

CHAPTER 4400
ENVIRONMENTAL QUALITY BOARD
HIGH VOLTAGE LINES, POWER PLANTS

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NOTE: Under Laws of Minnesota 1983, chapter 289, section 36, parts 4400.5100 to 4400.7000 and 4400.9910 shall be administered by the Bureau of Business Licenses.

4400.0200 DEFINITIONS.

Subpart 1. **Scope.** As used in these rules, the following terms have the meanings given them.

Subp. 2. **Act.** "Act" means the Power Plant Siting Act of 1973, as amended, Minnesota Statutes 1977, section 116C.51 et seq.

Subp. 3. **Board.** "Board" means the Minnesota Environmental Quality Board.

Subp. 4. **Community benefits.** "Community benefits" means those benefits to the local community, other than economic development, that result from power plant design or location. Examples include use of community solid waste as a supplemental fuel, joint water supply, improving the economic viability of existing rail lines, and increased tax base.

Subp. 5. **Construction.** "Construction" means any clearing of land, excavation, or other action that would adversely affect the natural environment of a site or route but does not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing survey or geological data, including necessary boring, to ascertain foundation conditions.

Subp. 6. **Developed portion of plant site.** "Developed portion of plant site" means the portion of the LEPPG site, exclusive of makeup water storage reservoirs or cooling ponds, where structures or other facilities or land uses necessary for plant operation preclude crop production.

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Subp. 7. **File.** "File" means to deliver 40 copies to the office of the chairman of the board.

Subp. 8. **High voltage transmission line; HVTL.** "High voltage transmission line" (HVTL) means a conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 200 kilovolts or more. Associated facilities shall include, but not be limited to, insulators, towers, switching yards, substations, and terminals.

Subp. 9. **Large electric power facilities.** "Large electric power facilities" means high voltage transmission lines and large electric power generating plants.

Subp. 10. **Large electric power generating plant; LEPGP.** "Large electric power generating plant" and "LEPGP" mean electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more.

Subp. 11. **Large electric power generating plant study area.** "Large electric power generating plant study area" or "study area" means a geographic area that meets inventory criteria and standards for a LEPGP of a specified capacity, fuel type, and design.

Subp. 12. **Person.** "Person" means any individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

Subp. 13. **Prime farmland.** "Prime farmland" means those soils that meet the specifications of Code of Federal Regulations 1980, title 7, section 657.5 (a).

Subp. 14. **Public adviser.** "Public adviser" means a staff person designated by the board for the sole purpose of assisting and advising affected or interested citizens on how to effectively participate in the site or route designation processes.

Subp. 15. **Right-of-way.** "Right-of-way" means the land interest used or proposed to be used within a route to accommodate a high voltage transmission line.

Subp. 16. **Route.** "Route" means the location of a high voltage transmission line between two end points. A route may have a variable width of up to 1.25 miles.

Subp. 17. **Route segment.** "Route segment" means a portion of a route.

Subp. 18. **Site.** "Site" means the location of a large electric power generating plant.

Subp. 19. **Technical assumptions.** "Technical assumptions" means the assumptions necessary to evaluate resource requirements of LEPGPS of a specified capacity, fuel type, and design and to evaluate the availability of resources to meet those requirements.

Subp. 20. **Utility.** "Utility" means any entity engaged in this state in the generation, transmission, or distribution of electric energy including, but not limited to, a private investor owned utility, a cooperatively owned utility, a public or municipally owned utility, or a private corporation.

Statutory Authority: *MS s 116C.66*

4400.0300 PURPOSE AND AUTHORITY.

The rules contained herein are prescribed by the Minnesota Environmental Quality Board pursuant to the authority granted to the board in the Power Plant Siting Act, Minnesota Statutes 1977, section 116C.51 et seq., to give effect to the purposes of the act.

It is the purpose of the act and the policy of the state to locate large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy, the board shall choose locations that minimize adverse human and environmental impact

while ensuring continuing electric power system reliability and integrity and ensuring that electric energy needs are met and fulfilled in an orderly and timely fashion. The board shall provide for broad spectrum citizen participation as a principle of operation.

Statutory Authority: *MS s 116C.66*

ROUTE DESIGNATION AND CONSTRUCTION PERMIT**4400.0600 APPLICATION FOR CONSTRUCTION PERMIT.**

An application shall be filed with the board which includes an environmental report consistent in form with a draft environmental impact statement, environmental review program rules. The application shall contain any information necessary to make the evaluation required in part 4400.1300 and the following:

- A. the size and type of the proposed transmission line;
- B. at least two proposed routes for the proposed transmission line;
- C. an environmental analysis of each proposed route including a description of the environmental setting and the potential environmental impacts of each route;
- D. the engineering and operational design concepts for the proposed transmission line;
- E. a description of the construction, right-of-way preparation, and maintenance procedures anticipated for the proposed transmission line;
- F. the procedures and practices proposed for the ultimate abandonment and restoration of the right-of-way;
- G. a listing of federal or state permits that may be required for the proposed transmission line;
- H. a cost analysis of each route;
- I. the certificate of need if available, or an acknowledgement of the acceptance of a substantially complete certificate of need application by the Department of Energy and Economic Development, if a certificate of need is required by Minnesota Statutes, chapter 116J; and
- J. a statement of proposed ownership of the facility as of the day of filing and an affidavit authorizing the applicant to act on behalf of those planning to participate in the project.

Statutory Authority: *MS s 116C.66*

History: *L 1983 c 289 s 115 subd 1*

4400.0700 ACCEPTANCE OF CONSTRUCTION PERMIT APPLICATION.

The board shall either accept or reject an application for a construction permit at its first regularly scheduled meeting after the application is filed with the board, provided the application is filed at least 30 days prior to that meeting. If the board rejects the application, it shall at that time inform the applicant which deficiencies, if corrected, will allow the application to be accepted. If the deficient information is submitted to the board ten days in advance of a regularly scheduled meeting, the board shall reconsider the application at that meeting. If the board fails to act within the prescribed time limits the application shall be considered accepted. On acceptance of the application, the board shall initiate the study, public participation, and hearings required by these rules. After acceptance of the application, the applicant shall provide any additional relevant information that the board deems necessary to process the application.

Statutory Authority: *MS s 116C.66*

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4400.0800 ROUTE EVALUATION COMMITTEE.

On acceptance of an application for a construction permit the board shall appoint a route evaluation committee consistent with the act. The board shall provide guidance to the committee in the form of a charge.

Statutory Authority: *MS s 116C.66*

4400.0900 PUBLIC ADVISER.

The public adviser shall be available to affected or interested citizens to advise them on how to effectively participate in the route designation process. The public adviser's duties shall include providing advice on appropriate methods and techniques of public involvement in the transmission line routing process. However, the public adviser is not authorized to give legal advice or advice that may affect the legal rights of the person being advised.

Statutory Authority: *MS s 116C.66*

4400.1000 INFORMATION MEETINGS.

The board shall hold at least two information meetings.

After acceptance of an application for a construction permit the board shall hold at least one information meeting in the area affected by the applicant's proposal to explain the route designation process and to respond to questions raised by the public.

