Resources are preparing computerized data bases using water use, well construction, and well log data.

Most recently, the Board staff, utilizing the computer capabilities at LMIC, began work on development of profiles on groundwater use and quality in southeastern Minnesota to enable assessment of environmental trends. Work on these profiles reflects Board interest in establishing a system of biological indices to chart future change in the environment. EQB staff are also coordinating this work with the other state agency efforts.

PEAT DEVELOPMENT

Minnesota has approximately six million acres of peatland, the majority of which (four million acres) are concentrated in the nine northernmost counties of the state. Koochiching County, with 1.1 million acres, has the highest concentration of peat in Minnesota. Minnesota has more peat than any state except Alaska. The U.S. has the second largest deposits of peat (52.6 million acres vs. Russia's 228 million acres).

Of the total acreage of peat in Minnesota, three million acres are state owned or managed. About 1.3 million of the state owned acres are classified as "deep peat"; if many other constraints were satisfied, these acres would be deep enough to mine. The state's peat resources have for many years been appreciated and preserved as unique wetland communities, rich in wildlife and plant species diversity. However, some may consider bog land preservation in the state as "preservation by default". Peat bogs are generally unsuited for outdoor recreation, insects are abundant, and locomotion is hampered by vegetation and soggy peat substrates.

Current utilization of the state's peatlands are few. Approximately 10% of Minnesota's peatland is used for agriculture and only 1,400 acres of privately owned peatland have been mined commercially for horticultural "peatmoss" during the past 30-40 years.

The use of peat as an energy supply has not been seriously investigated in the U.S. Therefore, Minnesota's approach to the exploitation of this energy resource will likely act as a model for other states interested in peatland development.

Problem

In the past, Minnesota's large peat resources were considered too difficult and expensive to exploit. But, as current energy supply projections indicate shortages and rising costs of current fuel resources, recognition of Minnesota's peat supplies as an abundant local energy resource has grown. Currently, peat is not mined for fuel in the U.S. Minnesota Gas Company (Minnegasco) has estimated that the one million acre Big Bog in North Central Minnesota could provide enough synthetic gas to supply 600,000 users for the next 20 years. The results of a recently completed feasibility study revealed, however, that large scale methane gas production from peat is not economically feasible at this time. Aside from gassification, the following are all viable uses for peatland resources: direct combustion, sewage treatment, renewable biomass (combustion and gasification) and the production of industrial chemicals. Commercial peat mining in the rest of the world is done on a small scale (750-2000 acres). Current Department of Natural Resources guidelines limit state leases to a maximum of 3,000 acres per lease.

Future peat development could take two forms. Either private developers could initiate projects or the state could fund peatland development for energy purposes. Several developers from around the country are interested in the energy uses of peat. Some have been involved in horticultural peat and now wish to diversify. Others are interested in the

development of alternative energy resources. However, most developers want incentives such as tax breaks, grants, and low-interest loans before breaking into the Minnesota peat market.

Although Minnesota has not provided developers financial incentives, the Legislature has funded over 2 million dollars of studies and inventories. Most of the work completed with this "Minnesota Peat Program" funding was under the direction of the Department of Natural Resources, which the Governor's Office designated in 1976 as the agency to coordinate peat-related activities. The Department of Natural Resources' efforts have concentrated in three areas: 1) establishment of state peatland policy regulatory guidelines, 2) performing basic research and baseline data gathering, and 3) completing a state peatland inventory. Work products were summarized in the Minnesota Peat Program Final Report issued in 1981.

Numerous environmental concerns remain to be addressed. Although the Department of Natural Resources has strongly recommended that only small scale peat development occur, there are no model systems that state agencies can use to anticipate the environmental impacts involved. Peatlands are currently the last major undisturbed wetlands in the state. It is unknown what impact the drainage and alteration of these wetlands will have. The wastewater flow produced will redirect the acidic bog waters to other bodies of water, disrupting the pH and trace metal content of those ecosystems. Air quality impacts of peat incineration are unknown, especially when combined with current air quality problems (acid-rain, hydrocarbons, oxidation of the industrial-use chemicals present in peat, etc.).

Mining practices and land reclamation are also important environmental management problems. The Department of Natural Resources has recommended that the current mineland reclamation statute (in which the DNR Commissioner may adopt rules pertaining to mining) be amended to include peat.

The DNR has stated that it should provide leadership in selecting peatlands to be leased rather than simply reacting to leasing applications. By defining areas that may be suitable prior to peat development, preservation of state controlled environmentally sensitive peatlands may be secured. However, protection of this sensitive resource is a complex matter and only 50% of Minnesota peatland is in public ownership. The DNR has recommended that there be uniform laws, rules, zoning, and management practices for all state peatlands. The DNR also recommended that federal, state, and local units of government should cooperate in establishing uniform guidelines.

Current Activities

In 1982-1983, the Department of Natural Resources proposed a shift in the direction of the Peat Program. Having completed policy recommendations for peatland management, the Department proposed a transition from policy development to policy implementation that included leasing, promulgating rules, and evaluating the protection and preservation areas. The Legislature approved the Department's 1982-1983 budget allocation for that transition. As part of this transition, the Department

is developing a computer model to estimate the cost effectiveness of a Minnesota peat industry and, following the recent completion of the peatland inventory, is mapping the eight major peatland counties. The Department also plans to introduce legislation requiring reclamation of mined peatlands.

Two other state agencies are currently involved in peat research and planning. The Department of Energy, Planning and Development is supervising the Virginia, Minnesota test burn of peat as an energy source. The experimental burn will provide performance data on various proportions of peat and coal used as a boiler fuel. The Pollution Control Agency has established a "peat team" to monitor development proposals and information relative to peatland water drainage and water quality.

Any increased emphasis on, or momentum, regarding peat development would necessitate completion of uniform planning and zoning regulation for peatlands and also would necessitate coordination of many state agencies in resolving environmental and economic issues. If peat development proposals do advance to the permitting stage, the Board could be requested to coordinate preparation of a generic environmental impact statement or a model peat mining ordinance suitable for local adoption.

ACID RAIN

The problem of acid rain was recognized in Europe in the 1950s and early 1960's; however, it was not until the mid-1970's that scientists in the United States established a linkage between an increase in the acidity of rain in the eastern United States and the decrease in fish populations from New York's Adirondack lakes. The source of the Adirondack problem was determined to have been as far away as the industrialized Ohio River Valley. Coincidentally, Canada determined that, in addition to its own industrial contributions to the U.S. acid rain problem, prevailing northerly winds subjected Canadian provinces to U.S.-originated acid rain. In addition to wildlife, acid rain has the potential to impact agriculture, forestry, health, and tourism and is both an interstate and international problem.

In the early 1970's, the U.S. Congress passed the Clean Air Act which established national standards for various air pollutants. The Act gave individual states primary enforcement responsibility. In 1979, the Environmental Protection Agency (EPA) identified acid rain as "one of the great environmental threats" of the 1980's. The EPA and the U.S. Congress have been trying to determine how to best use the existing mechanisms of the Clean Air Act to deal effectively with the interstate impacts of acid rain. As recently as mid-August, 1982, a federal task force on acid rain recommended further research to fill major gaps in information about the causes and effects of acid rain. The task force also recommended that a nationally coordinated program be established to monitor acid rain.

Problem

"Acid rain" is a phrase that encompasses all forms of precipitation characterized as having a pH value lower than that of typical rainfall (pH = 5.6-5.7). It is now believed that most of the acidity is caused by sulfur oxides (SO_x) and nitrogen oxides (NO_x) which are gasses emitted into the air primarily from fossil fuel combustion in power plants, industry, and motor vehicles. These gasses react with moisture in the air to form acid (sulfuric acid and nitric acid) solutions. These acids may cause the pH of rain to drop to levels averaging between 5.5 and 4.6 in Minnesota. (Because the pH scale is logarithmic, a pH of 4.6 is ten times as acidic as normal rainfall).

Most of the sulfur oxides originate with coal combustion while most of the man-made nitrogen oxides are associated with automobile exhaust and industrial and utility fossil fuel combustion. The major component of acid rain is sulfuric acid.

Acid precipitation has the potential for negatively impacting Minnesota's resources in many ways. In addition to drastic reductions in aquatic populations (via interference with spawning and metabolic stress), acidification may increase the leaching of nutrients and minerals from soils. Some toxic minerals (e.g., mercury) may be released as a result of the acidification. Human health, forestry,

tourism, and agricultural productivity may be impacted by acid precipitation as well as by the higher metal concentrations leaching into water supplies. Combined with other air pollutants, acid precipitation increases the rate of corrosion of man-made structures.

Prior to forming a solution with precipitation, the aerosol forms of sulfurs and nitrogen, combined with other pollutants in the atmosphere, are suspected to be potential health hazards when inhaled. The effect of acidified drinking water on public health also is an unknown at this time. The collection of baseline data in advance of statewide acidification would provide an excellent base from which comparisons could be made in the future, should the water supplies increase in acidity.

Such major and potentially irreversible environmental and political consequences justify careful analysis from a variety of sources. In 1980 the Minnesota Legislature passed the Acid Precipitation Act. The Act supported a ($100,000) one year effort, coordinated by the Pollution Control Agency (PCA) and involving the Departments of Health and Natural Resources, to quantify existing data and identify information needs.

The PCA Acid Rain Task Force, composed of individuals representing a number of state agencies, has coordinated the effort to carry out the Legislative mandate and identify research and information needs. In November of 1980, the Legislative Commission for Minnesota Resources (LCMR) approved a PCA work plan establishing an acid deposition monitoring network in the state to determine the magnitude and geographical distribution of acid rain in Minnesota, including some of the previously inaccessible lakes of the BWCA. A joint PCA, Department of Natural Resources and Health Department report summarizing the findings and recommendations of the one-year investigation, was presented to the LCMR in January of 1982.

The report to the LCMR affirms that northern Minnesota watersheds are geologically and chemically similar to those regions in which lakes have already become acidified. It also states that highly acidic precipitation is falling in northern Minnesota. Its major finding is that there is no evidence to indicate that any Minnesota lake has yet turned acidic, or has lost its buffering capacity. However, because of the glacially-originated thin soils and solid bedrock in the northeast, the capacity of the lakes in those regions to continue to buffer the acidic input is deteriorating. There may be a total of 2,500 threatened lakes, 700 of which are considered major fishing lakes. The LCMR report further stated that 512 to 967 lakes in 11 northern counties are extremely sensitive. Although some stop-gap measures, such as the liming of lakes, have been investigated, it appears that the only way to alleviate the acid rain problem is to reduce emissions of sulfur and nitrogen oxides.

Current Activities

In March, 1982, the Minnesota Legislature passed the Acid Deposition Control Act. The new law requires the PCA to publish by 1983 a list of acid-sensitive areas in the state, to adopt by 1985 acid deposition

standards for those areas, and to prepare by 1986 a plan detailing control measures for sources both inside and outside Minnesota. This legislation has put Minnesota ahead of every other state in addressing the acid rain problem.

PCA's principal activity in the acid rain area over the next few years will be data development for the establishment of the acid deposition control plan mandated in the Acid Deposition Act of 1982. The first step in establishing this control plan is to develop an inventory of "sensitive areas". The designation of sensitive areas will be based on a) the presence of plants and animals sensitive to the impacts of acid deposition; b) geological information identifying those areas which have acidic bedrock which is incapable of neutralizing acid deposition; and, c) the development of acid deposition data affecting aquatic and terrestrial systems and consolidation of this information with data available from other sources. Identification of these areas and publication of the final list shall be done by May 1, 1983. PCA is relying on the Minnesota Land Management Information Center services to map out areas with acid sensitive characteristics.

PCA must then adopt a standard for deposition in these sensitive areas. This standard will be a loading standard to be set on a mass per area basis (e.g., amount of acid/square mile/year). Following adoption of this standard, the PCA must adopt a control plan and rules that relate maintenance of the deposition standard to atmospheric emissions. PCA will address all sources that emit more than 100 tons of sulfur oxides per year; these emitters will be required to lower their emissions in proportion to their contribution to acid deposition. In order to meet the legislature's deadline of January 1, 1986, the PCA staff must initiate the legal rulemaking process by February of 1984.

The acid deposition/loading standard and control plan are highly technical tasks--empirical models must be developed to determine the dose-response relationship in order to set the deposition standard. Computer models of various sensitive watersheds will be designed to relate the role of deposition impact. Selection and calibration of a long range transport model must be done, and a specialized emission inventory will have to be developed to identify the large sources of SO_2 both within and outside the state.

PCA's most recent LCMR proposal requests nearly $700,000 for the 84-85 biennium to assess the current and projected impact of acid deposition. Their approach will be to construct soil and watershed models that will allow extrapolation of estimates regarding the impact of acid rain on watersheds throughout the state. Detailed research will be done on a few watersheds and the results will be used to construct models capable of predicting impacts on other watersheds.

In addition to the legislatively ordered work, the PCA Task Force report recommended more study and evaluation. These recommendations called for more atmospheric monitoring and computer modeling, watershed studies, fish population, and fish mercury concentration research.

LAKE SUPERIOR WATER DIVERSION

Although the most important problem confronting the Great Lakes is the need to maintain and protect water quality, recent proposals for inter-basin transfers of water have aroused both interest and concern. Great Lakes water diversion is not a new concept. The first major diversion project, the Erie Canal, was constructed in the nineteenth century. The Chicago diversion of water is a more recent example. Currently, much more water is diverted into the Great Lakes than is diverted out of them. Most observers believe that large scale, new transfers of water are unlikely in the immediate future; however, small or modest inter-basin transfers may develop as the western demand for fresh water approaches the limits of available supplies. Many issues must be resolved before water transfers occur; addressing the social and institutional issues will be far more difficult than addressing the technical issues because of existing inadequacies in the areas of water law and intergovernmental cooperation.

Problem

Energy development and agricultural irrigation have increased competition for fresh water in the western states. This competition will result in reduced water availability for irrigation as supplies are diverted to meet industrial and municipal demand. While the cost of transporting water for irrigation may exceed the value of the water to farmers, similar transfers for energy development appear more feasible because the water requirements are comparatively modest.

Recent events have focused attention on future prospects for inter-basin transfers. In the fall of 1981, the Powder River Pipeline Company, Inc., announced that it was considering construction of a return water/coal slurry pipeline that would divert water from Lake Superior to coal fields in Montana and Wyoming. At the same time, South Dakota announced the sale of up to 16.3 billion gallons of Missouri River water annually, for 50 years, to Energy Transportation Systems, Inc. The water will be used in a coal slurry pipeline planned between northeastern Wyoming and Arkansas. In addition, despite some cost uncertainty, a recent Corps of Engineers study maintained that large scale water diversion would be a viable method of supporting irrigated agriculture when the Ogallala aquifer is depleted.

Even modest transfers of water out of the Great Lakes could contribute to lower water levels. A reduction in water levels would lessen hydro electric power production and could affect water-borne commercial shipping tonnage. The environmental effects of fluctuating water levels, due to the creation of largely sterile littoral zones, have long been a matter of concern. The existing diversions and consumptive uses of Great Lakes water already pose problems during periods of low lake levels. New diversions could affect the important shoreline habitat and impact waterfowl, fish, and other wildlife. Diversions also could introduce foreign, and potentially harmful, organisms that could harm waterfowl in the receiving basins. Finally, as with any major pipeline project, there would be impacts associated with the construction and operation of slurry or water pipelines and pumping stations.

The institutional and social considerations of such transfers are, perhaps, the most problematical. At the intrastate level, existing water laws fail to recognize that water resources are a scarce good and should be used wisely rather than wastefully. At the interstate level, the ultimate authority of the federal government in regulating water conflicts and protecting natural interest is well established. Any impact that the states can have will be dependent on their ability to coordinate and develop policy in a manner that leaves as little as possible for subsequent resolution by the federal government or Congress. This necessitates an emphasis on additional research and study, as well as advocacy of the regional and intergovernmental approach to performing these functions, both of which have become increasingly difficult with diminished federal funding and dismantlement of regional coordinating bodies. At the international level, any massive transfer proposals would require the assent of the International Joint Commission and therefore, the Canadian national government. Another important social question concerns the lack of any systematic basis for valuing water as a resource. Possible approaches include production cost valuation, alternative supply cost valuation, and value-added valuation.

Current Activities

Because there have been no formal applications for the permits that would be required for water withdrawal or transport by the Powder River Pipeline Co., there are no current federal or state actions pending. State permitting authorities that would, or could, have jurisdiction include the Department of Natural Resources, the Pollution Control Agency, the Department of Transportation, and the Environmental Quality Board. (The Board is responsible for completing the environmental review process for major pipeline projects.)

The state agency that has been most active in studying and analyzing the potential impacts of water diversions is the Minnesota Water Planning Board. The Board has participated in multi-state conferences that have focused on interbasin water transfers and has developed alternatives for the valuation of Minnesota water resources. The Water Planning Board is scheduled to "sunset" on June 30, 1983.

SOIL AND FARMLAND LOSSES

Although the reasons for losses of soil and prime farmland may differ, both result in a diminished resource base for Minnesota agriculture. Productive agricultural land is either being eroded or converted to other uses at an alarming rate. While this concern is directed at farmland in general, recent attention has focused on the loss of prime farmland, the land that provides the highest yields with minimum inputs of energy and/or money and results in the least damage to the environment. Public surveys conducted by the State Planning Agency, hearings conducted by the Board, and studies by the Governor's Council on Rural Development, the Minnesota Farmers Union, and the Minnesota Project have all indicated the need to address this issue. The legislature has responded with numerous laws that reflect the importance of agricultural land in their policy statements. These laws include the Minnesota Enviromental Rights Act, the Minnesota Enviromental Policy Act, the Power Plant Siting Act, and the Metropolitan Agricultural Preserves Act.

The implications of being unable to produce sufficient crops are apparent; however, the loss of this resource base also has environmental implications. At some point, productivity needs may require farming of less suitable land, resulting in reduced crop yields, greater environmental hazards, and higher production costs (particularily energy).

Problem

Productive agricultural land is an important natural resource in Minnesota. Over half of the state--30 million acres--is in agricultural land, 23 million acres of which are croplands. Minnesota has 19.5 million acres of prime farmland (as defined by the U.S. Soil Conservation Service); 15.3 million of those acres are now being cropped. Another 3.7 million acres of pasture, range, forest, and other land have high or medium potential for conversion to cropland.

Estimates vary on the loss of agricultural land in Minnesota. The National Agricultural Lands Study estimated a total loss of 490,000 acres between 1967-1977. A University of Minnesota study concluded that approximately 50,000 acres of agricultural land are lost annually. In 1975 the State Planning Agency estimated that in the period between 1975 and 1990, 500,000 acres of agricultural land would be converted to other uses and 333,000 acres of forest land might be shifted into agricultural use as replacement acreage. While these numbers show that less than 1% of Minnesota's cropland base is likely to be lost each year, a high crop demand and moderate crop yield could necessitate a total harvested acreage of 22.6 million acres by 1990. This level of production is very near the limit of available cropland in the state.

The shift of other lands into agricultural use could be environmentally damaging. Its conversion would reduce habitat for plant and animal species and affect land that is usually more susceptible to erosion and groundwater overdrafts.

Additional erosion would only compound an already serious problem in Minnesota. Data from the 1979 National Erosion Inventory indicated that 7.7 million acres in Minnesota are losing soil in excess of allowable rates (rates that still permit the soil to maintain its productivity). Approximately 80% of this erosion is water-related; the remaining 20% is due to wind erosion. The figures also indicate that the amount of erosion has increased over recent years. This increase is attributable to more intensive row cropping and farming practices, production on marginal land during periods of favorable crop prices, and the tendency of some farmers to emphasize short-term economic gain during cost-price squeezes. Not only is the soil resource lost, but the erosion contributes to reduced water and air quality because of sedimentation and airborne particulates.

Current Activities

Present activity in these areas is concentrated in the state Agriculture Department and the Soil and Water Conservation Board. The Department of Agriculture is now implementing the 1982 Agricultural Land Protection Act which requires review of all state agency actions or rules that adversely impact agricultural land. Justification must be provided for any actions or rules that substantially restrict the use of 10 acres or more of agricultural land.

In response to 1982 state legislation, the Soil and Water Conservation Board is now preparing a new information base and criteria to insure that future funding of activities in the state's 92 soil and water conservation districts is directed to those areas with the most serious erosion, sedimentation, or water quality problems. These areas have been generally defined as having erosion from either wind and/or water on Class I-IV soils in excess of 2T tons (about 10 tons) per acre per year or any soil within 300 feet of a stream or 1,000 feet of a water basin designated as a protected water or wetland by state, that is eroding in excess of T tons (about 5 tons) per acre per year. Preliminary analyses have shown that erosion caused by water runoff in excess of 2T is most prevalent in southeastern Minnesota. Wind erosion is estimated to be greatest in northwestern and west-central Minnesota. Feedlots are most heavily concentrated in southeastern and central Minnesota.

According to the new legislation at least 70% of available cost-sharing funds must be allocated to these high priority areas. At least 50% must be assigned to the serious erosion problems.

POLYCHLORINATED BIPHENYLS (PCBs)

Polychlorinated biphenyls (PCBs) are a group of synthetic chemical compounds that are extremely stable, heat resistant, non-conductive, and non-flammable. These characteristics led to the widespread use of PCBs as transformer cooling liquids; capacitor dielectric fluids; heat transfer and hydraulic liquids; dye carriers in carbonless copy paper; plasticizers in paints, adhesives, and caulking compounds; fillers in casting wax; and dust control agents in road construction.

PCBs were first manufactured by Monsanto Industrial Chemicals in 1929 and were marketed under the generic name Askarel and other numerous trade names. Monsanto halted production of PCBs in 1977 following Congressional passage of the Toxic Substances Control Act in 1976. Enactment followed growing public concern regarding PCB toxicity and the need to handle and dispose of PCB oils in a manner different from other waste oils. The Act banned further manufacture of PCBs and prohibited their use after January 1 of 1978. However, the Environmental Protection Agency (EPA) was authorized to prepare rules allowing exceptions to this use prohibition if PCBs are used in a "totally enclosed manner" or if their use in an unenclosed manner "will not present an unreasonable risk of injury to health or the environment." These rules were promulgated in May, 1979. Subsequent court review resulted in rule amendments (August, 1982) that further qualified those exceptions. Rather than permit continued operation of all PCB equipment, if totally enclosed, the new rules require removal of some equipment by the mid-1980s, depending on location and PCB concentration.

Problem

Because of their molecular structure, PCBs do not naturally breakdown; the same chemical properties that made PCBs an attractive industrial chemical also make PCBs among the most persistant of contaminants. Because PCBs are bioaccumulative, they are not eliminated by the body's natural detoxification system. Instead, PCBs are circulated throughout the body by the blood and eventually accumulate in fatty tissue and in a variety of other tissues and organs, including the liver, kidneys, lungs, brain, heart, skin, and adrenal glands. PCBs accumulate in humans through inhalation, dietary intake, and skin absorption. Accumulation and concentration in the food chain ending with humans is the primary route of exposure to persons in the general population.

Depending upon the levels and length of exposure, PCBs can cause skin rash, hair loss, facial swelling, infertility, and birth defects. Workers exposed to PCBs have exhibited chloracne, irritation of the skin and mucous membranes, and liver injury; the liver injury has been shown to occur at relatively low PCB concentrations. In addition, the National Institute of Occupational Safety and Health has concluded that sufficient evidence exists to suspect that PCBs are potential carcinogens in the workplace, based on their ability to bond with nuclear components of liver cells in rats and monkeys.

Environmental concerns regarding PCB exposure are not limited to human health. PCBs have been shown to affect the productivity of phytoplankton and freshwater invertebrates and also have been shown to impair reproductive success in birds and mammals. It has been demonstrated that PCBs are toxic to fish at very low exposure levels and can induce sublethal physiological effects.

Although utilities in Minnesota have used substitutes for PCBs since 1977, many years will elapse before all the PCB contaminated oil and equipment has been replaced. Under the EPA rules that have been adopted pursuant to the Toxic Substances Control Act, most electric equipment containing PCBs can continue in service if totally enclosed; however, the equipment is subject to various handling and disposal procedures, depending on the PCB concentrations.

The EPA has classified Non-PCB Equipment as that having less than 50 parts per million (ppm) PCBs. Although oil containing less then 50 ppm PCBs is not allowed to be used as a dust suppressant, no other special handling measures are required and use as a commercial boiler fuel is permitted. Minnesota utilities currently burn this oil in generating station boilers.

Equipment with PCB concentrations of 500 ppm or more is classified as PCB Equipment. The utility industry has estimated that about 13% of all mineral oil or Askarel electrical equipment falls into this category. Askarel transformers and Large PCB capacitors contain PCBs at levels of 600,000 ppm or more. (Current estimates of PCB fluids with these concentrations, in Minnesota, total 650,000 gallons.) Under the newly amended EPA rules, if there is an exposure risk to human food or animal feed products, transformers and capacitors in this category must be removed from service by October 1, 1985, and October 1, 1988, respectively. Under the rule, there is an exposure risk when there is a potential pathway for PCBs discharged from electrical equipment to contaminate food or feed products. The amendments further require that Large PCB capacitors in this category, not located in restricted access outdoor installations or contained and restricted access indoor installations, must be removed from service by October 1, 1988. Routine servicing of PCB Equipment is permitted. When removed from service, oil or other materials with PCB concentrations in this category must be combusted in EPA-approved incinerators. The only EPA-approved incinerators are located in Deer Park, Texas and El Dorado, Arkansas.

Equipment with PCB concentations of at least 50 ppm but less than 500 ppm is classified as PCB-Contaminated Electrical Equipment and can be both serviced and rebuilt. There are four alternatives for treatment or disposal of oil or other materials with PCB concentrations at the intermediate level. These include:

- Combustion in an EPA-approved incinerator.
- Disposal in an EPA-approved chemical waste landfill.
- Chemical destruction using an EPA-approved chemical detoxification process.
- Combustion in a high efficiency boiler.

Two of the alternatives, combustion in an EPA-approved incinerator or disposal in an EPA-approved landfill, would require transport of the PCBs out of Minnesota. (EPA Region V has not yet fully approved portable incinerators, and the nearest EPA-approved chemical waste landfill is located in Williamsburg, Ohio.) The other two alternatives, chemical destruction or combustion in a high efficiency boiler, could occur in Minnesota.

Boilers in NSP's High Bridge Plant and Otter Tail Power's Fergus Falls Plant have been certified high efficiency boilers by the EPA, and both utilities applied for state permits to incinerate PCBs in 1981. The NSP application indicated their intermediate category oil had average PCB concentrations of 100 ppm. The applications were subsequently withdrawn because of public opposition and utility concern that the PCB applications could delay issuance of other pending permits.

Public concern with high efficiency boiler combustion of PCBs has focused on stack emissions and the possibility that PCBs could be released, as well as more toxic chlorinated dioxins and chlorinated furans that could be formed as intermediate by-products of the incineration. The utilities and the Pollution Control Agency argue that worst case conditions would still result in PCB exposure below the level normally encountered in American cities, below the levels proposed for exposure in the workplace, and below current dietary levels. They also argue that precautions can be taken to insure that combustion temperatures do not fall below the level (1400° F) where by-products could form or could escape destruction.

Current Activities

Two state agencies are directly involved in PCB regulation. The Pollution Control Agency's responsibilities include issuance of Certificates of Exemption, for any dielectric liquids with PCB concentrations over 500 ppm or for any equipment with over 2.2 pounds PCB (PCBs must be properly contained and labeled), and issuance of Hazardous Waste Permits authorizing the processing or disposal of hazardous wastes. Generators of PCB waste with concentrations greater than 0.1 ppm must disclose to the Agency how this waste is managed. The Pollution Control Agency's Air Quality Division also issues Emission Facility and Air Pollution Control Equipment Operating Permits that can be conditioned to allow for combustion of PCBs. Finally, the Pollution Control Agency receives notification of PCB spills and monitors the activities of the responsible party to insure proper clean-up.

The Minnesota Department of Transportation regulates the movement of non-waste PCB substances and equipment. Shipments with concentrations over 50 ppm must be properly manifested, packaged, and labeled. Shipments of waste PCB substances and equipment are regulated and monitored by the Pollution Control Agency through the tracking of hazardous waste shipping papers.

The Waste Management Board's current role in PCB management is primarily one of planning. The Legislature has instructed the Board to prepare a Hazardous Waste Management Plan that would discuss various treatment

and disposal alternatives for hazardous wastes generated in Minnesota, including PCBs; however, the Plan is advisory in nature and its scope precludes the type of thorough scientific analysis that might be required regarding management of a specific waste. Additional Board responsibilities include the selection of preferred sites for commercial processing and commercial disposal of hazardous wastes. The Board, through its Supplementary Review Program, also has the authority to overrule local units of government that pass restrictive ordinances for the purpose of excluding commercial hazardous waste facilities or industrial on-site treatment in an approved manner.

Two of the three state agencies currently involved in PCB management are represented on the Board (Pollution Control Agency and the Department of Transportation); processing or disposal mishaps could affect other state agencies also represented on the Board (Departments of Health and Natural Resources). Following the withdrawal of the NSP and Otter Tail applications Board staff developed alternatives for Board consideration. They included a public information program, establishment of a Scientific Advisory Panel or Peer Review Panel patterned after those that examined the health-realted impacts of direct current transmission lines, and a generic EIS that would be scoped to focus on operational and health issues without having to address site specific details. Such an EIS would be very desirable from the standpoints of public information and the opportunity to authoritatively review the risks associated with treatment or disposal.

These alternatives are not mutually exclusive and Board involvement could include combinations of these alternatives. Nor are the alternatives dependent on a new permit application; any or all of the alternatives could be initiated in the interim in anticipation of future need to address PCB issues.

RADIOACTIVE WASTE DISPOSAL

With the advent of the nuclear age, the use of radioactive materials and their by-products have become relatively common place. Radioactive materials are used in the production of energy, scientific research, manufacture of consumer goods, medicine, agricultural research, and industrial processing. One consequence of using radioactive materials is the generation of waste products that have no further utility. These wastes must be managed and disposed of in an environmentally sensitive manner.

The level of radioactivity in waste products can vary substantially depending upon the source of radioactivity and its concentration. As a result, the handling and disposal requirements for different types of radioactive waste materials also vary. Congress has differentiated radioactive waste disposal and managment requirements by the overall intensity of radiation in the waste. Electrical utilities, hospitals, and industries in Minnesota generate a moderate amount of both high and low level radioactive wastes.

Problem

Low-Level Radioactive Waste:

In December, 1980, Congress passed the National Low-Level Radioactive Waste Policy Act. The Act stipulates that each state is responsible for insuring that adequate facilities are provided for the disposal of low-level radioactive waste generated within a state's borders.

Low-level radioactive waste is defined primarily by what it is not. It is not: spent nuclear reactor fuel, wastes from reprocessing reactor fuel, uranium mining or mill tailings, or any other wastes that emit high levels of radioactivity. In general, low-level radioactive wastes are produced whenever radioactive materials are used. The radioactivity of low-level wastes is usually low enough to eliminate any need for cooling or minimal shielding.

Low-level wastes come in a variety of forms including:

1. General trash - contaminated paper, plastics, fillers, metal and glass containers, protective clothing, and insulation materials.

2. Discarded contaminated equipment - machinery, pipes, valves, tools, etc.

3. Wet wastes - contaminated laundry or clean-up water, filtering aids, sludges and cooling water.

4. Organic liquids - lubricating oils, greases, and various materials used in bio-medical research.

5. Biological wastes - animal carcasses and tissues used in research.

Minnesota ranks 15th among the states in regard to the volume of low-level radioactive waste produced. To review the options available for meeting the state's responsibilities under National Low-Level Radioactive Waste Act and provide state policymakers with background information, a special Low-Level Radioactive Waste Task Force was appointed by the Governor in 1981. The Task Force, which was chaired and staffed by the Board, issued its report in August, 1982.

The Task Force identified two basic options that the state might pursue to address its low-level radioactive waste disposal needs:

1. Minnesota can develop a low-level radioactive waste disposal site within the state for the exclusive use of Minnesota waste generators.

2. Minnesota can join an interstate compact with neighboring states and seek to develop a regional disposal site within the compact boundaries. The regional disposal site would be for the exclusive use of waste generators located within states that are members of the compact.

In examining these options, the Task Force noted that the development of a disposal site for the exclusive use of Minnesota waste generators contains several economic and legal uncertainties. The Task Force further noted that low-level radioactive waste can be most safely, economically, and efficiently managed on a regional basis. As such, Minnesota should pursue the joint development and adoption of a low-level radioactive waste compact with neighboring states. The Task Force also prepared a preliminary assessment of compact conditions that would be necessary for the state to address its low-level radioactive waste disposal needs.

High-Level Radioactive Waste:

The most hazardous of radioactive wastes are classified as high-level radioactive waste. Spent fuel rods from commercially operated nuclear power plants are the primary source of high-level radioactive wastes in Minnesota. Annually, the U.S. generates approximately 75 million gallons of highly radioactive liquid wastes, 5,900 metric tons of spent nuclear reactor fuel, and 140 million tons of radioactive tailings left over from uranium mining and processing.

The federal government, through the U.S. Department of Energy and the Nuclear Regulatory Commission, has reserved for itself virtually all the responsibility for developing and carrying out a program for the long-term isolation of high-level radioactive wastes. The Department of Energy is preparing a plan to identify and establish permanent disposal sites. The focus of the plan is to develop deep, underground repositories. The Department of Energy projects that 3 or 4 disposal sites will by needed by the late 1980's to effectively accommodate the nations' growing volume of high-level radioactive wastes.

As part of this planning effort, the Department of Energy is completing general studies of a variety of geologic media to enable identification of suitable repository sites. The granite formations located in Minnesota, Wisconsin, and Michigan are among the media being examined.

These granite studies have not yet advanced to the point where specific sites are selected for more detailed study and consideration as high level repositorities.

Current Activities

Low-Level Radioactive Waste:

The Minnesota Health Department has served as the lead agency for compact negotiations. Decisions are still pending concerning which compact, if any, to join and where within the compact region to locate a disposal facility. Joining one of the compacts will require legislative approval during the 1983 legislative session. If Minnesota is selected to host a low-level radioactive waste facility, the Board could be called upon to establish a state siting process and site selection criteria. The Board also could develop or coordinate environmental impact statements or special studies related to disposal of low-level radioactive waste.

High-Level Radioactive Waste:

The selection of potential disposal sites and initiation of suitability studies is expected by 1985-86. Presently, the Minnesota State Geological Survey is working with the Department of Energy to assemble geologic and hydrologic data. The State Geological Survey also is reviewing the technical studies and reports being prepared by the Department. To insure that the governor, the legislature, state agencies, and citizens of Minnesota are kept informed of the progress of this high level radioactive waste repository work, the Minnesota Environmental Quality Board (MEQB) has initiated an activity monitoring program. As Department of Energy work progresses, the Board will provide update reports on proposed activities, implications of those activities, and potential state involvement in this highly controversial and environmentally sensitive issue.

2, 4-D HERBICIDE USE

Herbicide use, particularly by state agencies, has been a recurring issue in Minnesota in recent years and is likely to remain so in the future. While public concern in the past has been voiced about a number of different herbicides, subsequent federal use bans, state policies, or market withdrawals have resulted in a current focus on a single herbicide, 2, 4-D. Use of this herbicide could, or does, affect most of the state agencies represented on the Environmental Quality Board. The Department of Agriculture is the state agency charged with applicator licensing and administration of the Minnesota Pesticide Control Act. The Department of Natural Resources manages forest lands that are sprayed with the herbicide. Spraying of 2, 4-D along state highways occurs under the direction of the Department of Transportation. Any threat to public health or the environment as a result of spraying would be of concern to both the Health Department and the Pollution Control Agency.

Problem

The phenoxy herbicide 2, 4-D is a selective herbicide that is widely used in crop production and in the management of forest, range, industrial, and urban land and aquatic sites. The chemical compound is related to naturally occurring plant growth regulators and kills plants by causing the growth process to malfunction. Broad-leafed plants are generally susceptible to the phenoxy herbicides, whereas most grasses, coniferous trees, and some legumes are relatively resistant.

The phenoxy herbicides are used to control broad-leafed weeds in wheat, barley, rice, oats, rye, corn, grain sorghums, and certain legumes. They are used in forests to prepare sites for conifer regeneration or to suppress unwanted hardwood trees and brush that compete with conifers already established. They are used on grazing lands to control unpalatable and noxious plants and to kill brush and small trees that reduce the productivity of pastures and ranges. They also are used in canals, ponds, lakes, and waterways to kill floating weeds such as water hyacinth, submerged weeds such as pondweeds, and emergent and shoreline plants such as cattails and willows. Industrial and urban uses include control of brush on utility and transportation rights-of-way; control of dandelions, plantains, and other weeds in turf; and suppression of ragweed, poison ivy, and other plants of public health importance.

Board involvement in herbicide use began in 1974 when the Board received a petition requesting an environmental impact statement on roadside ditch spraying in Cook and Freeborn Counties. In response, the Board established a Pesticide Review Task Force in March of 1975. Task Force members included farmers, bee keepers, small businessmen, researchers, and representatives of veterinarians, agribusiness, farm organizations, public interest groups, and utilities. Human health effects and potential long-term adverse impacts on the environment were the major concerns addressed by the Task Force. The June, 1976, final report of the Task Force contained a number of recommendations. The Task Force urged that further research and education efforts be funded by the state. It

recommended that future applications to roadsides, forests, and waterways be limited, in terms of concentration, frequency, and coverage. Full enforcement of all laws and regulations was endorsed and the Task Force recommended that the state continue to pursue development of disposal sites for pesticides and herbicides.

In 1977, Governor Perpich initiated further inquiry into the question of herbicide spraying for forest management purposes after residents of northern Minnesota objected to aerial applications. At the request of the Governor, state and federal agencies participated in monitoring the spraying operations of the U.S. Forest Service in Chippewa and Superior National Forests. In addition, public meetings were conducted by a State Hearing Examiner to permit public comment on the information obtained from the monitoring program. The Hearing Examiner recommended that further investigation be conducted on the low level chronic effects which herbicides may have on living organisms, upon their reproductive systems, and upon their survival capabilities. The Examiner also recommended if herbicide spraying was to continue, it should be limited to 2, 4-D rather than use of 2, 4, 5-T or Silvex. The Board reviewed the Examiner's findings and, in its report to the Governor, concluded that there was no demonstrated need to discontinue spraying of forest lands, but strict safety procedures should be adhered to and environmental review and state monitoring efforts should be continued.

Public requests to ban further state spraying of 2, 4-D are still received periodically; the most recent was considered by the State Executive Council in April of 1982. Although the Council declined to ban the DNR spraying of state timberlands because it did not constitiute an emergency, it did direct the Health Department and the Pollution Control Agency to convene a panel of experts to further examine the public health and environmental implications of the spraying. Funding proposals for the independent panel of experts were prepared, but the panel was never established.

Current Activities

There are no current research or monitoring activities involving state agencies, and state applications of 2,4-D are expected to continue. Another public request for a ban is likely to be received prior to DNR spraying in the spring. Environmental groups opposing the spraying, particularly Minnesotans Against Nonsensical Use of Resources and the Environment, have been actively preparing and have recently completed a film and appeared on local television interview programs.

Further efforts to establish a panel of experts, this time coordinated by the Board, could lead to resolution of this issue. The approach could be similar to that of the panel of experts established by the Board to analyze the health-related impacts of the UPA-CPA DC powerline.

NUCLEAR PLANT DECOMMISSIONING RULES AND PROCEDURES

Nuclear plant decommissioning may become a significant environmental issue in Minnesota in future years. In the past, the expected operating lifetime of a nuclear generating plant was generally agreed to be 35 to 40 years. Recently, doubts have been expresed regarding operating lifetimes. These doubts are related to the Three Mile Island and Brown's Ferry accidents, the continued lack of high-level radioactive waste faciltiies, and numerous design and operational problems that have affected plants in Minnesota as well as those in many other portions of the U.S. The future uncertainty of nuclear units was cited in NSP's recent Sherco 3 Certificate of Need application as a reason for adding new coal-fired capacity. Although actual decommissioning of plants in Minnesota may not be necessary for many years, the federal government is now preparing rules for decommissioning. State participation in this rulemaking process is essential to insure that state interests are considered and responsibilities are properly delegated.

Minnesota is unique in having already experienced the first of only three nuclear decommissionings in the U.S. (UPA's 58 MW Elk River Plant was dismantled between 1962 and 1964). This experience, however, will differ from similar events in the future due to the scale of current plants, subsequent changes in design, and new rules regarding waste disposal and decommissioning.

Problem

Northern States Power Company currently operates 3 nuclear plants in Minnesota. The 550 MW Monticello Unit, a boiling water reactor, went in service in 1971. Prairie Island Units 1 and 2, each 500 MW pressurized water reactors, went in service in 1973 and 1974. Although it is not possible to predict when decommissioning of these units might occur, some information on decommissioning processes is now available.

Decommissioning is a general term that encompasses a variety of alternatives. The decommissioning process does not begin until after the radioactive fuel has been removed from the facility. After the fuel has been removed, numerous other radioactive components still remain. Among these components are the reactor, the primary water circulation system, the turbine in a boiling water reactor, and the containment shell. For these components, three decommissioning alternatives could be considered:

1. Immediate Dismantlement - Occurs shortly after shutdown. All radioactive material over the level allowed for unrestricted use is shipped to an appropriate location for disposal and the plant site is restored.

2. Safe Storage (or Mothballing) - Radioactive portions of the plant are isolated and the piping systems are decontaminated. Security is maintained and periodic inspections are conducted until radiation levels have been reduced, at which time dismantlement occurs.

