



Guide to Minnesota Environmental Review Rules



ENVIRONMENTAL QUALITY BOARD

Guide to Minnesota Environmental Review Rules was prepared by the staff of the Environmental Quality Board at Minnesota Planning as an aid to units of government and others involved in the Minnesota Environmental Review Program pursuant to Minnesota Statutes, section 116D.04 and 116D.045; and the administrative rules adopted by the Environmental Quality Board: Minnesota Rules, chapter 4410 parts 4410.0200 to 4410.7500.

This guide replaces the 1989 edition of *Guide to the Rules*, introducing rule amendments adopted in 1997 and providing additional information on selected topics. It is not intended to substitute for the rules, nor address every section and provision of the rules; it is designed to help Responsible Governmental Units and others implement the program more effectively and efficiently and to avoid common pitfalls. The guide does not alter the rules or change their meaning; if any inconsistencies arise between the guide and the rules, the rules prevail. Updates and corrections to the guide will be posted on the Environmental Quality Board homepage at www.mnplan.state.mn.us.

Upon request, the *Guide to Minnesota Environmental Review Rules* will be made available in an alternate format, such as Braille, large print or audio tape. For TTY, contact Minnesota Relay Service at 800-627-3529 and ask for Minnesota Planning.

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Guide to Minnesota Environmental Review Rules

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Glossary

Alternative Urban Areawide Review

A substitute review process based on review of development scenarios for an entire geographic area rather than for a specific project. See Chapter 5 for more information on the AUAR process.

Connected actions

Two or more projects that are related, interdependent parts of a larger whole. See Chapter 2 for more information on connected actions.

Construction

Any activity that directly alters the environment, excluding surveying or mapping.

Cumulative effects

Effects resulting from a project and other past, present and reasonably foreseeable future projects.

Discretionary review

Environmental review ordered by any government unit, usually in response to a citizen petition, where review is not mandatory.

Environmental Assessment Worksheet

A document providing basic information about a project that may have the potential for significant environmental effects. The EAW is prepared by the Responsible Governmental Unit to determine whether an Environmental Impact Statement should be prepared.

Environmental Impact Statement

A thorough study of a project with potential for significant environmental impacts, including evaluation of alternatives and mitigation.

Environmental Quality Board

State agency that adopts environmental review rules, monitors their effectiveness and revises as appropriate; provides technical assistance to interpret and apply rules.

EQB Monitor

Biweekly publication of the Environmental Quality Board, lists deadlines for Environmental Assessment Worksheets, Environmental Impact Statements and other notices.

Expansion

A facility's capability to produce or operate beyond its existing capacity, excluding repairs or renovations that do not increase capacity.

Mandatory review

Legally required review, established by the Environmental Quality Board through rules authorized by the Environmental Policy Act. Mandatory review requirements are presented in Chapter 6.

Mitigation plan

An action plan developed in an Alternative Urban Areawide Review for how environmental effects will be avoided, including mitigation measures, legal and financial measures and institutional arrangements.

Phased actions

Two or more projects by the same proposer that will have environmental effects on the same geographic area and will occur sequentially over a limited time period. See Chapter 2 for more information on phased actions and phased residential actions.

Responsible Governmental Unit

Government unit responsible for environmental review, usually the unit with the greatest authority over the project as a whole. Using a standardized process, the RGU prepares an EAW or EIS when required by the rules.

Scoping

Process to identify what potential environmental impacts, alternatives and other issues will be addressed in the EIS.

Program overview

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

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

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

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

The other level of review is the Environmental Assessment Worksheet. This review procedure screens projects, which **may** have the potential for significant environmental effects using a worksheet with a standardized list of questions. The EAW is subject to a 30-day public review period before the Responsible Governmental Unit makes a decision about whether the project also needs an EIS.

An EAW can be initiated by a government unit or requested by citizen petition, as discussed in Chapter 3. Requirements for preparing a mandatory EIS or EAW for specific project types and sizes are described in the rules and in the last chapter of this guide.

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

- The action or project must involve the physical manipulation of the environment, directly or indirectly (see definition of project at part 4410.0200, subpart 65).
- The action or project must involve at least one governmental approval or one form of governmental financial assistance, or be conducted by a government unit (defined at part 4410.0200, subpart 34). For types of approvals and financial assistance that qualify, including those by federal agencies, see definition of permit at part 4410.0200, subpart 58.
- Action or project approval and construction must take place in the future; that is, projects constructed or those with all required governmental approvals are not subject to further review, unless an expansion is proposed.

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

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

- Project proposers provide information needed for an EAW to which they have "reasonable access" and pay reasonable costs to prepare an EIS (required by part 4410.6000).
- Responsible Governmental Unit prepares an EAW or EIS when required by the rules, verifies its accuracy and complies with rule time frames.
- Environmental Quality Board adopts program rules, monitors their effectiveness and revises as appropriate, and provides technical assistance to interpret and apply rules.

An appeal of an EAW or EIS need decision or EIS adequacy must be initiated within 30 days of the RGU decision being challenged (Minnesota Statutes, section 116D.04, subdivision 10). Formerly, the rules stated that an appeal could be filed within 30 days from the date the decision notice is published in the biweekly

EQB Monitor. In 1997 the board amended the rules to comply with statutory language.

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

DETERMINING THE RESPONSIBLE GOVERNMENTAL UNIT

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

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

Discretionary review. If a governmental unit orders environmental review, it serves as the RGU. If a petition is filed, the Environmental Quality Board chair or staff assigns the RGU. Based on a provision in the 1997 rule amendments, the EQB cannot designate as the RGU a governmental unit that has already granted all permits for the project, regardless of whether the unit qualifies under other selection criteria (part 4410.0500, subpart 3).

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

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

The EQB can exercise extraordinary authority to change the RGU. The EQB has limited authority to change the RGU that is properly designated under the rules. The EQB can change the RGU only if making the change results in the appointment of an RGU with greater expertise in analyzing potential environmental impacts (part 4410.0500, subpart 6). The EQB can exercise this authority only if it acts within five working days of receiving the completed data portion of an EAW. Since the time-frame for using this authority is restricted and because the board, which typically meets only once a month, must make the decision, the EQB staff should be contacted immediately if a change in the RGU is requested.

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

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

Beginning the review

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

DEFINING THE PROJECT

Before the review process can begin, the RGU needs to define the project. This is usually straightforward, however some projects include more than the project proposer initially intended. Additional components may be included as part of the project because of planned future stages of development or because additional projects will occur as a result of the initial project.

The rules contain two general concepts relating to identification of the complete project. One is "phased actions," which are future actions by the same proposer. The other is "connected actions," which are actions by any proposer that are closely connected to the initial project. These concepts are discussed below and at parts 4410.1000 and 4410.2000. In addition, for residential projects, the rules provide guidance in determining what constitutes the project (parts 4410.4300, subpart 19, mandatory EAW and 4410.4400, subpart 14, mandatory EIS.)

Phased actions

Phased actions are defined as: "two or more projects by the same proposer that an RGU determines will have environmental effects on the same geographic area and are substantially certain to be undertaken sequentially over a limited period of time" (4410.0200, subpart 60).

This definition involves three components: same proposer, same area affected and timing. Only one and not all of a group of owners need be involved in both projects if that owner's stake is substantial. The same geographic area is affected if the effects of any potentially significant impacts overlap. The project sites do not need to be adjacent, or even nearby, if the impact zone is large.

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

- Development rights are being granted for future stages; for example, all parcels given preliminary plat approval or concept plan approval

conveying any development rights must be considered part of the same "phased actions."

- The project proposer is seeking approval for later stages from another governmental unit.
- Public infrastructure or support facilities are currently being built to serve future stages.
- Any aspect of the initial stage determines, limits or tends to prejudice decisions about future stages.
- Any assurances that future stages will not take place within a limited period of time.
- The proposer has constructed other previous stages in the area. Past history may provide evidence about the likelihood and development schedule of future stages.
- Any other factor that impacts the certainty and scheduling of the future stages.

The 1997 amendments address the requirements for determining whether a proposed expansion of a project is a phased action that might require a mandatory EAW when considered with the existing project (part 4410.4300, subpart 1, EAW threshold test). The existing size, or number or impacts of the existing project must be added to those of the proposed project under the following conditions:

- Construction of the existing project began after April 21, 1997, the date this new provision of the rules went into effect;
- Construction of the existing project commenced less than three years before the date an application was submitted for the proposed expansion or additional stage; and
- The existing project was not reviewed through an EAW or EIS.

EXAMPLE: In 1999, a 150,000 square foot expansion is proposed to a 200,000 square foot office building constructed the year before, without an EAW. Since all three conditions listed above are met, the RGU adds the square footage of the proposed expansion and the existing structure, comparing the 350,000 square foot total to the EAW threshold to determine if the expansion needs review.

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

The goal of the 1997 amendment is to catch phased actions that slip by, intentionally or unintentionally, without review at their initial stage.

This provision does not require EAW review of any existing stages of the project. It only requires the RGU to include previous stages in the calculation to determine if the EAW mandatory threshold is exceeded, not to review completed construction. An EAW can only review impacts of actions that are not yet approved. Existing project stages are to be treated as background conditions, similar to the treatment of other development surrounding the project.

It is important to emphasize that although the 1997 amendment may require past construction to be included with proposed future construction in some situations, in all situations the RGU must still determine whether there are any future phased actions that must be included in the threshold determination (part 4410.0200, subpart 60).

Phased residential projects

For residential projects, the EQB has adopted special provisions that prescribe how to treat potential future stages. The provisions are in the mandatory EAW and EIS categories for residential projects text (part 4410.4300, subpart 19 and part 4410.4400, subpart 14). They require that the total number of units potentially buildable on all contiguous land owned or under an option by the proposer be considered, regardless of whether the whole area or only a part is proposed for immediate development. The land must be zoned or identified in an adopted comprehensive plan for future residential development.

If the proposer does not yet have plans for part of the area, the number of units potentially buildable is calculated from the maximum allowable units per acre under the zoning ordinance, or if the ordinance does not specify, from the average number of units per acre from the area as planned multiplied by the number of acres. If the total potential number of units exceeds a mandatory threshold, review is required for all phases. The review can be staged to coincide with phased development approvals (parts 4410.1000 and 4410.2000, subparts 4). If an EIS is mandatory, an initial stage of up to 10 percent of the applicable threshold may be reviewed through the EAW process; all subsequent stages are subject to an EIS.

Connected actions

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

- One induces the other;
- One is a prerequisite for the other, the first occurring previously or simultaneously; or
- Neither is justified by itself; that is, the two projects are interdependent parts of a larger whole.

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

In practice, connected actions occur less frequently than phased actions. One of the more common connected actions occurs when independent landowners with adjoining properties jointly design a residential or commercial project without regard to the ownership boundaries.

Multisite feedlot projects provide another example of connected actions. If an individual or group plans to raise animals on several sites, which may be owned by others, the projects may be considered a connected action; they are interdependent parts of a larger whole. If the total number of animals at all sites exceeds the EAW threshold, review of the whole operation is mandatory.

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

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

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

Joint review of independent projects

Independent projects — those which are neither phased nor connected actions — may be considered jointly for environmental review. Decisions about joint review of independent projects are at the RGU's discretion, with the general understanding that joint review may not unduly delay the review of any one project, and that an RGU is obligated to consider cumulative impacts from other projects when determining EIS need (part 4410.1700, subpart 7, item B).