Prior to the public hearings held to consider the routes approved for consideration by the board, the board shall hold an information meeting in each county through which a route is proposed to be located to explain the route designation process, present major issues and alternatives under consideration by the board, and respond to questions raised by the public.

Statutory Authority: *MS s 116C.66*

4400.1100 ROUTE PROPOSALS.

Subpart 1. Approval for consideration. The board shall consider the routes and route segments proposed by the applicant and may consider any other route or route segment it deems necessary. No route shall be considered at the public hearing unless approved for consideration by the board prior to notice of the hearing thereon. All approved routes shall be identified by the board consistent with part 4400.3700, subpart 4. Any proposer of a route or route segment which the board has approved for consideration shall make an affirmative presentation of facts on the merits of the proposal at the public hearing which shall provide the board with a basis for making a determination on that proposal.

Subp. 2. Adequate preparation of proposal. Within ten days of receipt of the proposal, the chairman of the board or his designee shall determine if the proposal is adequately prepared. If the chairman of the board or his designee determines that it is adequately prepared, he shall forward the proposal to the board for its consideration. If the chairman of the board or his designee determines that the proposal is not adequately prepared, he shall inform the proposer of any inadequacies in the proposal. The proposer shall have 15 days therefrom to provide additional information to the chairman of the board or his designee. The chairman of the board or his designee shall determine within ten days whether the amended proposal is adequately prepared. If the chairman of the board or his designee then determines that the proposal is not adequately prepared, the proposer may appeal to the board at its next meeting to determine the adequacy of the proposal.

Subp. 3. Sources of route proposals. The board member agencies, power plant siting staff, and the route evaluation committee may propose routes or route segments to the board. Route proposals made by the route evaluation committee must be made no later than 105 days after acceptance of the application by the board.

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Any other person may propose a route or a route segment in the following manner:

The route or route segment must be set out specifically on the appropriate general county highway map available from the Minnesota Department of Transportation, or on the appropriate United States Geological Survey topographical maps.

The proposal must contain the data and analysis required in parts 4400.0600 and 4400.1300, except part 4400.0600, item B; except where such information is the same as provided by the applicant.

The proposal must be presented to the chairman of the board or his designee within 70 days of acceptance of the application by the board.

Statutory Authority: *MS s 116C.66*

4400.1200 PUBLIC HEARINGS.

Public hearings held by the board pursuant to parts 4400.0600 to 4400.1500 shall be held for the purposes of collecting and verifying data, and establishing a complete and accurate record upon which to base a decision. The hearings shall be conducted by an independent administrative law judge from the Office of Administrative Hearings. The conduct of these hearings shall be as prescribed by rules adopted by the chief administrative law judge.

Statutory Authority: *MS s 116C.66*

History: *L 1984 c 640 s 32*

4400.1300 CRITERIA FOR ROUTE EVALUATION.

Subpart 1. **Objectives.** In selecting a route and issuing a construction permit, the board shall seek to minimize adverse human and environmental impact, maximize the efficient use of resources, and ensure continuing electric power system reliability.

Subp. 2. **Considerations.** The board shall make an evaluation of the following considerations prior to issuance of a construction permit. In its evaluation of route alternatives, the board shall consider the characteristics of a given geographical area, identify the potential impacts, and apply methods to minimize adverse impacts so that it may select a route with the least adverse impact.

Subp. 3. **Geographical characteristics and potential impacts.** The board shall identify the geographical characteristics and potential impacts in the following categories:

- A. human settlement, including development patterns;
- B. economic operations, including agricultural, forestry, recreational, and mining operations;
- C. the natural environment and public land, including natural areas, wildlife habitat, waters, recreational lands, and lands of historical and/or cultural significance; and
- D. reliability, cost, and accessibility.

Subp. 4. **Minimizing impacts.** In selecting a route with the least adverse impact, the board shall make an evaluation of each of the following categories:

- A. existing land use or management plans, and established methods of resource management;
- B. routes along or sharing existing rights-of-way;
- C. routes along survey and natural division lines and field boundaries so as to minimize interference with agricultural operations;
- D. structures capable of expansion in transmission capacity through multiple circuiting or design modifications to accommodate future high voltage transmission lines; and

E. alternate structure types and technologies.

Subp. 5. **Lands designated for preservation.** Certain lands within the state have been designated for preservation by action of the state or federal government for the benefit of the people and for future generations. No route shall be designated by the board through state or national wilderness areas. No route shall be designated by the board through state or national parks and state scientific and natural areas unless a route in a designated area would not materially damage or impair the purpose for which the land was designated, and circumstances exist in all alternate routes which would be more severely detrimental to humans or the environment if any alternate were selected.

In the event that such an area is approved, the board may require the applicant to take measures to minimize impacts which adversely affect the unique character of designated lands. Economic considerations alone shall not justify approval of these designated lands. No route shall be designated by the board in violation of federal or state statute, law, rule, or regulation.

Statutory Authority: *MS s 116C.66*

4400.1400 ROUTE DESIGNATION AND ISSUANCE OF CONSTRUCTION PERMIT.

Within one year after the board's acceptance of a utility's application for a construction permit, the board shall act on that application. When the board designates a route, it shall issue a permit for the construction of a high voltage transmission line specifying the type, design, routing, right-of-way preparation and maintenance, facility construction, and abandonment procedures it deems necessary with any other appropriate conditions. The board's decision shall be made in accordance with part 4400.1300. The board shall give the reasons for its decision in written findings of fact.

Statutory Authority: *MS s 116C.66*

4400.1500 REVIEW OF CONSTRUCTION PLANS.

Following issuance of a construction permit, a utility shall provide the board with a preliminary construction plan at least 60 days prior to construction that shall show that the right-of-way of the transmission line as proposed is within the route designated by the board. The board may suspend the 60-day time limitation if it can be shown that earlier construction will not preclude proper review of the plans. If the utility makes any changes in its preliminary construction plan, it shall notify the board in writing of such changes.

Statutory Authority: *MS s 116C.66*

SITE DESIGNATION AND CERTIFICATE OF SITE COMPATIBILITY

4400.2600 APPLICATIONS FOR CERTIFICATE OF SITE COMPATIBILITY.

Subpart 1. **Contents.** The application for a certificate of site compatibility filed with the board shall be consistent in form with an environmental report as outlined in the Minnesota Environmental Quality Board's environmental review program rules and shall contain any information necessary to make the evaluation required in part 4400.3300 and the following:

- A. the size and type of the proposed plant;
- B. at least two proposed sites for the proposed plant;
- C. the engineering and operational design concepts for the plant at each of the proposed sites;
- D. an engineering analysis of each of the proposed sites;
- E. the procedures and practices proposed for the ultimate abandonment and restoration of the site;
- F. an environmental analysis of each proposed site, including a description of the environmental setting and the potential environmental impacts of each site;

G. a cost analysis of the plant at each proposed site;

H. a listing of federal or state permits that may be required for each proposed site;

I. the certificate of need if available, or an acknowledgement of the acceptance of a substantially complete certificate of need application by the Department of Energy and Economic Development, if a certificate of need is required by Minnesota Statutes, chapter 116J; and

J. a statement of proposed ownership of the facility as of the day of filing and an affidavit authorizing the applicant to act on behalf of those planning to participate in the project.