3. Entombment - Complete isolation of radioactive components by steel and concrete encasement and decontamination of piping systems. Security is maintained and inspections are conducted until radioactivity has decayed to unrestricted levels.

Environmental impacts are primarily those associated with radiation dose (both to workers and public) and waste disposal. Analyses completed by Battelle National Laboratory show that the lowest exposures would result from safe storage of radioactive components for about 30 years. Any longer storage would have diminishing returns because the radioactivity of activation products would increase. Immediate dismantling has the greatest risk, but also was estimated to be the least expensive of the three decommissioning alternatives.

Before any future decommissioning could occur, four issues would need to be resolved. First, any acceptable decommissioning alternative must be chosen. Then, decommissioning financing must be assured. This financing could include insurance funds or funds established at the time of licensing or contributed to during the operational lifetime of the facility. Agreement also must be reached on the appropriate definition of the level of radioactivity allowed for "unrestricted use." Any components of the plant or site with radioactivity over this level would have to be removed. Finally, high- and low-level radioactive disposal facilities must be available to receive the radioactive components.

Current Activities

Board staff assisted in the preparation of the Governor's Low-Level Hazardous Waste Report. The legislature is expected to act on a compact with adjoining states in 1983. Staff members also are monitoring the high-level radioactive waste planning activities of the federal government.

Draft decommissioning rules are expected to be released for state and public review in March of 1983. Some of the unresolved issues discussed above, particularily the issue of the level of radioactivity allowed for "unrestricted use", will be addressed in these rules. Board staff will participate in the review of the draft rules and coordinate a response with other state agencies.

Nov., 1982

MINNESOTA ENVIRONMENTAL QUALITY BOARD
LONG RANGE PLAN

BACKGROUND

The Minnesota Environmental Quality Board (MEQB) was established by the legislature in 1973 as an interdiciplinary forum to address statewide environmental problems. In creating the Board, the legislature recognized that:

> ". . . problems related to the environment often encompass the responsibilities of several state agencies and that solutions to these environmental problems require the interaction of these agencies." (Mn. Stat. 116C.01)

The powers and duties of the EQB as elaborated in Minnesota Statutes 116C.04 state that the EQB "shall":

a. determine problems of environmental concern to state government and initiate interdepartmental investigations.

b. review and coordinate state agency programs that significantly affect the environment to insure compliance with state environmental policy.

c. advise the Governor and the Legislature about major environmental legislation.

d. cooperate with regional development commissions.

e. assist and advise the Governor on all environmental matters where action or comment by the Governor is required.

f. at its discretion convene an annual environmental quality board congress.

In addition of the Board "may":

a. review regulations and criteria for permits.

b. establish interdepartmental or citizen task forces or subcommittees.

c. adopt rules for operating procedures.

In order to ensure an effective and consistent framework for statewide environmental activities, the MEQB must become the vehicle through which coordinated policies for the state are developed. Given the limited staff and financial resources available to the Board, a clear focus for MEQB activities must be defined if it is to sucessfully fulfill its

mission. Toward this end, the MEQB developed a long range policy plan in 1981 to help establish priorities for action.

The overall usefullness of a plan can be measured, in part, by its ability to accomodate change. A plan is constantly evolving and expanding in detail. As such, a plan must be periodically reviewed to insure that it properly reflects anticipated needs and identifies a reasonable course of action. Since the Board initially adopted its plan, several significant changes and activities have occurred. These are outlined below as opportunities and constraints.

OPPORTUNITIES AND CONSTRAINTS

First, the state's economic condition and operating budget will likely continue to dominate state policy discussions for several years to come. As a result, most state agencies and programs will experience continued pressure to provide higher quality and expanded services while maintaining the same or lower cost for service delivery.

Second, the 1983 legislative session will begin with not only a new administration, but also with a potentially large number of new policymakers. As such, both executive and legislative officials will be looking for assistance in understanding the present status of the state's environmental policies and programs. In addition, major environmental issues such as hazardous waste management, low-level radioactive waste management, peat development, etc. will require the attention of the governor and the legislature. Factual and up-to-date information on existing and anticipated environmental programs will be much sought after as state policymakers work to find solutions to the difficult issues before them.

Third, during the 1981-82 legislative session, funding for staff to the Minnesota Science and Technology Committee was discontinued. In the past, the Science and Technology Committee provided the legislature, agencies and the governor with basic background studies on pressing technical issues.

Fourth, federal and state financial assistance to local units of government has been diminishing. These cutbacks are occurring at a time when local governments, under the new state EIS rules, have been assigned greater review responsibility.

Finally, the Water Planning Board, the Outdoor Recreation Advisory Council and other single issue committees are scheduled to "sunset" next year. These Boards and Councils provide important leadership and interagency coordinating roles. Should these groups cease to exist, there may be a need for some state agency(s) to assume the difficult task of monitoring and coordinating state policies in these program areas.

FRAMEWORK FOR THE PLAN

The purpose of a plan is to establish a clear direction for future actions. Toward this end a set of agency goals and objectives are adopted. Goals are used to define the overall aims and desired focus of

the agency. Objectives are the general means by which the agency will seek to carry out its goals. Together the goals and objectives provide the long term framework upon which annual work programs and budgets can be developed. The work programs and biennial budgets provide the specific activities, tasks and associated costs that the agency anticipates undertaking as it works to achieve its goals and objectives. The following text is provided to elaborate on the rationale, intent and design of the MEQB's goals and objectives.

GOALS

The following goals define the overall direction for future MEQB activities:

A. Structure and utilize the Environmental Quality Board as the governor's environmental cabinet.

B. Serve as the focal point for the establishment and development of statewide environmental policies.

C. Improve the understanding of potential impacts or consequences of existing or proposed policies, programs and physical activities on our environment.

D. Improve the manner in which the state manages, develops, protects, and enhances its environmental resources.

E. Improve the identification and assessment of activities likely to affect the state's environment and evaluate alternative options.

OBJECTIVES

Objectives are defined as the means by which the Board will seek to carry out its goals. The following text elaborates on the MEQB's objectives.

Objective 1. Provide staff and technical expertise to state policymakers on environmental matters.

During the next several months a new administration and a large body of new legislators will be assuming office. Many of these policymakers will not be aware of existing environmental programs or commitments. In addition, they may not have sufficient technical background or historical perspective to adequately respond to questions on environmental issues. The MEQB must, therefore, aggressively utilize its capabilities as an informational body to quickly assemble information on key environmental topics. The purpose of the Board's informational activities will be two-fold. First, it will demonstrate to the legislature and the governor that the Board has the capacity to accurately identify pressing environmental problems, define the key issues under debate, and assemble sufficient background information for policymakers to formulate informed

decisions. Second, the Board's informational services will identify the EQB as an environmental resource information center. This concept is important because it begins to foster the understanding and confidence that the EQB is an agency knowledgable on issues which may cross departmental boundaries. In so doing, the legislature and governor will begin to look to the EQB for advice on how interdisciplinary environmental problems might be most effectively addressed or incorporated into existing state programs.

Objective 2. Utilize the MEQB's coordinating responsibilities to improve the state's ability to anticipate and respond quickly to environmental problems.

During the late 1960's and early 1970's numerous environmental rules, regulations and laws were enacted by every unit of government. Many of the programs that resulted from these regulations are by design, narrowly focused on specific sets of problems related to a single environmental media such as land, air or water. The result has been piecemeal and often disjointed development of environmental policies. To ensure that policies and programs are mutually consistent requires the adoption of a more comprehensive perspective to environmental policy development. Only in this way can the economic, social, political and environmental factors be jointly considered in an unbiased manner. Because of its interdisciplinary membership, the MEQB can serve as a mediator between divergent interests and help initiate discussions, ideas and mutually agreeable solutions to complex environmental problems.

Objective 3. The MEQB will work to ensure comprehensive review and consistency of environmental policies at the state level.

With the myriad of special programs, regulations and studies addressing environmental matters, it is important to understand the interdependent relationships between state and federal programs. Administrative or policy changes in one program area often affect the activities of another. To insure that proper attention is given to a comprehensive range of policy issues, the MEQB will assume a leadership role in identifying the impacts of proposed federal and state changes on state environmental policies.

Objective 4. The MEQB should begin to establish profiles of environmental quality that can be used to assess the magnitude and extent of environmental changes.

Presently, environmental quality in Minnesota is difficult to assess at any given point in time. In addition, significant trends in environmental quality are not well know. Even though the state has adopted specific environmental standards and monitors the state's land, water and air resources, the results from these efforts are most often centered on the performance levels of a specific activity in a given location--i.e. the amount of emissions allowed for a given point source of pollution. A more comprehensive understanding of the status of environmental quality within the state is more difficult to identify.

There is also a limited understanding of the importance of any one environmental feature relative to other environmental, economic or social factors. For example, degradation of 1/2 mile of trout habitat during the development of a community center, may be of little importance in an area where trout habitats are plentiful but social services are seriously lacking. To better identify the types and magnitude of trade-offs that policy-makers are going to have to make, requires a sound data bank of information from which to make comparative judgements.

Objective 5. Locate large electric power facilities and pipelines in an orderly manner compatible with environmental preservation and efficient use of resources.

The Minnesota legislature has assigned the responsibility of locating large electric power facilities and coordinating the environmental review of pipelines with the MEQB. In selecting locations, the Board is asked to minimize adverse human and environmental impacts while insuring that reliable services are maintained. To effectively carry out these requirements, legislature provides the Board with a variety of authorities to evaluate research on potential environmental impacts, examine alternative actions, analyze economic impacts and evaluate possible future needs for additional facilities in the area.

Objective 6. Manage environmental review programs assigned to the EQB by the legislature.

The Minnesota Environmental Policy Act recognizes that the restoration and maintenance of environmental quality is critically important to our welfare. The act also recognizes that human activity has a profound and often adverse impact on the environment. To achieve a more harmonious relationship between human activity and the environment one must understand potential impacts that proposed activities may have on the environment. The MEQB has the primary responsibility for coordinating and administrating the state's environmental review program.

Objective 7. Manage the state's Critical Areas Program as assigned to the EQB by the legislature.

In 1973 the Minnesota legislature created a program to coordinate planning and management of resource areas of greater than local significance. The program enables local governments, regional development commissions and state agencies to work together through the EQB to plan for the wise use and management of "critical areas".

SUMMARY

Figure 1 provides a summary of the MEQB's goals and objectives. Most of the objectives are applicable to more than one goal. In this way, the stated objectives and their related work tasks will help to reinforce one another. A summary of how EQB activites fit into the Board's objectives is provided in Figure 2. Many of the Board's activities can and do apply to more than one objective. The specific work tasks that are undertaken in each activity area are described in the biennial work plan.

Figure 1

MEQB LONG RANGE PLAN
GOALS AND OBJECTIVES

I. AGENCY GOALS

A. Structure and utilize the Environmental Quality Board as the Governor's environmental cabinet.

B. Serve as the focal point for the establishment and development of statewide environmental policies.

C. Improve the understanding of potential impacts or consequences of existing, or proposed policies, programs and activities on our environment.

D. Improve the manner in which the state manages, develops and protects its environmental resources.

E. Improve the identification and assessment of activities likely to affect the state's environment and evaluate alternative options.

II. OBJECTIVES

1. Provide staff and technical expertise to state policymakers on environmental matters.

2. Utilize the MEQB's coordinating responsibilities to improve the state's ability to anticipate and respond effectively to environmental issues.

3. Work to ensure comprehensive review and consistency of environmental policies at the state level.

4. Establish profiles of environmental quality that can be used to assess the magnitude and extent of environmental changes.

5. Locate large electric power facilities and pipelines in an orderly manner compatible with environmental preservation and efficient use of resources.

6. Manage environmental review programs assigned to the EQB by the legislature.

7. Manage the state's Critical Areas Program assigned to the EQB by the legislature.

Figure 2
RELATIONSHIP OF BOARD ACTIVITIES TO OBJECTIVES

OBJECTIVES	ACTIVITIES
Objective 1: Provide staff and technical expertise to state policy makers on environmental matters.	o Provide the governor and legislature with background information on contemporary environmental issues. o Provide information services to the governor, legislature and public concerning environmental management programs in the state. o Provide informational services to the governor, legislature and public concerning the responsibilities, programs and activities of the EQB. o Provide the basic staff administrative assistance required to support the EQB and its subcommittees.
Objective 2: Utilize the MEQB's coordinating responsibilites to improve the state's ability to anticipate and respond to environmental issues.	o Develop and staff forums for interagency coordination.
Objective 3: Work to ensure comprehensive review and consistency of environmental policies at the state level.	o Participate in certificate of need hearings for all facilities eventually requiring Board issued permits. o Monitor proposed federal and state environmental policy changes and identify areas, agencies and programs likely to be impacted.
Objective 4: Establish profiles of environmental quality that can be used to assess the magnitude and extent of environmental changes within the state.	o Provide support to proposed state legislation that is designed to further the environmental enhancement of the state. o Provide a means by which environmental data collected in the state can be organized, catalogued and retrieved. o Develop indicies of environmental quality to assist policymakers. o Develop, operate and analyize environmental monitoring programs that contribute to a better understanding of existing environmental conditions and change.

Figure 2
(continued)
RELATIONSHIP OF BOARD ACTIVITIES TO OBJECTIVES

OBJECTIVES	ACTIVITIES
Objective 5:	
Locate large electric power facilities and pipelines in an orderly manner compatible with environmental preservation and efficient use of resources.	o Assist in the coordination of state pipeline routing activities with local units of government, private landowners, and federal government. o Process all transmission line route applications and power plant site applications in a timely manner. o Develop long range plans for electrical energy facilities to minimize the impacts of new facilities; publish a biennial report; and receive, analyze and publish an advance forecast. o Conduct studies of generic siting and routing issues by building an information base for future routing and siting projects including prototype sections of futre EIS's and construction permits. o Insure a high level of public participation in all stages of the power plant siting program. o Insure compliance with Board issued certificate of site compatibility and construction permits. o Provide basic administrative and office support for the power plant siting program.
Objective 6:	
Manage environmental review programs assigned to the EQB by the legislature.	o Assist interested and affected persons in understanding the concept of environmental review, interpreting the rules and implementing the procedures. o Prepare EAWs for all transmission lines and power plants that meet or exceed the threshold for a mandatory EAW.

Figure 2
(continued)
RELATIONSHIP OF BOARD ACTIVITIES TO OBJECTIVES

OBJECTIVES	ACTIVITIES
Objective 7:	
Manage the state's Critical Areass Program assigned to the EQB by the legislature.	o Coordinate the operation of the Critical Areas Program with other resource management programs. o Administer the review and hearing process for the designation of recommended critical areas. o Administer the critical areas planning process in designated areas to insure that community and state agency plans and regulations are conistant with the critical area designation order. o Prepare evaluation reports on potential critical areas in order to examine the resource management needs of the area and the applicability of the Critical Areas Program or other state resource management programs.

Minnesota Environmental Quality Board Retreat
June 2-3, 1982
Duluth, Minnesota

The following report is a summary of the events and discussions that took place at the Board's June 2-3 retreat. The purpose of the retreat was to initiate discussion on the future role of the Environmental Quality Board. The June 2 session consisted of a discussion with a panel of environmentalists, legislators, industry representatives and a legal council familiar with the Board's evolution and activities. The June 3 session consisted of discussions by Board members concerning potential goals, objectives, and topics for future Minnesota Environmental Quality Board involvement.

I. June 2, 1982 Retreat Session 3:00 p.m. - 5:00 p.m. - Radisson Hotel

Mr. Gary Botzek, Chairman of the MEQB, opened the June 2, 1982 retreat by outlining the objectives of the meeting. He noted that the Board was entering into an era of transition by becoming a separate agency and through the adoption of new rules governing the environmental impact statement program. As such, Mr. Botzek suggested that the Board should reflect upon what it has accomplished since 1972.

After providing a brief historical overview of key Board actions, Mr. Botzek introduced a panel of individuals familiar with the activities and history of the Board. The objective of the panel was to provide feedback on possible future directions for the Board and how the Board might evolve through the 1980's. The panel consisted of: Senator Gene Merriam; Representative Willard Munger; Nelson French, Executive Director Project Environment; John Herman, Attorney-at-Law; and Peter Vanderpoel, Northern States Power Co., and former Chairman of the EQB.

John Herman began the panel discussion. He suggested that the sentiment of the environmental groups which originally lobbied for the establishment of an EQB was to have the Board comprised of state officials whose agencies have the most influence on the overall environmental well being of the state. It was thought that by having agency directors serve as Board members, coordination of state environmental policy would be greatly enhanced. Mr. Herman said the EQB legislation provides the Board with extraordinary powers over other state agency actions to review programs, reverse agency actions and modify agency policies if there is a finding that state agency actions are not consistent with the state's environmental policy. Herman further indicated that the time and energy spent by the Board on EIS and power plant siting issues has limited the Board's ability to effectively realize its role as a coordinator of environmental policy. Mr. Herman did indicate that the Board had taken positive leadership in two inter-disciplinary studies--Copper Nickel Study and Mississippi River Critical Areas Study. With the new EIS rules and a reduced project load on the Power Plant Siting Program, Mr. Herman suggested that the Board will now have the time to devote to a variety of topics. In deciding on what issues should be undertaken, Mr. Herman thought the Board should consider the following:

(1). The Board should work to develop generic EIS's.

(2). The Board should begin to focus on topics with statewide environmental significance.

(3). The Board should consider revitalizing the Critical Areas Program.

(4). How should the Board utilize their powers of review over state agency actions.

Representative Willard Munger was the second panelist to discuss the future of the EQB. He began by detailing the events which preceded the passage of the EQB legislation. Representative Munger indicated that one of the key factors which lead to the establishment of an EQB was the confusion and often counter-productive ways in which state agencies often addressed critical environmental problems. Mr. Munger used the example of the state's water management policies of the late 1960's and early 1970's to illustrate his point. With the passage of the new (1982) EQB legislation, Representative Munger envisions the Board becoming a kind of environmental cabinet for the Governor. Mr. Munger indicated that he hoped the EQB could do more than merely serve as an advisory body and actually help set environmental policy for the state in key interdiciplinary areas such as the management and development of the state's peat resources.

Mr. Peter Vanderpoel began his discussion on the future of the EQB by noting that originally the EQB was the governor's executive environmental council. It was composed of five department heads and he said that while the concept was good there were some problems. Mr. Vanderpoel suggested that directors of state agencies are Commissioners first and EQB members second. The Commissioners have their agencies interests to consider when dealing with matters that may come before the Board. He indicated that an organization such as an EQB can operate very effectively if it has a strong director and strong leadership from the Governor. As an operational matter, Vanderpoel suggested that the Board refrain from getting involved in any EIS decisions for at least 2 years. He suggested that the new EIS rules will need that amount of time to see how they will work. With regard to future activities, Mr. Vanderpoel suggested that the Board focus on setting environmental policy for the state. He recommended that the Board not prepare broad sweeping policy statements but rather thoroughly examine a critical environmental issue for the state and take a stand on what has to be done and be specific with recommendations for action. He suggested that areas where the Board could have a meaningful role include: Hazard Waste Bill; Clean Air Act Amendments; Acid Rain; and Peat. Mr. Vanderpoel noted that economic concerns will be an important factor in any issue in the 1980's. How will this economic focus impact the states environmental outlook? Finally, it was noted that the state has a number of environmental laws. He did not feel additional laws are necessary, rather one should attempt to improve the efficiency of existing laws through better coordination. In undertaking its new role, Vanderpoel felt that one

major problem facing the Board is the budgetary process. He pointed out that it is hard to justify, for example, a 14 person Power Plant Siting Program when there are no projects forth-coming.

Mr. Nelson French began his panel discussion by expressing general support for the ideas and comments made by the other panel members. He indicated that the EQB has been given extraordinary powers and duties. These responsibilities should be fully explored. It is time, he suggested, for the Board to expand its horizons and go beyond what it has already done. The key, however, is to identify tasks and focus on specific issues. One way to gain this focus, he suggested, might be through the development of an annual environmental conference. By bringing together the principal environmental groups and actors, the conference could serve as a springboard for program ideas and directions for future environmental policies. In terms of other issues for the Board to consider, Mr. French listed the following:

(1). Develop generic EIS's on upcoming environmental topics.

(2). Examine the state's water policies.

(3). Look at the pesticide issue.

(4). What will be the impact of future development in the state--particularly on state owned lands.

(5). Reactivate the Critical Areas Program.

(6). Work with local units of government.

(7). Examine and review the environmental policies of state agencies for consistency with state environmental policy.

Senator Gene Merriam was the final panelist to speak. He indicated that many legislators are frustrated over the role that the EQB has taken in the past. Preoccupation with EIS's and power line issues was not what the legislature had intended. Senator Merriam indicated that there is a strong need for an EQB but serious questions must be asked regarding the mission and structure of the Board. The first question to answer is what went wrong--why has the EQB became bogged down on what appears to be local issues? He suggested the Board must begin to focus on "big-picture" policy issues such as hazardous waste and acid rain.

Following the panel debate, Mr. Botzek opened the discussion to the Board members and public present. Dr. Buchwald began by asking the panel if the legislature has created an impossible situation by asking the EQB to review state agency rules, legislation and programs for consistency with state environmental policy. He suggested that it is human nature to build and protect empires and that it is going to be very difficult for the EQB to realistically assume the level of program coordination that the law suggests.

Mr. Herman said he didn't think the EQB should look at individual programs and tell agencies to make major changes. He said the Board has never utilized its coordination role in helping to define broad environmental issues. He indicated that his concept of the EQB would be to bring together existing programs such as PCA's water quality, DNR's river access and State Planning's development and economic expertise and define what should be the states roles in managing its waterways.

Mr. Vanderpoel suggested that the Board can have a meaningful coordination role if it can find some topic of interest to several commissioners. Commissioner Alexander agreed that the Board should try, whenever possible, to get 3 or 4 agencies together to address a common problem. He said that form of coordination is different from the provision of the EQB Act that permits the Board to review agency laws, permits, and programs.

The issue of Board review of agency legislation was discussed at some length. It was generally agreed that key agency legislation has been coordinated through the Governor's office in an efficient manner. Mr. Alexander suggested that the Board ignore that part of the EQB legislation. He felt it was unattainable and time consuming.

Commissioner Braun asked that with the changing role of the EQB, is it still appropriate to have agency heads on the Board. Mr. Herman said in many ways Commissioner level people were poorly suited to render decisions on individual EIS or power lines. These he suggested, are less policy and more technically oriented. Without these items cluttering up the agenda, the Board members are free to undertake projects that they are better suited for--namely setting environmental policy for the state and setting direction on what key projects the state should undertake.

Mr. Botzek suggested that with the new (1982) EQB legislation, the Board may become an environmental cabinet. The agencies, through their Commissioners, would be receiving direction from the governor but the governor and legislature would also be receiving valuable input from the Board. Mr. Botzek asked if the Board is to realistically function as an environmental cabinet, does it have all the right agencies represented?

Commissioner Eklund suggested that since all Commissioners have a common boss--i.e. the Governor--agencies not officially represented on the Board would still have an opportunity to participate.

Commissioner Braun said if the EQB moves away from the local, concrete issues associated with the EIS's and toward lofty goals, how will it sell its budgetary request. His concern is that the legislature will ask if someone else isn't studying the same thing the Board will be working on. How do you justify "coordination" during times of economic problems?

Mr. Herman said the problems during a budget process will largely depend upon the Governor. If the Governor wants to use the EQB to pull together expertise, coordinate programs and spearhead action on complicated environment issues, the problem will not be as great as people

might think. To be successful the Board should come up with problem areas in need of state direction and guidance. Interagency issues such as river management are ideal. Finally, Mr. Herman suggested that the Board propose studies that can show that the coordination efforts will help to reduce state costs and improve overall efficiency.

Commissioner Alexander said he couldn't remember when the EQB has ever taken an issue on any significant environmental problem. He said he would welcome EQB involvement in peat development and rivers. He said that coordinating and issue specific activities were what he always thought the EQB should be involved in.

With regard to supporting a budget, Mr. Braun said the Board first had to get its own house in order. The fact is the Power Plant Siting Program will not likely have a large number of projects over the next couple of years. He indicated that the Board should not lose the staff and expertise it has developed in the area of power plant/transmission line siting but it has to recognize the criticism it will get if it has a major program with no apparent work to do.

Mr. Vanderpoel said the Board can't afford to continue a 14 person Power Plant staff with 1 million dollars in study money when no projects are being proposed.

Mr. Larsen said the Budget Committee has been looking at the problem of Power Plant Siting and that a smaller staff and budget will be proposed. He indicated that several staff could be reassigned to Board activities thus keeping the expertise within the Board for use when it is needed.

In terms of future activities for the Board, several ideas were discussed. Mr. Vanderpoel and Buchwald suggested organizing and updating the information presently contained in MLMIS. Commissioner Eklund said the EQB could play an important role in educating a new administration and legislature on important environmental issues facing the state. Representative Munger suggested that management of the state's peat resources should receive high priority. Mr. Herman suggested that the Board get into specific case studies such as the development of a generic EIS. Commissioner Eklund indicated that water oriented issues would be a major factor in the state's economic and environmental future.

Finally, Mr. Mulligan asked if by changing the role of the EQB, to what extent has the agency become a "toothless tiger". Without regulatory powers and enforcement activities can the Board sucessfully survive by simply doing coordination activities. Most of the panelists agreed that the Board did have a potential problem in this area but felt it could be overcome. The key to overcoming a "toothless tiger" image, they suggested, was to take on specific studies and do a good job. The topics should be ones in which the legislature is interested and looking for guidance.

The meeting adjourned at 5:30 p.m.

Attendance:

Panel:

Senator Gene Merriam
Representative Willard Munger
Nelson French
John Herman
Peter Vanderpoel

EQB Members:

Joe Alexander, DNR
Gary Botzek, Governor's office
Richard Braun, DOT
Ed Buchwald
Kent Eklund, DEPD
Lauren Larsen
Pat Mulligan
C. VanDoren

EQB Staff:

Mike Sullivan, Executive Director
Richard Paton

June 3, 1982

II. MEQB Retreat - 9:00 a.m. - 3:30 p.m.
Duluth Depot Board Room

Gary Botzek called the meeting to order by briefly reviewing the previous evenings panel discussions. He indicated that one goal for the retreat was to identify possible areas of future study or activity for the EQB. In general, Mr. Botzek felt that the EQB should serve as a forum that the legislature and governor could turn to for special studies and coordination of environmental matters. The Board, however, should not become a regulatory agency.

Mr. Mulligan and Buchwald indicated that one area that the Board might consider taking a leadership role in is groundwater. Another area of interest expressed was acid rain.

Commissioner Breimhurst asked what role the EQB wanted to take in acid rain. Most of the responsibilities for acid rain work have been legislated to the Pollution Control Agency. Members were unclear as to what role the Board might take other than to provide support services and help in coordinating activities that might be related to the management of acid rain.

Commissioner Braun said that if the EQB does not capitalize on its potential as a key coordinating agency, it will cease to exist. To sell coordination, the Board is going to have to show that improved communication and program coordination, will save the state money.

Mr. Braun suggested that one problem that will be facing the EQB in the future is continuity of members. To overcome this, the staff, director, and existing citizen members will have to educate the new members in a rapid fashion. Braun also noted that the Board is going to have to prove that it can sucessfully take on projects and manage them in a timely and effective manner. Presently when an environmental issue arises that requires rapid action, it is assigned to one of the environmental line agencies irregardless of the fact that it may require an interdiciplinary review and solution.

Mr. Botzek and Braun noted that part of the problem in the past has been the fact that line agencies have proven track records as lead agencies. The Board, it was suggested, should not become a lead agency for long-term study but rather an agency that looks at a problem, defines what is happening, and identifies what has to be done to begin working out a solution.

Mr. Buchwald suggested that maybe the level of Board activity in a given environmental issue will fluctuate. For example, he said the Board's role in acid rain might be minor since the state already has assigned a lead agency. In other areas such as data coordination and groundwater management where there are numerous actors, the Board could assume a strong coordinating role. To better understand the decision process Mr. Buchwald offered the following model:

(1). A problem is perceived.

(2). Information is gathered.

(3). Values are defined.

(4). Solutions are debated.

(5). Government decides what to do.

Mr. Larsen suggested that the Board members should list all of the issue topics that might be desirable for the Board to become involved in. To be meaningful, he suggested that the list of topics should also be prioritized. The following list were the topics identified. The topics were prioritized as A - high priority, B - moderate priority, and C - low priority.

Possible EQB Study Topics

Topic	Priority
1. Acid Rain	A
2. Peat Development	A
3. Herbicide Use	B
4. Pesticide Use	C
5. Groundwater	A
6. Rivers	A
7. Lakes	A
8. Wetlands	A
9. Drainage	A
10. Low-Level Radioactive Waste	B
11. High-Level Radioactive Waste	C
12. Hazardous Waste	C
13. Ambient Air Quality	C
14. Agricultural Lands as a Resource	A
15. Minerals	
a). Copper-Nickel	C
b). Uranium	C
16. Forest Mangement	C

Of the topics identified five were discussed as having significant potential for EQB involvement. These are, in order of preference:

1. Groundwater Coordination.
2. Peat Development/Management.
3. Acid Rain.
4. Rivers, Lakes, Wetlands and Drainage.
5. Agricultural Land as a Resource.

On the topic of groundwater, the meeting participants felt the Board should begin to pull together the key actors. Toward this end it was recommended that the Board invite groups such as the Water Planning

Board to appear before an EQB meeting to identify areas where it was felt the EQB could provide assistance. Mr. Larsen said the objective of Board involvement in groundwater should be to help develop a statewide policy for groundwater management. Mr. Mulligan suggested that the Board should go beyond just developing a policy. He felt the Board should recommend specific regulatory steps or legislative actions necessary to enhance coordination. Dr. Buchwald handed out some material he requested from EQB staff on groundwater issues in southeastern Minnesota. The Board members at the retreat session felt it might be worth while to have someone from MLMIS explain the data system for water planning in southern Minnesota.

On the topic of peat and acid rain the Board members felt they couldn't discuss any details on possible Board involvement until staff has had an opportunity to talk to the lead agencies working on these issues. It was suggested that the EQB might take on specific work items for which LCMR funds were being solicited, but may not receive funding.

On the topics of surface water issues, the Board members at the retreat felt the issue to consider should be what are the objectives of the state with regard to planning, developing and regulating the states water resources. The Board should consider developing a system for the management and dispersal of water related data. The goal should be to make sure that those who are charged with making decisions have the most comprehensive list of information available. The data/information system should concentrate on the existing MLMIS system. It was suggested that an EQB tour of the MLMIS offices would be helpful. To provide some background on the MLMIS system, Dr. Buchwald distriuted an information memo. (attached)

In terms of the next budget process, Board members thought the EQB should look at LCMR proposals to get an indication of what issues are of greatest concern to the legislature. The Board could serve a coordinating role with regard to member agencies' LCMR requests.

Having finished discussion on possible topics for EQB involvement, Mr. Botzek suggested that the Board members focus on administrative and organizational matters. The first topic of discussion was the role of the Chairman and Executive Director. It was generally felt that the Chairman should take a strong leadership position and have good access to the Governor. Mr. Botzek noted that he hoped to spend at least some time each week in the EQB offices. The Executive Director should be responsible for all EQB staff and administrative matters. Board members could ask for Board staff assistance as might be necessary but all requests should be channeled through the Director's office. Matters of personnel raises, promotions, etc. should be the responsibility of the Director although Board members are encouraged to provide feedback to the Director on individual staff members who have provided assistance to them (both positive and negative feedback). It was suggested that the Director and Chairman should be given some flexibility with regard to minor budget modifications. Mr. Sullivan said he would prepare a guideline policy for the Board's consideration.

The second administrative matter discussed was format of the EQB's budget. Commissioner Braun and Mr. Mulligan indicated that they did not feel comfortable with the present financial reporting system. Concern was expressed that Board members don't know how much money has been expended on a given work item at any given point in time. Mr. Sullivan indicatd that a modified financial report could be developed and distributed quarterly. The format and detail of the report would be developed with the Planning and Budget Subcommittee.

The Board members discussed the working committee structure of the Board and concluded that the existing sub-committee structure was working well. They felt the total number of committees should remain small and chaired by citizen members. One additional committee was proposed, called the Legislative/Administrative Rules Review Committee. This committee would be chaired by the EQB Chair.

One organizational issue that was discussed at some length was the role and future of the Boards "Tech Reps". Several Board members expressed concern that the Tech Rep role has become quasi-judicial in that the Tech Rep meetings take on the character of a pre-EQB meeting and debate. Agency heads were asked to review the role of the Tech Reps and decide if the Tech Rep function should be modified. With the new rules and changing agenda it may be that there is no formal need for a Tech Rep system.

The final administrative topic of discussion focused on agenda setting. It was generally agreed that more Board member involvement is needed in agenda setting. Mr. Mulligan suggested that a draft agenda with possible topics be sent out to Board members two weeks in advance of the Board meeting. In addition, the final order of business of each Board meeting could include a discussion of topics for the next meeting. It was also generally agreed that regular status reports on staff activities should be presented. This report should be coordinated between the Executive Director and the Board Chairman. Finally, meeting minutes should be distributed well in advance of the next meeting. The minutes should clearly show which Board member made a request for additional information or study as well as any proposal for an agenda item.

The final order of business discussed concerned authorization to allow the Executive Director to expend funds for the start-up of the proposed Board's monitoring activities listed in the work program. It was explained that contract work and equipment leasing agreements needed to be developed. Expenditures were described as minor and would probably fall under $6,000.

Meeting adjourned at 3:30 p.m.

Attendance:

EQB Members:

Gary Botzek
Dick Braun
Lou Breimhurst
Dr. Ed Buchwald
Lauren Larsen
C. VanDoren

EQB Staff:

Mike Sullivan, Executive Director
Richard Paton

CHAPTER 116C

ENVIRONMENTAL QUALITY BOARD

116C.01 FINDINGS.

The legislature of the state of Minnesota finds that problems related to the environment often encompass the responsibilities of several state agencies and that solutions to these environmental problems require the interaction of these agencies. The legislature also finds that further debate concerning population, economic and technological growth should be encouraged so that the consequences and causes of alternative decisions can be better known and understood by the public and its government.

History: *1973 c 342 s 1*

116C.02 DEFINITIONS.

Subdivision 1. For the purposes of sections 116C.01 to 116C.08, the following terms have the meaning given them.

Subd. 2. "Board" means Minnesota environmental quality board.

History: *1973 c 342 s 2; 1975 c 271 s 6*

116C.03 CREATION OF THE ENVIRONMENTAL QUALITY BOARD; MEMBERSHIP; CHAIRMAN; STAFF.

Subdivision 1. An environmental quality board, designated as the Minnesota environmental quality board, is hereby created.

Subd. 2. The board shall include as permanent members the director of the state planning agency, the director of the pollution control agency, the commissioner of natural resources, the commissioner of agriculture, the commissioner of health, the commissioner of transportation, the director of the Minnesota energy agency, a representative of the governor's office designated by the governor, the chairman of the citizens advisory committee, and three other members of the citizens advisory committee as designated by the governor. The names of the four members of the citizens advisory committee designated to serve on the board shall be submitted to the senate for its advice and consent. Upon the

expiration of the citizens advisory committee the governor shall appoint four members from the general public to the board, subject to the advice and consent of the senate.

Subd. 2a. The membership terms, compensation, removal, and filling of vacancies of citizens advisory committee members or public members, as appropriate, on the board shall be as provided in section 15.0575.

Subd. 3. The director of the state planning agency shall be the chairman of the board.

Subd. 4. The director of the state planning agency shall employ staff or consultants who will be assigned to work for the board on a continuous basis. The board shall have the authority to request and require staff support from all other agencies of state government as needed for the execution of the responsibilities of the board.

History: *1973 c 342 s 3; 1974 c 307 s 16; 1975 c 271 s 6; 1976 c 134 s 28,29; 1976 c 166 s 7*

116C.04 POWERS AND DUTIES.

Subdivision 1. The powers and duties of the Minnesota environmental quality board shall be as provided in this section and as otherwise provided by law or executive order. Actions of the board shall be taken only at an open meeting upon a majority vote of all the permanent members of the board.

Subd. 2. (a) The board shall determine which environmental problems of interdepartmental concern to state government shall be considered by the board. The board shall initiate interdepartmental investigations into those matters that it determines are in need of study. Topics for investigation may include but need not be limited to future population and settlement patterns, air and water resources and quality, solid waste management, transportation and utility corridors, economically productive open space, energy policy and need, growth and development, and land use planning.

(b) The board shall review programs of state agencies that significantly affect the environment and coordinate those it determines are interdepartmental in nature, and insure agency compliance with state environmental policy.

(c) The board may review environmental regulations and criteria for granting and denying permits by state agencies and may resolve conflicts involving state agencies with regard to programs, regulations, permits and procedures significantly affecting the environment, provided that such resolution of conflicts is consistent with state environmental policy.

(d) State agencies shall submit to the board all proposed legislation of major significance relating to the environment and the board shall submit a report to the governor and the legislature with comments on such major environmental proposals of state agencies.

Subd. 3. The board shall cooperate with regional development commissions in appropriate matters of environmental concern.

Subd. 4. The board may establish interdepartmental or citizen task forces or subcommittees to study particular problems.

Subd. 5. Pursuant and subject to the provisions of chapter 15, and the provisions hereof, the board may adopt, amend, and rescind rules governing its own administration and procedure and its staff and employees.

Subd. 6. The board shall assist and advise the governor on all environmental issues in which action or comment by the governor is required by law or is otherwise appropriate.

Subd. 7. At its discretion, the board shall convene an annual environmental quality board congress including, but not limited to, representatives of

state, federal and regional agencies, citizen organizations, associations, in tries, colleges and universities, and private enterprises who are active in or h a major impact on environmental quality. The purpose of the congress shall to receive reports and exchange information on progress and activities related environmental improvement.

~~Subd. 5. The board shall provide the citizens advisory committee established in section 116C.05 with such administrative, clerical, and technical assistance as may be required by the committee to carry out its functions.~~

~~Subd. 6. The board shall meet with the citizens advisory committee established in section 116C.05 at least four times a year at approximately three month intervals to receive advice from the committee and to coordinate activities of the board and the committee.~~

~~History: 1973 c 342 s 5~~

~~116C.05 CITIZENS ADVISORY COMMITTEE.~~

~~Subdivision 1. There is established a citizens advisory committee consisting of one resident from each congressional district and three members at large as a vehicle for citizen participation in the activities of the board. The governor shall appoint the members of the citizens advisory committee and the committee annually shall elect one of their members to serve as chairman. The committee shall expire and the terms, compensation, and removal of members shall be as provided in section 15.059.~~

~~Subd. 2. The duties and functions of the committee shall be as follows:~~

~~(a) To hold meetings throughout the state as it deems necessary for the purpose of gathering information on public and private opinions concerning the adequacy of the state's environmental quality policies and the extent to which these policies are being implemented.~~

~~(b) To meet with the environmental quality board at least four times a year at approximately three month intervals to give advice and counsel to the board on the basis of the information gathered pursuant to (a).~~

History: *1973 c 342 s 5; 1975 c 204 s 73; 1975 c 271 s 6; 1975 c 315 s 24*

116C.06 HEARINGS.

Subdivision 1. The board shall hold public hearings on matters that it determines to be of major environmental impact. The board shall prescribe by rule and regulation in conformity to the provisions of sections 15.0411 to 15.0423, the procedures for the conduct of all hearings and review procedures.

Subd. 2. The board may delegate its authority to conduct a hearing to a hearings officer. The hearings officer shall have the same power as the board to compel the attendance of witnesses to examine them under oath, to require the production of books, papers, and other evidence, and to issue subpoenas and cause the same to be served and executed in any part of the state. The hearings officer shall be knowledgeable in matters of law and the environment.

If a hearings officer conducts a hearing, he shall make findings of fact and submit them to the board. The transcript of testimony and exhibits shall constitute the exclusive record upon which such findings are made. The findings shall be available for public inspection.

Subd. 3. After receipt of the findings of fact of the hearings officer, the board shall make recommendations to the governor and legislature as to administrative and legislative actions to be considered in regard to the matter.

History: *1973 c 342 s 6; 1975 c 271 s 6*

116C.07 POLICY; LONG RANGE PLAN; PURPOSE.

Consistent with the policy announced herein, the board shall, before November 15, of each even numbered year, prepare a long range plan and program for the effectuation of said policy, and shall make a report to the governor and the legislature of progress on those matters assigned to it by law.

History: *1973 c 342 s 7; 1975 c 271 s 6*

116C.08 FEDERAL FUNDS; DONATIONS.

The board may apply for, receive, and disburse federal funds made available to the state by federal law or rules promulgated thereunder for any purpose related to the powers and duties of the board. The board shall comply with any and all requirements of such federal law or such rules and regulations promulgated thereunder in order to apply for, receive, and disburse such funds. The board is authorized to accept any donations or grants from any public or private concern. All such moneys received by the board shall be deposited in the state treasury and are hereby appropriated to it for the purpose for which they are received. None of such moneys in the state treasury shall cancel.

History: *1973 c 342 s 8; 1975 c 271 s 6*

Section 1 is effective the day following final enactment.