Joint review may be appropriate in the following circumstances:

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

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

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

■ Another possibility for joint review is the Alternative Urban Area-wide Review process, described in Chapter 5.

Cumulative impacts

The primary purpose of environmental review is to disclose and assess the environmental impacts potentially caused by an action. In addition to impacts directly attributable to the action, some impacts can be the cumulative result of other past, present and reasonably foreseeable future actions. This type of impact is a cumulative impact (defined at part 4410.0200, subpart 11). The rule states that cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time. A common example is the gradual urbanization of undeveloped land: each subdivision by itself may have only a minor effect, but after many subdivisions have been developed, the character of the land is completely changed.

The rules contain the following provisions involving cumulative impacts:

■ EIS need decision criteria at part 4410.1700, subpart 7, item B. The second of four criteria is “cumulative potential effects of related or anticipated future projects.” This criterion means that cumulative impacts must be weighed along with the project’s direct impacts when deciding if an EIS is needed. It also implies that the RGU must take into account cumulative impacts when preparing the EAW so that sufficient information about cumulative impacts is recorded and available for determining the need for an EIS.

■ Related actions EIS at part 4410.2000, subpart 5. This provision authorizes a single EIS to cover independent projects with cumulative impacts on the same geographic area, if joint review will not unreasonably delay review of any project. The related actions EIS is one tool available for an RGU to deal with situations with significant cumulative impacts.

■ EIS scoping decision at part 4410.2100, subpart 6. A scoping decision is to include “identification of potential impact areas resulting from the project itself and from related actions.” In a nutshell, this provision directs the RGU to identify cumulative impacts along with direct impacts.

■ EIS contents-impacts at part 4410.2300, item H. This provision requires an EIS to discuss indirect as well as direct impacts. Some indirect impacts are cumulative impacts.

■ Generic EIS-criteria for ordering at part 4410.3800, subpart 5, item G. One criteria for ordering a Generic EIS is “the potential for significant environmental effects as a result of cumulative impacts of such projects.” This was one of the chief reasons why the EQB prepared a Generic EIS on timber harvesting activities, for example.

The ability of traditional environmental review — especially the EAW process — to deal with cumulative impacts is limited because review processes are designed to be project-specific. When cumulative impacts from concurrent or future projects are likely to be significant, review can often be better accomplished through the Alternative Urban Area-wide Review process or the related actions EIS. In cases when cumulative impacts are of regional or statewide concern, using the Generic EIS process may be appropriate.

The EQB is currently studying cumulative impact issues and may ultimately propose changes in the rules or statutes to better deal with them. In the meantime, the best source of guidance on cumulative impacts is the federal Council on Environmental Quality’s *Considering Cumulative Effects under the National Environmental Policy Act*, available at <http://ceq.eh.doe.gov/nepa/ccenepa/ccenepa.htm>.

PROHIBITIONS ON GOVERNMENTAL APPROVALS AND CONSTRUCTION

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

- A petition is dismissed;
- A negative declaration on the need for an EIS is made;
- An EIS is determined adequate; or
- A variance is granted by the Environmental Quality Board

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

The statute and rule prohibit “final decisions” granting permits. In this context, final means “not to be altered or undone,” rather than last. Any discretionary step in an approval process that conveys rights to the proposer and is not subject to further review or change is a final decision. Examples include preliminary plat approvals, which convey development rights under Minnesota law, as well as final plat approvals

and conditional use permits. It may also include zoning or rezoning decisions if associated with a specific project or concept plan approvals if development rights are conveyed under applicable ordinances.

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

Conditional approvals

A conditional approval is merely an indication by an RGU that it views a proposed project favorably based on known information. A conditional approval does not eliminate the requirement to complete environmental review, it is not authorization for a project proposer to commence a project, and it is not binding on the RGU with regard to a final decision after environmental review is complete.

Nothing in the statute or in the rules addresses the issue of conditional approval. Project proposers often request an RGU to issue a conditional approval of a project pending completion of environmental review. While in some situations an RGU might want to issue a conditional approval for a project undergoing review, several precautionary notes are worthy of consideration.

- Since a conditional approval is a distortion of the intended process, the RGU should require a good reason from the project proposer for requesting the conditional approval and the RGU should indicate that it has relied on that representation in considering the request.
- The RGU should make it clear to the project proposer that nothing in a conditional approval will excuse the project proposer from making project changes or implementing mitigation measures that are war-

ranted on the basis of the information collected during the environmental review process.

- The RGU should make it clear to the project proposer that issuance of a conditional approval will not be a factor in determining whether an EIS will be required on the project.
- The RGU should make it clear to the project proposer that issuance of a conditional approval will not prejudice the RGU or any other governmental body from determining that a feasible alternative, or the no-build alternative, is justified under Minnesota law and that authorization for the proposed project will not be granted.

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

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

Environmental Assessment Worksheets

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

The EAW process consists of four steps:

- Step 1.** Project proposer supplies completed data to the RGU.
- Step 2.** RGU prepares an Environmental Assessment Worksheet.
- Step 3.** The public can comment during a 30-day period.
- Step 4.** RGU makes a decision about the need for an EIS, based on the EAW, comments received and comment responses.

Process details are covered in a companion booklet, *EAW Guidelines*, available from the Environmental Quality Board.

1997 rule amendments to EAW process

Content. An EAW must include information about the project’s purpose, and if a public project, an explanation of its need and beneficiaries. This information helps reviewers identify appropriate mitigation measures and alternatives.

Substitute form. The RGU can use a federal environmental assessment document in place of the regular form without prior approval from the Environmental Quality Board. All requirements of the EAW process must be followed when an environmental assessment document is substituted for an EAW.

Preparation. Procedures and timeframes are identical, regardless of how the review was initiated, replacing separate provisions for an EAW initiated by petition. The rule amendment also added further detail about how the RGU handles the proposer’s data submittal.

EIS need criteria. The fourth such criterion (at part 4410.1700, subpart 7, item D) reads: “the extent to which environmental effects can be anticipated and controlled as a result of other available studies undertaken by public agencies or the project proposer, including other EISs.” Only information already available can be taken into account.

PETITIONS FOR AN EAW

The purpose of the petition process is to provide a standard mechanism by which citizens can bring to the attention of the government projects which may have the potential for significant environmental effects.

Some projects that do not fall into any mandatory category or are below the EAW threshold nonetheless need review because of their location or unusual features.

Steps in the petition process (part 4410.1100):

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

- A description of the proposed project.
- Identification of the project proposer. Petitioners must notify the proposer in writing that they have filed a petition with the EQB; a copy of the petition need not be supplied.
- Identification of a representative for petitioners, including mailing address and telephone number.
- A brief description of the project’s potential environmental effects, including an explanation of how unusual or unique characteristics or the location create a need for an EAW even though no mandatory threshold is exceeded.
- Material evidence of potential for significant environmental effects because of the project’s nature or location.
- Signatures of at least 25 individuals, with no restriction on location of residence, age or any other factor. Signers must provide a complete mailing address and should certify that they are familiar with the petition content.

Petitioners must present a case for why the project should have an EAW prepared even though it does not exceed mandatory thresholds, by documenting unusual features relating to its nature or location. Material evidence can take many forms — maps, site plans, existing reports, letters from experts, testimonial letters from citizens, photographs — but it must be a factual documentation of potential for significant environmental effects. To be successful, petitioners must do more than express their opposition or raise questions and concerns.

Step 2. Petitioners file the petition with the Environmental Quality Board. If a petition fails to contain all of the required items, it will be returned by board staff to the petitioners’ representative. When the petition is complete, the board will assign the appropriate Responsible Governmental Unit and forward the petition to that unit. Once the petition is accepted, no final decisions to grant approval to the project may be given until environmental review is complete. The EQB is merely the clearinghouse for all petitions, and does not make any recommendations about the need for review, however it does advise the RGU of the major steps and criteria for review. Once the petition is sent to the RGU, petitioners should contact the RGU directly to check the petition’s status and to provide further input before a decision is made.

The RGU is almost always the unit with the greatest responsibility for approving the project: it makes no difference whether the unit is the sponsor of the project, or is in favor of or opposed to the project.

Step 3. The RGU reviews the petition and determines the need for an EAW. The RGU has up to 30 working days from the date the petition is received to make a decision. The rules require only that the RGU consider all known evidence, compare that evidence to the standard “there may be potential for significant environmental effects,” and document the findings and decision in writing. A hearing or testimony is not required. Once a decision is made, the petitioners’ representative and the Environmental Quality Board must be notified within five working days. Any aggrieved party may appeal the decision in district court within 30 days of the date the RGU made the decision.

Occasionally, the RGU cannot act on a petition because the project is not yet officially proposed for approval or because the project is withdrawn by the proposer. A petition remains valid for up to one year from its filing date with the Environmental Quality Board. If the petition expires, the citizens must file a new petition for review.

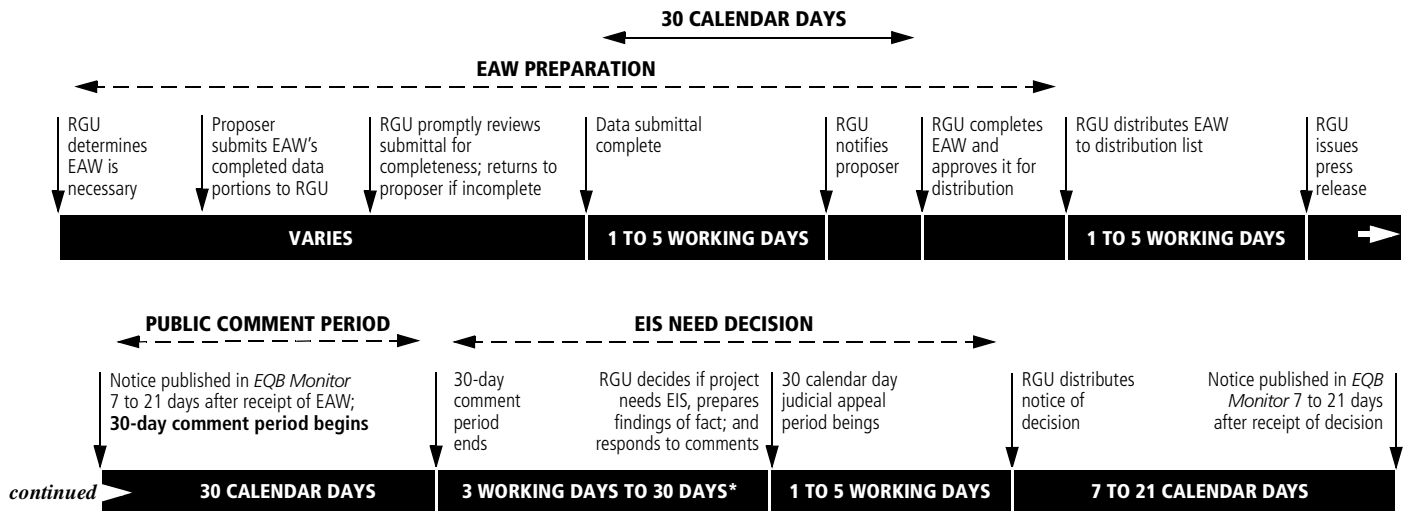
DISCRETIONARY REVIEW

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

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

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

ENVIRONMENTAL ASSESSMENT WORKSHEET PROCESS



* Can vary depending on RGU.

NOTES

Time frames are diagramed as prescribed in the rules and should be considered minimum estimates.