Subp. 2. **Site proposal from inventory.** After board adoption and publication of its inventory of large electric power generating plant study areas, the utility shall in all new applications filed with the board either apply for sites located within the inventory of study areas, or shall specify the reasons for any proposal located outside of the study areas and make an evaluation of the proposed site based upon the planning policies, criteria, and standards specified in the inventory.

Statutory Authority: *MS s 116C.66*

History: *L 1983 c 289 s 115 subd 1*

4400.2700 ACCEPTANCE OF APPLICATION FOR CERTIFICATE OF SITE COMPATIBILITY.

The board shall either accept or reject an application for a certificate of site compatibility at its first regularly scheduled meeting after the application is filed with the board, provided the application is filed at least 30 days prior to that meeting. If the board rejects the application, it shall at that time inform the applicant which deficiencies, if corrected, will allow the application to be accepted. If the deficient information is submitted to the board ten days in advance of a regularly scheduled meeting, the board shall reconsider the application at that meeting. If the board fails to act within the prescribed time limits the application shall be considered accepted. On acceptance of the application, the board shall initiate the study, public participation, and hearings required by these rules. After acceptance of the application, the applicant shall provide any additional relevant information which the board deems necessary to process the application.

Statutory Authority: *MS s 116C.66*

4400.2800 SITE EVALUATION COMMITTEE.

Upon acceptance of an application for a certificate of site compatibility, the board shall appoint a site evaluation committee consistent with the act. The board shall provide guidance to the committee in the form of a charge.

Statutory Authority: *MS s 116C.66*

4400.2900 PUBLIC ADVISER.

The public adviser shall be available to affected or interested citizens to advise them on how to effectively participate in the site designation process. The public adviser's duties shall include providing advice on appropriate methods and techniques of public involvement in the site designation process. However, the public adviser is not authorized to give legal advice or advice which may affect the legal rights of the person being advised.

Statutory Authority: *MS s 116C.66*

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4400.3000 INFORMATION MEETINGS.

The board shall hold at least two information meetings as follows:

After acceptance of an application for a certificate of site compatibility, the board shall hold at least one information meeting in the area affected by the applicant's proposal to explain the site designation process and to respond to questions raised by the public.

Prior to the public hearings held to consider the sites approved for consideration by the board, the board shall hold an information meeting in each county in which a site is proposed to be located to explain the site designation process, to present major issues and alternatives under consideration by the board, and to respond to questions raised by the public.

Statutory Authority: *MS s 116C.66*

4400.3100 SITE PROPOSALS.

The board shall consider the sites proposed by the applicant and may consider any other site it deems necessary. No site shall be considered at the public hearing unless approved for consideration by the board prior to notice of the hearing thereon. All approved sites shall be identified by the board consistent with part 4400.3700, subpart 4. Any proposer of a site which has been approved for consideration at the public hearing by the board shall make an affirmative presentation of facts on the merits of the proposal at the public hearing which shall provide the board with a basis for making a determination on that proposal. Any person may propose a site in the following manner:

A. The site must be set out specifically on United States Geological Survey topographical maps.

B. The proposal must contain the data and analysis required in parts 4400.2600 and 4400.3300 with the exception of part 4400.2600, items B and G, except where such information is the same as provided by the applicant.

C. The proposal must be presented to the chairman of the board or his designee within 70 days of acceptance of the application by the board. Within ten days of receipt of the proposal, the chairman of the board or his designee shall determine if the proposal is adequately prepared. If the chairman of the board or his designee determines that it is adequately prepared, he shall forward the proposal to the board for its consideration at its next meeting. If the chairman of the board or his designee determines that the proposal is not adequately prepared, he shall inform the proposer of any inadequacies in the proposal. The proposer shall have 15 days therefrom to provide additional information to the chairman of the board or his designee. The chairman of the board or his designee shall determine within ten days whether the amended proposal is adequately prepared. If the chairman of the board or his designee then determines that the proposal is not adequately prepared, the proposer may appeal to the board at its next meeting to determine the adequacy of the proposal.

Statutory Authority: *MS s 116C.66*

4400.3200 PUBLIC HEARINGS.

Public hearings held by the board pursuant to parts 4400.2600 to 4400.3500 shall be held for the purposes of collecting and verifying data and establishing a complete and accurate record upon which to base a decision. The hearing shall be conducted by an independent administrative law judge from the Office of Administrative Hearings. The conduct of these hearings shall be as prescribed by rule adopted by the chief administrative law judge.

Statutory Authority: *MS s 116C.66*

History: *L 1984 c 640 s 32*

4400.3300 CRITERIA FOR SITE EVALUATION.

Subpart 1. **Site selection criteria.** The following criteria and standards shall be used to guide the site suitability evaluation and selection process. Not all site selection criteria are applicable to all plants to the same degree. The following criteria shall be applied in the selection of sites:

- A. Preferred sites require the minimum population displacement.
- B. Preferred sites minimize adverse impacts on local communities and institutions.
- C. Preferred sites minimize adverse health effects on human population.
- D. Preferred sites do not require the destruction or major alteration of land forms, vegetative types, or terrestrial or aquatic habitats which are rare, unique, or of unusual importance to the surrounding area.
- E. Preferred sites minimize visual impingement on waterways, parks, or other existing public recreation areas.
- F. Preferred sites minimize audible impingement on waterways, parks, or other existing public recreation areas.
- G. Preferred sites minimize the removal of valuable and productive agricultural, forestry, or mineral land from their uses.
- H. Preferred sites minimize the removal of valuable and productive water from other necessary uses and minimize conflicts among water users.
- I. Preferred sites minimize potential accident hazards and possible related adverse effects with respect to geology.
- J. Preferred sites maximize opportunities for significant conservation of energy, utilization of by-products or biomass, cogeneration and development of waste-to-energy systems.
- K. Preferred sites minimize the distance to large load centers.
- L. Preferred sites maximize the use of already existing operating sites if expansion can be demonstrated to have equal or less adverse impact than feasible alternative sites.
- M. Preferred sites utilize existing transportation systems unless feasible alternative systems, including new or upgraded existing substandard systems, have less adverse impact.
- N. Preferred sites minimize adverse impact of transmission lines.
- O. Preferred sites minimize the costs of constructing and operating the facility.
- P. Preferred sites maximize the opportunities for community benefits and economic development.

Subp. 2. **Exclusion criteria.** No large electric power generating plant shall be sited in violation of any federal or state statute, law, rule, or regulation. No site shall be selected in which a large electric power generating plant is not licensable by all appropriate state and federal government agencies.