Approved March 22, 1982

CHAPTER 524 — S.F.No. 1671

An act relating to environment; providing for the chairmanship, staff, and administration of the environmental quality board; transferring the swim program from the water planning board to the department of energy, planning and development; extending the water planning board; appropriating money; amending Minnesota Statutes 1980, Section 116C.03, Subdivision 2a, and by adding subdivisions; Minnesota Statutes 1981 Supplement, Section 116C.03, Subdivisions 2 and 4; repealing Minnesota Statutes 1980, Sections 116C.04, Subdivisions 8 and 9; 116C.05; 116C.07; and Minnesota Statutes 1981 Supplement, Section 116C.03, Subdivision 3.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1981 Supplement, Section 116C.03, Subdivision 2, is amended to read:

Subd. 2. The board shall include as permanent members the ~~head of the planning division~~ commissioner of the department of energy, planning and development, the director of the pollution control agency, the commissioner of natural resources, the commissioner of agriculture, the commissioner of health, the commissioner of transportation, and a representative of the governor's office ~~ignated~~ by the governor. The governor shall appoint five members from the ~~eral~~ public to the board, subject to the advice and consent of the senate.

Sec. 2. Minnesota Statutes 1980, Section 116C.03, Subdivision 2a, is amended to read:

Subd. 2a. The membership terms, compensation, removal, and filling of vacancies of ~~citizens advisory committee members or~~ public members of the board, ~~as appropriate, on the board~~ shall be as provided in section 15.0575.

Sec. 3. Minnesota Statutes 1980, Section 116C.03, is amended by adding a subdivision to read:

Subd. 3a. The representative of the governor's office shall serve as chairman of the board.

Sec. 4. Minnesota Statutes 1981 Supplement, Section 116C.03, Subdivision 4, is amended to read:

Subd. 4. The ~~commissioner of energy, planning and development~~ board shall employ staff or consultants who will be assigned to work for the board on a continuous basis. The staff may include an executive director who shall serve in

the unclassified service and be responsible for administering the board's staff, work program, budget, and other duties delegated by the board. The board shall have the authority to request and require staff support from all other agencies of state government as needed for the execution of the responsibilities of the board.

Sec. 5. Minnesota Statutes 1980, Section 116C.03, is amended by adding a subdivision to read:

Subd. 5. The board shall contract with the department of energy, planning and development for administrative services necessary to the board's activities. The services shall include personnel, budget, payroll and contract administration.

Sec. 6. Minnesota Statutes 1980, Section 116C.03, is amended by adding a subdivision to read:

Subd. 6. The board shall adopt an annual budget and work program.

CHAPTER 116B

MINNESOTA ENVIRONMENTAL RIGHTS LAW

116B.01 PURPOSE. The legislature finds and declares that each person is entitled by right to the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state and that each person has the responsibility to contribute to the protection, preservation, and enhancement thereof. The legislature further declares its policy to create and maintain within the state conditions under which man and nature can exist in productive harmony in order that present and future generations may enjoy clean air and water, productive land, and other natural resources with which this state has been endowed. Accordingly, it is in the public interest to provide an adequate civil remedy to protect air, water, land and other natural resources located within the state from pollution, impairment, or destruction.

[*1971 c 952 s 1*]

116B.02 DEFINITIONS. Subdivision 1. For purposes of sections 116B.01 to 116B.13, the following terms have the meanings given them in this section.

Subd. 2. "Person" means any natural person, any state, municipality or other governmental or political subdivision or other public agency or instrumentality, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, and any other entity, except a family farm, a family farm corporation or a bona fide farmer corporation.

Subd. 3. "Nonresident individual" means any natural person, or his personal representative, who is not domiciled or residing in the state when suit is commenced.

Subd. 4. Natural resources shall include, but not be limited to, all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and historical resources. Scenic and esthetic resources shall also be considered natural resources when owned by any governmental unit or agency.

Subd. 5. "Pollution, impairment or destruction" is any conduct by any person which violates, or is likely to violate, any environmental quality standard, limitation, regulation, rule, order, license, stipulation agreement, or permit of the state or any instrumentality, agency, or political subdivision thereof which was issued prior to the date the alleged violation occurred or is likely to occur or any conduct which materially adversely affects or is likely to materially adversely affect the environment; provided that "pollution, impairment or destruction" shall not include conduct which violates, or is likely to violate, any such standard, limitation, regulation, rules, order, license, stipulation agreement or permit solely because of the introduction of an odor into the air.

Subd. 6. "Family farm" shall mean any farm owned by a natural person, or one or more natural persons all of whom are related within the third degree of kindred according to the civil law, at least one of whose owners resides on or actively operates said farm.

Subd. 7. "Family farm corporation" means a corporation founded for the purpose of farming and owning agricultural land, in which the majority of the voting stock is held by, and the majority of the stockholders are, members of a family related to each other within the third degree of kindred according to the rules of the civil law, and at least one of whose stockholders is a person residing on or actively operating the farm, and none of whose stockholders are corporations.

Subd. 8. "Bona fide farmer corporation" means an association of two or more natural persons, one of which, if two persons are so associated, or the majority of which, if more than two persons are so associated, reside on, or are actively operating

a farm.

[*1971 c 952 s 2*]

1168.03 CIVIL ACTIONS. Subdivision 1. Any person residing within the state; the attorney general; any political subdivision of the state; any instrumentality or agency of the state or of a political subdivision thereof; or any partnership, corporation, association, organization, or other entity having shareholders, members, partners or employees residing within the state may maintain a civil action in the district court for declaratory or equitable relief in the name of the state of Minnesota against any person, for the protection of the air, water, land, or other natural resources located within the state, whether publicly or privately owned, from pollution, impairment, or destruction; provided, however, that no action shall be allowable hereunder for acts taken by a person on land leased or owned by said person pursuant to a permit or license issued by the owner of the land to said person which do not and can not reasonably be expected to pollute, impair, or destroy any other air, water, land, or other natural resources located within the state; provided further that no action shall be allowable under this section for conduct taken by a person pursuant to any environmental quality standard, limitation, regulation, rule, order, license, stipulation agreement or permit issued by the pollution control agency, department of natural resources, department of health or department of agriculture.

Subd. 2. Within seven days after commencing such action, the plaintiff shall cause a copy of the summons and complaint to be served upon the attorney general and the pollution control agency. Within 21 days after commencing such action, the plaintiff shall cause written notice thereof to be published in a legal newspaper in the county in which suit is commenced, specifying the names of the parties, the designation of the court in which the suit was commenced, the date of filing, the act or acts complained of, and the declaratory or equitable relief requested. The court may order such additional notice to interested persons as it may deem just and equitable.

Subd. 3. In any action maintained under this section, the attorney general may intervene as a matter of right and may appoint outside counsel where as a result of such intervention he may represent conflicting or adverse interests. Other interested parties may be permitted to intervene on such terms as the court may deem just and equitable in order to effectuate the purposes and policies set forth in section 116B.[illegible]

Subd. 4. Except as provided in sections 15.0416, 15.0424, 115.05, 116.07 and 542.03, any action maintained under this section may be brought in any county in which one or more of the defendants reside when the action is begun, or in which the cause of action or some part thereof arose, or in which the conduct which has or is likely to cause such pollution, impairment, or destruction occurred. If none of the defendants shall reside or be found in the state, the action may be begun and tried in any county which the plaintiff shall designate. A corporation, other than railroad companies, street railway companies, and street railroad companies whether the motive power is steam, electricity, or other power used by these corporations or companies, also telephone companies, telegraph companies, and all other public service corporations, shall be considered as residing in any county wherein it has an office, resident agency, or business place. The above enumerated public service corporations shall be considered as residing in any county wherein the cause of action shall arise or in which the conduct which has or is likely to cause pollution, impairment or destruction occurred and wherein any part of its lines of railway, railroad, street railway, street railroad, without regard to the motive power of the railroad, street railway, or street railroad, telegraph or telephone lines or any other public service corporation shall extend, without regard to whether the corporation or company has an office, agent, or business place in the county or not.

Subd. 5. Where any action maintained under this section results in a judgment that a defendant has not violated an environmental quality standard, limitation, regulation, rule, order, license, stipulation agreement, or permit promulgated or issued by the pollution control agency, department of natural resources, department of health, or department of agriculture, the judgment shall not in any way estop the agency from relitigating any or all of the same issues with the same or other defendant unless in the prior action the agency was, either initially or by intervention a party. Where the action results in a judgment that the defendant has violated an environmental quality standard, limitation, regulation, rule, order, license, stipulation agreement, or permit promulgated or issued by the pollution control agency, department of natural resources, department of health or department of agriculture the judgment shall be

res judicata in favor of the agency in any action the agency might bring against the same defendant.

[*1971 c 952 s 3*]

116B.04 BURDEN OF PROOF. In any action maintained under section 116B.03, where the subject of the action is conduct governed by any environmental quality standard, limitation, regulation, rule, order, license, stipulation agreement, or permit promulgated or issued by the pollution control agency, department of natural resources, department of health, or department of agriculture, whenever the plaintiff shall have made a prima facie showing that the conduct of the defendant violates or is likely to violate said environmental quality standard, limitation, regulation, rule, order, license, stipulation agreement, or permit, the defendant may rebut the prima facie showing by the submission of evidence to the contrary; provided, however, that where the environmental quality standards, limitations, regulations, rules, orders, licenses, stipulation agreements, or permits of two or more of the aforementioned agencies are inconsistent, the most stringent shall control.

In any other action maintained under section 116B.03, whenever the plaintiff shall have made a prima facie showing that the conduct of the defendant has, or is likely to cause the pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative and the conduct at issue is consistent with and reasonably required for promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not constitute a defense hereunder.

[*1971 c 952 s 4*]

116B.05 APPOINTMENT OF REFEREE. The court may appoint a referee, who shall be a disinterested person to take testimony and make a report to the court in any such action.

[*1971 c 952 s 5*]

116B.06 BOND. If the court has reasonable grounds to doubt the plaintiff's ability to pay any judgment for costs and disbursements which might be rendered against him pursuant to chapter 549, in an action brought under section 116B.03, the court may order the plaintiff to post a bond or cash not to exceed $500 to serve as security for such judgment.

[*1971 c 952 s 6*]

116B.07 RELIEF. The court may grant declaratory relief, temporary and permanent equitable relief, or may impose such conditions upon a party as are necessary or appropriate to protect the air, water, land or other natural resources located within the state from pollution, impairment, or destruction. When the court grants temporary equitable relief, it may require the plaintiff to post a bond sufficient to indemnify the defendant for damages suffered because of the temporary relief, if permanent relief is not granted.

[*1971 c 952 s 7*]

116B.08 REMITTITUR. Subdivision 1. If administrative, licensing, or other similar proceedings are required to determine the legality of the defendants' conduct, the court shall remit the parties to such proceedings. If administrative, licensing, or other similar proceedings are available to determine the legality of the defendants' conduct, the court may remit the parties to such proceedings. In so remitting the parties the court may grant temporary equitable relief where appropriate to prevent irreparable injury to the air, water, land or other natural resources located within the state. In so remitting the parties the court shall retain jurisdiction of the cause pending completion thereof.

Subd. 2. Upon completion of such proceedings, the court shall adjudicate the impact of the defendants' conduct, program, or product on the air, water, land, or other natural resources located within the state in accordance with the preceding sections 116B.02 to 116B.07. In such adjudication, the court may order that additional evidence be taken to the extent necessary to protect the rights recognized in sections 116B.01

to 116B.13.

Subd. 3. Where, as to any such administrative, licensing, or other similar proceedings referred to above, judicial review thereof is available, notwithstanding any other provisions of law to the contrary, the court originally taking jurisdiction shall maintain jurisdiction for purposes of judicial review.

Subd. 4. Nothing in this section shall be applicable to any action maintained under section 116B.10 or to any appropriate administrative proceeding required thereunder.

[*1971 c 952 s 8*]

116B.09 INTERVENTION; JUDICIAL REVIEW. Subdivision 1. Except as otherwise provided in section 116B.10, in any administrative, licensing, or other similar proceeding, and in any action for judicial review thereof which is made available by law, any natural person residing within the state, the attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, or any partnership, corporation, association, organization or other legal entity having shareholders, members, partners, or employees residing within the state shall be permitted to intervene as a party upon the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct that has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state.

Subd. 2. In any such administrative, licensing, or other similar proceedings, the agency shall consider the alleged impairment, pollution, or destruction of the air, water, land, or other natural resources located within the state and no conduct shall be authorized or approved which does, or is likely to have such effect so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land, and other natural resources from pollution, impai[illegible]nt, or destruction. Economic considerations alone shall not justify such conduct.

Subd. 3. In any action for judicial review of any administrative, licensing, or other similar proceeding as described in subdivision 1, the court shall, in addition to any other duties imposed upon it by law, grant review of claims that the conduct caused, or is likely to cause pollution, impairment, or destruction of the air, water, land, or other natural resources located within the state, and in granting such review it shall act in accordance with the provisions of sections 116B.01 to 116B.13 and the administrative procedures act.

[*1971 c 952 s 9*]

116B.10 REVIEWAL OF STATE ACTIONS. Subdivision 1. Civil actions. As hereinafter provided in this section, any natural person residing within the state; the attorney general; any political subdivision of the state; any instrumentality or agency of the state or of a political subdivision thereof; or any partnership, corporation, association, organization, or other legal entity having shareholders, members, partners or employees residing within the state may maintain a civil action in the district court for declaratory or equitable relief against the state or any agency or instrumentality thereof where the nature of the action is a challenge to an environmental quality standard, limitation, regulation, rule, order, license, stipulation agreement, or permit promulgated or issued by the state or any agency or instrumentality thereof for which the applicable statutory appeal period has elapsed.

Subd. 2. Burden of proof. In any action maintained under this section the plaintiff shall have the burden of proving that the environmental quality standard, limitation, regulation, rule, order, license, stipulation agreement, or permit is inadequate to protect the air, water, land, or other natural resources located within the state from pollution, impairment, or destruction. The plaintiff shall have the burden of proving the existence of material evidence showing said inadequacy of said environmental quality standard, limitation, regulation, rule, order, license, stipulation agreement, or permit.

Subd. 3. Remittitur; judicial review. In any action maintained under this section the district court, upon a prima facie showing by the plaintiff of those matte[illegible]pecified in subdivision 2, shall remit the parties to the state agency or instrument[illegible] that promulgated the environmental quality standard, limitation, regulation, rule, order, license, stipulation agreement, or permit which is the subject of the action, requiring

said agency or instrumentality to institute the appropriate administrative proceedings to consider and make findings and an order on those matters specified in subdivision 2. In so remitting the parties, the court may grant temporary equitable relief where appropriate to prevent irreparable injury to the air, water, land, or other natural resources located within the state. In so remitting the parties, the court shall retain jurisdiction for purposes of judicial review to determine whether the order of the agency is supported by the preponderance of the evidence. If plaintiff fails to establish said prima facie showing, the court shall dismiss the action and award such costs and disbursements as the court deems appropriate.

Subd. 4. Intervention. In any action maintained under this section, any natural person residing within the state; the attorney general; any political subdivision of the state; any instrumentality or agency of the state or of a political subdivision thereof; or any partnership, corporation, association, organization or other legal entity having shareholders, members, partners, or employees residing within the state shall be permitted to intervene as a party, provided that said person makes timely application to the district court prior to the court's remittance of the action as specified in subdivision 3.

Subd. 5. Venue. Any action maintained under this section shall be brought in the county in which is located the principal office of the state agency or instrumentality that promulgated the rule, regulation, standard, order or permit which is the subject of the action.

[*1971 c 952 s 10*]

116B.11 JURISDICTION; SERVING PROCESS. Subdivision 1. As to any cause of action arising under sections 116B.01 to 116B.13, the district court may exercise personal jurisdiction over any foreign corporation or any nonresident individual, or his personal representative, in the same manner as if it were a domestic corporation or he were a resident of this state. This section applies if, in person or through an agent, the foreign corporation or nonresident individual:

(a) Commits or threatens to commit any act in the state which would impair, pollute or destroy the air, water, land, or other natural resources located within the state, or

(b) Commits or threatens to commit any act outside the state which would impair, pollute or destroy the air, water, land, or other natural resources located within the state, or

(c) Engages in any other of the activities specified in section 543.19.

Subd. 2. The service of process on any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be made by personally serving the summons upon the defendant outside this state with the same effect as though the summons had been personally served within this state.

Subd. 3. Only causes of action arising from acts enumerated or referenced in subdivision 1 may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.

Subd. 4. Nothing contained in this section shall limit or affect the right to serve any process in any other manner now or hereafter provided by law or the Minnesota rules of civil procedure.

[*1971 c 952 s 11*]

116B.12 RIGHTS AND REMEDIES NONEXCLUSIVE. No existing civil or criminal remedy for any wrongful action shall be excluded or impaired by sections 116B.01 to 116B.13. The rights and remedies provided herein shall be in addition to any administrative, regulatory, statutory, or common law rights and remedies now or hereafter available.

[*1971 c 952 s 12*]

116B.13 CITATION. Sections 116B.01 to 116B.13 may be cited as the "Minnesota Environmental Rights Act".

[*1971 c 952 s 14*]

CHAPTER 116D

STATE ENVIRONMENTAL POLICY

116D.01 PURPOSE.

The purposes of Laws 1973, Chapter 412 are: (a) to declare a state policy that will encourage productive and enjoyable harmony between man and his environment; (b) to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; and (c) to enrich the understanding of the ecological systems and natural resources important to the state and to the nation.

History: *1973 c 412 s 1*

116D.02 DECLARATION OF STATE ENVIRONMENTAL POLICY.

Subdivision 1. The legislature, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high density urbanization, industrial expansion, resources exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the state government, in cooperation with federal and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of the state's people.

Subd. 2. In order to carry out the policy set forth in Laws 1973, Chapter 412, it is the continuing responsibility of the state government to use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate state plans, functions, programs and resources to the end that the state may:

(a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) Assure for all people of the state safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) Discourage ecologically unsound aspects of population, economic and technological growth, and develop and implement a policy such that growth occurs only in an environmentally acceptable manner;

(d) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever practicable, an environment that supports diversity, and variety of individual choice;

(e) Encourage, through education, a better understanding of natural resources management principles that will develop attitudes and styles of living that minimize environmental degradation;

(f) Develop and implement land use and environmental policies, plans, and standards for the state as a whole and for major regions thereof through a coordinated program of planning and land use control;

(g) Define, designate, and protect environmentally sensitive areas;

(h) Establish and maintain statewide environmental information systems sufficient to gauge environmental conditions;

(i) Practice thrift in the use of energy and maximize the use of energy efficient systems for the utilization of energy, and minimize the environmental impact from energy production and use;

(j) Preserve important existing natural habitats of rare and endangered species of plants, wildlife, and fish, and provide for the wise use of our remaining areas of natural habitation, including necessary protective measures where appropriate;

(k) Reduce wasteful practices which generate solid wastes;

(l) Minimize wasteful and unnecessary depletion of nonrenewable resources;

(m) Conserve natural resources and minimize environmental impact by encouraging extension of product lifetime, by reducing the number of unnecessary and wasteful materials practices, and by recycling materials to conserve both materials and energy;

(n) Improve management of renewable resources in a manner compatible with environmental protection;

(o) Provide for reclamation of mined lands and assure that any mining is accomplished in a manner compatible with environmental protection;

(p) Reduce the deleterious impact on air and water quality from all sources, including the deleterious environmental impact due to operation of vehicles with internal combustion engines in urbanized areas;

(q) Minimize noise, particularly in urban areas;

(r) Prohibit, where appropriate, flood plain development in urban and rural areas; and

(s) Encourage advanced waste treatment in abating water pollution.

History: *1973 c 412 s 2*

116D.03 ACTION BY STATE AGENCIES.

Subdivision 1. The legislature authorizes and directs that, to the fullest extent practicable the policies, regulations and public laws of the state shall be interpreted and administered in accordance with the policies set forth in sections 116D.01 to 116D.06.

Subd. 2. All departments and agencies of the state government shall:

(a) On a continuous basis, seek to strengthen relationships between state, regional, local and federal-state environmental planning, development and management programs;

(b) Utilize a systematic, interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental arts in planning and in decision making which may have an impact on man's environment; as an aid in accomplishing this purpose there shall be established advisory councils or other forums for consultation with persons in appropriate fields of specialization so as to ensure that the latest and most authoritative findings will be considered in administrative and regulatory decision making as quickly and as amply as possible;

(c) Identify and develop methods and procedures that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations;

(d) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(e) Recognize the worldwide and long range character of environmental problems and, where consistent with the policy of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize interstate, national and international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(f) Make available to the federal government, counties, municipalities, institutions and individuals, information useful in restoring, maintaining, and enhancing the quality of the environment, and in meeting the policies of the state as set forth in Laws 1973, Chapter 412;

(g) Initiate the gathering and utilization of ecological information in the planning and development of resource oriented projects; and

(h) Undertake, contract for or fund such research as is needed in order to determine and clarify effects by known or suspected pollutants which may be detrimental to human health or to the environment, as well as to evaluate the feasibility, safety and environmental effects of various methods of dealing with pollutants.

History: *1973 c 412 s 3*

116D.04 ENVIRONMENTAL IMPACT STATEMENTS.

Subdivision 1. [Repealed, 1980 c 447 s 10]

Subd. 1a. For the purposes of sections 116D.01 to 116D.07, the following terms have the meanings given to them in this subdivision.

(a) "Natural resources" has the meaning given it in section 116B.02, subdivision 4.

(b) "Pollution, impairment or destruction" has the meaning given it in section 116B.02, subdivision 5.

(c) "Environmental assessment worksheet" means a brief document which is designed to set out the basic facts necessary to determine whether an environmental impact statement is required for a proposed action.

(d) "Governmental action" means activities, including projects wholly or partially conducted, permitted, assisted, financed, regulated or approved by units of government including the federal government.

(e) "Governmental unit" means any state agency and any general or special purpose unit of government in the state including, but not limited to, watershed districts organized under chapter 112, counties, towns, cities, port authorities and housing authorities, but not including courts, school districts and regional development commissions other than the metropolitan council.

Subd. 2. [Repealed, 1980 c 447 s 10]

Subd. 2a. Where there is potential for significant environmental effects resulting from any major governmental action, the action shall be preceded by a detailed environmental impact statement prepared by the responsible governmental unit. The environmental impact statement shall be an analytical rather than an encyclopedic document which describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated. The environmental impact statement shall also analyze those economic, employment and sociological effects that cannot be avoided should the action be implemented. To ensure its use in the decision making process, the environmental impact statement shall be prepared as early as practical in the formulation of an action.

(a) The board shall by rule establish categories of actions for which environmental impact statements and for which environmental assessment worksheets shall be prepared as well as categories of actions for which no environmental review is required under this section.

(b) The responsible governmental unit shall promptly publish notice of the completion of an environmental assessment worksheet in a manner to be determined by the board and shall provide copies of the environmental assessment worksheet to the board and its member agencies. Comments on the need for an environmental impact statement may be submitted to the responsible governmental unit during a 30 day period following publication of the notice that an environmental assessment worksheet has been completed. The responsible governmental unit's decision on the need for an environmental impact statement shall be based on the environmental assessment worksheet and the comments received during the comment period, and shall be made within 15 days after the close of the comment period. The board's chairman may extend the 15 day period by not more than 15 additional days upon the request of the responsible governmental unit.

(c) An environmental assessment worksheet shall also be prepared for a proposed action whenever material evidence accompanying a petition by not less than 25 individuals, submitted before the proposed project has received final approval by the appropriate governmental units, demonstrates that, because of the nature or location of a proposed action, there may be potential for significant environmental effects. Petitions requesting the preparation of an environmental assessment worksheet shall be submitted to the board. The chairman of the board shall determine the appropriate responsible governmental unit and forward the petition to it. A decision on the need for an environmental assessment worksheet shall be made by the responsible governmental unit within 15 days after the petition is received by the responsible governmental unit. The board's chairman may extend the 15 day period by not more than 15 additional days upon request of the responsible governmental unit.

(d) The board may, prior to final approval of a proposed project, require preparation of an environmental assessment worksheet by a responsible governmental unit selected by the board for any action where environmental review under this section has not been specifically provided for by rule or otherwise initiated.

(e) An early and open process shall be utilized to limit the scope of the environmental impact statement to a discussion of those impacts, which, because of the nature or location of the project, have the potential for significant environmental effects. The same process shall be utilized to determine the form, content and level of detail of the statement as well as the alternatives which are appropriate for consideration in the statement. In addition, the permits which will be required for the proposed action shall be identified during the scoping process. Further, the process shall identify those permits for which information will be developed concurrently with the environmental impact statement. The board shall provide in its rules for the expeditious completion of the scoping process. The determinations reached in the process shall be incorporated into the order requiring the preparation of an environmental impact statement.

(f) Whenever practical, information needed by a governmental unit for making final decisions on permits or other actions required for a proposed project shall be developed in conjunction with the preparation of an environmental impact statement.

(g) An environmental impact statement shall be prepared and its adequacy determined within 280 days after notice of its preparation unless the time is extended by consent of the parties or by the governor for good cause. The

responsible governmental unit shall determine the adequacy of an environmental impact statement, unless within 60 days after notice is published that an environmental impact statement will be prepared, the board chooses to determine the adequacy of an environmental impact statement. If an environmental impact statement is found to be inadequate, the responsible governmental unit shall have 60 days to prepare an adequate environmental impact statement.

Subd. 3. [Repealed, 1980 c 447 s 10]

Subd. 3a. Within 90 days after final approval of an environmental impact statement, final decisions shall be made by the appropriate governmental units on those permits which were identified as required and for which information was developed concurrently with the preparation of the environmental impact statement. Provided, however, that the 90 day period may be extended where a longer period is required by federal law or state statute or is consented to by the permit applicant. The permit decision shall include the reasons for the decision, including any conditions under which the permit is issued, together with a final order granting or denying the permit.

Subd. 4. [Repealed, 1980 c 447 s 10]

Subd. 4a. The board shall by rule identify alternative forms of environmental review which will address the same issues and utilize similar procedures as an environmental impact statement in a more timely or more efficient manner to be utilized in lieu of an environmental impact statement.

Subd. 5. [Repealed, 1980 c 447 s 10]

Subd. 5a. The board shall, by January 1, 1981, promulgate rules in conformity with this chapter and the provisions of chapter 15, establishing:

(a) The governmental unit which shall be responsible for environmental review of a proposed action;

(b) The form and content of environmental assessment worksheets;

(c) A scoping process in conformance with subdivision 2a, clause (e);

(d) A procedure for identifying during the scoping process the permits necessary for a proposed action and a process for coordinating review of appropriate permits with the preparation of the environmental impact statement;

(e) A standard format for environmental impact statements;

(f) Standards for determining the alternatives to be discussed in an environmental impact statement;

(g) Alternative forms of environmental review which are acceptable pursuant to subdivision 4a;

(h) A model ordinance which may be adopted and implemented by local governmental units in lieu of the environmental impact statement process required by this section, providing for an alternative form of environmental review where an action does not require a state agency permit and is consistent with an applicable comprehensive plan. The model ordinance shall provide for adequate consideration of appropriate alternatives, and shall ensure that decisions are made in accordance with the policies and purposes of Laws 1980, Chapter 447;

(i) Procedures to reduce paperwork and delay through intergovernmental cooperation and the elimination of unnecessary duplication of environmental reviews;

(j) Procedures for expediting the selection of consultants by the governmental unit responsible for the preparation of an environmental impact statement; and

(k) Any additional rules which are reasonably necessary to carry out the requirements of this section.

Subd. 6. No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct.

Subd. 6a. Prior to the preparation of a final environmental impact statement, the governmental unit responsible for the statement shall consult with and request the comments of every governmental office which has jurisdiction by law or special expertise with respect to any environmental effect involved. Copies of the drafts of such statements and the comments and views of the appropriate offices shall be made available to the public. The final detailed environmental impact statement and the comments received thereon shall precede final decisions on the proposed action and shall accompany the proposal through an administrative review process.

Subd. 7. Regardless of whether a detailed written environmental impact statement is required by the board to accompany an application for a permit for natural resources management and development, or a recommendation, project, or program for action, officials responsible for issuance of aforementioned permits or for other activities described herein shall give due consideration to the provisions of Laws 1973, Chapter 412, as set forth in section 116D.03, in the execution of their duties.

Subd. 8. In order to facilitate coordination of environmental decision making and the timely review of agency decisions, the board shall establish by regulation a procedure for early notice to the board and the public of natural resource management and development permit applications and other impending state actions having significant environmental effects.

Subd. 9. Prior to the final decision upon any state project or action significantly affecting the environment or for which an environmental impact statement is required, or within ten days thereafter, the board may delay implementation of the action or project by notice to the agency or department and to interested parties. Thereafter, within 45 days of such notice, the board may reverse or modify the decisions or proposal where it finds, upon notice and hearing, that the action or project is inconsistent with the policy and standards of sections 116D.01 to 116D.06. Any aggrieved party may seek judicial review pursuant to chapter 15.

Subd. 10. Decisions on the need for an environmental assessment worksheet, the need for an environmental impact statement and the adequacy of an environmental impact statement may be reviewed by a declaratory judgment action in the district court of the county wherein the proposed action, or any part thereof, would be undertaken. Judicial review under this section shall be initiated within 30 days after the governmental unit makes the decision, and a bond may be required under section 562.02 unless at the time of hearing on the application for the bond the plaintiff has shown that the claim has sufficient possibility of success on the merits to sustain the burden required for the issuance of a temporary restraining order. Nothing in this section shall be construed to alter the requirements for a temporary restraining order or a preliminary injunction pursuant to the Minnesota Rules of Civil Procedure for District Courts. The board may initiate judicial review of decisions referred to herein and may intervene as of right in any proceeding brought under this subdivision.

Subd. 11. If the board or governmental unit which is required to act within a time period specified in this section fails to so act, any person may seek an order of the district court requiring the board or governmental unit to immediately take the action mandated by subdivisions 2a and 3a.

Subd. 12. No attempt need be made to tabulate, analyze or otherwise evaluate the potential impact of elections made pursuant to section 116C.63, subdivision 4, in environmental impact statements done for large electric power facilities. It is sufficient for purposes of this chapter that such statements note the existence of section 116C.63, subdivision 4.

History: *1973 c 412 s 4; 1975 c 204 s 74; 1975 c 271 s 6; 1980 c 447 s 1-8; 1980 c 614 s 88*

116D.045 ENVIRONMENTAL IMPACT STATEMENTS; COSTS.

Subdivision 1. The board shall, no later than January 1, 1977, by rule adopt procedures to assess the proposer of a specific action, when the proposer is a private person, for reasonable costs of preparing and distributing an environmental impact statement on that action required pursuant to section 116D.04. Such costs shall be determined by the responsible agency pursuant to the rules promulgated by the board in accordance with subdivision 5 and shall be assessed for projects for which an environmental impact statement preparation notice has been issued after February 15, 1977.

Subd. 2. In the event of a disagreement between the proposer of the action and the responsible agency over the cost of an environmental impact statement, the responsible agency shall consult with the board, which may modify the cost or determine that the cost assessed by the responsible agency is reasonable.

Subd. 3. The proposer shall pay the assessed cost to the board. All money received pursuant to this subdivision shall be deposited in the general fund.

Subd. 4. No agency or governmental subdivision shall commence with the preparation of an environmental impact statement until at least one-half of the assessed cost of the environmental impact statement is paid pursuant to subdivision 3. Other laws notwithstanding, no state agency may issue any permits for the construction or operation of a project for which an environmental impact statement is prepared until the assessed cost for the environmental impact statement has been paid in full.

Subd. 5. For actions proposed by a private person there shall be no assessment for preparation and distribution of an environmental impact statement for an action which has a total value less than one million dollars. For actions which are greater than one million dollars but less than ten million dollars, the assessment to the proposer as determined by the agency shall not exceed .3 percent of the total value except that the total value shall not include the first one million dollars of value. For actions the value of which exceed ten million dollars but are less than 50 million dollars, an additional charge may be made to the proposer by the agency which will not exceed .2 percent of each one million dollars of value over ten million dollars. For actions which are greater than 50 million dollars in total value, an additional charge may be made to the proposer by the agency which will not exceed .1 percent of each one million dollars of value over 50 million dollars. The proposer shall pay the assessed cost to the board when a state agency is designated the responsible agency. All money received by the board pursuant to this subdivision shall be deposited in the general fund. The proposer shall pay the assessed cost to the designated lead agency when such agency is a local unit of government.

History: *1976 c 344 s 3*

116D.05 REVIEW OF AUTHORITY, REPORT.

All agencies of the state government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein that prohibit full compliance with the purposes and provisions of sections 116D.01 to 116D.06, and shall propose to the governor not later than July 1, 1974, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in Laws 1973, Chapter 412.

History: *1973 c 412 s 5*

116D.06 EFFECT OF EXISTING OBLIGATIONS.

Subdivision 1. Nothing in sections 116D.03 to 116D.05 shall in any way affect the specific statutory obligations of any state agency to (a) comply with criteria or standards of environmental quality, (b) coordinate or consult with any federal or state agency, or (c) act or refrain from acting contingent upon the recommendations or certification of any other state agency or federal agency.

Subd. 2. The policies and goals set forth in sections 116D.01 to 116D.06 are supplementary to those set forth in existing authorizations of state agencies.

History: *1973 c 412 s 6*

116D.07 GOVERNOR, REPORT REQUIRED.

The governor shall transmit to the legislature and make public by November 15 of each year an environmental quality report which shall set forth:

(1) The status and condition of the major natural, man made, or altered environmental classes of the state, including, but not limited to, the air, the aquatic, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment;

(2) Current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic and other requirements of the state;

(3) The adequacy of available natural resources for fulfilling human and economic requirements of the state in the light of expected population pressures;

(4) A review of the programs and activities, including regulatory activities, of the federal government in the state, the state and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources;

(5) A program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation;

(6) A review of identified, potentially feasible programs and projects for solving existing and future natural resources problems;

(7) Measures as may be necessary to bring state government statutory authority, administrative regulations and current policies into conformity with the intent, purposes, and procedures set forth in Laws 1973, Chapter 412;

(8) The status of statewide natural resources plans; and

(9) A statewide inventory of natural resources projects, consisting of (a) a description of all existing and proposed public natural resources works or improvements to be undertaken in the coming biennium by state agencies or with state funds, (b) a biennial tabulation of initial investment costs and operation and maintenance costs for both existing and proposed projects, (c) an analysis of the relationship of existing state projects to all existing public natural resources works of improvement undertaken by local, regional, state-federal,

and federal agencies with funds other than state funds, and (d) an analysis of the relationship of proposed state projects to local, regional, state-federal, and federal plans.

The purpose of this environmental quality report by the governor is to provide the information necessary for the legislature to assess the existing and possible future economic impact on state government of capital investments in and maintenance costs of natural resources works of improvement.

History: *1973 c 412 s 7*

THE POWER PLANT SITING ACT OF 1973

As Amended Through 1980

MINNESOTA ENVIRONMENTAL QUALITY BOARD
100 CAPITOL SQUARE BUILDING
550 CEDAR STREET
ST. PAUL, MN 55101

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THE POWER PLANT SITING ACT OF 1973

AS AMENDED THROUGH 1980

116C.51 [CITATION.] Sections 116C.51 to 116C.69 shall be known as the Minnesota power plant siting act.

116C.52 [DEFINITIONS.] Subdivision 1. As used in sections 116C.51 to 116C.68, the terms defined in this section have the meanings given them, unless otherwise provided or indicated by the context.

Subd. 2. "Board" shall mean the Minnesota environmental quality board.

Subd. 3. "High voltage transmission line" means a conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 200 kilovolts or more, except that the board, by rule, may exempt lines pursuant to section 116C.57, subdivision 5.

Subd. 4. "Large electric power generating plant" shall mean electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more.

Subd. 5. "Person" shall mean an individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

Subd. 6. "Utility" shall mean any entity engaged in this state in the generation, transmission or distribution of electric energy including, but not limited to, a private investor owned utility, cooperatively owned utility, and a public or municipally owned utility.

Subd. 7. "Construction" means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route but does not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions.

Subd. 8. "Route" means the location of a high voltage transmission line between two end points. The route may have a variable width of up to 1.25 miles.

Subd. 9. "Site" means the location of a large electric power generating plant.

Subd. 10. "Large electric power facilities" means high voltage transmission lines and large electric power generating plants.

116C.53 [SITING AUTHORITY.] Subdivision 1. [POLICY.] The legislature hereby declares it to be the policy of the state to locate large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy the board shall choose locations that minimize adverse human and environmental impact while insuring continuing electric power system reliability and integrity and insuring that electric energy needs are met and

fulfilled in an orderly and timely fashion.

Subd. 2. [JURISDICTION.] The board is hereby given the authority to provide for site and route selection.

Subd. 3. If a route is proposed in two or more states, the board shall attempt to reach agreement with affected states on the entry and exit points prior to authorizing the construction of the route. The board, in discharge of its duties pursuant to sections 116C.51 to 116C.69 may make joint investigations, hold joint hearings within or without the state, and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any state or of the United States. The board may negotiate and enter into any agreements or compacts with agencies of other states, pursuant to any consent of congress, for cooperative efforts in certifying the construction, operation, and maintenance of large electric power facilities in accord with the purposes of sections 116C.51 to 116C.69 and for the enforcement of the respective state laws regarding such facilities.

116C.54 [ADVANCE FORECASTING.] Every utility which owns or operates, or plans within the next 15 years to own or operate large electric power generating plants or high voltage transmission lines shall develop forecasts as specified in this section. On or before July 1 of each even-numbered year, every such utility shall submit a report of its forecast to the board. The report may be appropriate portions of a single regional forecast or may be jointly prepared and submitted by two or more utilities and shall contain the following information:

(1) Description of the tentative regional location and

general size and type of all large electric power generating plants and high voltage transmission lines to be owned or operated by the utility during the ensuing 15 years or any longer period the board deems necessary;

(2) Identification of all existing generating plants and transmission lines projected to be removed from service during any 15 year period or upon completion of construction of any large electric power generating plants and high voltage transmission lines;

(3) Statement of the projected demand for electric energy for the ensuing 15 years and the underlying assumptions for this forecast, such information to be as geographically specific as possible where this demand will occur;

(4) Description of the capacity of the electric power system to meet projected demands during the ensuing 15 years;

(5) Description of the utility's relationship to other utilities and regional associations, power pools or networks; and

(6) Other relevant information as may be requested by the board.

On or before July 1 of each odd-numbered year, a utility shall verify or submit revisions to items (1) and (2).

116C.55 s 1 [REPEALED 1977.]

Subd. 2. [INVENTORY CRITERIA; PUBLIC HEARINGS.] The board shall promptly initiate a public planning process where all interested persons can participate in developing the criteria and standards to be used by the board in preparing an inventory of large electric power generating plant study areas and to guide

the site and route suitability evaluation and selection process. The participatory process shall include, but should not be limited to public hearings. Before substantial modifications of the initial criteria and standards are adopted, additional public hearings shall be held. All hearings conducted under this subdivision shall be conducted pursuant to the rulemaking provisions of chapter 15.

Subd. 3. [INVENTORY OF LARGE ELECTRIC POWER GENERATING PLANT STUDY AREAS.] On or before January 1, 1979, the board shall adopt an inventory of large electric power generating plant study areas and publish an inventory report. The inventory shall specify the planning policies, criteria, and standards used in developing the inventory. After completion of its initial inventory the board shall have a continuing responsibility to evaluate, update and publish its inventory.

116C.56 [Repealed 1977.]

116C.57 [DESIGNATION OF SITES AND ROUTES; PROCEDURES; CONSIDERATIONS; EMERGENCY CERTIFICATION; EXEMPTION.] Subdivision 1. [DESIGNATION OF SITES SUITABLE FOR SPECIFIC FACILITIES; REPORTS.] A utility must apply to the board in a form and manner prescribed by the board for designation of a specific site for a specific size and type of facility. The application shall contain at least two proposed sites. In the event a utility proposes a site not included in the board's inventory of study areas, the utility shall specify the reasons for the proposal and shall make an evaluation of the proposed site based upon the planning policies, criteria and standards specified in the inventory.

Pursuant to sections 116C.57 to 116C.60, the board shall study and evaluate any site proposed by a utility and any other site the board deems necessary which was proposed in a manner consistent with rules adopted by the board concerning the form, content, and timeliness of proposals for alternate sites. No site designation shall be made in violation of the site selection standards established in section 116C.55. The board shall indicate the reasons for any refusal and indicate changes in size or type of facility necessary to allow site designation. Within a year after the board's acceptance of a utility's application, the board shall decide in accordance with the criteria specified in section 116C.55, subdivision 2, the responsibilities, procedures and considerations specified in section 116C.57, subdivision 4, and the considerations specified in section 116D.02, subdivision 2, which proposed site is to be designated. The board may extend for just cause the time limitation for its decision for a period not to exceed six months. When the board designates a site, it shall issue a certificate of site compatibility to the utility with any appropriate conditions. The board shall publish a notice of its decision in the state register within 30 days of site designation. No large electric power generating plant shall be constructed except on a site designated by the board.

Subd. 2. [DESIGNATION OF ROUTES; PROCEDURE.] A utility shall apply to the board in a form and manner prescribed by the board for a permit for the construction of a high voltage transmission line. The application shall contain at least two proposed routes. Pursuant to sections 116C.57 to 116C.60, the

board shall study, and evaluate the type, design, routing, right-of-way preparation and facility construction of any route proposed in a utility's application and any other route the board deems necessary which was proposed in a manner consistent with rules adopted by the board concerning the form, content, and timeliness of proposals for alternate routes provided, however, that the board shall identify the alternative routes prior to the commencement of public hearings thereon pursuant to section 116C.58. Within one year after the board's acceptance of a utility's application, the board shall decide in accordance with the criteria and standards specified in section 116C.55, subdivision 2, and the considerations specified in section 116C.57, subdivision 4, which proposed route is to be designated. The board may extend for just cause the time limitation for its decision for a period not to exceed 90 days. When the board designates a route, it shall issue a permit for the construction of a high voltage transmission line specifying the type, design, routing, right-of-way preparation and facility construction it deems necessary and with any other appropriate conditions. The board may order the construction of high voltage transmission line facilities which are capable of expansion in transmission capacity through multiple circuiting or design modifications. The board shall publish a notice of its decision in the state register within 30 days of issuance of the permit. No high voltage transmission line shall be constructed except on a route designated by the board, unless it was exempted pursuant to subdivision 5.