Day can mean either calendar or working day depending on the timeframe listed for a specific event. If the text lists 15 or fewer days, they are working days; calendar days are 16 or more days (4410.0200, subpart 12). Working days exclude Saturdays, Sundays and legal state holidays.

How to count a period of time. The first day of any time period is not counted but the final day is counted (part 4410.0200, subpart 12). The last day of the time period ends with normal business hours, generally at 4:30 p.m. No time period can end on a Saturday, Sunday or legal state holiday.

The 30-day period for EAW comments begins on the biweekly publication date of the EQB Monitor, which is always on Monday. Thirty days from a Monday always falls on a Wednesday, so the comment periods end on Wednesday unless it is a legal holiday.

Environmental Impact Statements

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

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

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

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

When is an EIS required?

- The project fits a mandatory EIS category (part 4410.4400).
- Based on the EAW, comments and responses, the RGU determines that the project has the potential for significant environmental effects (part 4410.1700).
- When the proposer and RGU agree that an EIS should be prepared; this generally occurs when both parties recognize an EIS order is the EAW’s likely outcome and they wish to expedite the process.

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

The RGU must consider other actions related to the total project when determining the need for an EIS (part 4410.2000), including the

project’s future stages, other development in its proximity and actions induced if the project is built. Chapter 3 also discusses these issues.

Who pays for an EIS?

Minnesota Statutes, section 116D.045 directs that the project proposer shall pay for the RGU’s full “reasonable costs” for scoping, preparing and distributing an EIS; most cost at least \$100,000. Parts 4410.6000 to 4410.6500 — on how to determine allowable costs, how to make payments and other cost-related details — were updated in 1997.

Four basic steps to prepare an EIS are:

- Step 1.** Scoping, or deciding what impacts and alternatives will be covered by the EIS and the extent of effort and depth of analysis to be devoted to each topic;
- Step 2.** Preparing the draft EIS based on the work outlined in scoping;
- Step 3.** Public review of the draft and preparing a final EIS that responds to comments and makes any necessary revisions; and
- Step 4.** Determining “adequacy” of the EIS.

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

1997 rule amendments to the EIS process:

- Emphasized that only potentially significant issues need to be addressed in an EIS; see wording changes at several places in the rules, including: part 4410.2100, subpart 1, purpose of scoping; part 4410.2300, items G and H, content; and part 4410.2800, subpart 4, adequacy.
- Provided additional guidance for evaluating alternatives.
- Explained that the level of detail on any given topic should correspond to its relevance to decision-making and cost of obtaining the information.
- Revised how to deal with incomplete or unavailable information (part 4410.2500).
- Clarified one criterion for EIS adequacy (4410.2800, subpart 4, item A).
- Explicitly authorized the “tiered” EIS concept, as discussed in the next chapter.

EIS CONTENT AND SCOPING

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

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

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

Previously the rules required that every impact, even if minor, be addressed to some extent in the EIS. The 1997 rule amendments modified this requirement so that only potentially significant impacts need to be addressed (at part 4410.2300, item H; see also part 4410.2100, subpart 1 and part 4410.2800, subpart 4, item A). However, although this revision removes any legal obligation to include minor impacts in an EIS, in some cases the need for public education may be an overriding reason to be inclusive. The EIS often serves as a basic public document about a controversial project and its audience expects information about all topics related to the project.

Information about minor environmental impacts can be added to the EIS by attaching the scoping EAW as an appendix or by inserting information from the scoping EAW where appropriate. In any case, since the EAW only covers environmental impacts, any minor socioeconomic impacts would have to be added by the RGU in some other way.

Another 1997 revision (at part 4410.2300, item H) clarifies the level of detail and effort for each topic. The rule states that the importance of the impact and the relevance of the information to choices among alternatives and selection of mitigation should dictate the amount of information presented; and the RGU is to consider the cost of obtaining the information compared to its importance and relevance when deciding what information should be included and how it should be obtained. In other words: the RGU should be willing to spend more for the information most needed for project decisions.

The purpose of scoping is to streamline the document, to identify only potentially significant and relevant issues and

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

EIS scoping documents

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

Scoping EAW. This document uses the standard EAW form to disclose information about the project and its setting to identify potentially significant environmental impacts. As with the regular process, the rules recommend that the project proposer supply completed data portions of the EAW. The RGU should carefully review this information and modify the EAW as needed. The RGU should be cautious about initiating the review if it discovers any uncertainty or ambiguity about the project description or location. Scoping may need to be repeated if the project changes in a way that influences potential environmental impacts or the people interested in the project.

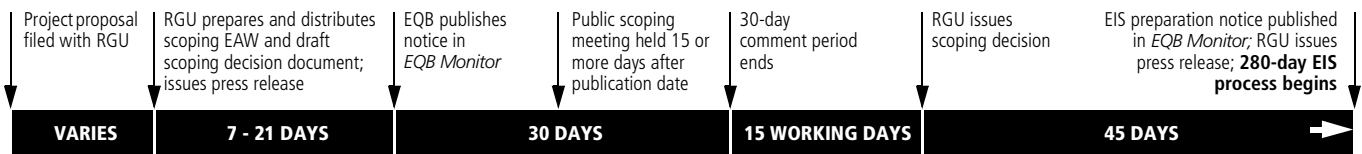
When completing the EAW form, the RGU should answer each question according to how the topic will be treated in the EIS:

- a. the topic is obviously not relevant or is so minor that it will not be addressed at all in the EIS;
- b. the topic is minor, but will be discussed briefly in the EIS using the same information as in the EAW;
- c. the topic is significant but the EAW information is adequate for use in the EIS; or
- d. the topic is significant; information beyond what was in the EAW will be included in the EIS.

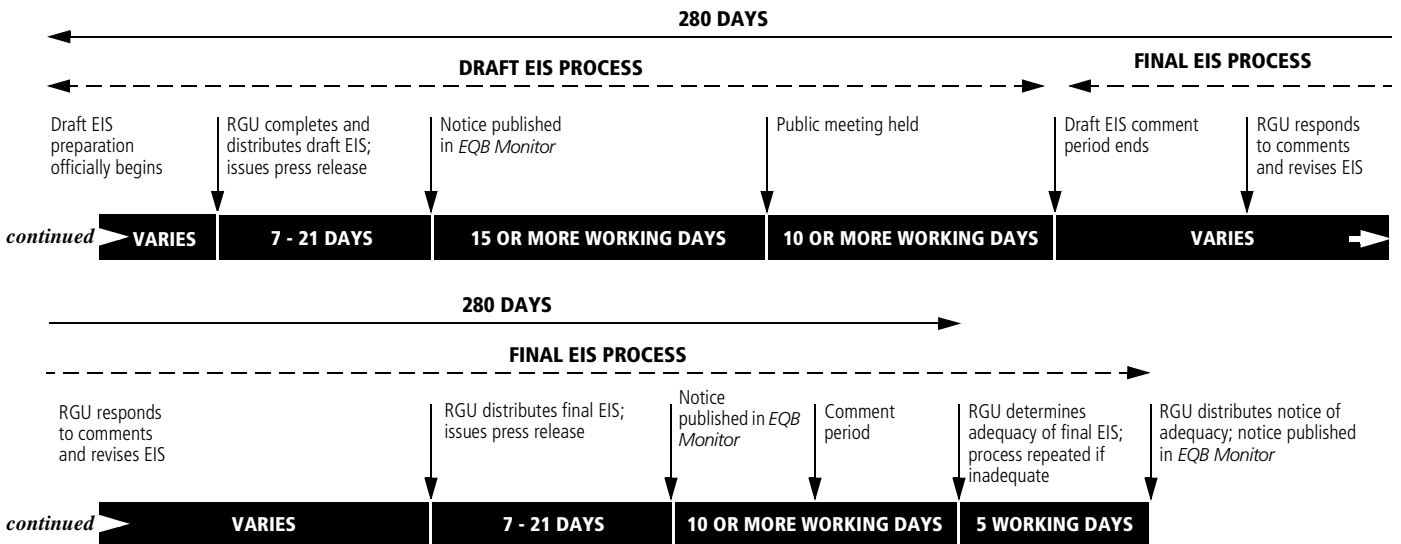
For topics that fall under item a, the RGU should provide enough information in the EAW to justify not addressing them in the EIS. For topics under b and c, the RGU should write text that can be used in the EIS without need to rewrite or edit extensively. For topics under d, little factual information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

ENVIRONMENTAL IMPACT STATEMENT PROCESS

Scoping process for a mandatory or voluntary Environmental Impact Statement*



EIS preparation and review



* *Scoping process differs for a discretionary EIS.*

NOTES

Time frames are diagrammed as prescribed in the rules and should be considered minimum estimates.

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The 30-day period for EAW comments begins on the biweekly publication date of the *EQB Monitor*, which is always on Monday. Thirty days from a Monday always falls on a Wednesday, so the comment periods end on Wednesday unless it is a legal holiday.

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

Final scoping decision document. Prepared after the scoping period, this document is adopted by the RGU governing body as the official “blueprint” for the EIS. At a minimum, the final scoping document must include the items listed at part 4410.2100, subpart 6: a. issues to be addressed; b. time limits (if shorter than standard 280 day requirement); c. permits for which information will be gathering concurrently; d. permits which will require a record of decision; e. alternatives to be addressed; f. impacts to be addressed; and g. studies to be done to develop information.

In the final scoping decision document, it may be more logical to reorder required items as follows: a, f, g, e, c, d and b. Topics covered under a, f and g could be grouped as described under the scoping EAW. Item e, alternatives, is discussed in the next section; permit-related items c and d are addressed in a later section.

Unlike EAW procedures, the rules do not require the scoping decision document to respond to public comments. Nevertheless, this step is typically done and is worthwhile in most cases.

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

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

Scoping an EIS ordered through the EAW process

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

- No scoping EAW is prepared. The EAW and record of documenting EIS need supply the necessary background information to scope the EIS.
- Instead of preparing a draft scoping decision document, the RGU announces the proposed EIS scope as part of its “positive declaration”

notice, which indicates that an EIS has been ordered. The RGU must send the positive declaration notice to people on the EAW distribution list and to anyone else who submitted substantive and timely comments on the EAW within five working days of the decision to order an EIS. This notice must be published in the *EQB Monitor* and a press release containing the information must be supplied to at least one newspaper of general circulation in the project area.

- The positive declaration notice must also give the time, date and place of the public scoping meeting. The meeting must be held between 10 working and 20 calendar days after the date of the *EQB Monitor* notice, which restricts timing to the second week after publication.
- The RGU must make its final scoping decision within 30 days of publishing the positive declaration, or if the decision is made by a board or council, at its first regular meeting after the public scoping meeting but no later than 45 days after notice publication.

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

Hiring consultants. Information about the project may be obtained from the proposer or its consultants, however, the RGU may want to use an independent consultant to analyze the project’s impacts, alternatives and mitigation to ensure an impartial study.

ALTERNATIVES

One of the main purposes of an EIS is to examine potential environmental impacts of project alternatives. In 1997 the Environmental Quality Board amended the rules to provide more guidance to Responsible Governmental Units for selecting an appropriate range of alternatives.

- The revised rule requires that an EIS must include the **no-build alternative and at least one alternative of each of the following types** or provide a concise explanation of why no alternative is included in the EIS:
 - Sites
 - Technologies
 - Modified designs or layouts
 - Modified scale or magnitude and
 - An alternative incorporating reasonable mitigation measures identified through comments on the scope or the draft EIS

Alternatives may be excluded only if they meet any of the following criteria:

- Underlying need for or purpose of the project is not met.
- Significant environmental benefit over the proposed project is not provided.
- Another alternative is likely to be similar in environmental benefits but will have lesser socioeconomic impacts.