The following land areas shall not be certified as a site for a large electric power generating plant except for use for water intake structures or water pipelines: national parks; national historic sites and landmarks; national historic districts; national wildlife refuges; national monuments; national wild, scenic, and recreational riverways; state wild, scenic, and recreational rivers and their land use districts; state parks; nature conservancy preserves; state scientific and natural areas; and state and national wilderness areas. If the board includes any of these lands within a site for use for water intake structures or water pipelines, it may impose appropriate conditions in the certificate of site compatibility which protect these lands for the purpose for which they were designated. The board shall also consider the adverse effects of proposed sites on these areas which are located wholly outside of the boundaries of these areas.

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No area shall be selected which does not have reasonable access to a proven water supply sufficient for plant operation. No use of ground water shall be permitted where mining of ground water resources will result. "Mining" as used herein shall mean the removal of ground water that results in material adverse effects on ground water in and adjacent to the area, as determined in each case.

Subp. 3. Site avoidance areas. In addition to exclusion areas, the following land use areas shall not be approved for large electric power generating plant sites when feasible and prudent alternatives with lesser adverse human and environmental effects exist. Economic considerations alone shall not justify approval of avoidance areas. Any approval of such areas shall include all possible planning to minimize harm to these areas. These avoidance areas are: state registered historic sites; state historic districts; state wildlife management areas (except in cases where the plant cooling water is to be used for wildlife management purposes); county parks; metropolitan parks; designated state and federal recreational trails; designated trout streams; and the rivers identified in Minnesota Statutes section 85.32, subdivision 1.

Avoidance areas also apply to new transportation access routes and storage facilities associated with the plant in addition to the plant itself.

The use of ground water for high consumption purposes, such as cooling, shall be avoided if feasible and prudent surface water alternatives less harmful to the environment exist. Ground water use to supplement available surface water shall be permitted if the cumulative impact minimizes environmental harm.

When there exists a feasible and prudent alternative with less adverse environmental and noncompensable human effects, no LEPGP site shall be selected where the developed portion of the plant site includes more than 0.5 acres of prime farmland per megawatt of net generating capacity, and no makeup water storage reservoir or cooling pond site shall be selected that includes more than 0.5 acres of prime farmland per megawatt of net generating capacity. These provisions shall not apply to areas located within home rule charter or statutory cities; areas located within two miles of home rule charter or statutory cities of the first, second, and third class; or areas designated for orderly annexation under Minnesota Statutes, section 414.0325.

Statutory Authority: *MS s 116C.66*

4400.3400 ISSUANCE OF CERTIFICATE OF SITE COMPATIBILITY.

Within one year after the board's acceptance of a utility's application for a certificate of site compatibility, the board shall act on that application. When the board designates a site it shall issue a certificate of site compatibility with any appropriate conditions. The board's decision shall be made in accordance with part 4400.3300. The board shall give the reasons for its decision in written findings of fact. If the board refuses to designate a site, it shall indicate the reasons for the refusal and indicate the necessary changes in size or type of facility to allow site designation.

Statutory Authority: *MS s 116C.66*

4400.3500 CERTIFICATE COMPLIANCE.

Following issuance of a certificate of site compatibility, the board may require the applicant to supply such plans and information as it deems necessary to determine whether the plant, as proposed or operated, is in compliance with the conditions of the certificate of site compatibility.

Statutory Authority: *MS s 116C.66*

4400.3600 ADVISORY COMMITTEES.

Subpart 1. **Route and site evaluation committees.** Route and site evaluation committees appointed by the board are advisory and are to assist the board in evaluating applications for routes and sites.

Subp. 2. **Power plant site advisory committee.** The board shall appoint a power plant siting advisory committee which shall work closely with the board staff in reviewing, advising, and making recommendations to the board concerning development, revision, and enforcement of any rule, inventory, or program initiated under the act or these rules. The board shall provide guidance to the committee in the form of a charge and through specific requests. The committee shall be composed of as many members as may be designated by the board, and its membership shall be solicited on a statewide basis. The committee shall be appointed for a one-year term coincident with the fiscal year.

Statutory Authority: *MS s 116C.66*

4400.3700 NOTICES.

Subpart 1. **Application acceptance.** Within 20 days of acceptance of any application submitted to the board pursuant to the act, except an exemption application, the board shall give notice of acceptance of the application by paid advertisement in a legal newspaper of general circulation in each county in which a route or site is proposed by the applicant to be located. The notice shall include the following information:

- A. identification of the application;
- B. the date of the board's acceptance of the application;
- C. a brief description of the proposed facility;
- D. a map showing the routes or sites proposed in that county;
- E. the name and function of the public adviser and the place where that person can be reached;
- F. locations where the application is available to the public; and
- G. procedures for proposing alternate routes or sites.

Subp. 2. **Information meetings.** Notice and agenda of public information meetings of the board shall be given by the board consistent with the act. For purposes of giving notice, a route or site proposal shall be any route or site proposed by the applicant or a route or site that is an accepted proposal under parts 4400.1100, subparts 1, 2, and 3; 4400.3100, items B and C, or by resolution of the board pursuant to part 4400.1100 or 4400.3100, as of the time of notice.

Subp. 3. **Public hearings.** Notice and agenda of public hearings shall be given by the board consistent with the act. For purposes of giving notice, a route or site proposal shall be any route or site proposed by the applicant or a route or site that is an accepted proposal under part 4400.1100, subpart 3 or 4400.3100, or by resolution of the board pursuant to part 4400.1100 or 4400.3100.

Subp. 4. **Route and site proposals.** Prior to public hearings held on routes and sites which the board has approved for consideration at the public hearings consistent with these rules, the board shall identify the routes and sites with maps published in a newspaper of general circulation in each county in which a route or site is proposed to be located showing the routes or sites in that county.

Statutory Authority: *MS s 116C.66*

4400.3800 EMERGENCY CERTIFICATIONS AND PERMITS.

Subpart 1. **Application for emergency certificate.** Any utility whose electric power system requires the immediate construction of a large electric power generating plant or a high voltage transmission line may apply to the board for an emergency certificate of site compatibility or an emergency construction permit. The application for an emergency construction permit shall contain the supporting information required in parts 4400.0600 and 4400.3800, subpart 2.

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The application for an emergency certificate of site compatibility shall contain the supporting information required in parts 4400.2600 and 4400.3800.

Subp. 2. Determination of an emergency. The board shall hold a public hearing within 90 days of acceptance of an application for emergency certification to consider the following to determine whether an emergency exists:

A. any evidence offered by the Department of Energy and Economic Development, or any other person;

B. whether adherence to the procedures and time schedules specified in parts 4400.1400 and 4400.3400 would jeopardize the utility's electric power system or would jeopardize the utility's ability to meet the electric needs of its customers in an orderly and timely manner;

C. whether there remains any feasible or prudent alternative to the utility which can serve its immediate need;

D. whether the utility is prepared to, and will upon authorization, carry out the acquisition and construction program at the maximum rate of progress.

The board shall also establish whether the situation could have been reasonably anticipated by the utility in time to utilize the normal application procedures. If the board finds that the utility could have reasonably anticipated the situation, the utility may be subject to the provisions of Minnesota Statutes 1977, section 116C.68.