Subd. 3. [EMERGENCY CERTIFICATION.] Any utility whose electric power system requires the immediate construction of a large electric power generating plant or high voltage transmission line may make application to the board for an emergency certificate of site compatibility or permit for the construction of high voltage transmission lines, which certificate or permit shall be issued in a timely manner no later than 195 days after the board's acceptance of the application and upon a finding by the board that a demonstrable emergency exists which requires immediate construction, and that adherence to the procedures and time schedules specified in sections 116C.54, 116C.56 and 116C.57 would jeopardize the utility's electric power system or would jeopardize the utility's ability to meet the electric needs of its customers in an orderly and timely manner. A public hearing to determine if an emergency exists shall be held within 90 days of the application. The board shall, after notice and hearing, promulgate rules specifying the criteria for emergency certification.

Subd. 4. [CONSIDERATIONS IN DESIGNATING SITES AND ROUTES.] To facilitate the study, research, evaluation and designation of sites and routes, the board shall be guided by, but not limited to, the following responsibilities, procedures, and considerations:

(1) Evaluation of research and investigations relating to the effects on land, water and air resources of large electric power generating plants and high voltage transmission line routes and the effects of water and air discharges and electric fields

resulting from such facilities on public health and welfare, vegetation, animals, materials and aesthetic values, including base line studies, predictive modeling, and monitoring of the water and air mass at proposed and operating sites and routes, evaluation of new or improved methods for minimizing adverse impacts of water and air discharges and other matters pertaining to the effects of power plants on the water and air environment;

(2) Environmental evaluation of sites and routes proposed for future development and expansion and their relationship to the land, water, air and human resources of the state;

(3) Evaluation of the effects of new electric power generation and transmission technologies and systems related to power plants designed to minimize adverse environmental effects;

(4) Evaluation of the potential for beneficial uses of waste energy from proposed large electric power generating plants;

(5) Analysis of the direct and indirect economic impact of proposed sites and routes including, but not limited to, productive agricultural land lost or impaired;

(6) Evaluation of adverse direct and indirect environmental effects which cannot be avoided should the proposed site and route be accepted;

(7) Evaluation of alternatives to the applicant's proposed site or route proposed pursuant to section 116C.57, subdivisions 1 and 2;

(8) Evaluation of potential routes which would use or parallel existing railroad and highway rights-of-way;

(9) Evaluation of governmental survey lines and other natural

division lines of agricultural land so as to minimize interference with agricultural operations;

(10) Evaluation of the future needs for additional high voltage transmission lines in the same general area as any proposed route, and the advisability of ordering the construction of structures capable of expansion in transmission capacity through multiple circuiting or design modifications;

(11) Evaluation of irreversible and irretrievable commitments of resources should the proposed site or route be approved; and

(12) Where appropriate, consideration of problems raised by other state and federal agencies and local entities.

(13) If the board's rules are substantially similar to existing rules and regulations of a federal agency to which the utility in the state is subject, the federal rules and regulations shall be applied by the board.

(14) No site or route shall be designated which violates state agency rules.

Subd. 5. [EXEMPTION OF CERTAIN ROUTES.] A utility may apply to the board in a form and manner prescribed by the board to exempt the construction of any proposed high voltage transmission line from sections 116C.51 to 116C.69. Within 15 days of the board's receipt of the exemption application, the utility shall publish a notice and description of the exemption application in a legal newspaper of general circulation in each county in which the route is proposed and send a copy of the exemption application by certified mail to the chief executive of any regional development commission, county, incorporated municipality and

organized town in which the route is proposed and shall send a notice and description of the exemption application to each owner over whose property the line may run, together with an understandable description of the procedures the owner must follow should he desire to object. For the purpose of giving mailed notice under this subdivision, owners shall be those shown on the records of the county auditor or, in any county where tax statements are mailed by the county treasurer, on the records of the county treasurer; but other appropriate records may be used for this purpose. Except as to the owners of tax exempt property or property taxes on a gross earnings basis, every property owner whose name does not appear on the records of the county auditor or the county treasurer shall be deemed to have waived such mailed notice unless he has requested in writing that the county auditor or county treasurer, as the case may be, include his name on the records for such purpose. The failure to give mailed notice to a property owner, or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with this subdivision has been made. If any person who owns real property crossed by the proposed route, or any person owning property adjacent to property crossed by the proposed route, or any affected political subdivision files an objection with the board within 60 days after the board's receipt of the exemption application, the board shall either deny the exemption application or conduct a public hearing. If the board determines that the proposed high voltage transmission line will not create significant human or environmental impact, it may exempt the pro-

posed transmission line with any appropriate conditions, but the utility shall comply with any applicable state rule and any applicable zoning, building and land use rules, regulations and ordinances of any regional, county, local and special purpose government in which the route is proposed. The board may by rule require a fee to pay expenses incurred in processing exemptions. Any fee charged is subject to the conditions of section 116C.69, subdivision 2a.

Subd. 6. [RECORDING OF SURVEY POINTS.] The permanent location of monuments or markers found or placed by a utility in a survey of right-of-way for a route shall be placed on record in the office of the county recorder or registrar of titles. No fee shall be charged to the utility for recording this information.

116C.58 [PUBLIC HEARINGS; NOTICE.] The board shall hold an annual public hearing at a time and place prescribed by rule in order to afford interested persons an opportunity to be heard regarding its inventory of study areas and any other aspects of the board's activities and duties or policies specified in sections 116C.51 to 116C.69. The board shall hold at least one public hearing in each county where a site or route is being considered for designation pursuant to section 116C.57. Notice and agenda of public hearings and public meetings of the board held in each county shall be given by the board at least ten days in advance but no earlier than 45 days prior to such hearings or meetings. Notice shall be by publication in a legal newspaper of general circulation in the county in which the public hearing or public meeting is to be held and by certified mailed notice to

chief executives of the regional development commissions, counties, organized towns and the incorporated municipalities in which a site or route is proposed. All hearings held for designating a site or route or for exempting a route shall be conducted by a hearing examiner from the office of hearing examiners pursuant to the contested case procedures of chapter 15. Any person may appear at the hearings and present testimony and exhibits and may question witnesses without the necessity of intervening as a formal party to the proceedings.

116C.59 [PUBLIC PARTICIPATION.] Subdivision 1. [ADVISORY COMMITTEE.] The board shall appoint one or more advisory committees to assist it in carrying out its duties. Committees appointed to evaluate sites or routes considered for designation shall be comprised of as many persons as may be designated by the board, but at least one representative from each of the following: regional development commissions, counties and municipal corporations and one town board member from each county in which a site or route is proposed to be located. No officer, agent, or employee of a utility shall serve on an advisory committee. Reimbursement for expenses incurred shall be made pursuant to the rules governing state employees.

Subd. 2. Other public participation. The board shall adopt broad spectrum citizen participation as a principal of operation. The form of public participation shall not be limited to public hearings and advisory committees and shall be consistent with the board's rules, regulations, and guidelines as provided for in section 116C.66.

Subd. 3. [PUBLIC ADVISOR.] The board shall designate one staff person for the sole purpose of assisting and advising those affected and interested citizens on how to effectively participate in site or route proceedings.

Subd. 4. [SCIENTIFIC ADVISORY COMMITTEE.] The board may appoint one or more advisory committees composed of technical and scientific experts to conduct research and make recommendations concerning generic issues such as health and safety, underground routes, double circuiting and long range route and site planning. Reimbursement for expenses incurred shall be made pursuant to the rules governing reimbursement of state employees.

116C.60 [PUBLIC MEETINGS; TRANSCRIPT OF PROCEEDINGS; WRITTEN RECORDS.] Meetings of the board, including hearings, shall be open to the public. Minutes shall be kept of board meetings and a complete record of public hearings shall be kept. All books, records, files, and correspondence of the board shall be available for public inspection at any reasonable time. The board shall also be subject to section 471.705.

116C.61 [LOCAL REGULATION; STATE PERMITS; STATE AGENCY PARTICIPATION.] Subdivision 1. [REGIONAL, COUNTY AND LOCAL ORDINANCES, RULES, REGULATIONS; PRIMARY RESPONSIBILITY AND REGULATION OF SITE DESIGNATION, IMPROVEMENT AND USE.] To assure the paramount and controlling effect of the provisions herein over other state agencies, regional, county and local governments, and special purpose government districts, the issuance of a certificate of site compatibility or transmission line construction permit and subsequent purchase and use of such site

or route locations for large electric power generating plant and high voltage transmission line purposes shall be the sole site approval required to be obtained by the utility. Such certificate or permit shall supersede and preempt all zoning, building, or land use rules, regulations, or ordinances promulgated by regional, county, local and special purpose government.

Subd. 2. [FACILITY LICENSING.] Notwithstanding anything herein to the contrary, utilities shall obtain state permits that may be required to construct and operate large electric power generating plants and high voltage transmission lines. A state agency in processing a utility's facility permit application shall be bound to the decisions of the board, with respect to the site or route designation, and with respect to other matters for which authority has been granted to the board by sections 116C.51 to 116C.69.

Subd. 3. [STATE AGENCY PARTICIPATION.] State agencies authorized to issue permits required for construction or operation of large electric power generating plants or high voltage transmission lines shall participate in and present the position of the agency at public hearings and all other activities of which the board on specific site or route designations of the board, which position shall clearly state whether the site or route being considered for designation or permit approval for a certain size and type of facility will be in compliance with state agency standards, regulations or policies.

116C.62 [IMPROVEMENT OF SITES AND ROUTES.] Utilities which

have acquired a site or route in accordance with sections 116C.51 to 116C.69 may proceed to construct or improve the site or route for the intended purposes at any time, subject to section 116C.61, subdivision 2, provided that if the construction and improvement commences more than four years after a certificate or permit for the site or route has been issued then the utility must certify to the board that the site or route continues to meet the conditions upon which the certificate of site compatibility or transmission line construction permit was issued.

116C.63 [EMINENT DOMAIN POWERS; RIGHT OF CONDEMNATION.] Subdivision 1. Nothing in this section shall invalidate the right of eminent domain vested in utilities by statute or common law existing as of May 24, 1973, except to the extent modified herein. The right of eminent domain shall continue to exist for utilities and may be used according to law to accomplish any of the purposes and objectives of sections 116C.51 to 116C.69, including acquisition of the right to utilize existing high voltage transmission facilities which are capable of expansion or modification to accommodate both existing and proposed conductors. Notwithstanding any law to the contrary, all easement interests shall revert to the then fee owner if a route is not used for high voltage transmission line purposes for a period of five years.

Subd. 2. In eminent domain proceedings by a utility for the acquisition of real property proposed for construction of a route or a site, the proceedings shall be conducted in the manner prescribed in chapter 117, except as otherwise specifically pro-

vided in this section.

Subd. 3. When such property is acquired by eminent domain proceedings or voluntary purchase and the amount the owner shall receive for the property is finally determined, the owner who is entitled to payment may elect to have the amount paid in not more than ten annual installments, with interest on the deferred installments, at the rate of eight percent per annum on the unpaid balance, by submitting a written request to the utility before any payment has been made. After the first installment is paid the petitioner may make its final certificate as provided by law, in the same manner as though the entire amount had been paid.

Subd. 4. When private real property defined as class 3, 3b, 3c, 3cc, 3d, or 3f pursuant to section 273.13 is proposed to be acquired for the construction of a site or route by eminent domain proceedings, the fee owner, or when applicable, the fee owner with the written consent of the contract for deed vendee, or the contract for deed vendee with the written consent of the fee owner, shall have the option to require the utility to condemn a fee interest in any amount of contiguous, commercially viable land which he wholly owns or has contracted to own in undivided fee and elects in writing to transfer to the utility within 60 days after his receipt of the notice of the objects of the petition filed pursuant to section 117.055. Commercial viability shall be determined without regard to the presence of the utility route or site. The owner or, when applicable, the contract vendee shall have only one such option and may not

expand or otherwise modify his election without the consent of the utility. The required acquisition of land pursuant to this subdivision shall be considered an acquisition for a public purpose and for use in the utility's business, for purposes of chapter 117 and section 500.24, respectively; provided that a utility shall divest itself completely of all such lands used for farming or capable of being used for farming not later than the time it can receive the market value paid at the time of acquisition of lands less any diminution of value by reason of the presence of the utility route or site. Upon the owner's election made under this subdivision, the easement interest over and adjacent to the lands designated by the owner to be acquired in fee, sought in the condemnation petition for a high voltage transmission line right-of-way shall automatically be converted into a fee taking.

Subd. 5. A utility shall notify by certified mail each person who has transferred any interest in real property to the utility after July 1, 1974, but prior to the effective date of this act, for the purpose of a site or route that he may elect in writing within 90 days after receipt of notice to require the utility to acquire any remaining contiguous parcel of land pursuant to this section or to return any payment to the utility and require it to make installment payments pursuant to this section.

116C.635 [ANNUAL PAYMENTS.] A utility shall annually pay to the owners of land defined as class 3, 3b, 3c, 3cc, 3d, or 3f pursuant to section 273.13 listed on records of the county auditor or treasurer over which runs a high voltage transmission line

as defined in section 116C.52, subdivision 3, an amount determined by multiplying a fraction, the numerator of which is the length of high voltage transmission line which runs over that parcel and the denominator of which is the total length of that particular line running over all property within the county, by ten percent of the transmission and distribution line tax revenue derived from the tax on that line pursuant to section 273.42. Prior to August 1 of each year, the auditor of each county shall send a statement to the utility specifying the amount of the payment the utility must make to each qualifying owner of land within the county pursuant to this section. Where a right-of-way width is shared by more than one property owner, the numerator shall be adjusted by multiplying the length of line on the parcel by the proportion of the total width on the parcel owned by that property owner. The amount of payment for which the property qualifies pursuant to this subdivision shall not exceed 20 percent of the total gross tax on the parcels prior to deduction of the state paid agricultural credit and the state paid homestead credit. The payments of this section shall be made to each affected landowner by the appropriate utility on or before October 1 of each year after 1977 based upon the tax levied in the previous year and shall not reduce any payment pursuant to a voluntary agreement or eminent domain proceeding.

[This section is repealed effective for taxes levied in 1981 payable in 1982 and thereafter. Minn. Laws 1980, Ch. 607, Art. II, Sec. 5.]

116C.64 [FAILURE TO ACT.] If the board fails to act within the times specified in section 116C.57, any affected utility may seek an order of the district court requiring the board to designate or refuse to designate a site or route.

116C.645 [REVOCATION OR SUSPENSION.] A site certificate or construction permit may be revoked or suspended by the board after adequate notice of the alleged grounds for revocation or suspension and a full and fair hearing in which the affected utility has an opportunity to confront any witness and respond to any evidence against it and to present rebuttal or mitigating evidence upon a finding by the board of:

(1) Any false statement knowingly made in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted a change in the board's findings;

(2) Failure to comply with material conditions of the site certificate or construction permit, or failure to maintain health and safety standards; or

(3) Any material violation of the provisions of sections 116C.51 to 116C.69, any rule promulgated pursuant thereto, or any order of the board.

116C.65 [JUDICIAL REVIEW.] Any utility, party or person aggrieved by the issuance of a certificate or emergency certificate of site compatibility or transmission line construction permit from the board or a certification of continuing suitability filed by a utility with the board or by a final order in accordance with any rules promulgated by the board, may appeal

therefrom to any district court where such a site or route is to be located. The appeal shall be filed within 60 days after the publication in the state register of notice of the issuance of the certificate or permit by the board or certification filed with the board or the filing of any final order by the board. The notice of appeal to the district court shall be filed with the clerk of the district court and a copy thereof mailed to the board and affected utility. Any utility, party or person aggrieved by a final order or judgment rendered on appeal to the district court may appeal therefrom to the supreme court in the manner provided in civil actions. The scope of judicial review shall be as prescribed in section 15.0424.

116C.66 [RULES.] The board, in order to give effect to the purposes of sections 116C.51 to 116C.69, shall prior to July 1, 1978, adopt rules consistent with sections 116C.51 to 116C.69, including promulgation of site and route designation criteria, the description of the information to be furnished by the utilities, establishment of minimum guidelines for public participation in the development, revision, and enforcement of any rule, plan or program established by the board, procedures for the revocation or suspension of a construction permit or a certificate of site compatibility, the procedure and timeliness for proposing alternative routes and sites, and route exemption criteria and procedures. No rule adopted by the board shall grant priority to state owned wildlife management areas over agricultural lands in the designation of route avoidance areas. The provisions of chapter 15 shall apply to the appeal of rules

adopted by the board to the same extent as it applies to review of rules adopted by any other agency of state government.

The chief hearing examiner shall, prior to January 1, 1978, adopt procedural rules for public hearings relating to the site and route designation process and to the route exemption process. The rules shall attempt to maximize citizen participation in these processes.

116C.67 [SAVINGS CLAUSE.] The provisions of sections 116C.51 to 116C.69 shall not apply to any site evaluated and recommended by the governor's environmental quality council prior to the date of enactment, and to any high voltage transmission lines, the construction of which will commence prior to July 1, 1974.

116C.68 [ENFORCEMENT, PENALTIES.] Subdivision 1. Any person who violates sections 116C.51 to 116C.69 or any rule promulgated hereunder, or knowingly submits false information in any report required by sections 116C.51 to 116C.69 is guilty of a misdemeanor for the first offense and a gross misdemeanor for the second and each subsequent offense. Each day of violation shall constitute a separate offense.

Subd. 2. The provisions of sections 116C.51 to 116C.69 or any rules promulgated hereunder may be enforced by injunction, action to compel performance or other appropriate action in the district court of the county wherein the violation takes place. The attorney general shall bring any action under this subdivision upon the request of the board.

Subd. 3. When the court finds that any person has violated

sections 116C.51 to 116C.69, any rule hereunder, knowingly submitted false information in any report required by sections 116C.51 to 116C.69, or has violated any court order issued under sections 116C.51 to 116C.69, the court may impose a civil penalty of not more than $10,000 for each violation. These penalties shall be paid to the general fund in the state treasury.

116C.69 [BIENNIAL REPORT; APPLICATION FEES; APPROPRIATION; FUNDING.] Subdivision 1. [BIENNIAL REPORT.] Before November 15 of each even-numbered year the board shall prepare and submit to the legislature a report of its operations, activities, findings and recommendations concerning sections 116C.51 to 116C.69. The report shall also contain information on the board's biennial expenditures, its proposed budget for the following biennium, and the amounts paid in certificate and permit application fees pursuant to subdivisions 2 and 2a and in assessments pursuant to subdivision 3. The proposed budget for the following biennium shall be subject to legislative review.

Subd. 2. [SITE APPLICATION FEE.] Every applicant for a site certificate shall pay to the board a fee in an amount equal to $500 for each $1,000,000 of production plant investment in the proposed installation as defined in the Federal Power Commission Uniform System of Accounts. The board shall specify the time and manner of payment of the fee. If any single payment requested by the board is in excess of 25 percent of the total estimated fee, the board shall show that the excess is reasonably necessary. The applicant shall pay within 30 days of notification any additional fees reasonably necessary for completion of the site eval-

uation and designation process by the board. In no event shall the total fees required of the applicant under this subdivision exceed an amount equal to 0.001 of said production plant investment ($1,000 for each $1,000,000). All money received pursuant to this subdivision shall be deposited in the general fund. So much money as is necessary is annually appropriated from the general fund to pay expenses incurred in processing applications for certificates in accordance with sections 116C.51 to 116C.69 and in the event the expenses are less than the fee paid, to refund the excess to the applicant. This annual appropriation shall not exceed the fees to be paid during each period.

Subd. 2a. [ROUTE APPLICATION FEE.] Every applicant for a transmission line construction permit shall pay to the board a base fee of $35,000 plus a fee in an amount equal to $1,000 per mile length of the longest proposed route. The board shall specify the time and manner of payment of the fee. If any single payment requested by the board is in excess of 25 percent of the total estimated fee, the board shall show that the excess is reasonably necessary. In the event the actual cost of processing an application up to the board's final decision to designate a route exceeds the above fee schedule, the board may assess the applicant any additional fees necessary to cover the actual costs, not to exceed an amount equal to $500 per mile length of the longest proposed route. All money received pursuant to this subdivision shall be deposited in the general fund. So much money as is necessary is annually appropriated from the general fund to pay expenses incurred in processing applications for

construction permits in accordance with sections 116C.51 to 116C.69 and in the event the expenses are less than the fee paid, to refund the excess to the applicant. This annual appropriation shall not exceed the fees to be paid during each period.

Subd. 3. [FUNDING; ASSESSMENT.] The board shall finance its base line studies, general environmental studies, development of criteria, inventory preparation, monitoring of conditions placed on site certificates and construction permits, and all other work, other than specific site and route designation from an assessment made annually by the board against all utilities. Each share shall be determined as follows: (1) the ratio that the annual retail kilowatt-hour sales in the state of each utility bears to the annual total retail kilowatt-hour sales in the state of all such utilities, multiplied by 0.667, plus (2) the ratio that the annual gross revenue from retail kilowatt-hour sales in the state of each utility bears to the annual total gross revenues from retail kilowatt-hour sales in the state of all such utilities, multiplied by 0.333, as determined by the board. The assessment shall be credited to the general fund and shall be paid to the state treasury within 30 days after receipt of the bill, which shall constitute notice of said assessment and demand of payment thereof. The total amount which may be assessed to the several utilities under authority of this subdivision shall not exceed the annual budget of the board for carrying out the purposes of this subdivision.

[EMERGENCY RULES.]* [Not Codified. Minn. Laws 1977, Ch. 439, s. 26.] The environmental quality board is authorized and directed to promulgate emergency rules pursuant to section 15.0412, subdivision 5, within 90 days of the effective date of this act, concerning the procedures for the revocation or suspension of a construction permit or a certificate of site compatibility and the procedure for designation of a route, including the manner and timeliness of proposing alternative routes, route designation considerations and route exemption criteria and procedures.

The chief hearing examiner is authorized and directed to promulgate emergency rules pursuant to section 15.0412, subdivision 5, within 30 days of the effective date of this act, establishing procedures for public hearings relating to the designation and exemption of routes. The rules shall attempt to maximize citizen participation in the route designation and exemption process.

Any emergency rules authorized by this section to be adopted by the chief hearing examiner shall be effective until either January 1, 1978, or until the chief hearing examiner adopts permanent rules pursuant to chapter 15, whichever occurs first. Any

*NOTE: Some "sections" referred to under Emergency Rules are those used in the Conference committee version of the Power Plant Siting Act:

-Section 18 refers to 116C.635 ANNUAL PAYMENTS. (p. 18)
-Section 22 refers to 116C.66 RULES (p. 21)
-Section 26 refers to this section, EMERGENCY RULES (p. 26)

emergency rules authorized by this section to be adopted by the environmental quality board shall be effective until July 1, 1978, or until the board adopts permanent rules pursuant to chapter 15, whichever occurs first.

Except as herein provided, this act is effective the day following its final enactment. Any corridor, route or site application filed or any public hearing or other proceeding pursuant to sections 116C.51 to 116C.69 initiated or conducted prior to the effective date of this act shall be considered, conducted and acted upon in accordance with the law and rules in effect prior to the effective date of this act. Any route or site application filed or any public hearing or other proceeding pursuant to sections 116C.51 to 116C.69 initiated or conducted subsequent to the effective date of this act shall be postponed until the completion of the emergency rules authorized in section 26, at which time it shall be considered, conducted and acted upon in accordance with sections 116C.51 to 116C.69, as amended by this act, and the emergency or permanent rules adopted pursuant to sections 22 or 26 of this act. Section 18 is effective January 1, 1978.

[Minn. Laws 1977, Ch. 439, s. 28.]

SUMMARY OF MINNESOTA STATUTES REFERRED TO IN THE POWER PLANT SITING ACT

Page 6 - Chapter 116D: Environmental Policy Act

116D.02 Subd. 2 lists nineteen goals that state government should work toward in order to carry out the Environmental Policy Act. Goals relate to energy conservation, preserving natural resources, reducing air, water, and noise pollution, and other matters.

Page 13, 21 and 26 - Chapter 15: Administrative Procedures Act

This act sets forth the procedures which a state agency must follow in adopting, amending, suspending, or repealing its rules.

15.0412 Subd. 5 includes procedures for holding public hearings and for promulgating rules.

15.0424 provides for judicial review of both the process and the substance of an agency's decision-making.

Page 14 - Chapter 471: Rights, Powers, Duties; Several Political Subdivisions

471.705 requires that all meetings of governing bodies be open to the public and votes of these bodies be recorded and available.

Pages 16, 17 and 18 - Chapter 117: Eminent Domain

This chapter sets forth procedures which must be followed when the right of eminent domain is exercised.

Pages 17, 18 and 19 - Chapter 273: Taxes; Listing, Assessment

273.13 classifies different types of property for purposes of taxation.

Class 3: includes electric generating transmission or distribution systems and certain kinds of agricultural land.

Class 3b: consists of agricultural land used for purposes of a homestead.

Class 3c, 3cc: consists of certain kinds of real estate used for purposes of a homestead.

Class 3d: consists of residential real estate.

Class 3f: consists of buildings owned by the occupant but located on property someone else owns.

Page 18 - Chapter 500: Estates in Real Property

500.24 restricts ownership of farm land by corporations in order to protect family farms.

CHAPTER 116G

CRITICAL AREAS

116G.01 CITATION. Sections 116G.01 to 116G.14 shall be known as the critical areas act of 1973.

[*1973 c 752 s 1*]

116G.02 POLICY. The legislature finds that the development of certain areas of the state possessing important historic, cultural, or esthetic values, or natural systems which perform functions of greater than local significance, could result in irreversible damage to these resources, decrease their value and utility for public purposes, or unreasonably endanger life and property. The legislature therefore determines that the state should identify these areas of critical concern and assist and cooperate with local units of government in the preparation of plans and regulations for the wise use of these areas.

[*1973 c 752 s 2*]

116G.03 DEFINITIONS. Subdivision 1. As used in sections 116G.01 to 116G.14, the terms defined in this section have the meanings ascribed to them.

Subd. 2. "Board" means the Minnesota environmental quality board.

Subd. 3. "Local unit of government" means any political subdivision of the state, including but not limited to counties, municipalities, townships, together with all agencies and boards thereof.

Subd. 4. "Government development" means any development financed in whole or in substantial part, directly or indirectly, by the United States, the state of Minnesota, or agency or political subdivision thereof.

Subd. 5. "Regional development commission" means any regional development commission created pursuant to Minnesota Statutes 1971, Sections 462.381 to 462.396, inclusive and the metropolitan council created by Minnesota Statutes 1971, Chapter 473B.

Subd. 6. A "development permit" includes any building permit, zoning permit, water use permit, discharge permit, permit for dredging, filling or altering any portion of a watercourse, plat approval, rezoning, certification, variance or other action having the effect of permitting any development as defined in sections 116G.01 to 116G.14.

Subd. 7. "Development" means the making of any material change in the use or appearance of any structure or land including but not limited to:

(a) a reconstruction, alteration of the size, or material change in the external appearance of a structure on the land;

(b) a change in the intensity of use of the land;

(c) alteration of a shore or bank of a river, stream, lake or pond;

(d) commencement of drilling (except to obtain soil samples), mining or excavation;

(e) demolition of a structure;

(f) clearing of land as an adjunct to construction;

(g) deposit of refuse, solid or liquid waste, or fill on a parcel of land;

(h) the dividing of land into three or more parcels.

Subd. 8. "Land" means the earth, water, and air, above, below or on the surface, and includes any improvements or structures customarily regarded as land.

Subd. 9. "Parcel" of land means any quantity of land capable of being described with such definiteness that its location and boundaries may be established, which is designated by its owner or developer as land to be used or developed as a unit, or which has been used or developed as a unit.

Subd. 10. "Developer" means any person, including a governmental agency, undertaking any development as defined in sections 116G.01 to 116G.14.

Subd. 11. "Structure" means anything constructed or installed or portable, the use of which requires a location on a parcel of land. It includes a movable structure while it is located on land which can be used for housing, business, commercial, agricultural, or office purposes either temporarily or permanently. Structure also includes fences, billboards, swimming pools, poles, pipelines, transmission lines, tracks, and advertising signs.

[*1973 c 752 s 3; 1975 c 271 s 6*]

116G.04 RULES AND REGULATIONS. The board shall adopt such rules and regulations pursuant to chapter 15, as are necessary for the administration of sections 116G.01 to 116G.14.

[*1973 c 752 s 4; 1975 c 271 s 6*]

116G.05 CRITERIA FOR THE SELECTION OF AREAS OF CRITICAL CONCERN. The board shall, in the manner provided in chapter 15, prepare criteria for the selection of areas of critical concern which have the following characteristics:

(1) An area significantly affected by, or having a significant effect upon, an existing or proposed major government development which is intended to serve substantial numbers of persons beyond the vicinity in which the development is located and which tends to generate substantial development or urbanization. (2) An area containing or having a significant impact upon historical, natural, scientific, or cultural resources of regional or statewide importance.

[*1973 c 752 s 5; 1975 c 271 s 6*]

116G.06 DESIGNATION. Subdivision 1. (a) The board shall periodically study and assess the resources and development of the state and shall recommend to the governor those areas that should be designated as areas of critical concern in accordance with criteria established in section 116G.05. In its recommendations, the board shall specify the boundaries of the proposed area of critical concern, state the reasons why the particular area proposed is of critical concern to the state or region, the dangers that would result from uncontrolled or inappropriate development of the area and the advantages that would be achieved from the development of the area in a coordinated manner and shall recommend specific principles for guiding the development of the area.

(b) Each regional development commission may from time to time recommend to the board areas wholly or partially within its jurisdiction that meet the criteria for areas of critical concern as defined in section 116G.05. Each regional development commission shall solicit from the local units of government within its jurisdiction suggestions as to areas to be recommended. A local unit of government in an area where no regional development commission has been established may from time to time recommend to the board areas wholly or partially within its jurisdiction that meet the criteria for areas of critical concern as defined in section 116G.05. The board shall provide the regional development commission or local unit of government with a written statement of its decision and the reasons therefor.

(c) Prior to submitting any recommendations to the governor, under this subdivision, the board shall conduct a public hearing in the manner provided in chapter 15 on the proposed designation at a location convenient to those persons affected by such designation.

Subd. 2. (a) The governor may designate by written order all or part of the recommended areas as areas of critical concern and specify the boundaries thereof and shall notify all local units of government in which any part or parts of a designated area or areas of critical concern are located.

(b) The order designating an area of critical concern shall (1) describe the boundaries of the area of critical concern, (2) indicate the reason that a particular area is of critical concern, (3) specify standards and guidelines to be followed in preparing and adopting plans and regulations required in section 116G.07, and (4) indicate what development, if any, shall be permitted consistent with the policies of sections 116G.01 to 116G.14 pending the adoption of plans and regulations.

(c) The order designating an area of critical concern shall be effective for no longer than three years pending approval by the legislature or by the regional development commission, where one exists, of each development region in which a part of the area of critical concern is located. After a regional development commission has approved the designation of an area of critical concern, it shall not revoke or rescind its approval, except as necessary to update and re-evaluate plans and regulations under section 116G.10.

[*1973 c 752 s 6; 1975 c 271 s 6*]

116G.07 PREPARATION, REVIEW, AND APPROVAL OF PLANS AND REGULATIONS. Subdivision 1. (a) Within 30 days of receiving notification of the designation of an area or areas of critical concern within its jurisdiction, the local unit of government shall submit existing plans and regulations which deal with or affect the area or areas so designated to the appropriate regional development commission or to the board if no regional development commission has been established.

(b) If no plans or regulations exist, the local unit of government shall upon receiving notification of the designation of an area or areas of critical concern within its jurisdiction:

(1) Within six months of said notification prepare plans and regulations for the designated area or areas of critical concern and submit them to the appropriate regional development commission for review; or

(2) Within 30 days of said notification request that the appropriate regional development commission prepare plans and regulations for the area or areas of critical concern. Within six months of receipt of such request, the regional development commission shall prepare said plans and regulations and submit them to the board for review. If no regional development commission has been established, the local unit of government may request that the board prepare plans and regulations for adoption by the local unit of government.

Subd. 2. Within 45 days of receiving plans and regulations from the local unit of government under the provisions of subdivision 1, the regional development commission shall review the plans and regulations to determine their consistency with regional objectives and the provisions of the order designating the areas of critical concern and transmit its recommendations, together with the plans and regulations, to the board.

Subd. 3. (a) Within 45 days of receiving plans and regulations from the local unit of government or a regional development commission, the board shall review the plans and regulations to determine their consistency with the provisions of the order designating the area, the recommendations of the regional development commission, and the review comments of such state agencies as the board shall deem appropriate, and shall either approve the plans and regulations by written order or return them to the local unit of government or regional development commission for modification along with a written explanation of the need for modification.

(b) Plans and regulations which are returned to the local unit of government or regional development commission for modification shall be revised consistent with the instructions of the board and resubmitted to the board within 60 days of their receipt, provided that final revision need not be made until a formal meeting has been held with the board on the plans and regulations if requested by the local unit of government or regional development commission.

(c) Plans or regulations prepared pursuant to this section shall become effective when enacted by the local unit of government or, following legislative or regional development commission approval of the designation, upon such date as the board may provide in its order approving said plans and regulations.

[*1973 c 752 s 7; 1975 c 271 s 6*]

116G.08 EXCEPTIONS. (a) If, in the opinion of the board, the local unit of government is making a conscientious attempt to develop plans and regulations for the protection of a designated area or areas of critical concern within its jurisdiction, but the scope of the project is of a magnitude that precludes the completion, review, and adoption of the plans and regulations within the time limits established in section 116G.07, the board may grant an appropriate extension of time.

(b) If the board determines that a designated area or areas of critical concern is of a size and complexity that precludes the development of plans and regulations by a local unit of government or a regional development commission, or that the development of plans and regulations requires the assistance of the state, the board shall direct the appropriate state agency or agencies to assist the local unit of government and the regional development commission in preparing the plans and regulations in accordance with a time schedule established by the board.

[*1973 c 752 s 8; 1975 c 271 s 6*]

116G.09 FAILURE TO PREPARE AND SUBMIT PLANS AND REGULATIONS. Subdivision 1. Except as otherwise provided in section 116G.08, if any local unit of government fails to prepare plans and regulations that are acceptable to the board within one year of the order designating an area or areas of critical concern within its jurisdiction, the board shall prepare and, after conducting a public hearing in the manner provided in chapter 15 at a location convenient to those persons affected by such plans and regulations, adopt such plans and regulations applicable to that government's portion of the area of critical concern as may be necessary to effect the purposes of sections 116G.01 to 116G.14. If such plans and regulations are adopted, they shall apply and be effective as if adopted by the local unit of government. Notice of any proposed order issued under this section shall be given to all units of government having jurisdiction over the area of critical concern.

Subd. 2. Plans and regulations adopted by the board under this section shall be administered by the local unit of government as if they were part of the local ordinance.

Subd. 3. At any time after the preparation and adoption of plans and regulations by the board, a local unit of government may submit plans and regulations pursuant to section 116G.07 which, if approved by the board as therein provided, supersede any plans and regulations adopted under this section.

Subd. 4. If the board determines that the administration of the local plans and regulations are inadequate to protect the state or regional interest, the board may institute appropriate judicial proceedings to compel proper enforcement of the plans and regulations.

[*1973 c 752 s 9; 1975 c 271 s 6*]

116G.10 UPDATING AND RE-EVALUATION OF PLANS AND REGULATIONS. Subdivision 1. If a local unit of government finds it necessary or desirable to amend or rescind plans and regulations that have been approved by the board, it shall resubmit its plans and regulations, together with any recommended changes thereto, for review and approval by the board.

Subd. 2. Two years from the initial date of the board's approval of the plans and regulations of a local unit of government, or from the date of a review conducted under the provisions of subdivision 1, the local unit of government shall resubmit its plans and regulations, together with any recommended changes thereto, for review and approval by the board.

Subd. 3. Approval of amendments or rescission shall become effective only upon approval thereof by the board in the same manner as for approval of the original plans and regulations as provided in section 116G.07.

[*1973 c 752 s 10; 1975 c 271 s 6*]

116G.11 SUSPENSION OF DEVELOPMENT. Except as provided in section 116G.12, upon the designation of an area of critical concern, no local unit of government or state agency shall grant a development permit affecting any portion of the area except as otherwise specified in the order designating the area.

[*1973 c 752 s 11*]

116G.12 DEVELOPMENT PERMITS. Subdivision 1. If an area of critical concern has been designated by the governor pursuant to section 116G.06, a local unit of government shall grant a development permit only in accordance with the provisions of this section.

Subd. 2. If no plans and regulations for the area of critical concern have been adopted under the provisions of section 116G.07, the local unit of government shall grant a development permit only if

(a) the development is specifically permitted by the order designating the area of critical concern or is essential to protect the public health, safety, or welfare because of an existing emergency; and

(b) a local ordinance has been in effect immediately prior to the designation of the area of critical concern and a development permit would have been granted thereunder.

Subd. 3. If plans and regulations for an area of critical concern have become effective under the provisions of section 116G.07, the local unit of government shall permit development only in accordance with those plans and regulations.

Subd. 4. The local unit of government shall notify the board of

(a) any application for a development permit in any area of critical concern for which no plans or regulations have become effective under the provisions of section 116G.07; or

(b) any application for a special development permit in any area of critical concern for which plans and regulations have become effective under the provisions of section 116G.07.

[*1973 c 752 s 12; 1975 c 271 s 6*]

116G.13 PROTECTION OF LANDOWNERS' RIGHTS. Subdivision 1. Nothing in sections 116G.01 to 116G.14 authorizes any governmental agency to adopt a rule or regulation or issue any order that is unduly restrictive or constitutes a taking of real or personal property in violation of the constitution of this state or of the United States.

Subd. 2. Neither the designation of an area of critical concern nor the adoption of any regulations for such an area shall in any way limit or modify the rights of any person to complete any development that has been authorized by registration and recordation of a subdivision pursuant to state laws, or by a building permit or other authorization to commence development on which there has been reliance and a change of position, and which registration or recordation was accomplished, or which permit or authorization was issued prior to the date of notice for public hearing as provided by section 116G.06. If a developer has by his actions in reliance on prior regulations obtained vested or other legal rights that in law would have prevented a local government from changing those regulations in a way adverse to his interests, nothing in sections 116G.01 to 116G.14 authorizes any governmental agency to abridge those rights.

[*1973 c 752 s 13*]

116G.14 PLANNING GRANTS. The board shall prepare guidelines for dispersing funds to local units of government or regional development commissions for as much as 100 percent but not less than 50 percent of the non-federal cost of preparing and adopting plans and regulations for areas of critical concern pursuant to section 116G.07, for a period not to exceed five years from the date the legislature or regional development commissions approve the designation of an area of critical concern.

[*1973 c 752 s 14; 1975 c 271 s 6*]

MINNESOTA STATE REGULATIONS

Rules and Regulations of

THE MINNESOTA ENVIRONMENTAL QUALITY COUNCIL

CRITICAL AREAS PLANNING PROCESS

1974 EDITION

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CHAPTER TWENTY: MEQC 51-60

CRITICAL AREAS PLANNING PROCESS

MEQC 51 AUTHORITY, PURPOSE, DEFINITIONS

(a) **Authority.** The Regulations contained herein are prescribed by the Minnesota Environmental Quality Council, pursuant to Minn. Stat. Sect. 116G.04 (Supp. 1973) for the implementation of Minn. Stat. Sections 116G.01 to 116G.14 (Supp. 1973), herein referred to as the Critical Areas Act of 1973. This Act deals with the duties and responsibilities of the Environmental Quality Council, state agencies, Regional Development Commissions, and local units of government in the identification and designation of critical areas and the preparation and implementation of plans and regulations for Critical Areas.

(b) **Purpose.**

(1) The purpose of these Regulations is to provide public agencies and private persons with policy, definitions, procedures, criteria, standards and guidelines of statewide application to be used in the implementation of the Critical Areas Act.

(2) Because development in areas of the State that possess important historic, cultural, or esthetic values or natural systems that perform functions of greater than local significance may result in irreversible damage to these resources, decrease their value and utility for public purposes, or unreasonably endanger life and property, the State shall identify these critical areas and assist and cooperate with local units of government in the preparation of plans and regulations for the wise use of these areas.

(3) The critical areas planning process is intended to be neither a "court of last resort" to review purely local planning and zoning issues nor a substitute for an on-going land planning process involving the legislative, executive and judicial branches of state and local government. The critical areas planning process shall be limited to exceptional circumstances where other powers are unavailable, inapplicable or are not being used effectively to ensure adequate and coordinated local, regional and state planning and regulation to protect the public interest in the area.

(4) The critical areas planning process is intended to be applied to a limited number of areas in the State. Critical area designation based on criteria that may characterize large or common areas of the State or region shall be avoided.

(c) **Definitions.** The following terms as used in these Regulations, shall have the following meanings, unless otherwise defined:

(1) "Council" means the Minnesota Environmental Quality Council created pursuant to Minn. Stat. §116C.01 et. seq. (Supp. 1973).