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

In applying exclusion criteria, the RGU must not be overly restrictive in defining the project's purpose and need. Occasionally, an RGU will claim desirable but nonessential elements as part of the project's purpose or need, thus eliminating alternatives that should be included. In many cases, these are cost-related factors and while important, they cannot overrule environmental considerations. At the same time, the RGU should not examine extraneous alternatives just to make an EIS more complicated. The intent of the 1997 revisions is to ensure that the RGU takes a serious look at whether significant environmental impacts can be avoided or minimized by carrying out the project in another way.

■ In the past an RGU did not always consider alternative sites, especially if the project proposer was a private entity. **The 1997 rule revision requires the RGU to always consider alternative sites** when scoping the EIS and to evaluate site alternative in the EIS unless they can be excluded based on the three exclusion criteria. The following factors should be considered by the RGU when deciding whether alternative sites would meet the underlying need and purpose of the project:

- Whether the proposer owns the proposed site;
- How long the proposer has owned the site;
- The likelihood that the proposer could sell or otherwise use the proposed site if the project was moved;
- Whether the proposer has access to other sites. Proposers with eminent domain authority have greater access than those who do not; access also depends on whether other sites are for sale;
- Whether the site is an integral part of the project or whether the project could be built on other sites in the general area. For example, if a farmer wants to develop his land as residential property, no other site would meet the need. Conversely, if a major retailer wants to open a store in a new housing area, multiple sites may satisfy the objective;
- The likely use of the proposed site if the project did not take place on it and the environmental impacts of other uses.

For public projects, the RGU should be careful not to eliminate alternatives from the EIS based simply on the culmination of a prior planning process. The RGU must take a hard look at the basis for prior decisions to make sure that environmentally superior alternatives were not eliminated without sufficient justification based on the rule's three criteria. Eliminated alternatives should be discussed in the EIS and noted in the scoping decision document. Prior decisions to eliminate options may need to be revisited in the EIS if insufficient consideration was given to environmental impacts. The next chapter describes how the RGU can use the "tiered" EIS concept, added to the rules in 1997, to efficiently incorporate environ-

mental review into complicated public decision-making processes and to help avoid prematurely dismissing alternatives without sufficient justification.

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

Mitigation measures

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

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

EIS adequacy

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

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

Cumulative impacts analysis

The scoping decision is required to include "identification of impact areas resulting from the project itself and from *related actions*" (part 4410.2100, subpart 6). In addition, EIS content requirements call for discussion of *indirect* as well as direct impacts; both requirements introduce the concept of cumulative impact analysis into the EIS process.

The rules define a cumulative impact as "the impact on the environment that results from the 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" (part 4410.0200, subpart 11).

Many types of analyses commonly used in EIS preparation such as traffic, air quality or other simulation analyses can account for cumulative impacts. Provided they consider reasonably foreseeable future development, these analyses usually satisfy the requirement to consider cumulative impacts. However, other cumulative impact issues may arise that cannot be resolved by using a standard approach. Dealing with cumulative impacts can prove to be one of the most difficult aspects of EIS work.

In 1997 the federal Council on Environmental Quality issued comprehensive guidance for federal agencies on how to handle cumulative impacts in federal environmental impact statements and environmental assessments. This guidance thoroughly covers the conceptual background of cumulative impact analysis, offering a compendium of techniques and methods, which may be useful to practitioners in the Minnesota environmental review process. It is available at <http://ceq.eh.doe.gov/nepa/ccenepa/ccenepa.htm>.

EIS and permit relationships in scoping

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

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

- Some permits and approvals can require a "record of decision," which documents how EIS information was considered in making the decision. Permits included in this group (if any) are determined by the RGU in its scoping decision. The RGU can require other agencies to prepare a record of decision. The record of decision is only appropriate for major discretionary decisions on the whole project, such as plat approval or a conditional use permit, or a major element that directly impacts the environment, such as an air emissions permit or a storm water management system permit. Whether or not the EIS scoping decision imposes the record of decision requirement, permitting agencies must consider EIS information in their decision-making, which should be reflected in the permitting record (listed at part 4410.2900).

- The scoping decision may identify permits for which information will be gathered concurrently with the EIS. The permitting agency must issue such permits within 90 days of the EIS adequacy decision, unless in conflict with federal or state law or the proposer agrees to an extension (part 4410.2900). This provision in no way reduces the information needed for a permit. If permit-related information is missing, either the

90-day time limit for the permit will be extended or the EIS adequacy decision will be delayed. The usefulness of this provision is debatable; it has never been used to the knowledge of Environmental Quality Board staff.

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

Changes in the project

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

If a project is scaled back substantially so that an EIS is no longer required, the rules provide a specific process to terminate (part 4410.2100, subpart 11). This provides opportunity for the public to comment on the need to continue with an EIS. The 1997 amendments establish different procedures depending on whether the modified project exceeds any mandatory EAW threshold.

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

- A procedure is provided for requests for supplements and RGU responses (subpart 4).

- The 30-day scoping period, scoping EAW and scoping decision document are eliminated. Instead, the RGU must adopt a scope in the "preparation notice," which also is the official order and rationale for the supplement. Interested people have 20 days after the preparation notice release to object to the scope, in which case the RGU must provide a written response in the draft scoping EIS document. However, the rules allow the RGU to go through a more public scoping process, including scoping meetings, if advisable.

- The time limit to complete the supplement is 120 days from the date the preparation notice is adopted to adequacy determination.

Substitute methods of environmental review

Several options for environmental review are found at parts 4410.3600 to 4410.4000. In appropriate circumstances, a Responsible Governmental Unit may consider the following substitute methods:

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

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

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

4410.3900. Joint federal and state review. Any RGU or federal agency contemplating environmental review under federal law is advised to contact board staff about coordinating federal and state review to minimize duplication and delays. Federal and state review documents are often prepared jointly, however, in some cases it is more expeditious to complete one review and use the completed documents in a subsequent review under the other process. Board staff can help determine the best approach for the situation. Although the same factual information can often be used, each process has separate and independent legal requirements. In other words, the state EIS process requirements cannot be met by following federal procedures.

4410.4000. Tiered EIS. Added to the rules in 1997, this provision is derived from federal NEPA procedures. It applies to projects for which decisions are made sequentially over time, allowing environmental review to be done in stages — or tiers — corresponding to decisions. In each tier, only information relevant to that stage is developed. The level of detail usually becomes greater and more site-specific as the review proceeds from one tier to the next. An appropriate situation for a tiered review is the siting of a major facility where a general area for the facility is selected first and the best site within the area is selected later.

ALTERNATIVE URBAN AREAWIDE REVIEW PROCESS

The regular environmental review process is best suited for distinct projects with environmental impacts that do not overlap. In 1988 the

Environmental Quality Board adopted a process to review incremental impacts accumulating from a series of sequential projects, development typical of the rapidly growing suburbs of the Twin Cities metropolitan area. The Alternative Urban Areawide Review process substitutes for any EAW or EIS required for specific qualifying projects, provided they comply with the review assumptions and mitigation measures.

The review's key feature is that its subject is a development scenario or several scenarios for an entire geographical area rather than a specific project. Development scenarios are established by the local unit based upon the comprehensive plan, zoning ordinances, developers' plans and other relevant information. More than one scenario can be reviewed, providing at least one is consistent with the adopted comprehensive plan. A maximum development, "worst case" scenario is usually included. Development scenarios chosen by the local unit serve as the project description for the environmental impacts analysis. Specific projects ready for review within the area can be included, however, the review can also be done before any specific projects are proposed.

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

Types of development projects that can be reviewed through the Alternative Urban Areawide Review process were clarified in the 1997 rule amendments. Specifically, an AUAR can now substitute for review of: residential development, commercial development, warehousing, light industrial development and infrastructure associated with any developments such as roadways, water, sewer and stormwater systems. Light industrial development is defined as the assembly of products from components that are produced off-site. Development with characteristics that meet thresholds of any industrial mandatory EAW or EIS categories (part 4410.4300, subparts 2 to 13, 15 to 18 or 24; part 4410.4400, subparts 2 to 10, 12, 13 or 25) are not eligible for AUAR.

A hybrid of the EAW and EIS review processes, the AUAR uses a standard list of questions adapted from the EAW, providing a level of analysis for typical urban area impacts comparable to an EIS. Since its content is uniform, scoping is not necessary; however, it has been voluntarily added to several reviews. A draft and final document is prepared and distributed in a manner similar to an EIS to ensure adequate review. A process for appeal to the Environmental Quality Board can be invoked by state agencies and the Metropolitan Council.

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

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

Initiating the AUAR process. Any local unit considering the AUAR process should consult with the Environmental Quality Board staff early in planning. An AUAR process is formally initiated by RGU order, which must define the review area boundaries and the “anticipated nature, location, and intensity” of development (part 4410.3610, subpart 3.) Several development scenarios may be designated. At least one must be consistent with the most current adopted comprehensive plan; if the plan is outdated and being revised, but has not yet been adopted, the AUAR must include a scenario based on the former comprehensive plan. This scenario takes the place of the no-build alternative required in an EIS, although the RGU can also include less intense development scenarios if it has reason to do so. The review area may be subdivided into smaller subareas so that variations in land uses and intensities can be delineated. It is presumed that the RGU will discuss potential development scenarios and how to pay review costs with property owners. The rules do not address the issue of how an AUAR is funded, leaving this up to the RGU. If disputes or uncertainties arise about the nature, location or intensity of development within the review area, the RGU can proceed by incorporating multiple scenarios that reflect differing view points.

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

Steps of the AUAR are detailed at part 4410.3610, subpart 5, and summarized below. The process needs to be completed in 120 days from the RGU’s order for the AUAR to adoption of the final document or mitigation plan.

Step 1. The RGU selects area boundaries to be reviewed and defines anticipated levels of development on various parcels.

Step 2. An Alternative Urban Areawide Review document is drafted. Guidance on contents and format is available from Environmental Quality Board. A draft mitigation plan may be included.

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

Step 4. Based on comments received, the RGU revises the document and adds a “mitigation plan,” specifying mitigation measures or procedures to protect the environment from identified potential impacts. The RGU may also need to revise development assumptions or set development limits to protect environmental resources.

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

Step 6. If objections are filed by any state agency or the Metropolitan Council, negotiations ensue after which, if no resolution can be reached, the Environmental Quality Board decides if the review is adequate or must be revised. If revised, the documents are again reviewed according to procedures above.