Subp. 3. Emergency procedures. If the board determines that an emergency exists, then the route or site designation procedures prescribed in parts 4400.0600 to 4400.1500 and 4400.2600 to 4400.3500, with the exception of parts 4400.1100, subparts 2 and 3, and 4400.3100, shall be followed, except that the board shall designate a route and issue an emergency construction permit or designate a site and issue an emergency certificate of site compatibility within 195 days of the application.

Statutory Authority: *MS s 116C.66*

History: *L 1983 c 289 s 115 subd 1*

4400.3900 EXEMPTION OF CERTAIN TRANSMISSION LINE ROUTES.

Subpart 1. Application for exemption. A utility may apply to the board to exempt the construction of a high voltage transmission line from the act. A utility shall submit an application for exemption of a specific transmission line containing the following information: the engineering design concepts; the proposed location of the facility; the environmental setting and impact of the proposed action; and a description of the plans for right-of-way preparation and construction.

Subp. 2. Notice of exemption application. Within 15 days of filing with the board an application for exemption of a certain route, the utility shall:

A. publish a notice and description of the exemption application including, but not limited to, a map of the proposed route and the size and type of facility in a legal newspaper of general circulation in each county in which the route is proposed to be located;

B. send a copy of the exemption application by certified mail to the chief executive of any regional development commission, county, incorporated municipality, and organized town in which the route is proposed to be located; and

C. send a notice and description of the exemption application to each owner over whose property the line may run, together with an understandable description of the procedures the owner must follow should he desire to object.

Subp. 3. Objections to exemption. Any person who owns real property crossed by the proposed route, or any person owning property adjacent to the property crossed by the proposed route, or any affected political subdivision may

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file an objection with the board within 60 days after the giving of notice under part 4400.3900, subpart 2, stating reasons why the board should deny the application.

Subp. 4. Determination of exemption. The board may conduct a public hearing to determine if the proposed high voltage transmission line will cause any significant human or environmental impact. If any objections are filed with the board, the board shall either deny the application or conduct such a public hearing. Whether or not an objection is filed or a hearing is held, the board shall determine whether the proposed high voltage transmission line will cause any significant human or environmental impact. If the board determines that significant human or environmental impact will occur, it shall deny the application. If not, it may exempt the proposed transmission line with any appropriate conditions, but the utility shall comply with any applicable state rule and any applicable zoning, building, and land use rules, regulations, and ordinances of any regional, county, local, and special-purpose government in which the route is proposed to be located.

Statutory Authority: *MS s 116C.66*

4400.4000 DELAY IN ROUTE OR SITE CONSTRUCTION.

Utilities that have acquired a route or site may proceed to construct or improve the route or site in accordance with these rules. However, when construction and improvement have not commenced four years after the construction permit or site certificate has been issued by the board, the board shall suspend the certificate or permit. If at that time, or at a time subsequent, the utility decides to construct the proposed large electric power facility, it shall certify to the board that there have been no significant changes in any material aspects of the conditions or circumstances existing when the permit or certificate was issued. If the board determines that there are no significant changes, it shall reinstate the permit or certificate. If the board determines that there is a significant change, it may order a new hearing and consider the matter further, or it may require a new application.

Statutory Authority: *MS s 116C.66*

4400.4100 MINOR ALTERATIONS IN CONSTRUCTION PERMIT FOR HIGH VOLTAGE TRANSMISSION LINE.

Following issuance of a construction permit for a high voltage transmission line, a utility may apply to the board for minor alterations on conditions specified in the permit. The utility shall submit an application for a minor alteration which contains sufficient information for the board to determine within 45 days the following: whether the requested changes are significant enough to warrant board study and approval; whether to order public hearings near the affected area; or whether additional fees shall be assessed.

If the board decides to study the application, the board shall determine within 70 days whether granting the application would be consistent with part 4400.1300 and shall grant or deny the utility's application accordingly.

Statutory Authority: *MS s 116C.66*

4400.4200 REVOCATION OR SUSPENSION OF CERTIFICATE OR PERMIT.

Subpart 1. Initiation of action to revoke or suspend. The board may initiate action to consider revocation or suspension of a construction permit or certificate of site compatibility on its own motion or upon the request of any person who has made a prima facie showing by affidavit and documentation that a violation of the act has occurred as set forth in Minnesota Statutes, section 116C.645 or these rules.

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Subp. 2. **Hearing.** If the board initiates action to consider revocation or suspension of a construction permit or certificate of site compatibility, it will consider in a hearing under Minnesota Statutes, section 116C.645 the following matters:

A. whether a violation of any of the conditions in Minnesota Statutes, section 116C.645 has occurred;

B. whether the violation will result in any significant additional adverse environmental effects;

C. whether the results of the violation can be corrected or ameliorated; and

D. whether a suspension or revocation of a permit or certificate will impair the utility's electrical power system reliability.

Subp. 3. **Finding of violation.** If the board finds that a violation of Minnesota Statutes, section 116C.645 or these rules has occurred, it may revoke or suspend the permit or certificate, require the utility to undertake corrective or ameliorative measures as a condition to avoid revocation or suspension, or require corrective measures and suspend the permit or certificate.

Statutory Authority: *MS s 116C.66*

4400.4300 ANNUAL PUBLIC HEARING.

The board shall hold an annual public hearing on a Saturday in November in Saint Paul in order to afford interested persons an opportunity to be heard regarding its inventory of study areas, route and site designation processes, other aspects of the board's activities and duties performed pursuant to the act, or policies set forth in these rules.

Statutory Authority: *MS s 116C.66*

4400.4400 ANNUAL ASSESSMENT ON UTILITY.

For purposes of determining the annual assessment on a utility pursuant to the act, each utility shall, on or before July 1 of each year, submit to the board a report of its retail kilowatt-hour sales in the state and its gross revenue from kilowatt-hour sales in the state for the preceding calendar or utility reporting year. Upon receipt of these reports, the board shall bill each utility as specified in the act.

Statutory Authority: *MS s 116C.66*

4400.4500 IDENTIFICATION OF LARGE ELECTRIC POWER GENERATING PLANT STUDY AREAS.

Subpart 1. **Inventory criteria and standards.** The following criteria and standards shall be used by the board to prepare an inventory of large electric power generating plant study areas and by the utility and the board to evaluate any proposed site not located within the appropriate study area.

Subp. 2. **Exclusion areas.** Criterion: study areas shall be compatible with board rules on exclusion criteria for LEPPG site selection.

Standard: geographic areas identified in part 4400.3300, subpart 2 shall not be part of any study area.

Subp. 3. **Air quality.** Criterion: study areas for LEPPGs shall be compatible with existing federal and state air quality rules.

Standard: study areas shall not include those areas in which operation of an LEPPG would likely result in violation of primary or secondary standards or exceedence of prevention of significant deterioration increments for sulfur dioxide or particulate matter as established under United States Code 1980, title 42, sections 7401 to 7642, Minnesota Statutes, section 116.07, and parts 7005.0010 to 7005.0080.

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Subp. 4. Transportation. Criterion: study areas for coal-fired LEPGP's shall have reasonable access to existing transportation systems which are or can be made capable of transporting the required quantities of coal.