(2) "Developer" means any person or governmental agency undertaking any development as defined in these Regulations.

(3) "Development" means the making of any material change in the use or appearance of any structure or land including but not limited to:

(aa) Reconstruction, alteration of the size, or material change in the external appearance of a structure on the land;

(bb) Change in the intensity of use of the land;

(cc) Alteration of a shore or bank of a river, stream, lake or pond;

(dd) Commencement of drilling (except to obtain soil samples), mining or excavation;

(ee) Demolition of a structure;

(ff) Clearing of land as an adjunct to construction;

(gg) Deposit of refuse, solid or liquid waste, or fill on a parcel of land;

(hh) Division of land into three or more parcels.

(4) "Development permit" means a building permit; zoning permit; water use permit; discharge permit; permit for dredging, filling or altering any portion of a watercourse; plat approval; re-zoning; certification; variance or other action having the effect of permitting any development as defined in the Act or these Regulations.

(5) "Government development" means any development financed in whole or in substantial part, directly or indirectly, by the United States, the State of Minnesota, or any agency or political subdivision thereof.

(aa) "Development financed in substantial part" means development with more than 50 percent of its financing or reimbursement from monies of the governments, or any agency, or political subdivision thereof.

(bb) "Development financed indirectly" means development underwritten or insured by monies of the governments, or any agency or political subdivision thereof.

(6) "Land" means the earth, water, and air, above, below or on the surface and includes any improvements or structures customarily regarded as land.

(7) "Local unit of government" means any political subdivision of the State, including but not limited to counties, municipalities, townships, and all agencies and boards thereof.

(8) "Order" means the Governor's Executive Order that formally designates a particular area as a critical area upon the recommendation of the Council.

(9) "Parcel" of land means any quantity of land capable of being described with such definiteness that its location and boundaries may be established, which is designated by its owner or developer as land to be used or developed as a unit, or which has been used or developed as a unit.

(10) "Powers" means the statutory or other legal authority of federal, state, or regional agencies and local units of government.

(11) "Recommendation" means a written document proposing a particular area as a critical area that is officially submitted for review and action by the appropriate bodies.

(12) "Regional Development Commission" means any Regional Development Commission created pursuant to Minn. Stat. Sections 462.381 to 462.396 (1971) and the Metropolitan Council created pursuant to Minn. Stat. Chapter 473B (1971).

(13) "Regulations" means the instruments by which state agencies and local units of government control the physical development of the critical area or any part or detail thereof. Regulations include, but are not limited to, ordinances establishing zoning, subdivision control, platting and the adoption of detailed maps.

(14) "State agency" means a State board, commission, institution, or any other unit of state government.

(15) "Structure" means anything constructed or installed or portable, the use of which requires a location on a parcel of land. It includes a movable structure which can, while it is located on land, be used for housing, business, commercial, agricultural, or office purposes either temporarily or permanently. Structure also includes fences, billboards, swimming pools, poles, pipelines, transmission lines, tracks and advertising signs.

MEQC 52 CHARACTERISTICS AND CRITERIA FOR THE IDENTIFICATION OF CRITICAL AREAS

(a) **Characteristics of Critical Areas.** A critical area shall have one of the following four characteristics:

(1) An area significantly affected by an existing or proposed major government development that is intended to serve substantial numbers of persons beyond the vicinity in which the development is located and that tends to generate substantial development or urbanization.

(2) An area having a significant effect upon an existing or proposed major government development that is intended to serve substantial numbers of persons beyond the vicinity in which the development is located and that tends to generate substantial development or urbanization.

(3) An area containing historical, natural, scientific, or cultural resources of regional or statewide importance.

(4) An area having a significant impact upon historical, natural, scientific, or cultural resources of regional or statewide importance.

(b) **Criteria.** In accordance with the characteristics of MEQC 52(a) and the purpose of these Regulations, a critical area shall meet all of the following criteria:

(1) The area shall be of significant regional or statewide public interest;

(2) Other powers are unavailable, inapplicable, or are not being used effectively to ensure adequate and coordinated local, regional, or state planning and regulation to protect the public interest in the area;

(3) The area shall be one of a limited number of such areas in the region or state; and

(4) The area shall be described specifically enough to permit delineation by legal description.

MEQC 53 RECOMMENDATIONS OF CRITICAL AREAS

(a) **Content.** A recommendation to designate a critical area shall include all of the following:

(1) The legal description of the boundaries of the area;

(2) A description of the characteristic(s) of the area pursuant to MEQC 52(a);

(3) A description of how the area meets all of the criteria of MEQC 52(b);

(4) The dangers to the regional or statewide interest that would result from unregulated development or development contrary to that interest;

(5) The advantages that would be achieved from the development of the area in a manner that coordinates state, regional, and local interests;

(6) The standards and guidelines to be followed in the preparation and adoption of plans and regulations, to the extent possible; and

(7) The development, if any, that would be permitted pending adoption of plans and regulations for a critical area.

(b) Initiation. A recommendation to designate a critical area may be initiated by the following:

(1) The Council;

(2) Regional Development Commissions; or

(3) Local units of government.

State agencies and private persons or organizations may submit suggestions for a recommendation to the Council, a Regional Development Commission or a local unit of government. The burden of proof to substantiate the recommendation shall rest with the Council, the Regional Development Commission or the local unit of government that initiates the recommendation.

(c) Local Unit of Government Action on Recommendations.

(1) In areas within the jurisdiction of an existing Regional Development Commission, a local unit of government initiating a recommendation shall submit it to the Regional Development Commission.

(2) In areas where no Regional Development Commission exists, a local unit of government initiating a recommendation:

(aa) Shall give legal notice of the recommendation and the public hearing or meeting on the recommendation in the official newspaper of each county in the area directly affected by the recommendation within 15 days of initiating the recommendation;

(bb) May mail notice of the recommendation to all persons owning real property within the boundaries of the area that is within the local unit of government's jurisdiction, as determined by tax records;

(cc) Shall submit the recommendation to every other local unit of government and any Regional Development Commission with jurisdiction within the area directly affected by the recommendation within 15 days of initiating the recommendation;

(dd) Shall hold a public hearing or public meeting within the 30 to 45 day period commencing with the legal notice of the recommendation, that shall be provided for property owners, interested persons, and local units of government to comment on the recommendation; and

(ee) Shall submit the original or modified recommendation with a statement of the local unit of government's acceptance or rejection of the

recommendation and all comments received on the recommendation to the Council within 15 days after the period for comment has expired.

(3) Local units of government who receive a recommendation from another local unit of government for comment may give notice as prescribed in MEQC 53(c)(2)(bb) and shall submit to the local unit of government initiating the recommendation any comments on the recommendation within the designated time period.

(d) **Regional Development Commission Act on Recommendations.**

(1) Each Regional Development Commission shall periodically solicit in writing recommendations of critical areas from local units of government within its jurisdiction.

(2) When a Regional Development Commission initiates a recommendation or receives a recommendation from a local unit of government or the Council, it:

(aa) Shall give legal notice of the recommendation and the public hearing or meeting on the recommendation in the official newspaper of each county in the area directly affected by the recommendation within 15 days of receiving or initiating the recommendation;

(bb) May mail notice of the recommendation to all persons owning real property within the recommended area, as determined by tax records;

(cc) Shall submit the recommendation to every other local unit of government and Regional Development Commission with jurisdiction within the areas directly affected by the recommendation within 15 days of receiving or initiating the recommendation;

(dd) Shall hold a public hearing or public meeting within the 30 to 45 day period commencing with the legal notice of the recommendation, that shall be provided for property owners, interested persons, and local units of government to comment on the recommendation; and

(ee) Shall submit the original or modified recommendation with a statement of the Regional Development Commission's acceptance or rejection of the recommendation and all comments received on the recommendation to the Council within 15 days after the period for comment has expired.

(3) When a Regional Development Commission receives a recommendation from the Council, it shall follow the procedures prescribed in MEQC 53(d)(2), unless the Council has determined that the time required for Regional Development Commission review and action must be shortened or eliminated.

(e) **Council Action on Recommendations.**

(1) When the Council initiates a recommendation it shall:

(aa) Submit the recommendation to the Regional Development Commission(s) with jurisdiction within the area directly affected for review and action, as prescribed in MEQC 53(d)(2); or

(bb) Follow the procedures prescribed in MEQC 53(e)(3), when it determines that the time required for Regional Development Commission review and action must be shortened or eliminated to avoid further endangerment to the regional or statewide interest in the recommended area.

(2) When the Council receives notice of action on a recommendation for a critical area from a Regional Development Commission or from a local unit of government, where no Regional Development Commission exists, it shall have 60 days to review the recommendation and either:

(aa) Give legal notice as prescribed in MEQC 53(e)(3) of its decision to conduct a public hearing pursuant to Chapter 15 on the recommendation; or

(bb) Notify the Regional Development Commission or local unit of government of its rejection of the recommendation and its reasons therefore and specify any authorized alternate action to protect the regional or statewide public interest.

(3) When the Council's decision in MEQC 53(e)(1) or (2) is to hold a public hearing on the recommendation, the procedures to be followed are:

(aa) Legal notice of at least 30 days shall be given to the following:

(i) The Governor;

(ii) The appropriate state agencies;

(iii) The Regional Development Commissions and local units of government with jurisdiction over the area affected by the recommendation;

(iv) Persons who have filed with the Secretary of State pursuant to Chapter 15 to receive notice of public hearings;

(v) Requesting persons; and

(vi) Each person owning real property within the recommended area and within 350 feet of the recommended area when the recommended area is 1,000 acres or less.

(bb) One legal notice of the recommendation shall be placed in the official newspaper of each county in the area directly affected by the recommended area at least two weeks prior to the date of the public hearing.

(cc) The Council may mail notice of the recommendation to all persons owning real property within the recommended area as determined by tax records.

(dd) The legal notice shall include the following:

(i) The time and location of the hearing; and

(ii) The recommendation.

(ee) The public hearing shall be held in each county affected by the proposed critical area.

(ff) At the public hearing, the Council shall receive all testimony and exhibits relative to the designation of the proposed critical area, including the amount and source of funds and technical aid required to prepare and adopt plans and regulations for the proposed critical area. An official record of the hearing shall be prepared. When a transcript is requested, the Council may require the party requesting to pay the reasonable costs of preparing the transcript.

(gg) After the public hearing on the recommendation, the Council shall examine the record and prepare findings of fact that shall include the following:

(i) An explanation of any modification or rejection of action by a Regional Development Commission or local unit of government on the recommendation;

(ii) The amount and source of funds and technical aid required for the preparation and adoption of plans and regulations;

(iii) Whether the proposed critical area may be effectively protected by any other powers; and

(iv) The specific standards and guidelines to be followed in preparing and adopting plans and regulations for the critical area.

(hh) Within 30 days of the public hearing on the recommendation, the Council shall, based on the findings of fact:

(i) Submit the recommendation to designate a critical area to the Governor; or

(ii) Reject the recommendation.

MEQC 54 DESIGNATION OF CRITICAL AREAS

(a) **Authority.** Only the Governor may designate a critical area upon the recommendation of the Council.

(b) **Action by The Governor.**

(1) When the Council submits a recommendation to designate a critical area to the Governor, the Governor may designate by Executive Order all or part of the recommended area as a critical area.

(2) The Governor shall send a copy of the order of designation to the Legislature, Council, affected state and federal agencies, Regional Development Commision and local units of government with jurisdiction in any part of the designated critical area.

(c) **Content of Order of Designation.** The order of designation shall include the following:

(1) The legal description of the boundaries of the critical area;

(2) The reason that a particular area is a critical area;

(3) The specific standards and guidelines to be followed in preparing and adopting plans and regulations for the critical area; and

(4) The development, if any, that shall be permitted pending the adoption of plans and regulations, consistent with the policies of the Act and these Regulations.

(d) **Use of Order by Local Unit of Government.** Each local unit of government shall attach the order of designation to existing regulations.

(e) **Duration of Order.** The order of designation shall be effective for no longer than three years pending approval by the Legislature or by the Regional Development Commission, where one exists, of each development region in which a part of the critical area is located. After a Regional Development Commission has approved the critical area designation, it shall not revoke or rescind its approval, except as necessary to update and re-evaluate plans and regulations under MEQC 55(d) of these Regulations.

MEQC 55 PLANS AND REGULATIONS FOR CRITICAL AREAS

(a) **Content.**

(1) The initial critical area plan and any subsequent update and re-

evaluation shall explicitly record the following stages of the critical area planning process:

(aa) The evaluation of existing conditions and trends, including a description of any change in each of the elements of the plan and a comparison between the intended and actual results of any adopted local, regional or state programs and regulations;

(bb) The evaluation of alternative futures, including the major problems and opportunities associated with each alternative;

(cc) The formulation of objectives based on the evaluation of existing conditions and alternative futures. The objectives shall be measurable short-range steps toward goals expressed in state law, by the Regional Development Commission and in the standards and guidelines specified in the order of designation. When the objectives differ substantially from those previously adopted, the predicted consequences shall be compared; and

(dd) The formulation of programs and regulations designed to achieve the objectives. The programs shall specify the schedule and sequence of actions and development to be undertaken by individual public agencies. The regulations shall be sufficiently specific to provide public agencies with the basis for evaluating individual development permit applications.

(2) The critical areas planning process shall specifically address the following factors:

(aa) The elements of regional or statewide interest identified in the recommendation to designate the critical area;

(bb) The standards and guidelines to be followed in preparing and adopting plans and regulations as specified in the order of designation; and

(cc) Any other relevant physical, social, or economic element as permitted by state law.

(3) The portions of plans and regulations for the designated critical area that are implemented by local units of government shall conform to the powers and procedures authorized or required by appropriate state law.

(4) The portions of plans and regulations for the designated critical area that are implemented by state agencies shall conform to the powers and procedures authorized or required by appropriate state laws or regulations.

(b) **Preparation.**

(1) **Requirement.** When a critical area has been designated, plans and regulations to govern the use of the critical area shall be prepared, unless acceptable plans and regulations exist.

(2) **Responsibility for Preparation of Plans and Regulations.** When no plans or regulations for the critical area exist at the time of the order of designation, the plans and regulations shall be prepared by the following:

(aa) Each local unit of government with jurisdiction within the critical area and the existing authority to develop and enact plans and regulations;

(bb) The Regional Development Commission with jurisdiction within the critical area when requested within 30 days of notice of the order of designation by a local unit of government with jurisdiction within the critical area; or

(cc) The Council when requested within 30 days of notice of the order of designation by a local unit of government with jurisdiction within the critical area, when no Regional Development Commission exists.

(3) **Time for Preparation.**

(aa) A local unit of government shall prepare the plans and regulations within six months of notice of the order of designation.

(bb) A Regional Development Commission shall prepare the plans and regulations within six months of the request from the local unit of government.

(cc) When the local unit of government or Regional Development Commission requests a time extension for the preparation of plans and regulations, the Council may grant the time extension when it determines that the local unit of government or Regional Development Commission is making a conscientious attempt to develop the plans and regulations, and that the project is of a magnitude that precludes the completion, review and adoption of the plans and regulations within the time limits established in these Regulations.

(4) **Reimbursement of Costs.** When a Regional Development Commission prepares the plans and regulations for a critical area at the request of a local unit of government, it may seek reimbursement from the local unit of government for the actual costs of preparation.

(5) **State Agency Assistance.** When the Council determines that the local unit of government or the Regional Development Commission that is preparing the plans and regulations for the Critical area requires technical assistance, the Council shall direct the appropriate state agency or agencies to assist in the preparation of the plans and regulations in accordance with a time schedule established by the Council.

(6) **Public participation.** The preparation process shall include adequate opportunity for participation by the general public, property owners, non-owner users of land, and appropriate officials or representatives of local, regional, state and federal government agencies. The appropriate Regional Development Commission may appoint an advisory committee consisting of representatives of the above interests to guide the planning process. Public hearing with adequate notice shall be held.

(c) **Review and Approval of Plans and Regulations.**

(1) **Submission of Plans and Regulations for Review.**

(aa) A local unit of government that has existing plans and regulations for the critical area shall submit the plans and regulations to the appropriate Regional Development Commission, and when no Regional Development Commission exists, to the Council for review, within 30 days of the order of designation.

(bb) A local unit of government that prepares plans and regulations for the critical area after the order of designation shall submit the plans and regulations to the appropriate Regional Development Commission, and when no Regional Development Commission exists, to the Council for review within six months of notice of the order of designation.

(cc) A Regional Development Commission that prepares plans and regulations for the critical area at the request of a local unit of government

shall submit the plans and regulations to the Council for review within six months of the request from the local unit of government.

(2) **Regional Development Commission Review.** The Regional Development Commission shall review the plans and regulations prepared by the local unit of government for consistency with regional objectives and the order of designation. Within 45 days of receiving the plans and regulations, the Regional Development Commission shall submit its written evaluation, any relevant prepared development plans or land use plans, and the plans and regulations to the Council. Upon a request from the Regional Development Commission, the Council may grant a time extension of 30 days when the Council determines that the Regional Development Commission has satisfactorily demonstrated that it requires more time for review.

(3) **Council Review and Approval.** The Council shall review all plans and regulations prepared for designated critical areas. Within 45 days of receiving plans and regulations from the local unit of government or the Regional Development Commission, the Council shall review the plans and regulations to determine their consistency with the provisions of the order of designation, the evaluation of the Regional Development Commission, and comments of the affected state agencies. When the Council has completed the review, it shall either:

(aa) Approve the plans and regulations by a written decision and notify the local unit of government or Regional Development Commission; or

(bb) Return them to the local unit of government or the Regional Development Commission for modification with a written explanation of the need for modification.

(d) **Modification of Plans and Regulations.**

(1) When the Council returns plans and regulations for modification, it shall request that any proposed or adopted development plans or land use plans of local units of government, Regional Development Commissions or state agencies that may exist for the critical area and that have not been included in the initial preparation, be considered in the modification of the plans and regulations.

(2) The plans and regulations that are returned to the local unit of government or the Regional Development Commission for modification shall be revised consistent with the direction of the Council and shall be resubmitted to the Council within 60 days of their return.

(3) Prior to the final revision, the local unit of government or Regional Development Commission may request a formal meeting with the Council to consider the plans and regulations. Within 15 days of the request, the Council shall send a 30 day written notice of the meeting to the appropriate local units of government, Regional Development Commission and interested parties. The meeting shall be held at a location convenient to the area affected by the designated critical area.

(e) **Council Preparation of Plans and Regulations.**

(1) When the local unit of government or the Regional Development Commission fails to prepare plans and regulations that are acceptable to the

Council within one year of the order of designation, the Council shall then prepare the plans and regulations within 90 days.

(2) When the Council has prepared the plans and regulations, it shall hold a public hearing pursuant to Chapter 15 in each county directly affected by the plans and regulations. The procedures to be followed are:

(aa) Legal notice of at least 30 days shall be given to the following:

(i) The Regional Development Commissions and local units of government with jurisdiction over the critical area;

(ii) The appropriate state agencies;

(iii) Persons who have filed with the Secretary of State pursuant to Chapter 15 to receive notice of public hearings;

(iv) Requesting persons;

(v) Each person owning real property within the area that would be directly affected by the proposed plans and regulations and within 350 feet of the area when the area directly affected is 5 acres or less.

(bb) One legal notice of the proposed plans and regulations shall be placed in the official newspaper of each county in the area directly affected by the recommended area at least two weeks prior to the date of the public hearing.

(cc) The Council may mail notice of the proposed plans and regulations to all persons owning real property within the boundaries of the area that is within the jurisdiction of the local unit of government for which the plans and regulations are being proposed.

(dd) The legal notice shall include the following:

(i) The time, location and purpose of the hearing; and

(ii) A summary of proposed plans and regulations.

(ee) At the public hearing, the Council shall receive all testimony and exhibits relative to the plans and regulations. An official record of the hearing shall be prepared. When a transcript is requested, the Council may require the party requesting to pay the reasonable costs of preparing the transcript.

(ff) After the public hearing on the plans and regulations, the Council shall examine the record and prepare findings of fact.

(gg) Within 60 days of the hearing, the Council shall adopt the plans and regulations for the local unit of government's portion of the critical area. Plans and regulations that have been adopted by the Council shall apply and have the effect of adoption by the local unit of government.

(3) At any time after the preparation and adoption of plans and regulations by the Council, a local unit of government may prepare plans and regulations according to procedures prescribed in these Regulations. When the plans and regulations are approved by the Council, they shall supersede the plans and regulations adopted by the Council.

(f) Implementation of Plans and Regulations.

(1) A local unit of government shall enact, according to existing authority, only the plans and regulations for a critical area that have the written approval of the Council.

(2) Plans or regulations prepared pursuant to these Regulations shall become effective when enacted by the local unit of government or, following legislative or Regional Development Commission approval of the Governor's order of designation, upon such date as the Council may provide in its approval of said plans and regulations.

(3) Plans and regulations adopted by the Council shall be administered by the local unit of government as part of the local regulations until the local unit of government prepares plans and regulations that are approved by the Council, at which time the local unit of government's plans shall supersede the Council's plans and regulations.

(g) **Update and Re-evaluation of Plans and Regulations.**

(1) **Optional Update.** When a local unit of government or a Regional Development Commission that prepared plans and regulations for a critical area finds it necessary or desirable to amend or rescind the plans and regulations that have been approved by the Council, the local unit of government or Regional Development Commission shall submit proposed modifications of its plans and regulations for approval by the appropriate Regional Development Commission and the Council pursuant to these Regulations.

(2) **Mandatory Review.** The Council shall review the plans and regulations for a critical area every two years after one of the following:

(aa) The date of the Council's initial approval of the plans and regulations; or

(bb) The Council's approval of an optional update of plans and regulations, pursuant to MEQC 55(g)(1).

The Council shall review the plans and regulations and any recommended changes for update and approval in the same manner as for approval of the original plans and regulations. When the Council determines that the plans and regulations for the critical area have been implemented to the extent of fulfilling the regional or statewide interest in such critical area, the Council may modify the two-year mandatory review requirement.

(3) Amendments or rescissions of plans and regulations shall become effective only upon the approval of the Council in the same manner as the aproval of the original plans and regulations.

(h) **Enforcement of Plans and Regulations.** When the Council determines that the administration of the local plans and regulations is inadequate to protect the state or regional interests, the Council may institute appropriate judicial proceedings to compel proper enforcement of the plans and regulations.

MEQC 56 DEVELOPMENT IN THE CRITICAL AREA

(a) **Limitation.**

(1) When a critical area has been designated, a local unit of government or state agency shall allow development affecting any portion of the area only as specified in the order of designation or as provided in these Regulations until plans and regulations have been adopted. This limitation shall be in effect as long as the designation is effective.

(2) Until plans and regulations for the critical area have been adopted

and approved, the local unit of government or state agency shall grant a development permit only when:

(aa) The development is specifically permitted by the order of designation; or the development is essential to protect the public health, safety, or welfare in an existing emergency; and

(bb) A local ordinance has been in effect immediately prior to the order of designation and a development permit would have been granted thereunder.

(3) When plans and regulations for a critical area have become effective, the local unit of government or state agency shall grant a development permit only in accordance with those plans and regulations.

(b) **Notice to Council.** At least 30 days before taking action on the application, the local unit of government shall notify the Council of:

(1) Any application for a development permit in any critical area for which plans or regulations have not become effective; or

(2) Any application for a development permit, for which a local unit of government is required to hold a public hearing, in any critical area for which plans and regulations have become effective.

MEQC 57 PROTECTION OF LANDOWNER'S RIGHTS

(a) In implementing these Regulations no governmental agency shall issue any order that is clearly in violation of the Constitution of this State or of the United States.

(b) Neither the designation of a critical area nor the adoption of any plans or regulations for such an area shall in any way limit or modify the rights of any person to complete any development that meets the following requirements:

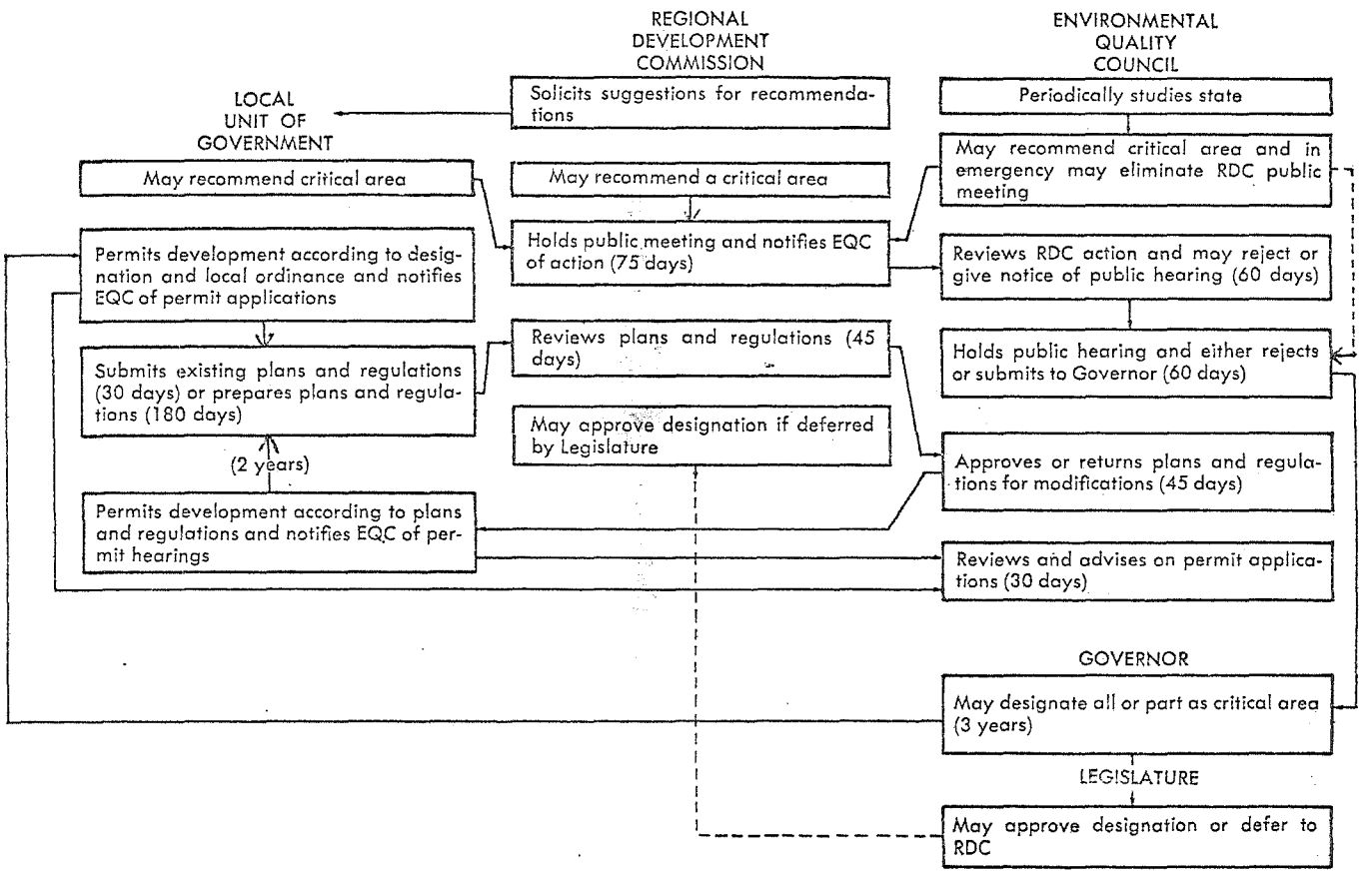
(1) A development that has been authorized by registration and recordation of a subdivision pursuant to state laws or by a building permit or other authorization to commence development on which there has been reliance and a change of position by the developer; and

(2) The registration, recordation, or the permit or authorization of the development was issued prior to the date of legal notice of the Council public hearing provided in MEQC 53(e) of these Regulations.

(c) When a developer has in reliance on prior regulations obtained vested or other legal rights, that would have prevented a local unit of government under the law from changing those regulations adverse to the developer's interests, these Regulations shall not authorize any local unit of government or governmental agency to abridge those rights.

Filed May 28, 1974.

CRITICAL AREAS PLANNING PROCESS



MINNESOTA CODE OF AGENCY RULES

ENVIRONMENTAL QUALITY BOARD

ROUTING HIGH VOLTAGE TRANSMISSION LINES AND SITING LARGE ELECTRIC POWER GENERATING PLANTS

1978 Edition

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ENVIRONMENTAL QUALITY BOARD

Rules for Routing High Voltage Transmission Lines
and Siting Large Electric Power Generating Plants

CONTENTS

6 MCAR §§ 3.071-3.082 filed with the Secretary of State on May 22, 1978; effective June 12, 1978; promulgated pursuant to the Power Plant Siting Act, Minn. Stat. § 116C.51 et seq. (1977).

6 MCAR § § 3.071-3.082: RULES FOR ROUTING HIGH VOLTAGE TRANSMISSION LINES AND SITING LARGE ELECTRIC POWER GENERATING PLANTS

§ 3.071 Authority, purpose and policy.

A. Authority. The rules contained herein are prescribed by the Minnesota Environmental Quality Board pursuant to the authority granted to the Board in the Power Plant Siting Act, Minn. Stat. § 116C.51 et seq. (1977), to give effect to the purposes of the Act.

B. Purpose and policy. It is the purpose of the Act and the policy of the State to locate large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy, the Board shall choose locations that minimize adverse human and environmental impact while ensuring continuing electric power system reliability and integrity and ensuring that electric energy needs are met and fulfilled in an orderly and timely fashion. The Board shall provide for broad spectrum citizen participation as a principle of operation.

§ 3.072 Definitions. As used in these rules, the following terms have the meanings given them.

A. "Act" means the Power Plant Siting Act of 1973, as amended, Minn. Stat. § 116C.51 et seq. (1977).

B. "Board" means the Minnesota Environmental Quality Board.

C. "Construction" means any clearing of land, excavation, or other action that would adversely affect the natural environment of a site or route but does not include changes needed for temporary use of sites or routes for non-utility purposes, or uses in securing survey or geological data, including necessary boring, to ascertain foundation conditions.

D. "File" means to deliver 40 copies to the office of the chairman of the Board.

E. "High voltage transmission line" (HVTL) means a conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 200 kilovolts or more. Associated facilities shall include, but not be limited to, insulators, towers, switching yards, substations and terminals.

F. "Large electric power facilities" means high voltage transmission lines and large electric power generating plants.

G. "Large electric power generating plant" (LEPGP) means electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more.

H. "Large electric power generating plant study area" means a general area of land designated by the Board for purposes of planning for future sites.

I. "Person" means any individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

J. "Public advisor" means a staff person designated by the Board for the sole purpose of assisting and advising affected or interested citizens on how to effectively participate in the site or route designation processes.

K. "Right-of-way" means the land interest used or proposed to be used within a route to accommodate a high voltage transmission line.

L. "Route" means the location of a high voltage transmission line between two end points. A route may have a variable width of up to 1.25 miles.

M. "Route segment" means a portion of a route.

N. "Site" means the location of a large electric power generating plant.

O. "Utility" means any entity engaged in this State in the generation, transmission or distribution of electric energy including, but not limited to, a private investor owned utility, a cooperatively owned utility, a public or municipally owned utility, or a private corporation.

§ 3.073 Procedure for designation of a route and issuance of a construction permit.

A. Content of an application for a construction permit. An application shall be filed with the Board which includes an environmental report consistent in form with a draft environmental impact statement (Environmental Review Program Rules). The application shall contain any information necessary to make the evaluation required in 6 MCAR § 3.073 H. and the following:

1. The size and type of the proposed transmission line;

2. At least two proposed routes for the proposed transmission line;

3. An environmental analysis of each proposed route including a description of the environmental setting and the potential environmental impacts of each route;

4. The engineering and operational design concepts for the proposed transmission line;

5. A description of the construction, right-of-way preparation and maintenance procedures anticipated for the proposed transmission line;

6. The procedures and practices proposed for the ultimate abandonment and restoration of the right-of-way;

7. A listing of federal or state permits that may be required for the proposed transmission line;

8. A cost analysis of each route;

9. The certificate of need if available, or an acknowledgement of the acceptance of a substantially complete certificate of need application by the Minnesota Energy Agency, if a certificate of need is required by Minn. Stat. § 116H;

10. A statement of proposed ownership of the facility as of the day of filing and an affidavit authorizing the applicant to act on behalf of those planning to participate in the project.

B. Acceptance of a construction permit application. The Board shall either accept or reject an application for a construction permit at its first regularly scheduled meeting after the application is filed with the Board, provided the application is filed at least 30 days prior to that meeting. If the Board rejects the application, it shall at that time inform the applicant which deficiencies, if corrected, will allow the application to be accepted. If the deficient information is submitted to the Board 10 days in advance of a regularly scheduled meeting, the Board shall reconsider the application at that meeting. If the Board fails to act within the prescribed time limits the application shall be considered accepted. On acceptance of the application, the Board shall initiate the study, public participation and hearings required by these rules. After acceptance of the application, the applicant shall provide any additional relevant information which the Board deems necessary to process the application.

C. Route evaluation committee. On acceptance of an application for a construction permit the Board shall appoint a route evaluation committee consistent with the Act. The Board shall provide guidance to the committee the form of a charge.

D. Public advisor. The public advisor shall be available to affected or interested citizens to advise them on how to effectively participate in the route designation process. The public advisor's duties shall include providing advice on appropriate methods and techniques of public involvement in the transmission line routing process. However, the public advisor is not authorized to give legal advice or advice which may affect the legal rights of the person being advised.

E. Information meetings. The Board shall hold at least two information meetings as follows:

1. After acceptance of an application for a construction permit the Board shall hold at least one information meeting in the area affected by the

applicant's proposal to explain the route designation process and to respond to questions raised by the public.

2. Prior to the public hearings held to consider the routes approved for consideration by the Board, the Board shall hold an information meeting in each county through which a route is proposed to be located to explain the route designation process, present major issues and alternatives under consideration by the Board and respond to questions raised by the public.

F. Route proposals. The Board shall consider the routes and route segments proposed by the applicant and may consider any other route or route segment it deems necessary. No route shall be considered at the public hearing unless approved for consideration by the Board prior to notice of the hearing thereon. All approved routes shall be identified by the Board consistent with 6 MCAR § 3.076 D. Any proposer of a route or route segment which the Board has approved for consideration shall make an affirmative presentation of facts on the merits of the proposal at the public hearing which shall provide the Board with a basis for making a determination on that proposal.

1. The Board member agencies, power plant siting staff and the route evaluation committee may propose routes or route segments to the Board. Route proposals made by the route evaluation committee must be made no later than 105 days after acceptance of the application by the Board.

2. Any other person may propose a route or a route segment in the following manner:

a. The route or route segment must be set out specifically on the appropriate general county highway map available from the Minnesota Department of Transportation, or on the appropriate United States Geological Survey topographical maps.

b. The proposal must contain the data and analysis required in 6 MCAR § 3.073 A. and 6 MCAR § 3.073 H., except 6 MCAR § 3.073 A. 2.; except where such information is the same as provided by the applicant.

c. The proposal must be presented to the chairman of the Board or his designee within 70 days of acceptance of the application by the Board.

Within 10 days of receipt of the proposal, the chairman of the Board or his designee shall determine if the proposal is adequately prepared. If the chairman of the Board or his designee determines that it is adequately prepared, he shall forward the proposal to the Board for its consideration. If the chairman of the Board or his designee determines that the proposal is not adequately prepared, he shall inform the proposer of any inadequacies in the proposal. The proposer shall have 15 days therefrom to provide additional information to the chairman of the Board or his designee. The chairman of the Board or his designee shall determine within 10 days whether the amended proposal is adequately prepared. If the chairman of the Board or his designee then deter-

mines that the proposal is not adequately prepared, the proposer may appeal to the Board at its next meeting to determine the adequacy of the proposal.

G. Public hearings. Public hearings held by the Board pursuant to this rule ll be held for the purposes of collecting and verifying data, and establishing a complete and accurate record upon which to base a decision. The hearings shall be conducted by an independent hearing examiner from the State Hearing Examiners Office. The conduct of these hearings shall be as prescribed by rule adopted by the Chief Hearing Examiner.

H. Criteria for the evaluation of routes. In selecting a route and issuing a construction permit, the Board shall seek to minimize adverse human and environmental impact, maximize the efficient use of resources, and ensure continuing electric power system reliability.

1. Considerations for the designation of a route and issuance of a construction permit. The Board shall make an evaluation of the following considerations prior to issuance of a construction permit. In its evaluation of route alternatives, the Board shall consider the characteristics of a given geographical area, identify the potential impacts, and apply methods to minimize adverse impacts so that it may select a route with the least adverse impact.

a. Identification of geographical characteristics and potential impacts. The Board shall identify the geographical characteristics and potential impacts in the following categories:

(1) Human settlement, including development patterns;

(2) Economic operations, including agricultural, forestry, recreational and mining operations;

(3) The natural environment and public land, including natural areas, wildlife habitat, waters, recreational lands and lands of historical and/or cultural significance;

(4) Reliability, cost and accessibility.

b. Methods of minimizing impacts. In selecting a route with the least adverse impact, the Board shall make an evaluation of each of the following categories:

(1) Existing land use or management plans, and established methods of resource management;

(2) Routes along or sharing existing rights-of-way;

(3) Routes along survey and natural division lines and field boundaries so as to minimize interference with agricultural operations;

(4) Structures capable of expansion in transmission capacity

through multiple circuiting or design modifications to accommodate future high voltage transmission lines; and

(5) Alternate structure types and technologies.

2. Designated lands. Certain lands within the state have been designated for preservation by action of the state or federal government for the benefit of the people and for future generations. No route shall be designated by the Board through State or National Wilderness Areas. No route shall be designated by the Board through State or National Parks and State Scientific and Natural Areas unless:

a. A route in a designated area would not materially damage or impair the purpose for which the land was designated; and

b. Circumstances exist in all alternate routes which would be more severely detrimental to humans or the environment if any alternate were selected.

In the event that such an area is approved, the Board may require the applicant to take measures to minimize impacts which adversely affect the unique character of designated lands. Economic considerations alone shall not justify approval of these designated lands. No route shall be designated by the Board in violation of federal or state statute or law, rule or regulation.

I. Board action. Within one year after the Board's acceptance of a utility's application for a construction permit, the Board shall act on that application. When the Board designates a route, it shall issue a permit for the construction of a high voltage transmission line specifying the type, design, routing, right-of-way preparation and maintenance, facility construction and abandonment procedures it deems necessary with any other appropriate conditions. The Board's decision shall be made in accordance with 6 MCAR § 3.073 H. The Board shall give the reasons for its decision in written findings of fact.

J. Construction plans. Following issuance of a construction permi utility shall provide the Board with a preliminary construction plan at le 60 days prior to construction which shall show that the right-of-way of the transmission line as proposed is within the route designated by the Board. The Board may suspend the 60-day time limitation if it can be shown that earlier construction will not preclude proper review of the plans. If the utility makes any changes in its preliminary construction plan, it shall notify the Board in writing of such changes.

§ 3.074 Procedures for designation of a site and issuance of a certificate of site compatibility.

A. Content of an application for a certificate of site compatibility. The application for a certificate of site compatibility filed with the Board shall be consistent in form with an environmental report as outlined in the Minnesota Environmental Quality Board's Environmental Review Program Rules and

shall contain any information necessary to make the evaluation required in 6 MCAR § 3.074 H. and the following:

1. The size and type of the proposed plant;

2. At least two proposed sites for the proposed plant;

3. The engineering and operational design concepts for the plant at each of the proposed sites;

4. An engineering analysis of each of the proposed sites;

5. The procedures and practices proposed for the ultimate abandonment and restoration of the site;

6. An environmental analysis of each proposed site, including a description of the environmental setting and the potential environmental impacts of each site;

7. A cost analysis of the plant at each proposed site;

8. A listing of federal or state permits that may be required for each proposed site;

9. The certificate of need if available, or an acknowledgement of the acceptance of a substantially complete certificate of need application by the Minnesota Energy Agency, if a certificate of need is required by Minn. Stat. 116H;

10. A statement of proposed ownership of the facility as of the day of filing and an affidavit authorizing the applicant to act on behalf of those planning to participate in the project.

After Board adoption and publication of its inventory of large electric power ›erating plant study areas, the utility shall in all new applications filed with Board either apply for sites located within the inventory of study areas, or shall specify the reasons for any proposal located outside of the study areas and make an evaluation of the proposed site based upon the planning policies, criteria and standards specified in the inventory.

B. Acceptance of an application for a certificate of site compatibility. The Board shall either accept or reject an application for a certificate of site compatibility at its first regularly scheduled meeting after the application is filed with the Board, provided the application is filed at least 30 days prior to that meeting. If the Board rejects the application, it shall at that time inform the applicant which deficiencies, if corrected, will allow the application to be accepted. If the deficient information is submitted to the Board 10 days in advance of a regularly scheduled meeting, the Board shall reconsider the application at that meeting. If the Board fails to act within the prescribed time limits the application shall be considered accepted. On acceptance of the

application, the Board shall initiate the study, public participation and hearings required by these rules. After acceptance of the application, the applicant shall provide any additional relevant information which the Board deems necessary to process the application.

C. Site evaluation committee. Upon acceptance of an application for a certificate of site compatibility, the Board shall appoint a site evaluation committee consistent with the Act. The Board shall provide guidance to the committee in the form of a charge.