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

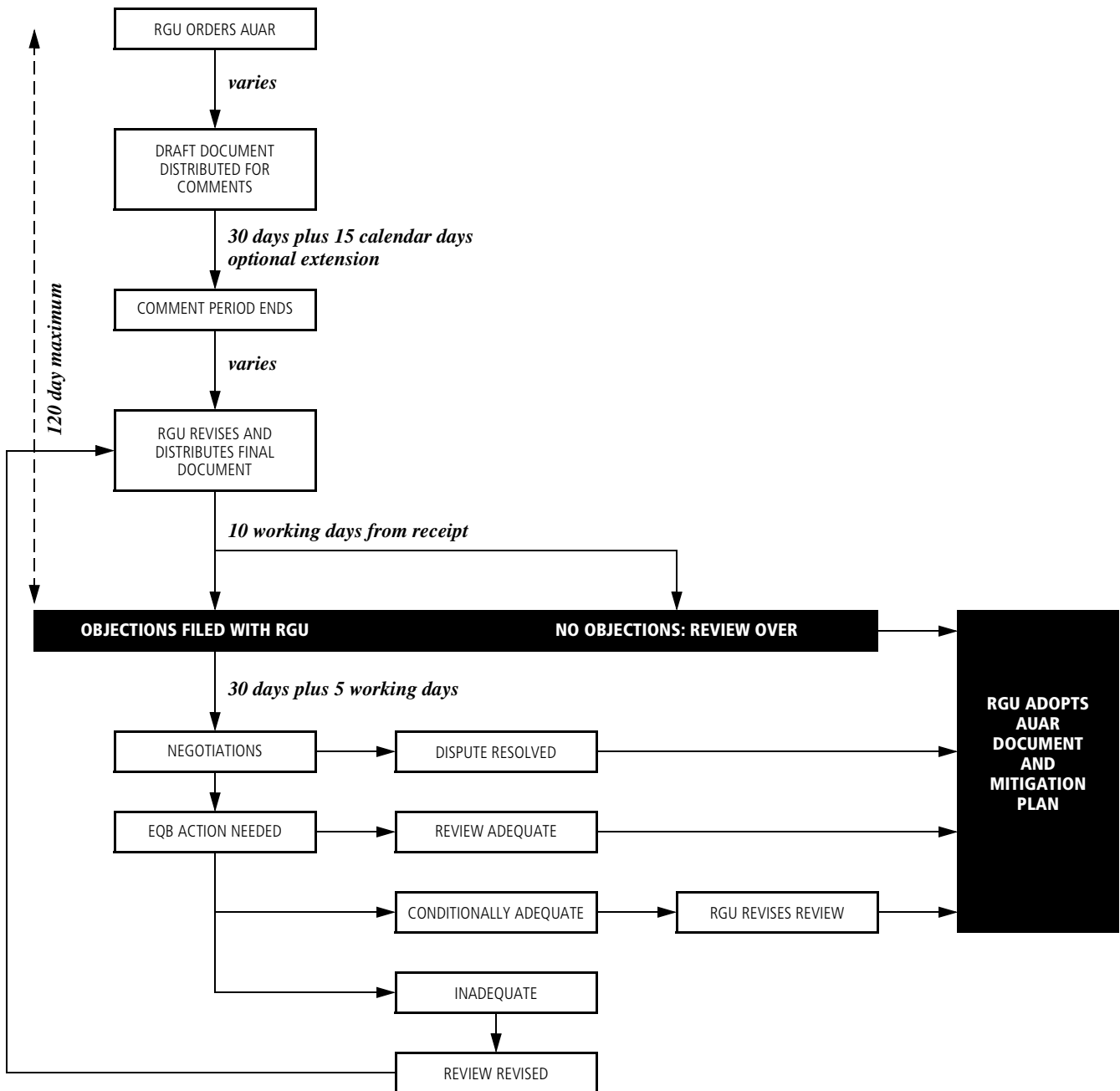
The mitigation plan is not merely a list of ways to avoid significant environmental effects, rather an action plan for how the effects **will** be avoided. It is a commitment by the RGU and other agencies to take action to prevent impacts that otherwise could occur from project development. Failure to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

Updating the AUAR. Subpart 7 provides guidance on when the review needs to be updated to remain valid, listing six specific examples of such circumstances. Regardless of any significant changes, the review must be updated every five years until all development in the area has been approved. Revisions to the documents are distributed for review in the same manner as for a final AUAR document.

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

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

ALTERNATIVE URBAN AREAWIDE REVIEW PROCESS



Mandatory and exemption categories

The following tables list mandatory requirements and exemptions for environmental review from Minnesota Rules, parts 4410.4300, 4410.4400 and 4410.4600. Each section presents EAW, EIS and exemption requirements, describing how to determine if review is mandatory or exempt for a particular type of project. It also indicates in bold the assigned **Responsible Governmental Unit**. If a project does not fit in any category, its review is discretionary. Notes accompany categories when needed to define terms, provide guidance and give examples.

Notes that apply to the entire table

- Two frequently used terms are: **construction**, any activity that directly alters the environment, including land preparation or facilities fabrication, excluding surveying or mapping; and **expansion**, a facility's capability to produce or operate beyond its existing capacity, excluding repairs or renovations that do not increase capacity.
- The "complete project" must be compared to appropriate categories in the table. Guidance about defining the complete project can be

found in Chapter 2. A requirement adopted in 1997 requires existing project stages begun after April 21, 1997, to be included under some circumstances.

- A project may fit several different categories: compare each project to columns within and among categories. If the RGU listed is different, follow procedures at part 4410.0500.
- Mandatory categories overrule exemption categories, except standard exemptions listed at part 4410.4600, subpart 2.

Guide to Minnesota state agencies in the table

- Department of Natural Resources, **DNR**
- Department of Transportation, **DOT**
- Environmental Quality Board, **EQB**
- Department of Agriculture, **MDA**
- Department of Health, **MDH**
- Pollution Control Agency, **PCA**
- Public Utilities Commission, **PUC**

NUCLEAR FUELS AND NUCLEAR WASTE		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 2</p> <p>A. Construction or expansion of a facility for the storage of high level nuclear waste, EQB</p> <p>B. Construction or expansion of a facility for the storage of low level nuclear waste for one year or longer, MDH</p> <p>C. Expansion of a high level nuclear waste disposal site, EQB</p> <p>D. Expansion of a low level nuclear waste disposal site, MDH</p> <p>E. Expansion of an away-from-reactor facility for temporary storage of spent nuclear fuel, EQB</p> <p>F. Construction or expansion of an on-site pool for temporary storage of spent nuclear fuel, EQB</p>	<p>4410.4400, subpart 2</p> <p>A. Construction or expansion of a nuclear fuel or nuclear waste processing facility, including fuel fabrication facilities, reprocessing plants, and uranium mills, DNR for uranium mills; otherwise, PCA.</p> <p>B. Construction of a high level nuclear waste disposal site, EQB</p> <p>C. Construction of an away-from-reactor facility for temporary storage of spent nuclear fuel, EQB</p> <p>D. Construction of a low level nuclear waste disposal site, MDH</p>	<p>None</p>

ELECTRIC GENERATING FACILITIES		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 3</p> <p>Construction of an electric power generating plant and associated facilities designed for or capable of operating at a capacity of 25 megawatts or more, EQB</p>	<p>4410.4400, subpart 3</p> <p>Construction of a large electric power generating plant pursuant to part 4410.7000, EQB</p>	<p>4410.4600, subpart 3</p> <p>Construction of an electric generating plant or combination of plants at a single site with a combined capacity of less than five megawatts.</p>
<p>NOTES</p> <p>Large electric power generating plants and associated facilities include power generating plants of 50 or more megawatt capacity (EQB power plant siting rules at part 4400.0200). Special procedures apply to integrate EIS review into EQB siting process (4410.7000 to 4410.7100).</p>		

PETROLEUM REFINERIES		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 4</p> <p>Expansion of an existing petroleum refinery facility that increases its capacity by 10,000 or more barrels per day, PCA</p>	<p>4410.4400, subpart 4</p> <p>Construction of a new petroleum refinery facility, PCA</p>	<p>None</p>

FUEL CONVERSION FACILITIES		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 5</p> <p>A. Construction of a facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 25,000 dry tons or more per year of input, PCA</p> <p>B. Construction or expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by 5,000,000 or more gallons per year of alcohol produced, PCA</p>	<p>4410.4400, subpart 5</p> <p>A. Construction of a facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 250,000 dry tons or more per year of input, PCA</p> <p>B. For construction or expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by 50,000,000 or more gallons per year of alcohol produced, PCA</p>	<p>4410.4600, subpart 4</p> <p>Expansion of a facility for the production of alcohol fuels that would have or would increase its capacity by less than 500,000 gallons per year of alcohol produced.</p>
<p>NOTES</p> <p>Biomass sources are animal wastes and all forms of vegetation, natural or cultivated (4410.0200, subpart 6).</p>		

TRANSMISSION LINES		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 6 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, EQB</p>	<p>4410.4400, subpart 6 Construction of a high voltage transmission line pursuant to part 4410.7400, EQB</p>	<p>4410.4600, subpart 5 Construction of a transmission line with a nominal capacity of 69 kilovolts or less.</p>
<p>NOTES High voltage transmission line is a conductor of electricity designed to operate at a nominal voltage of 200 kilovolts or more; associated facilities include insulators, towers, switching yards, substations, and terminals (4400.0200). Special procedures apply to integrate EIS into EQB route selection process (4410.7400 and 4410.7500).</p>		

PIPELINES		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 7 A. Routing of a pipeline, greater than six inches in diameter and having more than 0.75 miles of its length in Minnesota, used for the transportation of coal, crude petroleum fuels, or oil or their derivatives, EQB B. Construction of a pipeline for distribution of natural or synthetic gas under a license, permit, right, or franchise that has been granted by the municipality under authority of Minnesota Statutes, section 216B.36, designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than: (1) five miles if the pipeline will occupy streets, highways, and other public property; or (2) 0.75 miles if the pipeline will occupy private property; EQB or municipality C. Construction of a pipeline to transport natural or synthetic gas subject to regulation under the federal Natural Gas Act, United States Code, title 15, section 717, et. seq., designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than: (1) five miles if the pipeline will be constructed and operated within an existing right-of-way; or (2) 0.75 miles if construction or operation will require new temporary or permanent right-of-way; EQB D. Construction of a pipeline to convey natural or synthetic gas that is not subject to regulation under the federal Natural Gas Act, United States Code, title 15, section 717, et. seq.; or to a license, permit, right, or franchise that has been granted by a municipality under authority of Minnesota Statutes, section 216B.36; designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than 0.75 miles, EQB</p>	<p>4410.4400, subpart 24 Routing of a pipeline subject to the full route selection procedures under Minnesota Statutes, section 116I.015, EQB</p>	<p>None</p>
<p>NOTES Items A to D do not apply to repair or replacement of an existing pipeline within an existing right-of-way or to a pipeline located entirely within a refining, storage or manufacturing facility. Item C (interstate natural gas pipelines) does not apply if the application is expressly preempted by federal law, or under specific circumstances when a conflict exists with applicable federal law. The EQB has approved an alternative pipeline routing review process (4410.3600); any pipeline reviewed under chapter 4415 automatically satisfies EAW and EIS requirements.</p>		

TRANSFER FACILITIES		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 8</p> <p>A. Construction of a facility designed for or capable of transferring 300 tons or more of coal per hour or with an annual throughput of 500,000 tons of coal from one mode of transportation to a similar or different mode of transportation; or the expansion of an existing facility by these respective amounts, PCA</p> <p>B. Construction of a new facility or the expansion by 50 percent or more of an existing facility for the bulk transfer of hazardous materials with the capacity of 10,000 or more gallons per transfer, if the facility is located in a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers district Minnesota River Project Riverbend area, or the Mississippi headwaters area, PCA</p>	<p>None</p>	<p>4410.4600, subpart 6</p> <p>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.</p>
<p>NOTES</p> <p>Water-related land use management district is any of the following designated zones: shorelands, flood plains, wild or scenic rivers districts, Mississippi Headwaters and Minnesota Project Riverbend districts.</p>		