Standard: in identifying study areas for coal-fired LEPGP's, "reasonable access" shall mean no more than 12 miles distant from the existing transportation system.

Subp. 5. Water. Criterion: study areas for LEPGP's using evaporative cooling systems shall have reasonable access to an adequate water source.

Standards: in identifying study areas for LEPGP's using evaporative cooling, rivers and lakes shall be considered potential water sources.

In identifying study areas for LEPGP's using evaporative cooling, "reasonable access" shall mean no more than 25 miles distant from the water source.

In identifying study areas for LEPGP's using evaporative cooling, a water source shall be considered adequate if it appears likely to allow LEPGP operation through periods of historic low flows or historic low elevations, either by direct withdrawal or by using supplemental stored water. This evaluation shall be based on historic stream flows, cooling water system technology, and the environmental, economic, and engineering constraints of reservoir design related to size.

Subp. 6. Application of inventory criteria and standards. The board shall adopt an inventory of study areas for the LEPGP capacities, fuel types, and designs reasonably anticipated to be subject to application for a certificate of site compatibility in the near future. The inventory shall consist of the maps of the study areas; discussion of specific inventory criteria and standards and technical assumptions used to develop the maps; and discussion of the LEPGP capacities, fuel types, and designs for which the maps are developed. The board shall consult with board member agencies, utilities, and other agencies or persons with applicable information as it develops the technical assumptions necessary for application of inventory criteria and standards.

Statutory Authority: *MS s 116C.66*

4400.4900 APPLICATION FEES.

Every applicant for a route or site pursuant to Minnesota Statutes, section 116C.57 shall pay to the board a fee as prescribed by the act.

For applications filed pursuant to Minnesota Statutes, section 116C.57, subdivisions 1 and 2, 25 percent of the total estimated fee shall accompany the application and the balance is payable in three equal installments at the end of 90, 180, and 270 days from the date of the board's acceptance of the application.

For applications filed pursuant to Minnesota Statutes, section 116C.57, subdivision 3, 25 percent of the total estimated fee shall accompany the application and the balance is payable at the end of 90 days from the date of the board's acceptance of the application.

For applications filed pursuant to Minnesota Statutes, section 116C.57, subdivision 5, ten percent of the total estimated fee shall accompany the application and the balance is payable as determined by the board.

Statutory Authority: *MS s 116C.66*

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ENVIRONMENTAL PERMIT COORDINATION

NOTE: Under Laws of Minnesota 1983, chapter 289, section 36, parts 4400.5100 to 4400.7000 and 4400.9910 shall be administered by the Bureau of Business Licenses, Minnesota Department of Energy and Economic Development.

4400.5100 DEFINITIONS.

Subpart 1. **Scope.** The terms specified in subparts 2 to 16 shall have the following meanings for the purpose of these rules.

Subp. 2. **Agency.** "Agency" means a state department, commission, board, or other instrumentality of the state, however titled, or a local government unit or instrumentality if that local unit is acting within existing legal authority to grant or deny a permit that otherwise would be granted or denied by a state agency.

Subp. 3. **Board.** "Board" means the Minnesota Environmental Quality Board established pursuant to Minnesota Statutes, section 116C.03, formerly called the Minnesota Environmental Quality Council.

Subp. 4. **Coordination unit.** "Coordination unit" means the environmental permits coordination unit established pursuant to Minnesota Statutes, section 116C.25, to assist persons using the master application process.

Subp. 5. **Days.** "Days" in computing any period of time prescribed or allowed in these rules, the day the designated period of time begins shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which case the period will extend until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.

Subp. 6. **Environmental review process.** "Environmental review process" means any procedure for review established by the board pursuant to Minnesota Statutes, section 116D.04, subdivision 2.

Subp. 7. **Administrative law judge.** "Administrative law judge" means an administrative law judge regularly appointed by the chief administrative law judge as provided for in Minnesota Statutes, sections 14.49 to 14.56.

Subp. 8. **Joint hearing.** "Joint hearing" means the optional hearing at which one or more agencies participate as herein described as a replacement for individual state agency hearings that may be held following each agency's separate permit review procedures.

Subp. 9. **Local government unit.** "Local government unit" means a county, city, town, or special district with legal authority to issue a permit.

Subp. 10. **Master application.** "Master application" means an application requesting the issuance of all state permits necessary for construction or operation of a project requiring more than one permit.

Subp. 11. **Participating agency.** "Participating agency" means an agency with one or more permit programs under its jurisdiction that are pertinent to a project for which a completed master application has been submitted to the coordination unit and which orders a hearing to be held pursuant to these rules.

Subp. 12. **Permit.** "Permit" means a license, permit, certificate, certification, approval, compliance schedule, or other similar document pertaining to a regulatory or management program related to the protection, conservation, or use of or interference with the natural resources of land, air, or water, which is required to be obtained from a state agency prior to constructing or operating a project in this state. Nothing in these rules shall relate to the granting of a proprietary interest in publicly owned property through a sale, lease, easement, use permit, license, or other conveyance.

Subp. 13. **Permit information center.** "Permit information center" means an office established to provide information to the public about the requirements of state and local government regulations concerning the use of natural resources and protection of the environment.

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Subp. 14. **Person.** "Person" means an individual, an association, partnership, or cooperative, or a municipal, public, or private corporation, including but not limited to a state agency and a county.

Subp. 15. **Project.** "Project" means a new activity or an expansion of or addition to an existing activity, which is fixed in location and which requires permits from agencies prior to construction or operation, including but not limited to industrial and commercial operations and development.

Subp. 16. **Regional development commission.** "Regional development commission" means any regional development commission created pursuant to Minnesota Statutes, sections 462.381 to 462.396, and the Metropolitan Council created pursuant to Minnesota Statutes, chapter 473B.

Statutory Authority: *MS s 116C.32*

History: *L 1984 c 640 s 32*

4400.5200 AUTHORITY, PURPOSE, AND EXEMPTIONS.

Subpart 1. **Authority.** These rules are prescribed by the Minnesota Environmental Quality Board under:

A. Minnesota Statutes, section 116C.23, establishing an environmental permits coordination unit. This unit will implement the provisions of Minnesota Statutes, sections 116C.22 to 116C.34, herein titled the Environmental Coordination Procedures Act;

B. Minnesota Statutes, section 116C.32, to adopt rules, not inconsistent with rules of procedure established by the Office of Administrative Hearings, implementing the Environmental Coordination Procedures Act.

Subp. 2. **Purpose.** These rules provide an optional procedure to assist a person who, before undertaking a project which would use the state's air, land; or water resources, must obtain more than one state permit as defined by these rules when that person voluntarily decides to use this procedure. The assistance involves identifying all such required permits before the project is implemented; providing a single hearing on appropriate permit applications; providing time frames for the making of agency decisions; and providing to the applicant statements of the reasons that agencies approve or deny the permit applications.