D. Public advisor. The public advisor shall be available to affected or interested citizens to advise them on how to effectively participate in the site designation process. The public advisor's duties shall include providing advice on appropriate methods and techniques of public involvement in the site designation process. However, the public advisor is not authorized to give legal advice or advice which may affect the legal rights of the person being advised.

E. Information meetings. The Board shall hold at least two information meetings as follows:

1. After acceptance of an application for a certificate of site compatibility, the Board shall hold at least one information meeting in the area affected by the applicant's proposal to explain the site designation process and to respond to questions raised by the public.

2. Prior to the public hearings held to consider the sites approved for consideration by the Board, the Board shall hold an information meeting in each county in which a site is proposed to be located to explain the site designation process, to present major issues and alternatives under consideration by the Board, and to respond to questions raised by the public.

F. Site proposals. The Board shall consider the sites proposed by the applicant and may consider any other site it deems necessary. No site shall be considered at the public hearing unless approved for consideration by the Bo prior to notice of the hearing thereon. All approved sites shall be identi by the Board consistent with 6 MCAR § 3.076 D. Any proposer of a site which has been approved for consideration at the public hearing by the Board shall make an affirmative presentation of facts on the merits of the proposal at the public hearing which shall provide the Board with a basis for making a determination on that proposal. Any person may propose a site in the following manner:

1. The site must be set out specifically on United States Geological Survey topographical maps.

2. The proposal must contain the data and analysis required in 6 MCAR § 3.074 A. and 6 MCAR § 3.074 H. with the exception of 6 MCAR § 3.074 A.2. and 6 MCAR § 3.074 A.7., except where such information is the same as provided by the applicant.

3. The proposal must be presented to the chairman of the Board or his designee within 70 days of acceptance of the application by the Board. Within 10 days of receipt of the proposal, the chairman of the Board or his designee shall determine if the proposal is adequately prepared. If the chairman of Board or his designee determines that it is adequately prepared, he shall forward the proposal to the Board for its consideration at its next meeting. If the chairman of the Board or his designee determines that the proposal is not adequately prepared, he shall inform the proposer of any inadequacies in the proposal. The proposer shall have 15 days therefrom to provide additional information to the chairman of the Board or his designee. The chairman of the Board or his designee shall determine within 10 days whether the amended proposal is adequately prepared. If the chairman of the Board or his designee then determines that the proposal is not adequately prepared, the proposer may appeal to the Board at its next meeting to determine the adequacy of the proposal.

G. Public hearings. Public hearings held by the Board pursuant to this rule shall be held for the purposes of collecting and verifying data and establishing a complete and accurate record upon which to base a decision. The hearing shall be conducted by an independent hearing examiner from the State Hearing Examiners Office. The conduct of these hearings shall be as prescribed by rule adopted by the Chief Hearing Examiner.

H. Criteria for the evaluation of sites. The following criteria and standards shall be used to guide the site suitability evaluation and selection process. Not all site selection criteria are applicable to all plants to the same degree.

1. Site selection criteria. The following criteria shall be applied in the selection of sites:

a. Preferred sites require the minimum population displacement.

b. Preferred sites minimize adverse impacts on local communities and institutions.

c. Preferred sites minimize adverse health effects on human population.

d. Preferred sites do not require the destruction or major alteration of land forms, vegetative types, or terrestrial or aquatic habitats which are rare, unique, or of unusual importance to the surrounding area.

e. Preferred sites minimize visual impingement on waterways, parks, or other existing public recreation areas.

f. Preferred sites minimize audible impingement on waterways, parks or other existing public recreation areas.

g. Preferred sites minimize the removal of valuable and productive agricultural, forestry, or mineral land from their uses.

h. Preferred sites minimize the removal of valuable and productive water from other necessary uses and minimize conflicts among water users.

i. Preferred sites minimize potential accident hazards and possible related adverse effects with respect to geology.

j. Preferred sites permit significant conservation of energy or utilization of by-products.

k. Preferred sites minimize the distance to large load centers.

l. Preferred sites maximize the use of already existing operating sites if expansion can be demonstrated to have equal or less adverse impact than feasible alternative sites.

m. Preferred sites utilize existing transportation systems unless feasible alternative systems, including new or upgraded existing substandard systems, have less adverse impact.

n. Preferred sites allow for future expansion.

o. Preferred sites minimize adverse impact of transmission lines.

p. Preferred sites minimize the costs of constructing and operating the facility.

2. Exclusion criteria.

a. No large electric power generating plant shall be sited in violation of any federal or state statute or law, rule or regulation. No site shall be selected in which a large electric power generating plant is not licensable by all appropriate state and federal government agencies.

b. The following land areas shall not be certified as a site for a large electric power generating plant except for use for water intake structures or water pipelines: National Parks; National Historic Sites and Landmarks; National Historic Districts; National Wildlife Refuges; National Monuments; National Wild, Scenic and Recreational Riverways; State Wild, Scenic and Recreational Rivers and their land use districts; State Parks; Nature Conservancy Preserves; State Scientific and Natural Areas; and State and National Wilderness Areas. If the Board includes any of these lands within a site for use for water intake structures or water pipelines, it may impose appropriate conditions in the certificate of site compatibility which protect these lands for the purpose for which they were designated. The Board shall also consider the adverse effects of proposed sites on these areas which are located wholly outside of the boundaries of these areas.

c. No area shall be selected which does not have reasonable access to a proven water supply sufficient for plant operation. No use of ground water shall be permitted where mining of ground water resources will result. "Min-

ing" as used herein shall mean the removal of ground water that results in material adverse effects on ground water in and adjacent to the area, as determined in each case.

3. Large electric power generating plant avoidance areas.

a. In addition to exclusion areas, the following land use areas shall not be approved for large electric power generating plant sites when feasible and prudent alternatives with lesser adverse human and environmental effects exist. Economic considerations alone shall not justify approval of avoidance areas. Any approval of such areas shall include all possible planning to minimize harm to these areas. These avoidance areas are: state registered historic sites; State Historic Districts; State Wildlife Management Areas (except in cases where the plant cooling water is to be used for wildlife management purposes); county parks; metropolitan parks; designated state and federal recreational trails; designated trout streams; and the rivers identified in Minn. Stat. § 85.32, subd. 1 (1971).

b. Avoidance areas also apply to new transportation access routes and storage facilities associated with the plant in addition to the plant itself.

c. The use of ground water for high consumption pruposes, such as cooling, shall be avoided if feasible and prudent surface water alternatives less harmful to the environment exist. Ground water use to supplement available surface water shall be permitted if the cumulative impact minimizes environmental harm.

I. Board action. Within one year after the Board's acceptance of a utility's application for a certificate of site compatibility, the Board shall act on that application. When the Board designates a site it shall issue a certificate of site compatibility with any appropriate conditions. The Board's decision shall be made in accordance with 6 MCAR § 3.074 H. The Board shall give the reasons for its decision in written findings of fact. If the Board refuses to designate a site, it shall indicate the reasons for the refusal and indicate the necessary changes in size or type of facility to allow site designation.

J. Certificate administration. Following issuance of a certificate of site compatibility, the Board may require the applicant to supply such plans and information as it deems necessary to determine whether the plant, as proposed or operated, is in compliance with the conditions of the certificate of site compatibility.

§ 3.075 Advisory committees.

A. Route and site evaluation committees. Route and site evaluation committees appointed by the Board are advisory and are to assist the Board in evaluating applications for routes and sites.

B. Power plant siting advisory committee. The Board shall appoint a Power Plant Siting Advisory Committee which shall work closely with the

Board staff in reviewing, advising, and making recommendations to the Board concerning development, revision and enforcement of any rule, inventory, or program initiated under the Act or these Rules. The Board shall provide guidance to the committee in the form of a charge and through specific requests. The committee shall be composed of as many members as may be designated by the Board, and its membership shall be solicited on a statewide basis. The committee shall be appointed for a one-year term coincident with the fiscal year.

§ 3.076 Notice.

A. Applications. Within 20 days of acceptance of any application submitted to the Board pursuant to the Act, except an exemption application, the Board shall give notice of acceptance of the application by paid advertisement in a legal newspaper of general circulation in each county in which a route or site is proposed by the applicant to be located. The notice shall include the following information:

1. Identification of the application;

2. The date of the Board's acceptance of the application;

3. A brief description of the proposed facility;

4. A map showing the routes or sites proposed in that county;

5. The name and function of the public advisor and the place where that person can be reached;

6. Locations where the application is available to the public;

7. Procedures for proposing alternate routes or sites.

B. Information meetings. Notice and agenda of public information meetings of the Board shall be given by the Board consistent with the Act. For purposes of giving notice, a route or site proposal shall be any route or site proposed by the applicant or a route or site that is an accepted proposal under 6 MCAR § 3.073 F.2. or 6 MCAR §§ 3.074 F.1., 3.074 F.2., 3.074 F.3., or by resolution of the Board pursuant to 6 MCAR § 3.073 F. or 6 MCAR § 3.074 F., as of the time of notice.

C. Public hearings. Notice and agenda of public hearings shall be given by the Board consistent with the Act. For purposes of giving notice, a route or site proposal shall be any route or site proposed by the applicant or a route or site that is an accepted proposal under 6 MCAR § 3.073 F.2. or 6 MCAR §§ 3.074 F.1., 3.074 F.2., 3.074 F.3., or by resolution of the Board pursuant to 6 MCAR §§ 3.073 F. or 3.074 F.

D. Route and site proposals. Prior to public hearings held on routes and

sites which the Board has approved for consideration at the public hearings consistent with these rules, the Board shall identify the routes and sites with maps published in a newspaper of general circulation in each county in which a route or site is proposed to be located showing the routes or sites in that county.

§ 3.077 Emergency certification.

A. Application. Any utility whose electric power system requires the immediate construction of a large electric power generating plant or a high voltage transmission line may apply to the Board for an emergency certificate of site compatibility or an emergency construction permit. The application for an emergency construction permit shall contain the supporting information required in 6 MCAR §§ 3.073 A. and 3.077 B. The application for an emergency certificate of site compatibility shall contain the supporting information required in 6 MCAR §§ 3.074 A. and 3.077 B.

B. Determination of an emergency. The Board shall hold a public hearing within 90 days of acceptance of an application for emergency certification to consider the following to determine whether or not an emergency exists:

1. Any evidence offered by the Minnesota Energy Agency or any other person;

2. Whether adherence to the procedures and time schedules specified in 6 MCAR § 3.073 I. and 6 MCAR § 3.074 I. would jeopardize the utility's electric power system or would jeopardize the utility's ability to meet the electric needs of its customers in an orderly and timely manner;

3. Whether there remains any feasible or prudent alternative to the utility which can serve its immediate need;

4. Whether the utility is prepared to, and will upon authorization, carry the acquisition and construction program at the maximum rate of progress.

The Board shall also establish whether the situation could have been reasonably anticipated by the utility in time to utilize the normal application procedures. If the Board finds that the utility could have reasonably anticipated the situation, the utility may be subject to the provisions of Minn. Stat. § 116C.68 (1977).

C. Board action. If the Board determines that an emergency exists, then the route or site designation procedures prescribed in 6 MCAR § 3.073 and 6 MCAR § 3.074, with the exception of 6 MCAR § 3.073 F.2. and 6 MCAR §§ 3.074 F.1., 3.074 F.2., and 3.074 F.3., shall be followed, except that the Board shall designate a route and issue an emergency construction permit or designate a site and issue an emergency certificate of site compatibility within 195 days of the application.

§ 3.078 Exemption of certain routes.

A. Application. A utility may apply to the Board to exempt the construction of a high voltage transmission line from the Act. A utility shall submit an application for exemption of a specific transmission line containing the following information:

1. The engineering design concepts;

2. The proposed location of the facility;

3. The environmental setting and impact of the proposed action;

4. A description of the plans for right-of-way preparation and construction.

B. Notice of exemption application. Within 15 days of filing with the Board an application for exemption of a certain route, the utility shall:

1. Publish a notice and description of the exemption application including, but not limited to, a map of the proposed route and the size and type of facility in a legal newspaper of general circulation in each county in which the route is proposed to be located;

2. Send a copy of the exemption application by certified mail to the chief executive of any regional development commission, county, incorporated municipality and organized town in which the route is proposed to be located; and

3. Send a notice and description of the exemption application to each owner over whose property the line may run, together with an understandable description of the procedures the owner must follow should he desire to object.

C. Objection to an exemption application. Any person who owns property crossed by the proposed route, or any person owning property adjacent to the property crossed by the proposed route, or any affected political subdivision may file an objection with the Board within 60 days after the giving of notice under 6 MCAR § 3.078 B. stating reasons why the Board should deny the application.

D. Board action. The Board may conduct a public hearing to determine if the proposed high voltage transmission line will cause any significant human or environmental impact. If any objections are filed with the Board, the Board shall either deny the application or conduct such a public hearing. Whether or not an objection is filed or a hearing is held, the Board shall determine whether the proposed high voltage transmission line will cause any significant human or environmental impact. If the Board determines that significant human or environmental impact will occur, it shall deny the application. If not, it may exempt the proposed transmission line with any appropri-

ate conditions, but the utility shall comply with any applicable state rule and any applicable zoning, building and land use rules, regulations and ordinances of any regional, county, local and special-purpose government in which the r 'e is proposed to be located.

§ 3.079 Improvement of acquired routes and sites.

A. Delay in construction. Utilities that have acquired a route or site may proceed to construct or improve the route or site in accordance with these rules. However, when construction and improvement have not commenced four years after the construction permit or site certificate has been issued by the Board, the Board shall suspend the certificate or permit. If at that time, or at a time subsequent, the utility decides to construct the proposed large electric power facility, it shall certify to the Board that there have been no significant changes in any material aspects of the conditions or circumstances existing when the permit or certificate was issued. If the Board determines that there are no significant changes, it shall reinstate the permit or certificate. If the Board determines that there is a significant change, it may order a new hearing and consider the matter further, or it may require a new application.

B. Minor alterations in a construction permit for a high voltage transmission line.

1. Application. Following issuance of a construction permit for a high voltage transmission line, a utility may apply to the Board for minor alterations on conditions specified in the permit. The utility shall submit an application for a minor alteration which contains sufficient information for the Board to determine within 45 days the following:

a. Whether or not the requested changes are significant enough to warrant Board study and approval;

b. Whether or not to order public hearings near the affected area;

c. Whether or not additional fees shall be assessed.

2. Board action. If the Board decides to study the application, the Board shall determine within 70 days whether granting the application would be consistent wit 6 MCAR § 3.073 H. and shall grant or deny the utility's application accordingly.

§ 3.080 Revocation or suspension.

A. Initiation of Board action. The Board may initiate action to consider revocation or suspension of a construction permit or certificate of site compatibility on its own motion or upon the request of any person who has made a prima facie showing by affidavit and documentation that a violation of the Act has occurred as set forth in Minn. Stat. § 116C.645 or these rules.

B. Board action. If the Board initiates action to consider revocation or suspension of a construction permit or certificate of site compatibility, it will consider in a hearing under Minn. Stat. § 116C.645 the following matters:

1. Whether a violation of any of the conditions in Minn. Stat. § 116C.645 has occurred;

2. Whether the violation will result in any significant additional adverse environmental effects;

3. Whether the results of the violation can be corrected or ameliorated; and

4. Whether a suspension or revocation of a permit or certificate will impair the utility's electrical power system reliability.

If the Board finds that a violation of Minn. Stat. § 116C.645 or these rules has occurred, it may (1) revoke or suspend the permit or certificate, (2) require the utility to undertake corrective or ameliorative measures as a condition to avoid revocation or suspension, or (3) require corrective measures and suspend the permit or certificate.

§ 3.081 Annual hearing. The Board shall hold an annual public hearing on a Saturday in November in St. Paul in order to afford interested persons an opportunity to be heard regarding its inventory of study areas, route and site designation processes, other aspects of the Board's activities and duties performed pursuant to the Act, or policies set forth in these rules.

§ 3.082 Assessment, application fees.

A. Assessment. For purposes of determining the annual assessment on a utility pursuant to the Act, each utility shall, on or before July 1 of each year, submit to the Board a report of its retail kilowatt-hour sales in the State and its gross revenue from kilowatt-hour sales in the State for the preceding calendar or utility reporting year. Upon receipt of these reports, the Board shall bill each utility as specified in the Act.

B. Application fees. Every applicant for a route or site pursuant to Minn. Stat. § 116.57 shall pay to the Board a fee as prescribed by the Act.

1. For applications filed pursuant to Minn. Stat. § 116C.57, subds. 1 and 2, twenty-five percent of the total estimated fee shall accompany the application and the balance is payable in three equal installments at the end of 90, 180 and 270 days from the date of the Board's acceptance of the application.

2. For applications filed pursuant to Minn. Stat. § 116C.57, subd. 3, twenty-five percent of the total estimated fee shall accompany the applica-

tion and the balance is payable at the end of 90 days from the date of the Board's acceptance of the application.

3. For applications filed pursuant to Minn. Stat. § 116C.57, subd. 5, ten percent of the total estimated fee shall accompany the application and the balance is payable as determined by the Board.

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MINNESOTA CODE OF AGENCY RULES

ENVIRONMENTAL QUALITY BOARD

ENVIRONMENTAL REVIEW PROGRAM

(Environmental Impact Statements)

1982 Edition

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ENVIRONMENTAL REVIEW PROGRAM

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Chapter Eleven: Authority, Purpose, Definitions, Responsibilities

6 MCAR S 3.021 Authority, purpose and objectives.

A. Authority. Rules 6 MCAR SS 3.021-3.056 are issued under authority granted in Minnesota Statutes, chapter 116D to implement the environmental review procedures established by the Minnesota Environmental Policy Act.

B. Application. Rules 6 MCAR SS 3.021-3.056 apply to all governmental actions. Rules 6 MCAR SS 3.021-3.056 shall apply to projects for which environmental review has not been initiated prior to the rule's effective date. For any project for which environmental review has been initiated by submission of a citizens petition, environmental assessment worksheet, environmental impact statement preparation notice, or environmental impact statement to the EQB prior to the effective date, all governmental decisions that may be required for that project shall be acted upon in accord with prior rules.

C. Purpose. The Minnesota Environmental Policy Act recognizes that the restoration and maintenance of environmental quality is critically important to our welfare. The act also recognizes that human activity has a profound and often adverse impact on the environment.

A first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of 6 MCAR SS 3.021-3.056 is to aid in providing that understanding through the preparation and public review of environmental documents.

Environmental documents shall contain information which addresses the significant environmental issues of a proposed action. This information shall be available to governmental units and citizens early in the decision making process.

Environmental documents shall not be used to justify a decision, nor shall indications of adverse environmental effects necessarily require that a project be disapproved. Environmental documents shall be used as guides in issuing, amending, and denying permits and carrying out other responsibilities of governmental units to avoid or minimize adverse environmental effects and to restore and enhance environmental quality.

D. Objectives. The process created by 6 MCAR SS 3.021-3.056 is designed to:

1. Provide useable information to the project proposer, governmental decision makers and the public concerning the

primary environmental effects of a proposed project;

2. Provide the public with systematic access to decision makers, which will help to maintain public awareness of environmental concerns and encourage accountability in public and private decision making;

3. Delegate authority and responsibility for environmental review to the governmental unit most closely involved in the project;

4. Reduce delay and uncertainty in the environmental review process; and

5. Eliminate duplication.

6 MCAR S 3.022 Abbreviations and definitions.

A. Abbreviations. For the purpose of 6 MCAR SS 3.021-3.056 the following abbreviations have the meanings given them.

1. "CFR" means Code of Federal Regulations.

2. "DEPD" means Department of Energy, Planning and Development.

3. "DNR" means Department of Natural Resources.

4. "DOT" means Department of Transportation.

5. "EAW" means environmental assessment worksheet.

6. "EIS" means environmental impact statement.

7. "EQB" means Environmental Quality Board.

8. "HVTL" means high voltage transmission line.

9. "LEPGP" means large electric power generating plant.

10. "MCAR" means Minnesota Code of Agency Rules.

11. "MDA" means Minnesota Department of Agriculture.

12. "MDH" means Minnesota Department of Health.

13. "PCA" means Pollution Control Agency.

14. "RGU" means responsible governmental unit.

15. "USC" means United States Code.

B. Definitions. For the purposes of 6 MCAR SS 3.021-3.056, unless otherwise provided, the following terms have the meanings given them.

1. "Agricultural land" means land which is or has, within the last five years, been devoted to the production of livestock, dairy animals, dairy products, poultry and poultry products, fur bearing animals, horticultural and nursery stock, fruit, vegetables, forage, grains, or bees and apiary products. Wetlands, naturally vegetated lands and woodlands contiguous to or surrounded by agricultural land shall be considered agricultural lands if under the same ownership or management as that of the agricultural land during the period of agricultural use.

2. "Animal units" has the meaning given in 6 MCAR S 4.8051 B.4.

3. "Approval" means a decision by a unit of government to issue a permit or to otherwise authorize the commencement of a proposed project.

4. "Attached units" means a group 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.

5. "Biomass sources" means animal waste and all forms of vegetation, natural or cultivated.

6. "Class I dam" has the meaning given in 6 MCAR S 1.5031.

7. "Class II dam" has the meaning given in 6 MCAR S 1.5031.

8. "Collector roadway" means a road that provides access to minor arterial roadways from local streets and adjacent land uses.

9. "Construction" means any activity that directly alters the environment. It includes preparation of land or fabrication of facilities. It does not include surveying or mapping.

10. "Cumulative impact" means the impact on the environment that results from incremental effects of the project in addition to other past, present, and reasonably foreseeable future projects regardless of what person undertakes the other projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

11. "Day" in counting any period of time, shall not include the day of the event from which the designated period of time begins. The last day of the period counted shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is 15 days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the counting of days.

12. "Disposal facility" has the meaning given in Minnesota Statutes, section 115A.03, subdivision 10.

13. "EIS actual cost" means the total of all allowable expenditures incurred by the RGU and the proposer in preparing and distributing the EIS.

14. "EIS assessed cost" means that portion of the EIS estimated cost paid by the proposer in the form of a cash payment to the EQB or to the RGU for the collection and analysis of technical data incorporated in the EIS.

15. "EIS estimated cost" means the total of all expenditures of the RGU and the proposer anticipated to be necessary for the preparation and distribution of the EIS.

16. "Emergency" means a sudden, unexpected occurrence, natural or manmade, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. "Emergency" includes fire, flood, windstorm, riot, accident, or sabotage.

17. "Environment" means physical conditions existing in the area which may be affected by a proposed project. It includes land, air, water, minerals, flora, fauna, ambient noise, energy resources, and manmade objects or natural features of historic, geologic or aesthetic significance.

18. "Environmental assessment worksheet" or "EAW" means a brief document which is designed to set out the basic facts necessary to determine whether an EIS is required for a proposed project or to initiate the scoping process for an EIS.

19. "Environmental document" means EAW, draft EIS, final EIS, substitute review document, and other environmental analysis documents.

20. "Environmental impact statement" or "EIS" means a detailed written statement as required by Minn. Stat. S 116D.04, subd. 2a.

21. "Expansion" means an extension of the capability of a facility to produce or operate beyond its existing capacity. It excludes repairs or renovations which do not increase the capacity of the facility.

22. "First class city" has the meaning given in Minnesota Statutes, section 410.01.

23. "Flood plain" has the meaning given in rule NR 85 (c) of the Department of Natural Resources.

24. "Flood plain ordinance, state approved" means a local governmental unit flood plain management ordinance which meets the provisions of Minnesota Statutes, section 104.04 and has

been approved by the Commissioner of the DNR pursuant to rule NR 85 of the Department of Natural Resources.

25. "Fourth class city" has the meaning given in Minnesota Statutes, section 410.01.

26. "Governmental action" means activities, including projects wholly or partially conducted, permitted, assisted, financed, regulated or approved by governmental units, including the federal government.

27. "Governmental unit" means any state agency and any general or special purpose unit of government in the state, including watershed districts organized under Minnesota Statutes, chapter 112, counties, towns, cities, port authorities, housing authorities, and the Metropolitan Council, but not including courts, school districts, and regional development commissions.

28. "Gross floor space" means the total square footage of all floors but does not include parking lots or approach areas.

29. "Ground area" means the total surface area of land that would be converted to an impervious surface by the proposed project. It includes structures, parking lots, approaches, service facilities, appurtenant structures, and recreational facilities.

30. "Hazardous waste" has the meaning given in Minnesota Statutes, section 116.06, subdivision 13.

31. "High voltage transmission line" or "HVTL" has the meaning given in 6 MCAR S 3.072 E.

32. "Highway safety improvement project" means a project designed to improve safety of highway locations which have been identified as hazardous or potentially hazardous. Projects in this category include the removal, relocation, remodeling, or shielding of roadside hazards; installation or replacement of traffic signals; and the geometric correction of identified high accident locations requiring the acquisition of minimal amounts of right-of-way.

33. "Large electric power generating plant" or "LEPGP" has the meaning given in 6 MCAR S 3.072 G.

34. "Local governmental unit" means any unit of government other than the state or a state agency or the federal government or a federal agency. It includes watershed districts established pursuant to Minnesota Statutes, chapter 112, counties, towns, cities, port authorities, housing authorities, and the Metropolitan Council. It does not include courts, school districts, and regional development commissions.

35. "Marina" has the meaning given in 6 MCAR S 1.5020 D.

36. "Mineral deposit evaluation" has the meaning given in Minnesota Statutes, section 156A.071, subdivision 9, clause (d).

37. "Minnesota River Project Riverbend area" means an area subject to the comprehensive land use plan of the Project Riverbend Board established pursuant to Laws of 1982, chapter 627.

38. "Mississippi headwaters area" means an area subject to the comprehensive land use plan of the Mississippi River Headwaters Board established pursuant to Laws of 1981, chapter 246; Minnesota Statutes, chapter 114B.

39. "Mississippi headwaters plan" means the comprehensive land use plan of the Mississippi River Headwaters Board established pursuant to Laws of 1981, chapter 246; Minnesota Statutes, chapter 114B.

40. "Mitigation" means:

a. Avoiding impacts altogether by not undertaking a certain project or parts of a project;

b. Minimizing impacts by limiting the degree of magnitude of a project;

c. Rectifying impacts by repairing, rehabilitating, or restoring the affected environment;

d. Reducing or eliminating impacts over time by preservation and maintenance operations during the life of the project; or

e. Compensating for impacts by replacing or providing substitute resources or environments.

41. "Mixed municipal solid waste" has the meaning given in Minnesota Statutes, section 115A.03, subdivision 21.

42. "Natural watercourse" has the meaning given in Minnesota Statutes, section 105.37, subdivision 10.

43. "Negative declaration" means a written statement by the RGU that a proposed project does not require the preparation of an EIS.

44. "Open space land use" means a use particularly oriented to and using the outdoor character of an area including agriculture, campgrounds, parks and recreation areas.

45. "Permanent conversion" means a change in use of agricultural, naturally vegetated, or forest lands that impairs the ability to convert the land back to its agricultural, natural, or forest capacity in the future. It does not include changes in management practices, such as conversion to parklands, open space, or natural areas.

46. "Permit" means a permit, lease, license, certificate, or other entitlement for use or permission to act that may be granted or issued by a governmental unit or the commitment to issue or the issuance of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, by a governmental unit.

47. "Person" means any natural person, state, municipality, or other governmental unit or political subdivision or other agency or instrumentality, public or private corporation, partnership, firm, association, or other organization, receiver, trustee, assignee, agent, or other legal representative of the foregoing, and any other entity.

48. "Phased action" means two or more projects to be undertaken by the same proposer which a RGU determines:

a. Will have environmental effects on the same geographic area;

b. Are substantially certain to be undertaken sequentially over a limited period of time; and

c. Collectively have the potential to have significant environmental effects.

49. "Positive declaration" means a written statement by the RGU that a proposed project requires the preparation of an EIS.

50. "Potentially permanent" means a dwelling for human habitation that is permanently affixed to the ground or commonly used as a place of residence. It includes houses, seasonal and year round cabins, and mobile homes.

51. "Preparation notice" means a written notice issued by the RGU stating that an EIS will be prepared for a proposed project.

52. "Processing", as used in 6 MCAR SS 3.038 O.2. and 3., and 3.039 K.3., has the meaning given in Minnesota Statutes, section 115A.03, subdivision 25.

53. "Project" means a governmental action, the results of which would cause physical manipulation of the environment, directly or indirectly. The determination of whether a project requires environmental documents shall be made by reference to the physical activity to be undertaken and not to the governmental process of approving the project.

54. "Project estimated cost" means the total of all allowable expenditures of the proposer anticipated to be necessary for the implementation of a proposed project.

55. "Project Riverbend plan" means the comprehensive land use plan of the Project Riverbend Board established pursuant to

Laws of 1982, chapter 627.

56. "Proposer" means the private person or governmental unit that proposes to undertake or to direct others to undertake a project.

57. "Protected waters" has the meaning given public waters in Minnesota Statutes, section 105.37, subdivision 14.

58. "Protected wetland" has the meaning given wetland in Minnesota Statutes, section 105.37, subdivision 15.

59. "Recreational development" means facilities for temporary residence while in pursuit of leisure activities. Recreational development includes, but is not limited to, recreational vehicle parks, rental or owned campgrounds, and condominium campgrounds.

60. "Related action" means two or more projects that will affect the same geographic area which a RGU determines:

a. Are planned to occur or will occur at the same time; or

b. Are of a nature that one of the projects will induce the other project.

61. "Resource recovery" has the meaning given in Minnesota Statutes, section 115A.03, subdivision 27.

62. "Resource recovery facility" has the meaning given in Minnesota Statutes, section 115A.03, subdivision 28.

63. "Responsible governmental unit" or RGU means the governmental unit which is responsible for preparation and review of environmental documents.

64. "Scientific and natural area" means an outdoor recreation system unit designated pursuant to Minnesota Statutes, section 86A.05, subdivision 5.

65. "Scram mining" has the meaning given in 6 MCAR S 1.0401 B.16.

66. "Second class city" has the meaning given in Minnesota Statutes, section 410.01.

67. "Sewer system" means a piping or conveyance system that conveys wastewater to a wastewater treatment plant.

68. "Sewered area" means an area:

a. That is serviced by a wastewater treatment facility or a publicly owned, operated, or supervised centralized septic system servicing the entire development; or

b. That is located within the boundaries of the Metropolitan Urban Service Area, as defined pursuant to the development framework of the Metropolitan Council.

69. "Shoreland" has the meaning given in rule Cons 70 of the Department of Natural Resources.

70. "Shoreland ordinance, state approved" means a local governmental unit shoreland management ordinance which satisfies Minnesota Statutes, section 105.485 and has been approved by the commissioner of the DNR pursuant to rule Cons 70 or NR 82 of the Department of Natural Resources.

71. "Solid waste" has the meaning given in Minnesota Statutes, section 116.06, subdivision 10.

72. "State trail corridor" means an outdoor recreation system unit designated pursuant to Minnesota Statutes, section 86A.05, subdivision 4.

73. "Storage", as used in 6 MCAR S 3.038 O.4., has the meaning given in Code of Federal Regultions, title 40, section 260.10 (a)(66) (1980).

74. "Third class city" has the meaning given in Minnesota Statutes, section 410.01.

75. "Tiering" means incorporating by reference the discussion of an issue from a broader or more general EIS. An example of tiering is the incorporation of a program or policy statement into a subsequent environmental document of a more narrow scope, such as a site-specific EIS.

76. "Transfer station" has the meaning given in Minnesota Statutes, section 115A.03, subdivision 33.

77. "Waste" has the meaning given in Minnesota Statutes, section 115A.03, subdivision 34.

78. "Waste facility" has the meaning given in Minnesota Statutes, section 115A.03, subdivision 35.

79. "Wastewater treatment facility" means a facility for the treatment of municipal or industrial waste water. It includes on-site treatment facilities.

80. "Wetland" has the meaning given in U.S. Fish and Wildlife Service Circular No. 39 (1971 edition).

81. "Wild and scenic rivers district" means a river, or a segment of the river, and its adjacent lands that possess outstanding scenic, recreational, natural, historical, scientific, or similar values and has been designated by the Commissioner of the DNR or by the legislature of the state of Minnesota for inclusion within the Minnesota Wild and Scenic Rivers system pursuant to Minnesota Statutes, sections 104.31 to

104.40 or by Congress for inclusion within the National Wild and Scenic Rivers System pursuant to United States Code, title 16, sections 1274 to 1286 (1976).

82. "Wild and scenic rivers district ordinances, state approved" means a local governmental unit ordinance implementing the state management plan for the district. The ordinance must be approved by the Commissioner of the DNR pursuant to rule NR 81 or NR 2202 of the Department of Natural Resources.

83. "Wilderness area" means an outdoor recreation system unit designated pursuant to Minnesota Statutes, section 86A.05, subdivision 6.

6 MCAR S 3.023 General responsibilities.

A. EQB. The EQB shall monitor the effectiveness of 6 MCAR SS 3.021-3.056 and shall take appropriate measures to modify and improve their effectiveness. The EQB shall assist governmental units and interested persons in understanding and implementing the rules.

B. RGUs. RGUs shall be responsible for verifying the accuracy of environmental documents and complying with environmental review processes in a timely manner.

C. Governmental units, private individuals, citizen groups, and business concerns. When environmental review documents are required on a project, the proposer of the project and any other person shall supply any data reasonably requested by the RGU which he has in his possession or to which he has reasonable access.

D. Appeal of final decisions. Decisions by a RGU on the need for an EAW, the need for an EIS and the adequacy of an EIS are final decisions and may be reviewed by a declaratory judgment action initiated within 30 days after publication of the RGU's decision in the EQB Monitor in the district court of the county where the proposed project, or any part thereof, would be undertaken.

6 MCAR S 3.024 RGU selection procedures.

A. RGU for mandatory categories. For any project listed in 6 MCAR S 3.038 or 3.039, the governmental unit specified in those rules shall be the RGU.

B. RGU for discretionary EAWs. If a governmental unit orders an EAW pursuant to 6 MCAR S 3.025 C.1., that governmental unit shall be designated as the RGU.

C. RGU for petition EAWs. 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.

D. RGU for EAW by order of EQB. If the EQB orders an EAW pursuant to 6 MCAR S 3.025 C.3., the EQB shall, at the same time, designate the RGU for that EAW.

E. RGU selection generally. For any project where the RGU is not listed in 6 MCAR S 3.038 or 3.039 or which falls into more than one category in 6 MCAR S 3.038 or 3.039, or for which the RGU is in question, the RGU shall be determined as follows:

1. When a single governmental unit proposes to carry out or has sole jurisdiction to approve a project, it shall be the RGU.

2. When two or more governmental units propose to carry out or have jurisdiction to approve the project, the RGU shall be the governmental unit with the greatest responsibility for supervising or approving the project as a whole. Where it is not clear which governmental unit has the greatest responsibility for supervising or approving the project or where there is a dispute about which governmental unit has the greatest responsibility for supervising or approving the project, the governmental units shall either:

a. By agreement, designate which unit shall be the RGU within five days of receipt of the completed data portion of the EAW; or

b. Submit the question to the EQB chairperson, who shall within five days of receipt of the completed data portions of the EAW designate the RGU based on a consideration of which governmental unit has the greatest responsibility for supervising or approving the project or has expertise that is relevant for the environmental review.

F. Exception. Notwithstanding A.-E., 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 if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.

Chapter Twelve: Environmental Assessment Worksheet

6 MCAR S 3.025 Projects requiring an EAW.

A. Purpose of an EAW. The EAW is a brief document prepared in worksheet format which is designed to rapidly assess the environmental effects which may be associated with a proposed project. The EAW serves primarily to:

1. Aid in the determination of whether an EIS is needed for a proposed project; and

2. Serve as a basis to begin the scoping process for an EIS.

B. Mandatory EAW categories. An EAW shall be prepared for any project that meets or exceeds the thresholds of any of the EAW categories listed in 6 MCAR S 3.038 or any of the EIS categories listed in 6 MCAR S 3.039.

C. Discretionary EAWs. An EAW shall be prepared:

1. When a project is not exempt under 6 MCAR S 3.041 and when a governmental unit with approval authority over the proposed project determines that, because of the nature or location of a proposed project, the project may have the potential for significant environmental effects;

2. When a project is not exempt under 6 MCAR S 3.041 and when a governmental unit with approval authority over a proposed project determines pursuant to the petition process set forth in 6 MCAR S 3.026 that, because of the nature or location of a proposed project, the project may have the potential for significant environmental effects;

3. Whenever the EQB determines that, because of the nature or location of a proposed project, the project may have the potential for significant environmental effects. This paragraph 3 shall not be applicable to a project exempt under 6 MCAR S 3.041 or to a project for which a governmental unit, with approval authority over the project, has made a prior negative or positive determination concerning the need for an EAW concerning the project; or

4. When the proposer wishes to initiate environmental review to determine if a project has the potential for significant environmental effects.

6 MCAR S 3.026 Petition process.

A. Petition. Any person may request the preparation of an EAW on a project by filing a petition that contains the signatures and mailing addresses of at least 25 individuals.

B. Content. The petition shall also include:

1. A description of the proposed project;

2. The proposer of the project;

3. The name, address and telephone number of the representative of the petitioners;

4. A brief description of the potential environmental effects which may result from the project; and

5. Material evidence indicating that, because of the

nature or location of the proposed project, there may be potential for significant environmental effects.

C. Filing of petition. The petition shall be filed with the EQB for a determination of the RGU.

D. Notice to proposer. The petitioners shall notify the proposer in writing at the time they file a petition with the EQB.

E. Determination of RGU. The EQB's chairperson or designee shall determine whether the petition complies with the requirements of A. and B.1., 2., 3., 4., and 5. If the petition complies, the chairperson or designee shall designate an RGU pursuant to 6 MCAR S 3.024 and forward the petition to the RGU within five days of receipt of the petition.

F. EAW decision. The RGU shall order the preparation of an EAW if the evidence presented by the petitioners, proposers, and other persons or otherwise known to the RGU demonstrates that, because of the nature or location of the proposed project, the project may have the potential for significant environmental effects. The RGU shall deny the petition if the evidence presented fails to demonstrate the project may have the potential for significant environmental effects. The RGU shall maintain, either as a separate document or contained within the records of the RGU, a record, including specific findings of fact, of its decision on the need for an EAW.

G. Time limits. The RGU has 15 days from the date of the receipt of the petition to decide on the need for an EAW.

1. If the decision must be made by a board, council, or other body which meets only on a periodic basis, the time period may be extended by the RGU for an additional 15 days.

2. For all other RGUs, the EQB's chairperson shall extend the 15-day period by not more than 15 additional days upon request of the RGU.

H. Notice of decision. Within five days of its decision, the RGU shall notify, in writing, the proposer, the EQB staff, and the petitioner's representative of its decision. The EQB staff shall publish notice of the RGU's decision concerning the petition in the EQB Monitor.

6 MCAR S 3.027 EAW content, preparation and distribution process.

A. EAW content. The EAW shall address at least the following major categories in the form provided on the worksheet:

1. Identification including project name, project proposer, and project location;

2. Procedural details including identification of the

RGU, EAW contact person, and instructions for interested persons wishing to submit comments;

3. Description of the project, methods of construction, quantification of physical characteristics and impacts, project site description, and land use and physical features of the surrounding area;

4. Resource protection measures that have been incorporated into the project design;

5. Major issues sections identifying potential environmental impacts and issues that may require further investigation before the project is commenced; and

6. Known governmental approvals, reviews, or financing required, applied for, or anticipated and the status of any applications made, including permit conditions that may have been ordered or are being considered.

B. EAW form.

1. The EQB shall develop an EAW form to be used by the RGU.

2. The EQB may approve the use of an alternative EAW form if an RGU demonstrates the alternative form will better accommodate the RGU's function or better address a particular type of project and the alternative form will provide more complete, more accurate, or more relevant information.

3. The EAW form shall be assessed by the EQB periodically and may be altered by the EQB to improve the effectiveness of the document.

C. Preparation of an EAW.

1. The EAW shall be prepared as early as practicable in the development of the proposed project. The EAW shall be prepared by the RGU or its agents.

2. If an RGU orders the preparation of an EAW pursuant to 6 MCAR S 3.026 F., the EAW must be prepared within 25 working days of the date of that decision, unless an extension of time is agreed upon by the proposer and the RGU.

3. When an EAW is to be prepared, except pursuant to 6 MCAR S 3.026 F., the proposer shall submit the completed data portions of the EAW to the RGU for its consideration and approval for distribution. The RGU shall have 30 days to add supplementary material, if necessary, and to approve the EAW for distribution. The RGU shall be responsible for the completeness and accuracy of all information .

D. Publication and distribution of an EAW.

1. The RGU shall provide one copy of the EAW to the EQB staff within five days after the RGU approves the EAW. This copy shall serve as notification to the EQB staff to publish the notice of availability of the EAW in the EQB Monitor. At the time of submission of the EAW to the EQB staff, the RGU shall also submit one copy of the EAW to:

a. Each member of the EQB;

b. The proposer of the project;

c. The U.S. Corps of Engineers;

d. The U.S. Environmental Protection Agency;

e. The U.S. Fish and Wildlife Service;

f. The State Historical Society;

g. The Environmental Conservation Library;

h. The Legislative Reference Library;

i. The Regional Development Commission and Regional Development Library for the region of the project site;

j. Any local governmental unit within which the project will take place;

k. The representative of any petitioners pursuant to 6 MCAR S 3.026; and

l. Any other person upon written request.