UNDERGROUND STORAGE		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 9</p> <p>A. Expansion of an underground storage facility for gases or liquids that requires a permit, pursuant to Minnesota Statutes, section 103I.681, subdivision 1, paragraph (a), DNR</p> <p>B. Expansion of an underground storage facility for gases or liquids, using naturally occurring rock materials, that requires a permit pursuant to Minnesota Statutes, section 103I.681, subdivision 1, paragraph (b), DNR</p>	<p>4410.4400, subpart 7</p> <p>A. Construction of an underground storage facility for gases or liquids that requires a permit pursuant to Minnesota Statutes, section 103I.681, subdivision 1, paragraph (a), DNR</p> <p>B. Construction of an underground storage facility for gases or liquids, using naturally occurring rock materials, that requires a permit pursuant to Minnesota Statutes, section 103I.681, subdivision 1, paragraph (b), DNR</p>	<p>None</p>

STORAGE FACILITIES		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 10</p> <p>A. Construction of a facility designed for or capable of storing more than 7,500 tons of coal or with an annual throughput of more than 125,000 tons of coal; or the expansion of an existing facility by these respective amounts, PCA</p> <p>B. Construction of a facility on a single site designed for or capable of storing 1,000,000 gallons or more of hazardous materials, PCA</p> <p>C. Construction of a facility designed for or capable of storing on a single site 100,000 gallons or more of liquefied natural gas, synthetic gas, or anhydrous ammonia, PCA</p>	<p>None</p>	<p>4410.4600, subpart 7</p> <p>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.</p>
<p>NOTES</p> <p>Item C includes all types of natural or synthetic gas stored in a liquid state.</p>		

METALLIC MINERAL MINING AND PROCESSING		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 1</p> <p>A. Mineral deposit evaluation of metallic mineral deposits other than natural iron ore and taconite, DNR</p> <p>B. Expansion of a stockpile, tailings basin, or mine by 320 or more acres, DNR</p> <p>C. Expansion of a metallic mineral plant processing facility that is capable of increasing production by 25 percent per year or more, provided that increase is in excess of 1,000,000 tons per year in the case of facilities for processing natural iron ore or taconite, DNR</p>	<p>4410.4400, subpart 8</p> <p>A. Mineral deposit evaluation involving the extraction of 1,000 tons or more of material that is of interest to the proposer principally due to its radioactive characteristics, DNR</p> <p>B. Construction of a new facility for mining metallic minerals or for the disposal of tailings from a metallic mineral mine, DNR</p> <p>C. Construction of a new metallic mineral processing facility, DNR</p>	<p>4410.4600, subpart 8</p> <p>A. General mine site evaluation activities that do not result in a permanent alteration of the environment, including mapping, aerial surveying, visual inspection, geologic field reconnaissance, geophysical studies, and surveying, but excluding exploratory borings.</p> <p>B. Expansion of metallic mineral plant processing facilities that are capable of increasing production by less than ten percent per year, provided the increase is less than 100,000 tons per year in the case of facilities for processing natural iron ore or taconite.</p> <p>C. Scram mining operations.</p>
<p>NOTES</p> <p>Mineral deposit evaluation is examining an area to determine the quantity and quality of minerals, excluding exploratory boring, but including bulk samples obtained by excavating; trenching; constructing shafts, tunnels or pits; producing refuse and other associated activities (4410.0200, subpart 47, citing Minnesota Statute, section 103I.605, subdivision 2).</p> <p>Scram mining operations produce natural iron ore or ore concentrates from previously developed stockpiles, tailings, basins, underground mines or open pits. Land can be no more than 80 acres previously not affected by mining, that is: from which no materials have been removed or on which no mine wastes have been deposited. (4410.0200, Subpart 78, citing part 6130.0100).</p>		

NONMETALLIC MINERAL MINING		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 12</p> <p>A. Development of a facility for the extraction or mining of peat which will result in the excavation of 160 or more acres of land during its existence, DNR</p> <p>B. Development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 40 or more acres of land to a mean depth of ten feet or more during its existence, local governmental unit</p>	<p>4410.4400, subpart 9</p> <p>A. Development of a facility for the extraction or mining of peat which will utilize 320 acres of land or more during its existence, DNR</p> <p>B. Development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 160 acres of land or more to a mean depth of ten feet or more during its existence, local governmental unit</p>	<p>None</p>
<p>NOTES</p> <p>Item B requires a mine to be both at least 40 acres in extent and of 10-foot average depth.</p>		

PAPER OR PULP PROCESSING MILLS		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 13</p> <p>Expansion of an existing paper or pulp processing facility that will increase its production capacity by 50 percent or more, PCA</p>	<p>4410.4400, subpart 10</p> <p>Construction of a new paper or pulp processing mill, PCA</p>	<p>4410.4600, subpart 9</p> <p>Expansion of an existing paper or pulp processing facility that will increase its production capacity by less than 10 percent.</p>

INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL FACILITIES		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 14 A. Construction of a new or expansion of an existing warehousing or light industrial facility equal to or in excess of the following thresholds, expressed as gross floor space, local governmental unit:</p> <p>(1) unincorporated area, 150,000 (2) third or fourth class city, 300,000 (3) second class city, 450,000 (4) first class city, 600,000</p> <p>B. Construction of a new or expansion of an existing industrial, commercial, or institutional facility, other than a warehousing or light industrial facility, equal to or in excess of the following thresholds, expressed as gross floor space, local governmental unit:</p> <p>(1) unincorporated area, 100,000 square feet (2) third or fourth class city, 200,000 square feet (3) second class city, 300,000 square feet (4) first class city, 400,000 square feet</p>	<p>4410.4400, subpart 11 A. Construction of a new or expansion of an existing warehousing or light industrial facility equal to or in excess of the following thresholds, expressed as gross floor space, local governmental unit:</p> <p>(1) unincorporated area, 375,000 (2) third or fourth class city, 750,000 (3) second class city, 1,000,000 (4) first class city, 1,500,000</p> <p>B. Construction of a new or expansion of an existing industrial, commercial, or institutional facility, other than a warehousing or light industrial facility, equal to or in excess of the following thresholds, expressed as gross floor space, local governmental unit:</p> <p>(1) unincorporated area, 250,000 square feet (2) third or fourth class city, 500,000 square feet (3) second class city, 750,000 square feet (4) first class city, 1,000,000 square feet</p>	<p>4410.4600, subpart 10 A. Construction of a new or expansion of an existing warehousing, light industrial, commercial, or institutional facility of less than the following thresholds, expressed as gross floor space, if no part of the development is within a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area: (1) third or fourth class city or unincorporated area, 50,000 square feet (2) second class city, 75,000 square feet (3) first class city, 100,000 square feet</p> <p>B. Construction of a warehousing, light industrial, commercial, or institutional facility with less than 4,000 square feet of gross floor space, and with associated parking facilities designed for 20 vehicles or less.</p>
<p>NOTES Warehousing facility's primary function is storage of goods or materials; a small portion may be used for office or sales space. (4410.0200, subpart 89a) Light industrial facility's primary function is that other than manufacturing with fewer than 500 employees (4410.0200, subpart 42a). Gross floor space is the total square footage of all floors, including all structures on the site, but not including parking space or approach areas (4410.0200, subpart 35). Ground area is total area converted to impervious surface in conjunction with the project, including parking and approach areas (4410.0200, Subpart 36). City classes by population First class: Minneapolis, St. Paul and Duluth (and any other city that reaches population of 100,000) Second class: 20,000 to 100,000 Third class: 10,000 to 20,000 Fourth class: under 10,000 Based on the most recent population census or the latest reliable population estimate from the State Demographer or Metropolitan Council.</p>		

AIR POLLUTION		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 15 A. Construction of a stationary source facility that generates 100 tons or more per year or modification of a stationary source facility that increases generation by 100 tons or more per year of any single air pollutant after installation of air pollution control equipment, PCA</p> <p>B. Construction of a new parking facility for 2,000 or more vehicles, PCA, except that this category does not apply to any parking facility which is part of a project reviewed pursuant to part 4410.4300, subpart 14, 19, 32, or 34, or part 4410.4400, subpart 11, 14, 21, or 22.</p>	None	<p>4410.4600, subpart 10, item C Construction of a new parking facility for less than 100 vehicles if the facility is not located in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.</p>

HAZARDOUS WASTE		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 16</p> <p>A. Construction or expansion of a hazardous waste disposal facility, PCA</p> <p>B. Construction of a hazardous waste processing facility with a capacity of 1,000 or more kilograms per month, PCA</p> <p>C. Expansion of a hazardous waste processing facility that increases its capacity by ten percent or more, PCA</p> <p>D. Construction or expansion of a facility that sells hazardous waste storage services to generators other than the owner and operator of the facility or construction of a facility at which a generator's own hazardous wastes will be stored for a time period in excess of 90 days, if the facility is located in a water-related land use management district, or in an area characterized by soluble bedrock, PCA</p>	<p>4410.4400, subpart 12</p> <p>A. Construction or expansion of a hazardous waste disposal facility for 1,000 or more kilograms per month, PCA</p> <p>B. Construction or expansion of a hazardous waste disposal facility in a water-related land use management district, or in an area characterized by soluble bedrock, PCA</p> <p>C. Construction or expansion of a hazardous waste processing facility if the facility is located in a water-related land use management district, or in an area characterized by soluble bedrock, PCA</p>	<p>None</p>
<p>NOTES</p> <p>Water-related land use management district is any of the following designated zones: shorelands, flood plains, wild or scenic rivers districts, Mississippi Headwaters and Minnesota Project Riverbend districts.</p>		

SOLID WASTE		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 17</p> <p>A. Construction of a mixed municipal solid waste disposal facility for up to 100,000 cubic yards of waste fill per year, PCA</p> <p>B. Expansion by 25 percent or more of previous capacity of a mixed municipal solid waste disposal facility for up to 100,000 cubic yards of waste fill per year, PCA</p> <p>C. Construction or expansion of a mixed municipal solid waste transfer station for 300,000 or more cubic yards per year, PCA</p> <p>D. Construction or expansion of a mixed municipal solid waste energy recovery facility or incinerator, or the utilization of an existing facility for the combustion of mixed municipal solid waste or refuse-derived fuel, with a capacity of 30 or more tons per day of input, PCA</p> <p>E. Construction or expansion of a mixed municipal solid waste compost facility or a refuse-derived fuel production facility with a capacity of 50 or more tons per day of input, PCA</p> <p>F. Expansion by at least ten percent but less than 25 percent of previous capacity of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste fill per year, PCA</p> <p>G. Construction or expansion of a mixed municipal solid waste energy recovery facility ash land-fill receiving ash from an incinerator that burns refuse-derived fuel or mixed municipal solid waste, PCA</p>	<p>4410.4400, subpart 13</p> <p>A. Construction of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste fill per year, PCA</p> <p>B. Construction or expansion of a mixed municipal solid waste disposal facility in a water-related land use management district, or in an area characterized by soluble bedrock, PCA</p> <p>C. Construction or expansion of a mixed municipal solid waste energy recovery facility or incinerator, or the utilization of an existing facility for the combustion of mixed municipal solid waste or refuse-derived fuel, with a capacity of 250 or more tons per day of input, PCA</p> <p>D. Construction or expansion of a mixed municipal solid waste compost facility or a refuse-derived fuel production facility with a capacity of 500 or more tons per day of input, PCA</p> <p>E. Expansion by 25 percent or more of previous capacity of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste fill per year, PCA</p>	<p>None</p>
<p>NOTES</p> <p>Water-related land use management district is any of the following designated zones: shorelands, flood plains, wild or scenic rivers districts, Mississippi Headwaters and Minnesota Project Riverbend districts.</p>		