Subp. 3. **Exemptions.** These rules shall not apply to projects that:

A. require permits issued under Minnesota Statutes, chapter 93 pertaining to reservations, permits, and leases of state-owned mineral lands; Minnesota Statutes, sections 116C.51 to 116C.69, the Minnesota Power Plant Siting Act; or Minnesota Statutes, section 216B.243 pertaining to certificates of need for large energy facilities; or

B. are initiated for taconite tailings disposal or mining, or producing or beneficiating copper, nickel, or copper-nickel.

Statutory Authority: *MS s 116C.32*

4400.5300 APPLICATION OF THESE RULES.

Subpart 1. **Agency jurisdiction.** Each agency having jurisdiction to issue or reject a permit shall retain this authority as vested in it before the effective date of these rules. Nothing in these rules shall lessen or reduce such authority and these rules shall modify only the procedures followed in carrying out such authority.

A state agency may, in performing its responsibilities under these rules, request or receive additional information from an applicant. A copy of that request or receipt shall be immediately forwarded to the coordination unit, which shall immediately notify all other agencies having permit interest in the project.

Subp. 2. **Fees.** Fee schedules authorized by statute or rules for an application or permit shall continue to be applicable even though the application

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or permit is processed according to these rules. The coordination unit shall not charge the applicant or participating agencies a fee for services.

Subp. 3. Postdecision proceedings. These rules shall have no applicability to an application for a permit renewal, amendment, extension, or other similar document required subsequent to the completion of decisions and proceedings under parts 4400.5100 to 4400.6300, or to a replacement thereof or to a quasi-judicial or judicial proceeding held pursuant to an order of remand or similar order by a court in relation to a final decision of an agency.

Subp. 4. Limitation. Nothing in these rules shall modify in any manner whatsoever the applicability or inapplicability to the lands of any agency of any land use regulation, statute, or local government zoning ordinance.

Subp. 5. Modification of rules. The board, to the limited extent necessary to comply with procedural requirements of federal statutes relating to permit systems operated by the state, may modify the notice, timing, hearing, and related procedural matters provided in these rules.

Statutory Authority: *MS s 116C.32*

4400.5500 MASTER APPLICATION.

Subpart 1. Scope. A person proposing a project that might require more than one permit may, before the initial construction of the project or the initial operation of the project if construction of the project requires no permits, submit to the coordination unit a master application requesting the issuance of all permits necessary for construction and (or) operation of the project.

Other permits, in addition to those defined by these rules, may be included in these permit coordination procedures if the applicant and state regulatory agency so agree and if such procedure is permissible under the statutes and regulations that apply to such nonincluded permits. A written agreement to such an arrangement shall be provided by the agency to the coordination unit within 30 days of receipt by the agency of the master application. If such other permit applications are included within the master application process, they shall remain with the process until final disposition of the master application and for purposes of the master application process shall be included as a permit as defined by these rules.

If a permit is required for the operation of a project or if a state agency must approve the engineering design plans of a project, and if the information needed by the agency to reach a decision could not be made available through the master application process, because postconstruction or operation data are required to be collected or evaluated or because the issuance of the permit depends upon a postconstruction facilities inspection or performance demonstration, then that permit or approval may be processed independently from the master application process provided both the applicant and the agency agree.

Subp. 2. Master application form. The coordination unit shall provide a master application form which requests information necessary for agencies to determine permit applicability. Information required shall include but not be limited to the name and address of the applicant, the location of the project, and a description of the project, including but not limited to: possible discharges of waste; use of or interference with natural resources; the time for project completion; and, if the project is to be phased, the timing of such phases.

Subp. 3. Signatories. Permit forms of agencies shall be signed as required by the rules of the respective agencies. Any form, exclusive of the agencies' permit forms, submitted to the coordination unit shall be signed as follows:

A. in the case of a corporation, by a principal executive officer or his duly authorized representative or agent, if such representative or agent is responsible for the project for which the permit is requested;

B. in the case of a partnership, by a general partner;

C. in the case of a sole proprietorship, by the proprietor;

D. in the case of a municipal, state, or other public signatory, by either a principal executive officer, ranking elected official, or other duly authorized employee.

Subp. 4. **Certification.** The coordination unit shall provide certification application forms which shall be submitted respectively by all applicants as follows:

A. certification must be obtained, from the local government units in which the proposed project will be located, that the project complies with all local zoning ordinances, subdivision regulations, and environmental rules administered by the local government unit. Certification under this item must be issued not more than 120 days before the submission date of the master application. The local government units shall either issue a certification or deny that certification in accord with the following procedures:

(1) Within 45 days after the applicant has submitted a certification application form to the local government unit, the unit shall return the completed form to the applicant or notify the applicant in writing that the certification is denied, including the reasons for the denial.

(2) No local government unit shall rescind such a certification for a master application, even though the local government may have changed its zoning ordinances, subdivision regulations, or environmental regulations. A change of zoning ordinances, subdivision regulations, or environmental rules shall not invalidate a previously given certification for the purpose of securing a state permit under parts 4400.5100 to 4400.6300. After certification, the local government may change such zoning ordinances, subdivision regulations, or environmental rules, but not so as to affect the proposed project until the procedures of parts 4400.5100 to 4400.6300, including any administrative or judicial reviews, are completed.

(3) A local government unit denial of certification shall not be appealable under these rules. Such denial shall not preclude the applicant from filing a permit application under any other available statute or procedure.

B. Certification must be obtained from the board that an environmental impact statement on the project either has been completed or is not required. Within five days after the first board meeting following submission of a certification application form to the board, the board shall return the completed form or notify the applicant in writing that the proposed project is undergoing review under the environmental review process. If the project is undergoing review under the environmental review process, the board shall return a completed form to the applicant within ten days after such process is completed. If an environmental impact statement was required on the project, a copy of the final environmental impact statement shall be attached to the board's certification.

Subp. 5. **Acceptance for processing.** Upon receipt of a completed master application, including certifications required in subpart 4, the coordination unit shall immediately notify the applicant that the application has been accepted and is ready for processing. Upon acceptance, the coordination unit shall immediately notify in writing each agency having a possible permit interest in the project. The notice shall be accompanied by a copy of the master application.

Subp. 6. **Permit and hearing information.** Each notified agency shall respond in writing to the coordination unit within 20 days of receipt by the agency of the master application, advising whether the agency will or will not require a permit for the described project. If the agency responds affirmatively, it shall include application forms and information concerning the specific permit programs applicable to the project as described, and state whether a public hearing is required or appropriate relating to permit requirements for the project. Provided, that a statement whether a public hearing is required or appropriate relating to National Pollutant Discharge Elimination System (NPDES) permit

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requirements for the project shall not be required at this time. If an agency affirms that a public hearing is required or appropriate, it shall provide a brief statement identifying the reasons.

Subp. 7. Revision to normal procedure. If after all agency responses are received, only one permit is required, the master application procedure shall no longer be available to the applicant for that project. The applicant may then proceed to process the permit application using the normal procedures established by the agency requiring the permit. However, agencies shall not require additional permits of the applicant unless one of the conditions described in subpart 8 arises.