2. Within five days of the date of submission of the EAW to the EQB staff, the RGU shall provide a press release, containing notice of the availability of the EAW for public review, to at least one newspaper of general circulation within the area where the project is proposed. The press release shall include the name and location of the project, a brief description of the project, the location at which copies of the EAW are available for review, the date the comment period expires, and the procedures for commenting. The RGU shall publish legal notice or advertisement of the availability of the EAW if the proposer requests and agrees to pay for the notice or advertisement. The notice or advertisement shall contain the information required in the press release.

3. The EQB staff shall maintain an official EAW distribution list containing the names and addresses of agencies designated to receive EAWs.

E. Comment period.

1. A 30-day period for review and comment on the EAW shall begin the day the EAW availability notice is published in

the EQB Monitor.

2. Written comments shall be submitted to the RGU during the 30-day review period. The comments shall address the accuracy and completeness of the material contained in the EAW, potential impacts that may warrant further investigation before the project is commenced, and the need for an EIS on the proposed project.

3. The RGU may hold one or more public meetings to gather comments on the EAW if it determines that a meeting is necessary or useful. Reasonable public notice of the meetings shall be given prior to the meetings. All meetings shall be open to the public.

6 MCAR S 3.028 Decision on need for EIS.

A. Standard for decision on need for EIS. An EIS shall be ordered for projects which have the potential for significant environmental effects.

B. Decision making process.

1. The decision on the need for an EIS shall be made in compliance with one of the following time schedules:

a. If the decision is to be made by a board, council, or other body which meets only on a periodic basis, the decision shall be made at the body's first meeting more than ten days after the close of the review period or at a special meeting but, in either case, no later than 30 days after the close of the review period; or

b. For all other RGUs the decision shall be made no later than 15 days after the close of the 30-day review period. This 15-day period shall be extended by the EQB chairperson by no more than 15 additional days upon request of the RGU.

2. The RGU's decision shall be either a negative declaration or a positive declaration. If a positive declaration, the decision shall include the RGU's proposed scope for the EIS. The RGU shall base its decision regarding the need for an EIS and the proposed scope on the information gathered during the EAW process and the comments received on the EAW.

3. The RGU shall maintain a record, including specific findings of fact, supporting its decision. This record shall either be a separately prepared document or contained within the records of the governmental unit.

4. The RGU's decision shall be provided, within five days, to all persons on the EAW distribution list pursuant to 6 MCAR S 3.027 D., to all persons that commented in writing during the 30-day review period, and to any person upon written request. Upon notification, the EQB staff shall publish the

RGU's decision in the EQB Monitor. If the decision is a positive declaration the RGU shall also indicate in the decision the date, time and place of the scoping review meeting.

C. Standard. In deciding whether a project has the potential for significant environmental effects the RGU shall compare the impacts which may be reasonably expected to occur from the project with the criteria in this rule.

D. Criteria. In deciding whether a project has the potential for significant environmental effects, the following factors shall be considered:

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

2. Cumulative potential effects of related or anticipated future projects;

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

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

E. Related actions. When two or more projects are related actions, their cumulative potential effect on the environment shall be considered in determining whether an EIS is required.

F. Phased actions.

1. Phased actions shall be considered a single project for purposes of the determination of need for an EIS.

2. In phased actions where it is not possible to adequately address all the phases at the time of the initial EIS, a supplemental EIS shall be completed prior to approval and construction of each subsequent phase. The supplemental EIS shall address the impacts associated with the particular phase that were not addressed in the initial EIS.

3. For proposed projects such as highways, streets, pipelines, utility lines, or systems where the proposed project is related to a large existing or planned network, for which a governmental unit has determined environmental review is needed, the RGU shall treat the present proposal as the total proposal or select only some of the future elements for present consideration in the threshold determination and EIS. These selections shall be logical in relation to the design of the total system or network. They shall not be made merely to divide a large system into exempted segments.

Chapter Thirteen:

Environmental Impact Statement

6 MCAR S 3.029 Projects requiring an EIS.

A. Purpose of an EIS. The purpose of an EIS is to provide information for governmental units, the proposer of the project, and other persons to evaluate proposed projects which have the potential for significant environmental effects, to consider alternatives to the proposed projects, and to explore methods for reducing adverse environmental effects.

B. Mandatory EIS categories. An EIS shall be prepared for any project that meets or exceeds the thresholds of any of the EIS categories listed in 6 MCAR S 3.039.

C. Discretionary EISs. An EIS shall be prepared:

1. When the RGU determines that, based on the EAW and any comments or additional information received during the EAW comment period, the proposed project has the potential for significant environmental effects; or

2. When the RGU and proposer of the project agree that an EIS should be prepared.

6 MCAR S 3.030 EIS scoping process.

A. Purpose. The scoping process shall be used before the preparation of an EIS to reduce the scope and bulk of an EIS, identify only those issues relevant to the proposed project, define the form, level of detail, content, alternatives, time table for preparation, and preparers of the EIS, and to determine the permits for which information will be developed concurrently with the EIS.

B. EAW as scoping document. All projects requiring an EIS must have an EAW filed with the RGU. The EAW shall be the basis for the scoping process.

1. For projects which fall within a mandatory EIS category or if a voluntary EIS is planned, the EAW will be used solely as a scoping document.

2. If the need for an EIS has not been determined the EAW will have two functions:

a. To identify the need for preparing an EIS pursuant to 6 MCAR S 3.028; and

b. To initiate discussion concerning the scope of the EIS if an EIS is ordered pursuant to 6 MCAR S 3.028.

C. Scoping period.

1. If the EIS is being prepared pursuant to 6 MCAR S 3.029 B. or C.2., the following schedule applies:

a. The 30-day scoping period will begin when the notice of the availability of the EAW is published in accord with 6 MCAR S 3.027 D.1. and 2. This notice and press release shall include the time, place and date of the scoping meeting;

b. The RGU shall provide the opportunity for at least one scoping meeting during the scoping period. This meeting shall be held not less than 15 days after publication of the notice of availability of the EAW. All meetings shall be open to the public; and

c. A final scoping decision shall be issued within 15 days after the close of the 30-day scoping period.

2. If the EIS is being prepared pursuant to 6 MCAR S 3.029 C.1., the following schedule applies:

a. At least ten days but not more than 20 days after notice of a positive declaration is published in the EQB Monitor, a public meeting shall be held to review the scope of the EIS. Notice of the time, date and place of the scoping meeting shall be published in the EQB Monitor, and a press release shall be provided to a newspaper of general circulation in the area where the project is proposed. All meetings shall be open to the public; and

b. Within 30 days after the positive declaration is published in the EQB Monitor, the RGU shall issue its final decision regarding the scope of the EIS. If the decision of the RGU must be made by a board, council, or other similar body which meets only on a periodic basis, the decision may be made at the next regularly scheduled meeting of the body following the scoping meeting but not more than 45 days after the positive declaration is published in the EQB Monitor.

D. Procedure for scoping.

1. Written comments suggesting issues for scoping or commenting on the EAW must be filed with the RGU during the scoping period. Interested persons may attend the scoping meeting to exercise their right to comment.

2. Governmental units and other persons shall be responsible for participating in the scoping process within the time limits and in the manner prescribed in 6 MCAR SS 3.021-3.056.

E. Scoping decision.

1. The scoping decision at the least shall contain:

a. The issues to be addressed in the EIS;

b. Time limits for preparation, if they are shorter than those allowed by 6 MCAR SS 3.021-3.056;

c. Identification of the permits for which information will be gathered concurrently with EIS preparation;

d. Identification of the permits for which a record of decision will be required;

e. Alternatives which will be addressed in the EIS ;

f. Identification of potential impact areas resulting from the project itself and from related actions which shall be addressed in the EIS; and

g. Identification of necessary studies requiring compilation of existing information or the development of new data that can be generated within a reasonable amount of time and at a reasonable cost.

2. The form of an EIS may be changed during scoping if circumstances indicate the need or appropriateness of an alternative form.

3. After the scoping decision is made, the RGU shall not amend the decision without the agreement of the proposer unless substantial changes are made in the proposed project that affect the potential significant environmental effects of the project or substantial new information arises relating to the proposed project that significantly affects the potential environmental effects of the proposed project or the availability of prudent and feasible alternatives to the project. If the scoping decision is amended after publication of the EIS preparation notice, notice and a summary of the amendment shall be published in the EQB Monitor within 30 days of the amendment.

F. EIS preparation notice. An EIS preparation notice shall be published within 45 days after the scoping decision is issued. The notice shall be published in the EQB Monitor, and a press release shall be provided to at least one newspaper of general circulation in each county where the project will occur. The notice shall contain a summary of the scoping decision.

G. Consultant selection. The RGU shall be responsible for expediting the selection of consultants for the preparation of the EIS.

6 MCAR S 3.031 EIS preparation and distribution process.

A. Interdisciplinary preparation. An EIS shall be prepared using an interdisciplinary approach which will insure the integrated use of the natural, environmental, and social

sciences. The RGU may request that another governmental unit help in the completion of the EIS. Governmental units shall provide any unprivileged data or information, to which it has reasonable access, concerning the subjects to be discussed and shall assist in the preparation of environmental documents on any project for which it has special expertise or access to information.

B. Content. An EIS shall be written in plain and objective language. An RGU shall use a format for an EIS that will encourage good analysis and clear presentation of the proposed action including alternatives to the project. The standard format shall be:

1. Cover sheet. The cover sheet shall include:

a. The RGU;

b. The title of the proposed project that is the subject of the statement and, if appropriate, the titles of related actions, together with each county or other jurisdictions, if applicable, where the project is located;

c. The name, address, and telephone number of the person at the RGU who can supply further information;

d. The name and address of the proposer and the name, address and telephone number of the proposer's representative who can supply further information.

e. A designation of the statement as a draft, final or supplement;

f. A one paragraph abstract of the EIS; and

g. If appropriate, the date of the public meeting on the draft EIS and the date following the meeting by which comments on the draft EIS must be received by the RGU.

2. Summary. The summary shall stress the major findings, areas of controversy, and the issues to be resolved including the choice among alternatives.

3. Table of contents. The table shall be used to assist readers to locate material.

4. List of preparers. This list shall include the names and qualifications of the persons who were primarily responsible for preparing the EIS or significant background papers.

5. Project description. The proposed project shall be described with no more detail than is absolutely necessary to allow the public to identify the purpose of the project, its size, scope, environmental setting, geographic location, and the anticipated phases of development.

6. Governmental approvals. This section shall list all known governmental permits and approvals required including indentification of the governmental unit which is responsible for each permit or approval. Those permits for which all necessary information has been gathered and presented in the EIS shall be identified.

7. Alternatives. The alternatives section shall compare the environmental impacts of the proposal with other reasonable alternatives to the proposed project. Reasonable alternatives may include locational considerations, design modifications including site layout, magnitude of the project, and consideration of alternative means by which the purpose of the project could be met. Alternatives that were considered but eliminated shall be discussed briefly and the reasons for their elimination shall be stated. The alternative of no action shall be addressed.

8. Environmental, economic, employment and sociological impacts. For the proposed project and each major alternative there shall be a thorough but succinct discussion of any direct or indirect, adverse or beneficial effect generated. The discussion shall concentrate on those issues considered to be significant as identified by the scoping process. Data and analyses shall be commensurate with the importance of the impact, with less important material summarized, consolidated or simply referenced. The EIS shall identify and briefly discuss any major differences of opinion concerning impacts of the proposed project and the effects the project may have on the environment.

9. Mitigation measures. This section shall identify those measures that could reasonably eliminate or minimize any adverse environmental, economic, employment or sociological effects of the proposed project.

10. Appendix. If a RGU prepares an appendix to an EIS the appendix shall include, when applicable:

a. Material prepared in connection with the EIS, as distinct from material which is not so prepared and which is incorporated by reference;

b. Material which substantiates any analysis fundamental to the EIS; and

c. Permit information that was developed and gathered concurrently with the preparation of the EIS. The information may be presented on the permitting agency's permit application forms. The appendix may reference information for the permit included in the EIS text or the information may be included within the appendix, as appropriate. If the permit information cannot conveniently be incorporated into the EIS, the EIS may simply indicate the location where the permit information may be reviewed.

C. Incorporation by reference. A RGU shall incorporate material into an EIS by reference when the effect will be to reduce bulk without impeding governmental and public review of the project. The incorporated material shall be cited in the EIS, and its content shall be briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by interested persons within the time allowed for comment.

D. Incomplete or unavailable information. When a RGU is evaluating significant effects on the environment in an EIS and there is scientific uncertainty or gaps in relevant information, the RGU shall make clear that the information is lacking. If the information relevant to the impacts is essential to a reasoned choice among alternatives and is not known and the cost of obtaining it is excessive or the information cannot be obtained within the time periods specified in G.4. or the information relevant to the impacts is important to the decision and the means to obtain it are beyond the state of the art, the RGU shall weigh the need for the project against the risk and severity of possible adverse impacts were the project to proceed in the face of uncertainty. The EIS shall, in these circumstances, include a worst case analysis and an indication of the probability or improbability of its occurrence.

E. Draft EIS.

1. A draft EIS shall be prepared consistent with 6 MCAR SS 3.021-3.056 and in accord with the scoping determination.

2. When the draft EIS is completed, the RGU shall make the draft EIS available for public review and comment and shall hold an informational meeting in the county where the project is proposed.

3. The entire draft EIS with appendices shall be provided to:

a. Any governmental unit which has authority to permit or approve the proposed project, to the extent known;

b. The proposer of the project;

c. The EQB and EQB staff;

d. The Environmental Conservation Library;

e. The Legislative Reference Library;

f. The Regional Development Commission and Regional Development Library;

g. A public library or public place where the draft will be available for public review in each county where the project will take place, to the extent known; and

h. To the extent possible, to any person requesting the entire EIS.

4. The summary of the draft EIS shall be provided to:

a. All members of the EAW distribution list that do not receive the entire draft EIS;

b. Any person that submitted substantive comments on the EAW that does not receive the entire draft EIS; and

c. Any person requesting the summary.

5. The copy provided to the EQB staff shall serve as notification to publish notice of availability of the draft EIS in the EQB Monitor.

6. The RGU shall supply a press release to at least one newspaper of general circulation within the area where the project is proposed.

7. The notice of availability in the EQB Monitor and the press release shall contain notice of the date, time, and place of the informational meeting, notice of the location of the copy of the draft EIS available for public review, and notice of the date of termination of the comment period.

8. The informational meeting must be held not less than 15 days after publication of the notice of availability in the EQB Monitor. A typewritten or audio-recorded transcript of the meeting shall be made.

9. The record shall remain open for public comment not less than ten days after the last date of the informational meeting. Written comments on the draft EIS may be submitted any time during the comment period.

10. The RGU shall respond to the timely substantive comments received on the draft EIS and prepare the final EIS.

F. Final EIS.

1. The final EIS shall respond to the timely substantive comments on the draft EIS consistent with the scoping decision. The RGU shall discuss at appropriate points in the final EIS any responsible opposing views relating to scoped issues which were not adequately discussed in the draft EIS and shall indicate the RGU's response to the views.

2. If only minor changes in the draft EIS are suggested in the comments on the draft, the written comments and the responses may be attached to the draft or bound as a separate volume and circulated as the final EIS. If other than minor changes are required, the draft text shall be rewritten so that necessary changes in the text are incorporated in the appropriate places.

3. The RGU shall provide copies of the final EIS to:

a. All persons receiving copies of the entire draft EIS pursuant to E.3.;

b. Any person who submitted substantive comments on the draft EIS; and

c. To the extent possible, to any person requesting the final EIS.

4. The copy provided to the EQB staff shall serve as notification to publish notice of availability of the final EIS in the EQB Monitor.

5. The RGU shall supply a press release to at least one newspaper of general circulation within the area where the project is proposed.

6. The notice of availability in the EQB Monitor and the press release shall contain notice of the location of the copy of the final EIS available for public review and notice of the opportunity for public comment on the adequacy of the final EIS.

G. Determination of adequacy.

1. The RGU shall determine the adequacy of the final EIS unless notified by the EQB, on its own initiative or at the request of the RGU, the proposer of the project or other interested persons, that the EQB will determine the adequacy. The EQB shall notify the RGU no later than 60 days following publication of the preparation notice in the EQB Monitor. The EQB shall intervene only if the EQB determines that:

a. The RGU is or will be unable to provide an objective appraisal of the potential impacts of the project;

b. The project involves complex issues which the RGU lacks the technical ability to assess; or

c. The project has multi-jurisdictional effects.

2. Interested persons may submit written comments on the adequacy of the final EIS to the RGU or the EQB, if applicable, at any time prior to the final determination of adequacy.

3. The determination of adequacy of the final EIS shall be made at least ten days after publication in the EQB Monitor of the notice of availability of the final EIS.

4. The determination of adequacy of the final EIS shall be made within 280 days after the preparation notice was published in the EQB Monitor unless the time is extended by consent of the proposer and the RGU or by the governor for good cause.

5. The final EIS shall be determined adequate if it:

a. Addresses the issues raised in scoping so that all issues for which information can be reasonably obtained have been analyzed;

b. Provides responses to the substantive comments received during the draft EIS review concerning issues raised in scoping; and

c. Was prepared in compliance with the procedures of the act and 6 MCAR SS 3.021-3.056.

6. If the RGU or the EQB determine that the EIS is inadequate, the RGU shall have 60 days in which to prepare an adequate EIS. The revised EIS shall be circulated in accord with F.3.

7. The RGU shall notify all persons receiving copies of the final EIS pursuant to F.3. of its adequacy decision within five days of the adequacy decision. Public notice of the decision shall be published in the EQB Monitor.

H. Permit decisions in cases requiring an EIS.

1. Within 90 days after the determination of adequacy of a final EIS, final decisions shall be made by the appropriate governmental units on those permits which were identified as required in the scoping process and for which information was developed concurrently with the preparation of the EIS. The 90-day period may be extended with the consent of the permit applicant or where a longer period is required by federal law or state statute.

2. At the time of its permit decision, for those permits which were identified during the scoping process as requiring a record of decision, each permitting unit of government shall prepare a concise public record of how it considered the EIS in its decision. That record shall be supplied to the EQB for the purpose of monitoring the effectiveness of the process created by 6 MCAR SS 3.021-3.056 and to any other person requesting the information. The record may be integrated into any other record prepared by the permitting unit of government.

3. The RGU or other governmental unit shall, upon request, inform commenting governmental units and interested parties on the progress in carrying out mitigation measures which the commenting governmental units have proposed and which were adopted by the RGU making the decision.

I. Supplemental EIS.

1. A RGU shall prepare a supplement to a final EIS whenever the RGU determines that:

a. Substantial changes have been made in the proposed

project that affect the potential significant environmental effects of the project; or

b. There is substantial new information or new circumstances that significantly affect the potential environmental effects from the proposed project which have not been considered in the final EIS or that significantly affect the availability of prudent and feasible alternatives with lesser environmental effects.

2. A supplement to an existing EIS shall be utilized in lieu of a new EIS for expansions of existing projects for which an EIS has been prepared if the RGU determines that a supplement can adequately address the environmental impacts of the project.

3. A RGU shall prepare, circulate, and file a supplemental EIS in the same manner as a draft and final EIS unless alternative procedures are approved by the EQB.

4. The determination of adequacy of the supplemental EIS shall be made within 120 days after the notice of preparation of the supplemental EIS was published in the EQB Monitor unless the time is extended by consent of the proposer and the RGU or by the Governor for good cause.

6 MCAR S 3.032 Prohibition on final governmental decisions.

A. EAW filed or required. On any project for which a petition for an EAW is filed or an EAW is required or ordered under 6 MCAR SS 3.021-3.056, no final governmental decision to grant a permit or other approval required, or to commence the project shall be made until either a petition has been dismissed, a negative declaration has been issued, or a determination of adequacy of the EIS has been made.

B. EIS adequate or filed. Except for projects under D. or E., for any project for which an EIS is required, no final governmental decision to grant a permit or other approval required, or to commence the project shall be made until the RGU or the EQB has determined the final EIS is adequate. Where public hearings are required by law to precede issuance of a permit, public hearings shall not be held until after filing of a draft EIS.

C. Construction prohibited, exceptions. No physical construction of a project shall occur for any project subject to review under 6 MCAR SS 3.021-3.056 until a petition has been dismissed, a negative declaration has been issued, or until the final EIS has been determined adequate by the RGU or the EQB, unless the project is an emergency under E. or a variance is granted under D. The EQB's statutory authority to halt projects or impose other temporary relief is in no way limited by this paragraph.

D. Variance. Construction may begin on a project if the

proposer applies for and is granted a variance from C. A variance for certain governmental approvals to be granted prior to completion of the environmental review process may also be requested.

1. A variance may be requested at any time after the commencement of the 30-day review period following the filing of an EAW.

2. The proposer shall submit an application for a variance to the EQB together with:

a. A detailed explanation of the construction proposed to be undertaken or the governmental approvals to be granted;

b. The anticipated environmental effects of undertaking the proposed construction or granting the governmental approvals;

c. The reversibility of the anticipated environmental effects;

d. The reasons necessitating the variance; and

e. A statement describing how approval would affect subsequent approvals needed for the project and how approval would affect the purpose of environmental review.

3. The EQB chairperson shall publish a notice of the variance application in the EQB Monitor within 15 days after receipt of the application.

4. The EQB chairperson shall issue a press release to at least one newspaper of general circulation in the area where the project is proposed. The notice and press release shall summarize the reasons given for the variance application and specify that comments on whether a variance should be granted must be submitted to the EQB within 20 days after the date of publication in the EQB Monitor.

5. 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 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 not caused by the proposer's own action or inaction.

6. The EQB shall set forth in writing its reasons for granting or denying each request for a variance.

7. Only the construction or governmental approvals necessary to avoid the consequences listed in 5. shall be undertaken or granted.

E. Emergency action. In the rare situation when immediate action by a governmental unit or person is essential to avoid or eliminate an imminent threat to the public health or safety or a serious threat to natural resources, a proposed project may be undertaken without the environmental review which would otherwise be required by 6 MCAR SS 3.021-3.056. The governmental unit or person must demonstrate to the EQB chairperson, either orally or in writing, that immediate action is essential and must receive authorization from the EQB chairperson to proceed. Authorization to proceed shall be limited to those aspects of the project necessary to control the immediate impacts of the emergency. Other aspects of the project remain subject to review under 6 MCAR SS 3.021-3.056.

6 MCAR S 3.033 Review of state projects.

A. Applicability. This rule applies to any project wholly or partially conducted by a state agency if an EIS or a generic EIS has been prepared for that project.

B. Prior notice required. At least seven working days prior to the final decision of any state agency concerning a project subject to this rule, that agency shall provide the EQB with notice of its intent to issue a decision. The notice shall include a brief description of the project, the date the final decision is expected to be issued, the title and date of EISs prepared on the project and the name, address and phone number of the project proposer and parties to any proceeding on the project. If the project is required by the existence of a public emergency advance notice shall not be required. If advance notice is precluded by public emergency or statute notice shall be given at the earliest possible time but not later than three calendar days after the final decision is rendered.

C. Decision to delay implementation. At any time prior to or within ten days after the issuance of the final decision on a project, the chairperson of the EQB may delay implementation of the project by notice to the agency, the project proposer and interested parties as identified by the governmental unit. Notice may be verbal, however, written notice shall be provided as soon as reasonably possible. The chairperson's decision to delay implementation shall be effective for no more than ten days by which time the EQB must affirm or overturn the decision.

D. Basis for decision to delay implementation. The EQB, or the chairperson of the EQB, shall delay implementation of a project where there is substantial reason to believe that the

project or its approval is inconsistent with the policies and standards of Minnesota Statutes, sections 116D.01 to 116D.06.

E. Notice and hearing. Promptly upon issuance of a decision to delay implementation of a project, the EQB shall order a hearing. When the hearing will determine the rights of any private individual, the hearing shall be conducted pursuant to Minnesota Statutes, section 15.0418. In all other cases, the hearing shall be conducted as follows:

1. Written notice of the hearing shall be given to the governmental unit, the proposer, and parties, as identified by the governmental unit, no less than seven days in advance. To the extent reasonably possible, notice shall be published in the EQB Monitor and a newspaper of general circulation in each county in which the project is to take place. The notice shall identify the time and place of the hearing, and provide a brief description of the project and final decision to be reviewed and a reference to the EQB's authority to conduct the hearing. The hearing shall be conducted by the EQB chairperson or a designee;

2. Any person may submit written or oral evidence tending to establish the consistency or inconsistency of the project with the policies and standards of Minnesota Statutes, sections 116D.01 to 116D.06. Evidence shall also be taken of the governmental unit's final decision; and

3. Upon completion of the hearing, the EQB shall determine whether to affirm, reverse, or modify the governmental unit's decision. If modification is required, the EQB shall specifically state those modifications. The EQB shall prepare specific findings of fact regarding its decision. If the EQB fails to act within 45 days of notice given pursuant to C. the agency's decision shall stand as originally issued.

Chapter Fourteen:

Substitute Forms of Environmental Review

6 MCAR S 3.034 Alternative review.

A. 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:

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

2. The process addresses 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;

3. Alternatives to the proposed project are considered in light of their potential environmental impacts;

4. Measures to mitigate the potential environmental impacts are identified and discussed;

5. A description of the proposed project and analysis of potential impacts, alternatives and mitigating measures are provided to other affected or interested governmental units and the general public;

6. The governmental unit shall provide notice of the availability of environmental documents to the general public in at least the area affected by the project. A copy of environmental documents on projects reviewed under an alternative review procedure shall be submitted to the EQB. The EQB shall be responsible for publishing notice of the availability of the documents in the EQB Monitor;

7. Other governmental units and the public are provided with a reasonable opportunity to request environmental review and to review and comment on the information concerning the project. The process must provide for RGU response to timely substantive comments relating to issues discussed in environmental documents relating to the project; and

8. The process must routinely develop the information required in 1.-5. and provide the notification and review opportunities in 6. and 7. for each project that would be subject to environmental review.

B. Exemption from rules. If the EQB accepts a governmental unit's process as an adequate alternative review procedure, projects reviewed under that alternative review procedure shall be exempt from environmental review under 6 MCAR SS 3.026, 3.027, 3.028, 3.030 and 3.031. On approval of the alternative review process, the EQB shall provide for periodic review of the alternative procedure to ensure continuing compliance with the requirements and intent of these environmental review procedures. The EQB shall withdraw its approval of an alternative review procedure if review of the procedure indicates that the procedure no longer fulfills the intent and requirements of the Minnesota Environmental Policy Act and 6 MCAR SS 3.021-3.056. A project in the process of undergoing review under an approved alternative process shall not be affected by the EQB's withdrawal of approval.

6 MCAR S 3.035 Model ordinance.

A. Application. The model ordinance, set out in C. may be utilized by any local governmental unit which adopts the

ordinance in lieu of 6 MCAR SS 3.025-3.032 for projects which qualify for review under the ordinance.

B. Notice.

If a local governmental unit adopts the ordinance exactly as set out in C. it shall be effective without prior approval by the EQB. A copy of the adopted ordinance shall be forwarded to the EQB. Notice of adoption of the ordinance shall be made in the EQB Monitor.

C. Model ordinance.

AN ORDINANCE RELATING TO THE PREPARATION AND

REVIEW OF ENVIRONMENTAL ANALYSIS

The (county board) (town board) (city council) (watershed board) of ..... ordains:

Section 1. Application. This ordinance shall apply to all projects which:

a. Are consistent with any applicable comprehensive plan;

b. Do not require a state permit; and

c. The (board) (council) determines that, because of the nature or location of the project, the project may have the potential for significant environmental effects; or

d. Are listed in a mandatory EAW or EIS category of the state environmental review program, 6 MCAR SS 3.038 and 3.039, one copy of which is on file with the (county auditor) (town clerk) (city clerk) (watershed district board of managers).

This ordinance shall not apply to projects which are exempted from environmental review by 6 MCAR S 3.041 or to projects which the (board) (council) determines are so complex or have potential environmental effects which are so significant that review should be completed under the state environmental review program, 6 MCAR SS 3.021-3.056.

Section 2. Preparation. Prior to or together with any application for a permit or other form of approval for a project, the proposer of the project shall prepare an analysis of the project's environmental effects, reasonable alternatives to the project and measures for mitigating the adverse environmental effects. The analysis should not exceed 25 pages in length. The (board) (council) shall review the information in the analysis and determine the adequacy of the document. The (board) (council) shall use the standards of the state's environmental review program rules in its determination of adequacy. If the (board) (council) determines the document is inadequate, it shall return the document to the proposer to correct the inadequacies.

Section 3. Review. Upon filing the analysis with the (board) (council), the (board) (council) shall publish notice in a newspaper of general circulation in the (county) (city) (town) (district) that the analysis is available for review. A copy of the analysis shall be provided to any person upon request. A copy of the analysis shall also be provided to every local governmental unit within which the proposed project would be located and to the EQB. The EQB shall publish notice of the availability of the analysis in the EQB Monitor.

Comments on the analysis shall be submitted to the (board) (council) within 30 days following the publication of the notice of availability in the EQB Monitor. The (board) (council) may hold a public meeting to receive comments on the analysis if it determines that a meeeting is necessary or useful. The meeting may be combined with any other meeting or hearing for a permit or other approval for the project. Public notice of the meeting to receive comments on the analysis shall be provided at least ten days before the meeting.

Section 4. Decision. In issuing any permits or granting any other required approvals for a project subject to review under this ordinance, the (board) (council) shall consider the analysis and the comments received on it. The (board) (council) shall, whenever practicable and consistent with other laws, require that mitigation measures identified in the analysis be incorporated in the project's design and construction.

6 MCAR S 3.036 Generic EIS. A generic EIS may be ordered by the EQB to study types of projects that are not adequately reviewed on a case-by-case basis.

A. EQB as RGU. If the EQB orders a generic EIS, the EQB shall be the RGU for the generic EIS.

B. Public requests for generic EIS. A governmental unit or any other person may request the EQB to order a generic EIS.

C. Timing. Time deadlines for the preparation of a generic EIS shall be set at the scoping meeting.

D. Criteria. In determining the need for a generic EIS, the EQB shall consider:

1. If the review of a type of action can be better accomplished by a generic EIS than by project specific review;

2. If the possible effects on the human environment from a type of action are highly uncertain or involve unique or unknown risks;

3. If a generic EIS can be used for tiering in a subsequent project specific EIS;

4. The amount of basic research needed to understand the

impacts of such projects;

5. The degree to which decision makers or the public have a need to be informed of the potential impacts of such projects;

6. The degree to which information to be presented in the generic EIS is needed for governmental or public planning;

7. The potential for significant environmental effects as a result of the cumulative impacts of such projects;

8. The regional and statewide significance of the impacts and the degree to which they can be addressed on a project-by-project basis; and

9. The degree to which governmental policies affect the number or location of such projects or the potential for significant environmental effects.

E. Scoping. The generic EIS shall be scoped. Scoping shall be coordinated by the RGU and shall identify the issues and geographic areas to be addressed in the generic EIS. Scoping procedures shall follow the procedures in 6 MCAR S 3.030 except for the identification of permits for which information is to be gathered concurrently with the EIS preparation, the preparation and circulation of the EAW, and the time requirements.

F. Content. In addition to content requirements specified by the scoping process, the generic EIS shall contain the following:

1. Any new data that has been gathered or the results of any new research that has been undertaken as part of the generic EIS preparation;

2. A description of the possible impacts and likelihood of occurrence, the extent of current use, and the possibility of future development for the type of action; and

3. Alternatives including recommendations for geographic placement of the type of action to reduce environmental harm, different methods for construction and operation, and different types of actions that could produce the same or similar results as the subject type of action but in a less environmentally harmful manner.

G. Relationship to project specific review. Preparation of a generic EIS does not exempt specific activities from project specific environmental review. Project specific environmental review shall use information in the generic EIS by tiering and shall reflect the recommendations contained in the generic EIS if the EQB determines that the generic EIS remains adequate at the time the specific project is subject to review.

H. Relationship to projects. The fact that a generic EIS is being prepared shall not preclude the undertaking and completion

of a specific project whose impacts are considered in the generic EIS.

6 MCAR S 3.037 Joint federal and state environmental documents.

A. Cooperative processes. Governmental units shall cooperate with federal agencies to the fullest extent possible to reduce duplication between Minnesota Statutes, chapter 116D and the National Environmental Policy Act, United States Code, title 42, sections 4321 to 4361 (1976).

B. Joint responsibility. Where a joint federal and state environmental document is prepared, the RGU and one or more federal agencies shall be jointly responsible for its preparation. Where federal laws have environmental document requirements in addition to but not in conflict with those in Minnesota Statutes, section 116D.04, governmental units shall cooperate in fulfilling these requirements as well as those of state laws so that one document can comply with all applicable laws.

C. Federal EIS as draft EIS. If a federal EIS will be or has been prepared for a project, the RGU shall utilize the draft or final federal EIS as the draft state EIS for the project if the federal EIS addresses the scoped issues and satisfies the standards set forth in 6 MCAR S 3.028 B.

Chapter Fifteen:

Mandatory Categories

6 MCAR S 3.038 Mandatory EAW categories. An EAW must be prepared for projects that meet or exceed the threshold of any of A.-DD.

A. Nuclear fuels and nuclear waste.

1. Construction or expansion of a facility for the storage of high level nuclear waste. The EQB shall be the RGU.

2. Construction or expansion of a facility for the storage of low level nuclear waste for one year or longer. The MDH shall be the RGU.

3. Expansion of a high level nuclear waste disposal site. The EQB shall be the RGU.

4. Expansion of a low level nuclear waste disposal site. The MDH shall be the RGU.

5. Expansion of an away-from-reactor facility for temporary storage of spent nuclear fuel. The EQB shall be the

RGU.

6. Construction or expansion of an on-site pool for temporary storage of spent nuclear fuel. The EQB shall be the RGU.

B. Electric generating facilities. Construction of an electric power generating plant and associated facilities designed for or capable of operating at a capacity of 25 megawatts or more. The EQB shall be the RGU.

C. Petroleum refineries. Expansion of an existing petroleum refinery facility which increases its capacity by 10,000 or more barrels per day. The PCA shall be the RGU.

D. Fuel conversion facilities.

1. Construction of a facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 25,000 dry tons or more per year of input. The PCA shall be the RGU.

2. Construction or expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by 5,000,000 or more gallons per year of alcohol produced. The PCA shall be the RGU.

E. Transmission lines. Construction of a transmission line at a new location with a nominal capacity of 70 kilovolts or more with 20 or more miles of its length in Minnesota. The EQB shall be the RGU.

F. Pipelines.

1. Construction of a pipeline, greater than six inches in diameter and having more than 50 miles of its length in Minnesota, used for the transportation of coal, crude petroleum fuels, or oil or their derivates. The EQB shall be the RGU.

2. Construction of a pipeline for transportation of natural or synthetic gas at pressures in excess of 200 pounds per square inch with 50 miles or more of its length in Minnesota. The EQB shall be the RGU.

G. Transfer facilities.

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

2. Construction of a new facility or the expansion by 50 percent or more of an existing facility for the bulk transfer of hazardous materials with the capacity of 10,000 or more gallons

per transfer, if the facility is located in a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers district Minnesota River Project Riverbend area, or the Mississippi headwaters area. The PCA shall be the RGU.

H. Underground storage.

1. Expansion of an underground storage facility for gases or liquids that requires a permit, pursuant to Minnesota Statutes, section 84.57. The DNR shall be the RGU.

2. Expansion of an underground storage facility for gases or liquids, using naturally occurring rock materials, that requires a permit pursuant to Minnesota Statutes, section 84.621. The DNR shall be the RGU.

I. Storage facilities.

1. Construction of a facility designed for or capable of storing more than 7,500 tons of coal or with an annual throughput of more than 125,000 tons of coal; or the expansion of an existing facility by these respective amounts. The PCA shall be the RGU.

2. Construction of a facility on a single site designed for or capable of storing 1,000,000 gallons or more of hazardous materials. The PCA shall be the RGU.

3. Construction of a facility designed for or capable of storing on a single site 100,000 gallons or more of liquified natural gas or synthetic gas. The PCA shall be the RGU.

J. Metallic mineral mining and processing.

1. Mineral deposit evaluation of metallic mineral deposits other than natural iron ore and taconite. The DNR shall be the RGU.

2. Expansion of a stockpile, tailings basin, or mine by 320 or more acres. The DNR shall be the RGU.

3. Expansion of a metallic mineral plant processing facility that is capable of increasing production by 25 percent per year or more, provided that increase is in excess of 1,000,000 tons per year in the case of facilities for processing natural iron ore or taconite. The DNR shall be the RGU.

K. Nonmetallic mineral mining.

1. Development of a facility for the extraction or mining of peat which will result in the excavation of 160 or more acres of land during its existence. The DNR shall be the RGU.

2. Development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 40 or more acres of land to a

mean depth of ten feet or more during its existence. The local government unit shall be the RGU.

L. Paper or pulp processing mills. Expansion of an existing paper or pulp processing facility that will increase its production capacity by 50 percent or more. The PCA shall be the RGU.

M. Industrial, commercial and institutional facilities.

1. Construction of a new or expansion of an existing industrial, commercial, or institutional facility equal to or in excess of the following thresholds, expressed as gross floor space:

a. Unincorporated area - 100,000 square feet

b. Third or fourth class city - 200,000 square feet

c. Second class city - 300,000 square feet

d. First class city - 400,000 square feet

The local government unit shall be the RGU.

2. Construction of a new or expansion of an existing industrial, commercial, or institutional facility of 20,000 or more square feet of ground area, if the local governmental unit has not adopted approved shoreland, flood plain, or wild and scenic rivers land use district ordinances, the Mississippi headwaters plan or the Project Riverbend plan, as applicable, and either:

a. The project involves riparian frontage; or

b. Twenty thousand or more square feet of ground area to be developed is within a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, Minnesota River Project Riverbend area, or the Mississippi headwaters area. The local government unit shall be the RGU.

N. Air pollution.

1. 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.

2. Construction of a new parking facility for 1,000 or more vehicles. The PCA shall be the RGU.

O. Hazardous waste.

1. Construction or expansion of a hazardous waste disposal facility. The PCA shall be the RGU.

2. Construction of a hazardous waste processing facility which sells processing services to generators, other than the owner and operator of the facility, of 1,000 or more kilograms per month capacity, or expansion of the facility by 1,000 or more kilograms per month capacity. The PCA shall be the RGU.

3. Construction of a hazardous waste processing facility of 1,000 or more kilograms per month capacity or expansion of a facility by 1,000 or more kilograms per month capacity if the facility is located in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or in an area characterized by soluble bedrock. The PCA shall be the RGU.

4. Construction or expansion of a facility which sells hazardous waste storage services to generators other than the owner and operator of the facility or construction of a facility at which a generator's own hazardous wastes will be stored for a time period in excess of 90 days, if the facility is located in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, Mississippi headwaters area, or in an area characterized by soluble bedrock. The PCA shall be the RGU.

P. Solid waste.

1. Construction of a mixed municipal solid waste disposal facility for up to 100,000 cubic yards of waste fill per year. The PCA or metropolitan council shall be the RGU.

2. Expansion by 25 percent or more of previous capacity of a mixed municipal solid waste disposal facility for up to 100,000 cubic yards of waste fill per year. The PCA or metropolitan council shall be the RGU.

3. Construction or expansion of a mixed municipal solid waste transfer station for 300,000 or more cubic yards per year. The PCA or metropolitan council shall be the RGU.

4. Construction or expansion of a mixed municipal solid waste resource recovery facility for 100 or more tons per day of input. The PCA or metropolitan council shall be the RGU.

5. Expansion by at least ten percent but less than 25 percent of previous capacity of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste per year. The PCA or metropolitan council shall be the RGU.

Q. Sewage systems.

1. 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.

2. Expansion of an existing municipal or domestic

wastewater treatment facility or sewer system by an increase in capacity of 50 percent or more over existing capacity or by 50,000 gallons per day or more. The PCA shall be the RGU.

R. Residential development.

1. Construction of a permanent or potentially permanent residential development of:

a. Fifty or more unattached or 75 or more attached units in an unsewered area;

b. One hundred or more unattached or 150 or more attached units in a third or fourth class city or sewered unincorporated area;

c. One hundred and fifty or more unattached or 225 or more attached units in a second class city; or

d. Two hundred or more unattached or 300 or more attached units in a first class city.

The local government unit shall be the RGU.

2. Construction of a permanent or potentially permanent residential development of 20 or more unattached units or of 30 or more attached units, if the local governmental unit has not adopted state approved shoreland, flood plain, or wild and scenic rivers land use district ordinances, the Mississippi headwaters plan, or the Project Riverbend plan, as applicable, and either:

a. The project involves riparian frontage; or

b. Five or more acres of the development is within a shoreland, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

The local government unit shall be the RGU.

S. Recreational development. Construction of a seasonal or permanent recreational development, accessible by vehicle, consisting of 50 or more sites. The local government unit shall be the RGU.

T. Airport projects. Construction of a runway extension that would upgrade an existing airport runway to permit usage by aircraft over 12,500 pounds that are at least three decibels louder than aircraft currently using the runway. The DOT or local government unit shall be the RGU.

U. Highway projects.

1. Construction of a road on a new location over one mile in length that will function as a collector roadway. The DOT or

local government unit shall be the RGU.

2. Construction of additional travel lanes on an existing road for a length of one or more miles. The DOT or local government unit shall be the RGU.

3. The addition of one or more new interchanges to a completed limited access highway. The DOT or local government unit shall be the RGU.

V. Barge fleeting. Construction of a new or expansion of an existing barge fleeting facility. The DOT or port authority shall be the RGU.

W. Water appropriation and impoundments.

1. A new appropriation for commercial or industrial purposes of either surface water or ground water averaging 30,000,000 gallons per month, or exceeding 2,000,000 gallons in any day during the period of use; or a new appropriation of either ground water or surface water for irrigation of 540 acres or more in one continuous parcel from one source of water. The DNR shall be the RGU.