WASTEWATER AND SEWAGE SYSTEMS		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 18</p> <p>A. Expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of any part of that system by 1,000,000 gallons per day or more, PCA</p> <p>B. Expansion or reconstruction of an existing municipal or domestic wastewater treatment facility which results in an increase by 50 percent or more and by at least 50,000 gallons per day of its average wet weather design flow capacity, or construction of a new municipal or domestic wastewater treatment facility with an average wet weather design flow capacity of 50,000 gallons per day or more, PCA</p> <p>C. Expansion or reconstruction of an existing industrial process wastewater treatment facility which increases its design flow capacity by 50 percent or more and by at least 200,000 gallons per day or more, or construction of a new industrial process wastewater treatment facility with a design flow capacity of 200,000 gallons per day or more, 5,000,000 gallons per month or more, or 20,000,000 gallons per year or more, PCA. This category does not apply to industrial process wastewater treatment facilities that discharge to a publicly-owned treatment works or to a tailings basin reviewed pursuant to subpart 11, item B.</p>	<p>None</p>	<p>4410.4600, subpart 11</p> <p>Construction of a new wastewater treatment facility with a capacity of less than 5,000 gallons per day average wet weather flow or the expansion of an existing wastewater treatment facility by less than 5,000 gallons per day average wet weather flow or the expansion of a sewage collection system by less than 5,000 gallons per day design daily average flow or a sewer line of 1,000 feet or less and eight-inch diameter or less.</p>

RESIDENTIAL DEVELOPMENT		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 19</p> <p>Local governmental unit is the RGU for construction of a permanent or potentially permanent residential development of:</p> <p>A. 50 or more unattached or 75 or more attached units in an unsewered unincorporated area or 100 unattached units or 150 attached units in a sewerer unincorporated area;</p> <p>B. 100 unattached units or 150 attached units in a city that does not meet the conditions of item D;</p> <p>C. 100 unattached units or 150 attached units in a city meeting the conditions of item D if the project is not consistent with the adopted comprehensive plan; or</p> <p>D. 250 unattached units or 375 attached units in a city within the seven-county Twin Cities metropolitan area that has adopted a comprehensive plan under Minnesota Statutes, section 473.859, or in a city not located within the seven-county Twin Cities metropolitan area that has filed with the EQB chair a certification that it has adopted a comprehensive plan containing the elements listed in the Notes.</p>	<p>4410.4400, subpart 14</p> <p>Local governmental unit is the RGU for construction of a permanent or potentially permanent residential development of:</p> <p>A. 100 or more unattached or 150 or more attached units in an unsewered unincorporated area or 400 unattached units or 600 attached units in a sewerer unincorporated area;</p> <p>B. 400 unattached units or 600 attached units in a city that does not meet the conditions of item D;</p> <p>C. 400 unattached units or 600 attached units in a city meeting the conditions of item D if the project is not consistent with the adopted comprehensive plan; or</p> <p>D. 1,000 unattached units or 1,500 attached units in a city within the seven-county Twin Cities metropolitan area that has adopted a comprehensive plan under Minnesota Statutes, section 473.859, or in a city not located within the seven-county Twin Cities metropolitan area that has filed with the EQB chair a certification that it has adopted a comprehensive plan containing the elements listed in the Notes below.</p>	<p>4410.4600, subpart 12</p> <p>A. Construction of a sewerer 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:</p> <p>(1) less than ten units in an unincorporated area, (2) less than 20 units in a third or fourth class city, (3) less than 40 units in a second class city, or (4) less than 80 units in a first class city.</p> <p>B. Construction of a single residence or multiple residence with four dwelling units or less and accessory appurtenant structures and utilities.</p>
<p>NOTES</p> <p>How to count units. All contiguous land must be included if: a. the developer owns it or has a purchase option; and b. it is zoned for residential development or is identified for future residential development by an adopted comprehensive plan.</p> <p>To calculate number of units: a. If known, use the number of units planned by the proposer, or b. Use the maximum number of units per acre allowed by the zoning ordinance, or c. If option b is not available, use the average number of units per acre in the proposer's plan.</p> <p>Attached units are dwelling units that are grouped together with four or more units per structure.</p> <p>Unattached units are single-family, duplex and triplex structures.</p> <p>Sewered area is one served by a sanitary sewer system connected to a wastewater treatment or a publicly owned, operated or supervised centralized septic system, or one that lies within the Metropolitan Council's designated Metropolitan Urban Service Area.</p> <p>Water-related land use management district is any of the following designated zones: shorelands, flood plains, wild or scenic rivers districts, Mississippi Headwaters and Minnesota Project Riverbend districts.</p> <p>Mixtures of attached and unattached units. An arithmetic computation must be performed to determine if mixed unit developments require an EAW or EIS. The formula is: $S = A/B + C/D$, where: A = # of unattached units B = applicable unattached unit threshold C = # of attached units, and D = applicable attached unit threshold.</p> <p>If S equals or exceeds 1.00, review is required.</p> <p>Example: Determine if an EAW is required for a development of 300 apartments and 50 single-family units; and the development is consistent with a certified comprehensive plan.</p> <p>Step 1: divide the number of unattached units, 50, by the applicable unattached EAW threshold, 250: $50/250 = 0.20$. Step 2: divide the number of attached units, 300, by the applicable attached unit threshold, 375: $300/375 = 0.80$. Step 3: Add the quotients from steps 1 & 2: $0.20 + 0.80 = 1.00$. Step 4: Compare the sum to 1.00: Since 1.00 equals 1.00, an EAW is mandatory for this project.</p> <p>Requirements for a qualifying comprehensive plan. The overall plan must include the following elements: (1) a land use plan designating the existing and proposed location, intensity and extent of use of land and water for residential, industrial, agricultural and other public and private purposes; (2) a transportation plan describing, designating and scheduling the location, extent, function and capacity of existing and proposed local public and private transportation facilities and services; (3) a sewage collection system policy plan describing, designating, and scheduling the areas to be served by the public system, the existing and planned capacities of the public system, and the standards and conditions under which the installation of private sewage treatment systems will be permitted; (4) a capital improvements plan for public facilities; and (5) an implementation plan describing public programs, fiscal devices and other actions to be undertaken to implement the comprehensive plan, and a description of official controls for zoning, subdivision and private sewage systems, and a schedule for their implementation.</p>		

CAMPGROUNDS AND RV PARKS		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 20</p> <p>Construction of a seasonal or permanent recreational development, accessible by vehicle, consisting of 50 or more sites, or the expansion of such a facility by 50 or more sites, local governmental unit</p>	None	None

AIRPORT PROJECTS		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 21</p> <p>A. Construction of a paved, new airport runway, the DOT, local governmental unit or Metropolitan Airports Commission</p> <p>B. Construction of a runway extension that would upgrade an existing airport runway to permit usage by aircraft over 12,500 pounds that are at least three decibels louder than aircraft currently using the runway, the DOT, local governmental unit or Metropolitan Airports Commission</p>	<p>24410.4400, subpart 15</p> <p>Construction of a paved and lighted airport runway of 5,000 feet of length or greater, local governmental unit or Department of Transportation</p>	<p>4410.4600, subpart 13</p> <p>A. Runway, taxiway, apron, or loading ramp construction or repair work including reconstruction, resurfacing, marking, grooving, fillets, and jet blast facilities, except where the project will create environmental impacts off airport property</p> <p>B. Installation or upgrading of airfield lighting systems, including beacons and electrical distribution systems</p> <p>C. Construction or expansion of passenger handling or parking facilities, including pedestrian walkway facilities.</p> <p>D. Grading or removal of obstructions and erosion control projects on airport property, except where the projects will create environmental impacts off airport property</p>
<p>NOTES</p> <p>RGU for the airport categories shall be selected according to part 4410.0500, subpart 5.</p>		

HIGHWAY PROJECTS		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 22</p> <p>A. Construction of a road on a new location over one mile in length that will function as a collector roadway, local governmental unit or DOT</p> <p>B. For construction of additional travel lanes on an existing road for a length of one or more miles, local governmental unit or DOT</p> <p>C. For the addition of one or more new interchanges to a completed limited access highway, local governmental unit or DOT</p>	<p>4410.4400, subpart 16</p> <p>Construction of a road on a new location which is four or more lanes in width and two or more miles in length, local governmental unit or DOT</p>	<p>4410.4600, subpart 14</p> <p>A. Highway safety improvement projects</p> <p>B. Installation of traffic control devices, individual noise barriers, bus shelters and bays, loading zones, and access and egress lanes for transit and paratransit vehicles</p> <p>C. Modernization of an existing roadway or bridge by resurfacing, restoration, or rehabilitation that may involve the acquisition of minimal amounts of right-of-way</p> <p>D. Roadway landscaping, construction of bicycle and pedestrian lanes, paths, and facilities within existing right-of-way</p> <p>E. Any stream diversion or channelization within the right-of-way of an existing public roadway associated with bridge or culvert replacement</p> <p>F. Reconstruction or modification of an existing bridge structure on essentially the same alignment or location that may involve the acquisition of minimal amounts of right-of-way</p>
<p>NOTES</p> <p>Collector roadway is a road that provides access to minor arterial roadways from local roadways and adjacent land uses.</p> <p>Highway safety improvement projects are those at specific hazardous locations, including geometric corrections with minimal additional right-of-way.</p>		

BARGE FLEETING		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 23 Construction of a new or expansion of an existing barge fleeting facility, DOT or port authority</p>	<p>4410.4400, subpart 17 Construction of a barge fleeting facility at a new off-channel location that involves the dredging of 1,000 or more cubic yards, DOT or port authority</p>	<p>None</p>

WATER APPROPRIATION AND IMPOUNDMENTS		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 24 A. New appropriation for commercial or industrial purposes of either surface water or ground water averaging 30,000,000 gallons per month; or a new appropriation of either ground water or surface water for irrigation of 540 acres or more in one continuous parcel from one source of water, DNR B. New permanent impoundment of water creating additional water surface of 160 or more acres or an additional permanent impoundment of water creating additional water surface of 160 or more acres, DNR C. Construction of a dam with an upstream drainage area of 50 square miles or more, DNR</p>	<p>4410.4400, subpart 18 Construction of a Class I dam, DNR</p>	<p>4410.4600, subpart 15 A new or additional permanent impoundment of water creating a water surface of less than ten acres.</p>
<p>NOTES Class I dam is a dam whose failure would probably result in loss of life; serious hazard; damage to health; damage to main highways, high-value industrial or commercial properties, major public utilities; or serious economic loss to the public.</p>		

MARINAS		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 25 Construction or expansion of a marina or harbor that results in a 20,000 or more square foot total or a 20,000 or more square foot increase of water surface area used temporarily or permanently for docks, docking, or maneuvering of watercraft, local governmental unit</p>	<p>4410.4400, subpart 19 Construction of a new or expansion of an existing marina, harbor, or mooring project on a state or federally designated wild and scenic river, local governmental unit</p>	<p>4410.4600, subpart 16 Construction of private residential docks for use by four or less boats and utilizing less than 1,500 square feet of water surface.</p>
<p>NOTES Marina is an inland or offshore area for the concentrated mooring of five or more watercraft where at least one of the following ancillary services is provided: boat storage, fueling, launching, repair, sanitary pumpout or restaurant service.</p>		