2. A new or additional permanent impoundment of water creating a water surface of 160 or more acres. The DNR shall be the RGU.

3. Construction of a Class II dam. The DNR shall be the RGU.

X. Marinas. Construction or cumulative expansion of a marina or harbor project which results in a total of 20,000 or more square feet of temporary or permanent water surface area used for docks, docking, or maneuvering of watercraft. The local government unit shall be the RGU.

Y. Stream diversion. The diversion or channelization of a designated trout stream or a natural watercourse with a total watershed of ten or more square miles, unless exempted by 6 MCAR S 3.041 P. or 6 MCAR S 3.041 M.5. The local government unit shall be the RGU.

Z. Wetlands and protected waters.

1. Projects that will change or diminish the course, current, or cross section of one acre or more of any protected water or protected wetland except for those to be drained without a permit pursuant to Minnesota Statutes, section 105.391, subdivision 3. The local government unit shall be the RGU.

2. Projects that will change or diminish the course, current, or cross section of 40 percent or more or five or more acres of a Type 3 through 8 wetland of 2.5 acres or more, excluding protected wetlands, if any part of the wetland is

within a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area. The local government unit shall be the RGU.

AA. Agriculture and forestry.

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

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

3. Projects resulting in the conversion of 640 or more acres of forest or naturally vegetated land to a differing open space land use. The local government unit shall be the RGU.

4. Projects resulting in the permanent conversion of 80 or more acres of agricultural, forest, or naturally vegetated land to a more intensive, developed land use. The local government unit shall be the RGU.

BB. Animal feedlots. The construction of an animal feedlot facility with a capacity of 1,000 animal units or more or the expansion of an existing facility by 1,000 animal units or more. The PCA shall be the RGU if the feedlot is in a shoreland, delineated flood plain or Karst area; otherwise the local unit of government shall be the RGU.

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

DD. Historical places. Destruction of a property that is listed on the national register of historic places. The permitting state agency or local unit of government shall be the RGU.

6 MCAR S 3.039 Mandatory EIS categories. An EIS must be prepared for projects that meet or exceed the threshold of any of A.-S.

A. Nuclear fuels and nuclear waste.

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

2. Construction of a high level nuclear waste disposal site. The EQB shall be the RGU.

3. Construction of an away-from-reactor facility for temporary storage of spent nuclear fuel. The EQB shall be the RGU.

4. Construction of a low level nuclear waste disposal site. The MDH shall be the RGU.

B. Electric generating facilities. Construction of a large electric power generating plant pursuant to 6 MCAR S 3.035. The EQB shall be the RGU.

C. Petroleum refineries. Construction of a new petroleum refinery facility. The PCA shall be the RGU.

D. Fuel conversion facilities.

1. Construction of a facility for the conversion of coal, peat, or biomass sources to gaseous, liquid or solid fuels if that facility has the capacity to utilize 250,000 dry tons or more per year of input. The PCA shall be the RGU.

2. Construction or expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by 50,000,000 or more gallons per year of alcohol produced. The PCA shall be the RGU.

E. Transmission lines. Construction of a high voltage transmission line pursuant to 6 MCAR S 3.036. The EQB shall be the RGU.

F. Underground storage.

1. Construction of an underground storage facility for gases or liquids that requires a permit pursuant to Minnesota Statutes, section 84.57. The DNR shall be the RGU.

2. Construction of an underground storage facility for gases or liquids, using naturally occurring rock materials, that requires a permit pursuant to Minnesota Statutes, section 84.621. The DNR shall be the RGU.

G. Metallic mineral mining and processing.

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

2. Construction of a new facility for mining metallic minerals or for the disposal of tailings from a metallic mineral mine. The DNR shall be the RGU.

3. Construction of a new metallic mineral processing facility. The DNR shall be the RGU.

H. Nonmetallic mineral mining.

1. Development of a facility for the extraction or mining of peat which will utilize 320 acres of land or more during its existence. The DNR shall be the RGU.

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

I. Paper or pulp processing. Construction of a new paper or pulp processing mill. The PCA shall be the RGU.

J. Industrial, commercial and institutional facilities.

1. Construction of a new or expansion of an existing industrial, commercial, or institutional facility equal to or in excess of the following thresholds, expressed as gross floor space:

a. Unincorporated area - 250,000 square feet;

b. Third or fourth class city - 500,000 square feet;

c. Second class city - 750,000 square feet;

d. First class city - 1,000,000 square feet.

The local government unit shall be the RGU.

2. Construction of a new or expansion of an existing industrial, commercial, or institutional facility of 100,000 or more square feet of ground area, if the local governmental unit has not adopted state approved shoreland, flood plain, or wild and scenic rivers land use district ordinances, the Mississippi headwaters plan or the Project Riverbend plan, as applicable, and either:

a. The project involves riparian frontage, or

b. One hundred thousand or more square feet of ground area to be developed is within a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

The local government unit shall be the RGU.

K. Hazardous waste.

1. Construction or expansion of a hazardous waste disposal facility for 1,000 or more kilograms per month. The PCA shall be the RGU.

2. The construction or expansion of a hazardous waste disposal facility in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or in an area characterized by soluble bedrock. The PCA shall be the RGU.

3. Construction or expansion of a hazardous waste processing facility which sells processing services to generators other than the owner and operator of the facility, if the facility is located in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or in an area characterized by soluble bedrock. The PCA shall be the RGU.

L. Solid waste.

1. Construction of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste fill per year. The PCA or metropolitan council shall be the RGU.

2. Construction or expansion of a mixed municipal solid waste disposal facility in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or in an area characterized by soluble bedrock. The PCA or metropolitan council shall be the RGU.

3. Construction or expansion of a mixed municipal solid waste resource recovery facility for 500 or more tons per day of input. The PCA or metropolitan council shall be the RGU.

4. Expansion by 25 percent or more of previous capacity of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste fill per year. The PCA or metropolitan council shall be the RGU.

M. Residential development.

1. Construction of a permanent or potentially permanent residential development of:

a. One hundred or more unattached or 150 or more attached units in an unsewered area;

b. Four hundred or more unattached or 600 or more attached units in a third or fourth class city or sewered unincorporated area;

c. Six hundred or more unattached or 900 or more attached units in a second class city; or

d. Eight hundred or more unattached or 1,200 or more attached units in a first class city.

The local government unit shall be the RGU.

2. Construction of a permanent or potentially permanent residential development of 40 or more unattached units or of 60 or more attached units, if the local governmental unit has not adopted state approved shoreland, flood plain, or wild and scenic rivers land use district ordinances, the Mississippi headwaters plan, or the Project Riverbend plan as applicable, and either:

a. The project involves riparian frontage, or

b. Ten or more acres of the development is within a shoreland, delineated flood plain, or state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

The local government unit shall be the RGU.

N. Airport projects. Construction of a paved and lighted airport runway of 5,000 feet of length or greater. The DOT or local government unit shall be the RGU.

O. Highway projects. Construction of a road on a new location which is four or more lanes in width and two or more miles in length. The DOT or local government unit shall be the RGU.

P. Barge fleeting facilities. Construction of a barge fleeting facility at a new off-channel location that involves the dredging of 1,000 or more cubic yards. The DOT or port authority shall be the RGU.

Q. Water appropriation and impoundments. Construction of a Class I dam. The DNR shall be the RGU.

R. Marinas. Construction of a new or expansion of an existing marina, harbor, or mooring project on a state or federally designated wild and scenic river. The local government unit shall be the RGU.

S. Wetlands and protected waters. Projects that will eliminate a protected water or protected wetland except for those to be drained without a permit pursuant to Minnesota Statutes, section 105.391, subdivision 3. The local government unit shall be the RGU.

6 MCAR S 3.040 Discretionary EAW. A governmental unit with jurisdiction may order the preparation of an EAW for any project

that does not exceed the mandatory thresholds designated in 6 MCAR S 3.038 or 3.039 if the governmental unit determines that because of the nature or location of the proposed project the project may have the potential for significant environmental effects, and the project is not exempted pursuant to 6 MCAR S 3.041.

6 MCAR S 3.041 Exemptions. Projects within A.-Y. are exempt from 6 MCAR SS 3.021-3.056.

A. Standard exemptions.

1. Projects for which no governmental decisions are required.

2. Projects for which all governmental decisions have been made.

3. Projects for which, and so long as, a governmental unit has denied a required governmental approval.

4. Projects for which a substantial portion of the project has been completed and an EIS would not influence remaining implementation or construction.

5. Projects for which environmental review has already been initiated under the prior rules or for which environmental review is being conducted pursuant to 6 MCAR S 3.034 or 3.035.

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

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

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

E. Transfer facilities. Construction of a facility designed for or capable of transferring less than 30 tons of coal per hour or with an annual throughput of less than 50,000 tons of coal from one mode of transportation to a similar or different mode of transportation; or the expansion of an existing facility by these respective amounts.

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

G. Mining.

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

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

3. Scram mining operations.

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

I. Industrial, commercial and institutional facilities.

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

a. Third or fourth class city or unincorporated area - 50,000 square feet;

b. Second class city - 75,000 square feet; or

c. First class city - 100,000 square feet.

2. The construction of an industrial, commercial, or institutional facility with less than 4,000 square feet of gross floor space, and with associated parking facilities designed for 20 vehicles or less.

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

J. Sewage systems. Construction of a new wastewater treatment facility or sewer system with a capacity of less than 3,000 gallons per day or the expansion of an existing facility by less than that amount.

K. Residential development.

1. Construction of a sewered residential development, no part of which is within a shoreland area, delineated flood plain state or federally designated wild and scenic rivers district,

the Minnesota River Project Riverbend area, or the Mississippi headwaters area, of:

a. Less than ten units in an unincorporated area;

b. Less than 20 units in a third or fourth class city;

c. Less than 40 units in a second class city; or

d. Less than 80 units in a first class city.

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

L. Airport projects.

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

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

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

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

M. Highway projects.

1. Highway safety improvement projects.

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

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

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

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

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

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

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

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

Q. Agriculture and forestry.

1. Harvesting of timber for maintenance purposes.

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

R. Animal feedlots. The construction of an animal feedlot facility of less than 100 animal units or the expansion of an existing facility by less than 100 animal units no part of either of which is located within a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

S. Utilities. Utility extensions as follows: Water service mains of 500 feet or less and one and a half inches diameter or less; sewer lines of 500 feet or less and eight inch diameter or less; local electrical service lines; gas service mains of 500 feet or less and one inch diameter or less; and telephone services lines.

T. Construction projects.

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

2. Accessory signs appurtenant to any commercial, industrial, or institutional facility.

3. Operation, maintenance, or repair work having no substantial impact on existing structures, land use or natural resources.

4. Restoration or reconstruction of a structure provided that the structure is not of historical, cultural, architectural, archeological, or recreational value.

5. Demolition or removal of buildings and related structures except where they are of historical, archeological,

or architectural significance.

U. Land use.

1. Individual land use variances including minor lot line adjustments and side yard and setback variances, not resulting in the creation of a new subdivided parcel of land or any change in land use character or density.

2. Minor temporary uses of land having negligible or no permanent effect on the environment.

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

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

W. Financial transactions.

1. Acquisition or disposition of private interests in real property, including leaseholds, easements, right-of-way, or fee interests.

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

X. Licenses.

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

2. All licenses required under electrical, fire, plumbing, heating, mechanical and safety codes and regulations, but not including building permits.

Y. Governmental activities.

1. Proposals and enactments of the legislature.

2. Rules or orders of governmental units.

3. Executive orders of the governor, or their implementation by governmental units.

4. Judicial orders.

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

Chapter Sixteen: Early Notice Rules

6 MCAR S 3.042 Authority and purpose.

A. Bulletin. To provide early notice of impending projects which may have significant environmental effects, the EQB shall, pursuant to Minnesota Statutes, section 116D.04, subdivision 8, publish a bulletin with the name of "EQB Monitor" containing all notices as specified in 6 MCAR S 3.044. The EQB may prescribe the form and manner in which the governmental units submit any material for publication in the EQB Monitor, and the EQB chairperson may withhold publication of any material not submitted according to the form or procedures the EQB has prescribed.

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

6 MCAR S 3.043 Exemptions.

A. EPA permit exception. All National Pollutant Discharge Elimination System Permits granted by the PCA, under the authority given by the Environmental Protection Agency, shall be exempt from 6 MCAR SS 3.021-3.056 unless otherwise provided by resolution of the EQB.

B. Non-strict observance. Where, in the opinion of any governmental unit, strict observance of 6 MCAR SS 3.042-3.046 would jeopardize the public health, safety, or welfare, or would otherwise generally compromise the public interest, the governmental unit shall comply with these rules as far as practicable. In such cases, the governmental unit shall carry out alternative means of public notification and shall communicate the same to the EQB chairperson.

C. Federal permits, exemption. Any federal permits for which review authority has been delegated to a non-federal governmental unit by the federal government may be exempted by resolution of the EQB.

6 MCAR S 3.044 EQB Monitor publication requirements.

A. Required notices. Governmental units are required to publish notice of the items listed in 1.-15. in the EQB Monitor except that this rule constitutes a request and not a requirement with respect to federal agencies.

1. When a project has been noticed pursuant to 6 MCAR S 3.044 A.3. separate notice of individual permits required by that project need not be made unless changes in the project are proposed which will involve new and potentially significant environmental effects not considered previously. No decision granting a permit application for which notice is required to be published by this rule shall be effective until 30 days following publication of the notice.

a. All public hearings conducted pursuant to water resources permit applications, Minnesot Statutes, chapter 105. The DNR is the permitting authority.

b. Notice of public sales of permits for or leases to mine iron ore, copper-nickel, or other minerals on state-owned or administered mineral rights, Minnesota Statutes, sections 93.16, 93.335, 93.351, and NR 94 e. The DNR is the permitting authority.

c. Section 401 certifications, United States Code, title 33, section 1341 (1976); Minnesota Statutes, section 115.03. The PCA is the permitting authority.

d. Construction of a public use airport, Minnesota Statutes, section 360.018, subdivision 6. The DOT is the permitting authority.

e. Special local need registration for pesticides, Minnesota Statutes, section 18A.23; 3 MCAR S 1.0338 B. The MDA is the permitting authority.

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

3. Notice of the decision on the need for an EAW pursuant to 6 MCAR S 3.026 F.

4. Notice of the availability of a completed EAW pursuant to 6 MCAR S 3.027 D.1.

5. RGU's decision on the need to prepare an EIS pursuant to 6 MCAR S 3.028 A.4.

6. Notice of the time, place and date of the EIS scoping meeting pursuant to 6 MCAR S 3.030 C.1.b. and C.2.a.

7. EIS Preparation Notices pursuant to 6 MCAR S 3.030 F.

8. Amendments to the EIS scoping decision pursuant to 6 MCAR S 3.030 E.5.

9. Availability of draft and final EIS pursuant to 6 MCAR S 3.031 E.5. and F.4.

10. Notice of draft EIS informational meetings to be held

pursuant to 6 MCAR S 3.031 E.7.

11. RGU's adequacy decision of the final EIS pursuant to 6 MCAR S 3.031 G.7.

12. Notice of activities undergoing environmental review under alternative review processes pursuant to 6 MCAR S 3.034 A.6.

13. Adoption of model ordinances pursuant to 6 MCAR S 3.035 B.1. and 2.

14. Environmental analyses prepared under adopted model ordinances pursuant to 6 MCAR S 3.035 C.

15. Notice of the application for a Certificate of Need for a large energy facility, pursuant to Minnesota Statutes, section 116H.03.

16. Notice of the availability of a draft environmental report, pursuant to 6 MCAR S 3.055 B.5.

17. Notice of the availability of a final environmental report, pursuant to 6 MCAR S 3.055 B.10.

18. Notice of other actions that the EQB may specify by resolution.

B. Optional notices. Governmental units may publish notices of general interest or information in the EQB Monitor.

C. Required EQB notices. The EQB is required to publish the following in the EQB Monitor:

1. Receipt of a valid petition and assignment of a RGU pursuant to 6 MCAR S 3.026 C. and E.;

2. Decision by the EQB that it will determine the adequacy of a final EIS pursuant to 6 MCAR S 3.031 G.1.;

3. EQB's adequacy decision of the final EIS pursuant to 6 MCAR S 3.031 G.7;

4. Receipt by the EQB of an application for a variance pursuant to 6 MCAR S 3.032 D.3;

5. Notice of any public hearing held pursuant to 6 MCAR S 3.033 E.1;

6. The EQB's decision to hold public hearings on a recommended Critical Area pursuant to Minnesota Statutes, section 116G.06, subdivision 1, clause (c);

7. Notice of application for a Certificate of Site Compatibility or a High Voltage Transmission Line Construction Permit pursuant to Minnesota Statutes, sections 116C.51 to

116C.69; and

8. Receipt of a consolidated permit application pursuant to 6 MCAR S 3.102 A.

6 MCAR S 3.045 Content of notice. The information to be included in the notice for natural resources management and development permit applications and other items in 6 MCAR S 3.044 A.1. and 2. shall be submitted by the governmental unit on a form approved by the EQB. This information shall include but not be limited to:

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

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

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

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

E. Identification of governmental unit. The identification of the governmental unit publishing the notice, including the manner and place at which comments on the project can be submitted and additional information can be obtained.

6 MCAR S 3.046 Statement of compliance. Each governmental permit or agency authorizing order subject to the requirements of 6 MCAR S 3.044 A.1. issued or granted by a governmental unit shall contain a statement by the unit concerning whether the provisions of 6 MCAR SS 3.042-3.046 have been complied with, and publication dates of the notices, if any, concerning that permit or authorization.

6 MCAR S 3.047 Publication. The EQB shall publish the EQB Monitor whenever it is necessary, except that material properly submitted to the EQB shall not remain unpublished for more than 13 working days.

6 MCAR S 3.048 Cost and distribution.

A. Costs of publication. When a governmental unit properly

submits material to the EQB for publication, the EQB shall then be accountable for the publication of the same in the EQB Monitor. The EQB shall require each governmental unit which is required to publish material or requests the publication of material in the EQB Monitor, including the EQB itself, to pay its proportionate cost of the EQB Monitor unless other funds are provided and are sufficient to cover the cost of the EQB Monitor.

B. Distribution. The EQB may further provide at least one copy to the Documents Division for the mailing of the EQB Monitor to any person, governmental unit, or organization if so requested. The EQB may assess reasonable costs to the requesting party. Ten copies of each issue of the EQB Monitor, however, shall be provided without cost to the legislative reference library and ten copies to the state law library, and at least one copy to designated EQB depositories.

Chapter Seventeen:

Assessing the Cost of Preparing Environmental Impact Statements

6 MCAR S 3.049 Projects requiring an assessment of the EIS preparation cost.

When a private person proposes to undertake a project, and the final determination has been made that an EIS will be prepared by a governmental unit on that project, the proposer shall be assessed for the reasonable costs of preparing and distributing that EIS in accord with 6 MCAR SS 3.050-3.054.

6 MCAR S 3.050 Determining the EIS assessed cost.

A. Proposer and RGU agreement. Within 30 days after the EIS preparation notice has been issued, the RGU shall submit to the EQB a written agreement signed by the proposer and the RGU. The agreement shall include the EIS estimated cost, the EIS assessed cost, and a brief description of the tasks and the cost of each task to be performed by each party in preparing and distributing the EIS. Those items identified in 6 MCAR S 3.051 A. and B. may be used as a guideline in determining the EIS estimated cost. The EIS assessed cost shall identify the proposer's costs for the collection and analysis of technical data to be supplied to the RGU and the costs which will result in a cash payment by the proposer to the EQB if a state agency is the RGU or to a local governmental unit when it is the RGU. If an agreement cannot be reached, the RGU shall so notify the EQB within 30 days after the final determination has been made that an EIS will be prepared.

B. EIS assessed cost limits. The EIS assessed cost shall not exceed the following amounts unless the proposer agrees to

an additional amount.

1. There shall be no assessment for the preparation and distribution of an EIS for a project which has a project estimated cost of one million dollars or less.

2. For a project whose project estimated cost is more than one million dollars but is ten million dollars or less, the EIS assessed cost shall not exceed .3 percent of the project estimated cost except that the project estimated cost shall not include the first one million dollars of such cost.

3. For a project whose project estimated cost is more than ten million dollars but is 50 million dollars or less, the EIS assessed cost shall not exceed .2 percent of each dollar of such cost over ten million dollars in addition to the assessment in 2.

4. For a project whose project estimated cost is more than 50 million dollars, the EIS assessed cost shall not exceed .1 percent of each dollar of such cost over 50 million dollars in addition to the assessment in 3.

C. Data costs. The proposer and the RGU shall include in the EIS assessed cost the proposer's costs for the collection and analysis of technical data which the RGU incorporates into the EIS. The amount included shall not exceed one-third of the EIS assessed cost unless a greater amount is agreed to by the RGU. When practicable, the proposer shall consult with the RGU before incurring such costs.

D. Federal/state EIS. When a joint federal/state EIS is prepared pursuant to 6 MCAR S 3.037 and the EQB designates a non-federal agency as the RGU, only those costs of the state RGU may be assessed to the proposer. The RGU and the proposer shall determine the appropriate EIS assessed cost and shall forward that determination to the EQB in accord with 6 MCAR SS 3.021-3.056.

E. Related actions EIS. When specific projects are included in a related actions EIS, only the portion of the EIS estimated cost that is attributable to each specific project may be used in determining the EIS assessed cost for its proposer. The RGU and each proposer shall determine the appropriate EIS assessed cost and shall forward that determination to the EQB in accord with 6 MCAR SS 3.021-3.056.

6 MCAR S 3.051 Determining the EIS estimated cost, the EIS actual cost and the project estimated cost.

A. EIS estimated or actual costs; inclusions. In determining the EIS estimated cost or the EIS actual cost, the following items shall be included:

1. The cost of the RGU's staff time including direct

salary and fringe benefit costs.

2. The cost of consultants hired by the RGU.

3. The proposer's costs for the collection and analysis of technical data expended for the purpose of preparing the EIS.

4. Other direct costs of the RGU for the collection and analysis of information or data necessary for the preparation of the EIS. These costs shall be specifically identified.

5. Indirect costs of the RGU not to exceed the RGU's normal operating overhead rate.

6. The cost of printing and distributing the draft EIS and the final EIS.

7. The cost of any public hearings or public meetings held in conjunction with the preparation of the final EIS.

B. EIS estimated or actual costs; exclusions. The following items shall not be included in determining the EIS estimated cost or the EIS actual cost:

1. The cost of collecting and analyzing information and data incurred before the final determination has been made that an EIS will be prepared unless the information and data were obtained for the purpose of being included in the EIS;

2. Costs incurred by a private person other than the proposer or a governmental unit other than the RGU, unless the costs are incurred at the direction of the RGU for the preparation of material to be included in the EIS; and

3. The capital costs of equipment purchased by the RGU or its consultants for the purpose of establishing a data collection program, unless the proposer agrees to include such costs.

C. Project estimated costs. The following items shall be included in determining the project estimated cost:

1. The current market value of all the land interests, owned or to be owned by the proposer, which are included in the boundaries of the project. The boundaries shall be those defined by the project which is the subject of the EIS preparation notice;

2. Costs of architectural and engineering studies for the design or construction of the project;

3. Expenditures necessary to begin the physical construction or operation of the project;

4. Construction costs required to implement the project including the costs of essential public service facilities where

such costs are directly attributable to the proposed project; and

5. The cost of permanent fixtures.

6 MCAR S 3.052 Revising the EIS assessed cost.

A. Alteration of project scope. If the proposer substantially alters the scope of the project after the final determination has been made that an EIS will be prepared and the EIS assessed cost has been determined, the proposer shall immediately notify the RGU and the EQB.

1. If the change will likely result in a net change of greater than five percent in the EIS assessed cost, the proposer and the RGU shall make a new determination of the EIS assessed cost. The determination shall give consideration to costs previously expended or irrevocably obligated, additional information needed to complete the EIS and the adaptation of existing information to the revised project. The RGU shall submit either a revised agreement or a notice that an agreement cannot be reached following the procedures of 6 MCAR S 3.050 A. except that such agreement or notice shall be provided to the EQB within 20 days after the proposer notifies the RGU and the EQB of the change in the project. If the changed project results in a revised project estimated cost of one million dollars or less, the proposer shall not be liable for further cash payments to the EQB or to the local governmental unit beyond what has been expended or irrevocably obligated by the RGU at the time it was notified by the proposer of the change in the project.

2. If the proposer decides not to proceed with the proposed project, the proposer shall immediately notify the RGU and the EQB. The RGU shall immediately cease expending and obligating the proposer's funds for the preparation of the EIS.

a. If cash payments previously made by the proposer exceed the RGU's expenditures or irrevocable obligations at the time of notification, the proposer may apply to the EQB or to the local governmental unit for a refund of the overpayment. The refund shall be paid as expeditiously as possible.

b. If cash payments previously made by the proposer are less than the RGU's expenditures or irrevocable obligations at the time of notification, the RGU shall notify the proposer and the EQB within ten days after it was notified of the project's withdrawal. Such costs shall be paid by the proposer within 30 days after the RGU notifies the proposer and the EQB.

B. New significant environmental problem. If, after the EIS assessed cost has been determined, the RGU or the proposer uncovers a significant environmental problem that could not have been reasonably foreseen when determining the EIS assessed cost, the party making the discovery shall immediately notify the

other party and the EQB. If the discovery will likely result in a net change of greater than five percent in the EIS assessed cost, the proposer and the RGU shall make a new determination of the EIS assessed cost. The RGU shall submit either a revised agreement or a notice that an agreement cannot be reached following the procedures of 6 MCAR S 3.050 A. except that such agreement or notice shall be provided to the EQB within 20 days after both parties and the EQB were notified.

6 MCAR S 3.053 Disagreements regarding the EIS assessed cost.

A. Notice to EQB. If the proposer and the RGU disagree about the EIS assessed cost, the proposer and the RGU shall each submit a written statement to the EQB identifying the EIS estimated cost, and the project estimated cost within ten days after the RGU notifies the EQB that an agreement could not be reached. The statements shall include the EIS preparation costs identified in 6 MCAR S 3.051 A. and B. as they pertain to the information to be included in the EIS, a brief explanation of the costs, and a discussion of alternative methods of preparing the EIS and the costs of those alternatives.

B. Estimated cost disagreement. If the proposer and the RGU disagree about the project estimated cost, the proposer shall submit in writing a detailed project estimated cost in addition to the requirements of A. The RGU may submit a written detailed project estimated cost in addition to the requirements of A. The statements shall be submitted to the EQB within ten days after the RGU notifies the EQB that an agreement could not be reached. The project estimated cost shall include the costs as identified in 6 MCAR S 3.051 C. and a brief explanation of the costs. The estimates shall be prepared according to the categories in 6 MCAR S 3.051 so as to allow a reasonable examination as to their completeness.

C. EIS assessed cost disagreement. If the proposer and the RGU disagree about a revision of the EIS assessed cost prepared following the procedures in 6 MCAR S 3.052, the proposer and the RGU shall use the applicable procedures described in A. or B. in resolving their disagreement except that all written statements shall be provided to the EQB within ten days after the RGU notifies the EQB that an agreement cannot be reached.

D. EIS actual cost disagreement. If the proposer and the RGU disagree about the EIS actual cost as determined by 6 MCAR S 3.054 B., the proposer and the RGU shall prepare a written statement of their EIS actual cost and an estimate of the other party's EIS actual cost. The items included in 6 MCAR S 3.051 A. and B. shall be used in preparing the EIS actual cost statements. These statements shall be submitted to the EQB and the other party within 20 days after the final EIS has been accepted as adequate by the RGU or the EQB.

E. EQB determination. The EQB at its first meeting held more than 15 days after being notified of a disagreement shall

make any determination required by A.-D. The EQB shall consider the information provided by the proposer and the RGU and may consider other reasonable information in making its determination. This time limit shall be waived if a hearing is held pursuant to F.

F. Hearing. If either the proposer or the RGU so requests, the EQB shall hold a hearing to facilitate it in making its determination.

G. Half cash payment. Nothing in A.-F. shall prevent the proposer from making one half of the cash payment as recommended by the RGU's proposed EIS assessed cost for the purpose of commencing the EIS process. If the proposer makes the above cash payment, preparation of the EIS shall immediately begin. If the required cash payment is altered by the EQB's determination, the remaining cash payments shall be adjusted accordingly.

6 MCAR S 3.054 Payment of the EIS assessed cost.

A. Schedule of payments. The proposer shall make all cash payments to the EQB or to the local governmental unit according to the following schedule:

1. At least one-half of the proposer's cash payment shall be paid within 30 days after the EIS assessed cost has been submitted to the EQB pursuant to 6 MCAR S 3.050 A. or has been determined by the EQB pursuant to 6 MCAR S 3.053 E. or F.

2. At least three-fourths of the proposer's cash payment shall be paid within 30 days after the draft EIS has been submitted to the EQB.

3. The final cash payment shall be paid within 30 days after the final EIS has been submitted to the EQB.

a. The proposer may withhold final cash payment of the EIS assessed cost until the RGU has submitted a detailed accounting of its EIS actual cost to the proposer and the EQB. If the proposer chooses to wait, the remaining portion of the EIS assessed cost shall be paid within 30 days after the EIS actual cost statement has been submitted to the proposer and the EQB.

b. If the proposer has withheld the final cash payment of the EIS assessed cost pending resolution of a disagreement over the EIS actual cost, such payment shall be made within 30 days after the EQB has determined the EIS actual cost.

B. Refund. The proposer and the RGU shall submit to each other and to the EQB a detailed accounting of the actual costs incurred by them in preparing and distributing the EIS within ten days after the final EIS has been submitted to the EQB. If the cash payments made by the proposer exceed the RGU's EIS

actual cost, the proposer may apply to the EQB or to the local governmental unit for a refund of the overpayment. The refund shall be paid as expeditiously as possible.

C. State agency as RGU. If the RGU is a state agency, the proposer shall make all cash payments of the EIS assessed cost to the EQB which shall deposit such payments in the state's general fund.

D. Local government unit as RGU. If the RGU is a local governmental unit, the proposer shall make all cash payments of the EIS assessed cost directly to the local governmental unit. The local governmental unit shall notify the EQB in writing of receipt of each payment within ten days following its receipt.

E. Payment prerequisite to EIS. No RGU shall commence with the preparation of an EIS until at least one-half of the proposer's required cash payment of the EIS assessed cost has been paid.

F. Notice of final payment. Upon receipt or notice of receipt of the final payment by the proposer, the EQB shall notify each state agency having a possible governmental permit interest in the project that the final payment has been received.

Other laws notwithstanding, a state agency shall not issue any governmental permits for the construction or operation of a project for which an EIS is prepared until the required cash payments of the EIS assessed cost for that project or that portion of a related actions EIS have been paid in full.

G. Time period extension. All time periods included in 6 MCAR SS 3.050-3.054 may be extended by the EQB chairperson only for good cause upon written request by the proposer or the RGU.

Chapter Eighteen:

Special Rules for Certain Large Energy Facilities

6 MCAR S 3.055 Special rules for LEPGP.

A. Applicability. Environmental review for LEPGP as defined in Minnesota Statutes, section 116C.52, subdivision 4 shall be conducted according to the procedures set forth in this rule unless a utility has filed an application for emergency certification pursuant to Minnesota Statutes, section 116C.57, subdivision 3. Environmental review shall consist of an environmental report at the certificate of need stage and an EIS at the site certificate stage. Energy facilities subject to Minnesota Statutes, section 116H.13, but excluded under Minnesota Statutes, section 116C.52, subdivision 4, shall not be subject to this rule. Except as expressly provided in this rule, 6 MCAR SS 3.024-3.036 shall not apply to LEPGPs subject to

this rule. No EAW shall be prepared for any LEPGPs subject to this rule. If a utility has filed an application for emergency certification pursuant to Minnesota Statutes, section 116C.57, subdivision 3, the procedures and standards specified in 6 MCAR S 3.077 shall constitute alternative environmental review and neither 6 MCAR SS 3.024-3.036 nor 6 MCAR S 3.055 shall apply.

B. Environmental report at certificate of need stage.

1. The DEPD shall be responsible for preparation of an environmental report on a LEPGP subject to this rule.

2. The environmental report shall be prepared for inclusion in the record of certificate of need hearings conducted under Minnesota Statutes, section 116H.13. The report and comments thereon shall be included in the record of the hearings.

3. The environmental report on the certificate of need application shall include:

a. A brief description of the proposed facility;

b. An identification of reasonable alternative facilities including, as appropriate, the alternatives of different sized facilities, facilities using different fuels, different facility types, and combinations of alternatives;

c. A general evaluation, including the availability, estimated reliability, and economic, employment and environmental impacts, of the proposal and reasonable alternative facilities identified in 3.b.; and

d. A general analysis of the alternatives of no facility, different levels of capacity, and delayed construction of the facility. The analysis shall include consideration of conservation and load management measures that could be used to reduce the need for the proposed facility.

4. The environmental report shall not be as exhaustive or detailed as an EIS and shall consider only those site-differentiating factors identifiable pursuant to the information requirements of 6 MCAR S 2.0633 A.5.

5. Upon completion of the draft environmental report, the report shall be circulated as provided in 6 MCAR S 3.031 E.3. In addition, one copy shall go to each regional development commission in the state. At least one copy shall be available for public review during the hearings conducted under Minnesota Statutes, section 116H.13.

6. The DEPD shall provide notice of the date and locations at which the draft environmental report shall be available for public review. Notice shall be provided in the manner used to provide notice of public hearings conducted under Minnesota Statutes, section 116H.13 and may be provided in the

notice of the hearings.

7. Comments on the draft environmental report shall be received during and entered into the record of hearing conducted under Minnesota Statutes, section 116H.13. The DEPD shall respond to the timely substantive comments on the draft environmental report.

8. The draft environmental report, any comments received during the hearings, and responses to the timely substantive comments shall constitute the final environmental report.

9. Preparation and review of the report, including submission and distribution of comments, shall be completed in sufficient time to enable the commissioner of the DEPD to take final action pursuant to Minnesota Statutes, section 116H.13 within the time limits set by that statute.

10. Upon completion of a final environmental report, notice thereof shall be published in the EQB Monitor. Copies of the final environmental report shall be distributed as provided in 5.

11. The DEPD shall not make a final determination of need for the project until the final environmental report has been completed.

12. A supplement to an environmental report shall be required if the tests described in 6 MCAR S 3.031 I. are met and a Minnesota Statutes, section 116H.13 determination is pending before the DEPD.

C. EIS at certificate of site compatibility stage.

1. The EQB shall be responsible for preparation of the EIS on a LEPGP subject to this rule.

2. The draft of the EIS shall be prepared for inclusion in the record of the hearings to designate a site for a LEPGP under Minnesota Statutes, section 116C.58. The draft EIS and final EIS shall be included in the record of the hearing.

3. The draft EIS shall conform to 6 MCAR S 3.031 B. It shall contain a brief summary of the environmental report and the certificate of need decision relating to the project, if available. Alternatives shall include those sites designated for public hearings pursuant to Minnesota Statutes, section 116C.57, subdivision 1 and rules promulgated thereunder. Significant issues to be considered in the EIS shall be identified by the EQB in light of the citizen evaluation process established in Minnesota Statutes, section 116C.59 rather than through a formal scoping process.

The EIS shall not consider need for the facility and other issues determined by the DEPD. Unless a specific site has already been designated, the EIS shall not contain detailed data

which are pertinent to the specific conditions of subsequent construction and operating permits and which may be reasonably obtained only after a specific site is designated.

4. Upon completion, the draft EIS shall be distributed as provided in 6 MCAR S 3.031 E.3. In addition, one copy shall go to each regional development commission representing a county in which a site under consideration is located. At least one copy shall be available for public review during the hearings conducted under Minnesota Statutes, section 116C.58.

5. The EQB shall provide notice of the date and location at which the draft EIS shall be available for public review. The notice shall be provided in the manner used to provide notice of the public hearings conducted under Minnesota Statutes, section 116C.58 and may be provided in the notice of the hearings.

6. The EQB or a designee shall conduct a meeting to receive comments on the draft EIS. The meeting may but need not be conducted in conjunction with hearings conducted under Minnesota Statutes, section 116C.58. Notice of the meeting shall be given at least ten days before the meeting in the manner provided in B.6. and may be given with the notice of hearing.

7. The EQB shall establish a final date for submission of written comments after the meeting. After that date comments need not be accepted.

8. Within 60 days after the last day for comments, the EQB shall prepare responses to the comments and shall make necessary revisions in the draft. The draft EIS as revised shall constitute the final EIS. The final EIS shall conform to 6 MCAR S 3.031 F.

9. Upon completion of a final EIS, notice thereof shall be published in the EQB Monitor. Copies of the final EIS shall be distributed as provided in 4.

10. Prior to submission of the final EIS into the record of a hearing under Minnesota Statutes, section 116C.58, the EQB shall determine the EIS to be adequate pursuant to 6 MCAR S 3.031 G.

11. If required pursuant to 6 MCAR S 3.031 I., a supplement to an EIS shall be prepared.

12. The EQB shall make no final decision designating a site until the final EIS has been found adequate. No governmental unit having authority to grant approvals subsequent to a site designation shall issue any final decision for the construction or operation of a facility subject to this rule until the final EIS has been found adequate.

D. Cooperative processes. 6 MCAR SS 3.028 D. and E., 3.032

D. and E., 3.036 and 3.037 shall apply to energy facilities subject to this rule. Variance applications may be submitted without preparation of an EAW.

6 MCAR S 3.056 Special rules for HVTL.

A. Applicability. Environmental review for a HVTL as defined in Minnesota Statutes, section 116C.52, subdivision 3, shall be conducted according to the procedures set forth in this rule unless a utility has filed an application for emergency certification pursuant to Minnesota Statutes, section 116C.57, subdivision 3, or for an exemption pursuant to Minnesota Statutes, section 116C.57, subdivision 5. Environmental review shall consist of an environmental report at the certificate of need stage and an EIS at the route designation and construction permit stage. Except as expressly provided in this rule, 6 MCAR SS 3.024-3.036 shall not apply to HVTLs subject to this rule. No EAW shall be prepared for any HVTLs subject to this rule. If a utility has filed an application for emergency certification pursuant to Minnesota Statutes, section 116C.57, subdivision 3, or for an exemption pursuant to Minnesota Statutes, section 116C.57, subdivision 5, the procedures and standards specified in 6 MCAR SS 3.077 and 3.078, respectively, shall constitute alternative environmental review and neither 6 MCAR SS 3.024-3.036 nor 6 MCAR S 3.056 shall apply.

B. Environmental report at certificate of need stage.

1. The DEPD shall be responsible for preparation of an environmental report on an HVTL subject to this rule.

2. The environmental report shall be prepared for inclusion in the record of the certificate of need hearings conducted under Minnesota Statutes, section 116H.13. The report and comments thereon shall be included in the record of the hearings.

3. The environmental report on the certificate of need application shall include:

a. A brief description of the proposed facility;

b. An identification of reasonable alternatives of a different sized facility, a transmission line with different endpoints, upgrading existing transmission lines, and additional generating facilities;

c. A general evaluation, including the availability, estimated reliability, and economic, employment and environmental impacts, of the proposal and alternatives;

d. A general analysis of the alternatives of no facility and delayed construction of the facility. The analysis shall include consideration of conservation and load management measures that could be used to reduce the need for the proposed

facility;

e. The environmental report shall not be as exhaustive or detailed as an EIS and shall consider only those route differentiating factors identifiable pursuant to the information requirements of 6 MCAR SS 3.0634 A. and B.; and

f. The report shall be reviewed in the manner provided in 6 MCAR S 3.055 B.5.-12.

C. EIS at route designation and construction permit stage.

1. The EQB shall be responsible for preparation of an EIS on a HVTL subject to this rule.

2. The draft of the EIS shall be prepared for inclusion in the record of the hearings to designate a route for a HVTL under Minnesota Statutes, section 116C.58. The draft EIS and final EIS shall be included in the record of the hearing.

3. The draft shall conform to 6 MCAR S 3.031 B. It shall contain a brief summary of the environmental report and the certificate of need decision relating to the project, if applicable. Alternatives shall include those routes designated for public hearing pursuant to Minnesota Statutes, section 116C.57, subdivision 2 and rules promulgated thereunder. Significant issues to be considered in the EIS shall be identified by the EQB in light of the citizen evaluation process established pursuant to Minnesota Statutes, section 116C.59 rather than through a formal scoping process. Need for the facility and other issues determined by the DEPD shall not be considered in the EIS.

4. The draft EIS shall be reviewed in the manner provided in 6 MCAR S 3.055 C.4.-11.

5. The EQB shall make no final decision designating a route until the final EIS has been found adequate. No governmental unit having authority to grant approvals subsequent to a route designation shall issue any final decision for the construction or operation of a facility subject to this rule until the final EIS has been found adequate.

D. Review of HVTL requiring no certificate of need. An EIS for a HVTL subject to Minnesota Statutes, sections 116C.51 to 116C.69 but not subject to Minnesota Statutes, section 116H.13 shall consist of an EIS to be prepared as provided in C.

E. Cooperative processes. 6 MCAR SS 3.028 D. and E., 3.012 D. and E., 3.036 and 3.037 shall apply to facilities subject to this rule. Variance applications may be submitted without preparation of an EAW.

Repealer. Rules 6 MCAR SS 3.021-3.032, 3.040 and 3.047 as existing on the day before the effective date of these proposed rules are repealed.