STREAMS AND DITCHES		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 26 Diversion, realignment or channelization of any designated trout stream, or affecting greater than 500 feet of natural watercourse with a total drainage area of ten or more square miles unless exempted by part 4410.4600, subpart 14, item E, or 17, local governmental unit</p>	<p>None</p>	<p>4410.4600, subpart 17 Routine maintenance or repair of a drainage ditch within the limits of its original construction flow capacity, performed within 20 years of construction or major repair.</p>
<p>NOTES See also exemption at subpart 14, item E, highway projects.</p>		

WETLANDS AND PROTECTED WATERS		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 27</p> <p>A. 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, chapter 103G, local governmental unit</p> <p>B. Projects that will change or diminish the course, current or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more, excluding 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, local governmental unit</p>	<p>4410.4400, subpart 20</p> <p>Projects that will eliminate a protected water or protected wetland, local governmental unit</p>	<p>None</p>
<p>NOTES</p> <p>Protected waters and wetlands are identified on official maps of the Department of Natural Resources, which requires permits for work within their beds. Wetlands regulated by a local governmental unit under the Wetland Conservation Act are generally not covered by EQB categories, except as specified under item B. Circular 39 wetland classes are described in an appendix to the EQB's EAW Guidelines.</p> <p>Wetlands are covered by item B only if: a. a type 3 to 8 wetland, b. not on the DNR protected wetland inventory, c. at least 2.5 acres; and d. at least partially in a shoreland, flood plain, wild or scenic river zone. Item B threshold is triggered if a project cumulatively affects five acres or 40 percent of any wetland.</p>		

FORESTRY		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 28</p> <p>A. Harvesting of timber for commercial purposes on public lands within a state park, historical area, wilderness area, scientific and natural area, wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or critical area that does not have an approved plan under Minnesota Statutes, section 86A.09 or 116G.07, DNR</p> <p>B. Clear cutting of 80 or more contiguous acres of forest, any part of which is located within a shoreland area and within 100 feet of the ordinary high water mark of the lake or river, DNR</p>	<p>None</p>	<p>4410.4600, subpart 18</p> <p>A. Harvesting of timber for maintenance purposes</p> <p>B. Public and private forest management practices, other than clear cutting or the application of pesticides, that involve less than 20 acres of land</p>
<p>NOTES</p> <p>Items C and D, formerly in subpart 28, are in subpart 36, effective 1997.</p>		

ANIMAL FEEDLOTS																				
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES																		
<p>4410.4300, subpart 29</p> <p>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 or construction of a total confinement animal feedlot facility of 2,000 animal units or more or the expansion of an animal feedlot facility by 2,000 animal units or more if the expansion is a total confinement facility, PCA</p>	<p>None</p>	<p>4410.4600, subpart 19</p> <p>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.</p>																		
<p>NOTES</p> <p>Multisite feedlots are usually treated as a single project and animal units at all sites must be added together.</p> <p>Animal units are as follows per one animal:</p> <table border="0"> <tr><td>mature dairy cow</td><td>1.4</td></tr> <tr><td>slaughter steer/heifer</td><td>1.0</td></tr> <tr><td>horse</td><td>1.0</td></tr> <tr><td>swine over 55 lbs.</td><td>0.4</td></tr> <tr><td>duck</td><td>0.2</td></tr> <tr><td>sheep</td><td>0.1</td></tr> <tr><td>swine under 55 lbs.</td><td>0.05</td></tr> <tr><td>turkey</td><td>0.018</td></tr> <tr><td>chicken</td><td>0.01</td></tr> </table>			mature dairy cow	1.4	slaughter steer/heifer	1.0	horse	1.0	swine over 55 lbs.	0.4	duck	0.2	sheep	0.1	swine under 55 lbs.	0.05	turkey	0.018	chicken	0.01
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NATURAL AREAS		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 30</p> <p>Projects resulting in the permanent physical encroachment on lands within a national park, state park, wilderness area, state lands and waters within the boundaries of the Boundary Waters Canoe Area, scientific and natural area, or state trail corridor when the encroachment is inconsistent with laws applicable to or the management plan prepared for the recreational unit, local governmental unit or DNR</p>	<p>None</p>	<p>None</p>
<p>NOTES</p> <p>The Department of Natural Resources is the RGU if the area is state-owned or state-managed; for all other areas, including federally managed lands, the local governmental unit is the RGU.</p>		

HISTORICAL PLACES		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 31</p> <p>Destruction, in whole or part, or the moving of a property that is listed on the National Register of Historic Places or State Register of Historic Places, except this does not apply to projects reviewed under section 106 of the National Historic Preservation Act of 1966, United States Code, title 16, section 470, or the federal policy on lands, wildlife and waterfowl refuges, and historic sites pursuant to United States Code, title 49, section 303, permitting state agency or local governmental unit</p>	<p>None</p>	<p>None</p>
<p>NOTES</p> <p>If a state permit is involved, the state agency is the RGU, otherwise the local governmental unit. The State Historical Society is never the RGU.</p>		

MIXED RESIDENTIAL AND INDUSTRIAL-COMMERCIAL PROJECTS		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 32</p> <p>If a project includes both residential and industrial-commercial components, the project must have an EAW prepared if the sum of the quotient obtained by dividing the number of residential units by the applicable residential threshold of subpart 19, plus the quotient obtained by dividing the amount of industrial-commercial gross floor space by the applicable industrial-commercial threshold of subpart 14, equals or exceeds one, local governmental unit</p>	<p>4410.4400, subpart 21</p> <p>If a project includes both residential and commercial-industrial components, the project must have an EIS prepared if the sum of the quotient obtained by dividing the number of residential units by the applicable residential threshold of subpart 14, plus the quotient obtained by dividing the amount of industrial-commercial gross floor space by the applicable industrial-commercial threshold of subpart 11, equals or exceeds one.</p>	None
<p>NOTES</p> <p>Calculations needed for this category are similar to those for mixed-unit residential projects.</p>		

COMMUNICATIONS TOWERS		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 33</p> <p>Construction of a communications tower equal to or in excess of 500 feet in height, or 300 feet in height within 1,000 feet of any protected water or protected wetland or within two miles of the Mississippi, Minnesota, Red, or St. Croix rivers or Lake Superior, local governmental unit</p>	None	None
<p>NOTES</p> <p>Official maps showing protected waters and wetlands are available at many local unit offices and at DNR hydrology offices. DNR issues permits for protected waters and wetlands rather than a local unit, as under the Wetland Conservation Act. When a river flows through an impoundment or lake, distance is measured from its shoreline.</p>		

SPORTS OR ENTERTAINMENT FACILITIES		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 34</p> <p>Construction of a new sports or entertainment facility designed for or expected to accommodate a peak attendance of 5,000 or more persons, or the expansion of an existing sports or entertainment facility by this amount, local governmental unit</p>	<p>4410.4400, subpart 22</p> <p>Construction of a new outdoor sports or entertainment facility designed for or expected to accommodate a peak attendance of 20,000 or more persons or a new indoor sports or entertainment facility designed for or expected to accommodate a peak attendance of 30,000 or more persons, or the expansion of an existing facility by these amounts, local governmental unit</p>	None
<p>NOTES</p> <p>Sports or entertainment facility is any facility for sports events or various forms of entertainment or amusement that attract large numbers of people within a limited period of time, including: sports stadiums and arenas; racetracks; concert halls or amphitheatres; theaters; facilities for festivals or pageants (if other than temporary facilities such as grandstands, amplification systems, or lighting are to be constructed); fairgrounds; amusement parks; and zoos. The number of participants is to be counted as part of the attendance.</p>		

WATER DIVERSIONS		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
None	<p>4410.4400, subpart 23</p> <p>Diversion of waters of the state to an ultimate location outside the state in an amount equal to or greater than 2,000,000 gallons per day, expressed as a daily average over any 30-day period, DNR</p>	None

RELEASE OF GENETICALLY ENGINEERED ORGANISMS		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 35</p> <p>Release of a genetically engineered organism that requires a release permit from the EQB under chapter 4420, EQB. For all other releases of genetically engineered organisms, permitting state agency. This subpart does not apply to the direct medical application of genetically engineered organisms to humans or animals.</p>	None	None
<p>NOTES</p> <p>The EQB is required to prepare an EAW for the release of any genetically engineered organism except those regulated under a significant environmental permit. Presently, only certain agriculturally related organisms regulated by the Department of Agriculture qualify for this exception.</p> <p>Agriculturally related organism is any organism that is used in agricultural production or processing of agricultural products, including livestock and livestock products; dairy animals and dairy products; poultry and poultry products; domestic fur-bearing animals; animal feeds; horticultural stock; nursery stock; fruit; vegetables; forage grain; wild rice; seeds; bees; apiary products; and products for the control or mitigation of noxious weeds. It excludes vaccines and drugs for use in humans; genetic engineering of human germ cells and human somatic cells intended for use in human gene therapy; vaccines for use in livestock, dairy animals, poultry, domestic fur-bearing animals, or private aquatic life; genetically engineered wild animals; and forestry products.</p> <p>Genetically engineered organism is an organism derived from genetic engineering.</p> <p>Genetic engineering is the introduction of new genetic material to an organism or the regrouping of an organism's genes using techniques or technology designed by humans. This does not include selective breeding, hybridization or nondirected mutagenesis.</p> <p>Organism is any animal, plant, bacterium, cyanobacterium, fungus, protist or virus.</p> <p>Release is the placement or use of a genetically engineered organism outside a contained laboratory, greenhouse, building, structure, or other similar facility or under any other conditions not specifically determined by the EQB to be adequately contained.</p>		

LAND USE CONVERSION, INCLUDING GOLF COURSES		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
<p>4410.4300, subpart 36</p> <p>A. Golf courses, residential development where the lot size is less than five acres, and other projects resulting in the permanent conversion of 80 or more acres of agricultural, native prairie, forest, or naturally vegetated land, except that this subpart does not apply to agricultural land inside the boundary of the Metropolitan Urban Service Area established by the Metropolitan Council, local governmental unit</p> <p>B. Projects resulting in the conversion of 640 or more acres of forest or naturally vegetated land to a different open space land use, local governmental unit</p>	None	None
<p>NOTES</p> <p>Permanent conversion is a change that impairs the ability to convert the land back to its agricultural, natural or forest capacity. It does not include changes in management practices such as the conversion to parklands, open space or natural areas. (4410.0200, Subpart 57.) In practice, the EQB considers almost all intensified land development to be permanent conversion, even when it would be physically possible to reconvert the land, unless the intensified use is clearly temporary.</p> <p>Open space land use is a function particularly oriented to an area's outdoor character including agriculture; campgrounds, parks and recreation areas (4410.0200, subpart 55).</p>		

PCB INCINERATION		
MANDATORY EAW	MANDATORY EIS	EXEMPTION CATEGORIES
None	<p>4410.4400, subpart 25</p> <p>Incineration of wastes containing PCBs for which an EIS is required by Minnesota Statutes, section 116.38, subdivision 2, PCA</p>	None

EXEMPTIONS WITH NO ASSOCIATED EAW OR EIS CATEGORIES**4410.4600****Subpart 2. Standard exemptions**

Projects are exempt when:

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

Subpart 20. Utilities

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

Subpart 21. Construction projects

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

Subpart 22. Land use

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

Subpart 23. Research and data collection

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

Subpart 24. Financial transactions

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

Subpart 25. Licenses

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

Subpart 26. Governmental activities

Proposals and enactments of the legislature, rules or orders of governmental units, executive orders of the governor or their implementation by governmental units, judicial orders and submissions of proposals to a vote of the people of the state.