Subp. 8. Conditions for requirement of permit. A notified agency that makes a timely response indicating that a permit is not required, or that fails to make a timely response concerning a permit program or programs, shall not require such a permit of the applicant for the described project unless:

A. the master application provided to the agency lacked information or contained false, misleading, or deceptive information that would reasonably lead the agency to misjudge the applicability of its permits to the project;

B. subsequent laws or rules require additional permits; or

C. unusual circumstances prevented the agency from notifying the coordination unit, and the agency can establish that failure to require a permit would result in substantial harm to the public health and welfare.

Subp. 9. Procedure if permits are required. If one of the conditions listed in subpart 8, items A to C arises, the affected agencies shall so notify the applicant, the coordination unit, and the board, and shall request a determination by the board whether an order should be issued to require the relevant permits. Included with the agency's request shall be a statement justifying the need to require the additional permits. The board at its first meeting held more than 15 days after being notified by the agency shall determine whether the permits shall be required. If additional permits are required because one of the conditions of subpart 8, item A occurs necessitating a change in the notice required by part 4400.5800, subpart 1, the applicant shall pay the additional cost, if any, resulting from the requirement for the additional permits. Any other costs resulting from the conditions in subpart 8, items A to C will be borne by the agencies requiring additional permits.

Subp. 10. Alteration of project. If the applicant without being required by a public agency alters the proposed project in a way that may affect the validity of the certifications required in subpart 4 or an agency response required in subpart 5, item C, the applicant shall immediately notify the coordination unit of the proposed alteration. The coordination unit shall then immediately notify the board, the local government units involved, and all agencies which may have a permit interest in the proposed project. Within 15 days after notification by the coordination unit, the board, the local government units, and the agencies shall respond to the coordination unit and the applicant whether the previous certification is still valid or additional permits are required. If a new certification is needed or additional permits are required, the master application process shall be suspended. The period of suspension shall not exceed the time periods provided in subpart 4, items A, subitem (1) and B, and subpart 6.

Statutory Authority: *MS s 116C.32*

4400.5600 PERMIT APPLICATIONS.

Subpart 1. Forms. Within five days after the deadline for agency responses, the coordination unit shall submit to the applicant all necessary application forms for the permits identified in the affirmative agency responses described in part 4400.5500, subpart 6. The applicant shall complete and return these forms to the coordination unit, with any required individual permit fees, within 90 days.

Subp. 2. **Transmittal to agencies.** Within ten days of receipt of the full set of completed forms the coordination unit shall send each application to the appropriate agency for its permit review in accord with the procedures of these rules, provided, that a completed NPDES form shall be forwarded to the Minnesota Pollution Control Agency immediately upon receipt by the coordination unit.

Subp. 3. **Priorities.** If an agency has a procedure for setting priorities in permit issuance according to the application date, the date used shall be the day the master application is received by the coordination unit.

Statutory Authority: *MS s 116C.32*

4400.5700 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT REVIEW.

Whenever the Minnesota Pollution Control Agency responds under 4400.5500, subparts 5 to 9 that a NPDES permit is required for a master application, within 110 days after it has received a completed NPDES application under 4400.5600, subpart 2 the Minnesota Pollution Control Agency shall complete all permit review procedures necessary to determine the necessity or appropriateness of a hearing on the NPDES requirements for the project, and shall within the 110 days notify the coordination unit whether a hearing is required or necessary. When conditions prevail that do not require the full 110-day processing period, the MPCA will notify the coordination unit as soon as possible as to whether a hearing is required.

Statutory Authority: *MS s 116C.32*

4400.5800 NOTICE.

Subpart 1. **Publication.** Immediately after transmittal of the completed permit applications and any required permit fees to the appropriate agency, the coordination unit shall publish notice at the applicant's expense once each week on the same day of the week for three consecutive weeks, in a newspaper of general circulation in each county in which the project is proposed to be constructed or operated.

Subp. 2. **Content.** The notice shall contain:

- A. a description of the proposed project;
- B. the name and address of the applicant;
- C. the location of the project;
- D. the permits applied for and the agencies with permit jurisdiction;
- E. the coordination unit telephone number to contact for more information about the project;

F. a statement that a copy of the master application and a copy of all permit applications for the project are available for public inspection during normal business hours in the office of the county auditor of each county in which the project is proposed to be constructed or operated, and in other locations the coordination unit may designate;

G. except as provided in subpart 3 or part 4400.5700, the time and place of the joint hearing and other contents of the order for hearing, to commence not less than 20 days or more than 45 days after publication of the last newspaper notice; and

H. additional information concerning the permit application or hearing, upon notification by an agency that such specified information is required to be provided in the notice.

Subp. 3. **If joint hearing of no value.** If agency responses to the master application unanimously affirm that a public hearing concerning the master application is not required or is not in the public interest, the newspaper notice shall not refer to a joint hearing. The notice shall state that members of the public may present relevant views and supporting material concerning specified

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permits in writing to the coordination unit within 30 days after the last notice has been published.

Subp. 4. Additional notice. Persons wishing to receive notice by mail of master applications may do so upon written request. The request shall give the name and address of the person to receive notice and the counties for which master application notice is requested. The request shall be valid for one year and may be renewed upon notice of expiration by the coordination unit. Upon notification by an agency, the coordination unit shall also mail notices to any additional persons entitled to receive notice according to the requirements of individual permit programs.

Subp. 5. Confidentiality. If the applicant requests that information contained on the application or in supplement to the application be certified as confidential, the information shall not be released unless the appropriate agency responds in writing that the information is not to be certified as confidential. If the agency so responds, the coordination unit shall immediately notify the applicant that the agency has failed to certify the information as confidential. Within ten days after such notification, the applicant may withdraw the subject information by giving written notice to the coordination unit. The information shall not be subsequently released if it is withdrawn by the applicant within the ten-day period.

Statutory Authority: *MS s 116C.32*

4400.5900 JOINT HEARING.

Subpart 1. Procedure. When one or more agencies affirm that a hearing is required or appropriate relating to its permit requirements for the project, the agencies shall issue an order for a hearing. In preparing the order for hearing, the agencies shall consult with the coordination unit in setting the time and place for the joint hearing. The coordination unit shall issue a notice that a joint hearing will be held pursuant to the contested case provisions of Minnesota Statutes, chapter 14, the rules of the Office of Administrative Hearings, and these rules. Copies of the notice and orders shall be immediately forwarded to all agencies having a permit interest in the project and to the applicant by the coordination unit.

Subp. 2. State agency participation. Each participating state agency shall be represented at the joint hearing by its chief administrative officer or his designee. The representative shall participate in the portion of the joint hearing pertaining to submission of information, views, and supporting materials that are relevant to the specific permit applications under the jurisdiction of that agency. The manner of agency participation shall be consistent with the contested case rules of the Office of Administrative Hearings. The administrative law judge may, when appropriate, continue a joint hearing from time to time and place to place. The joint hearing shall be recorded in any manner suitable for transcription pursuant to Minnesota Statutes, chapter 14. The record of the joint hearing shall be made available for public inspection by the coordination unit.

Subp. 3. Administrative law judge's report. Upon termination of the joint hearing, the administrative law judge's report, containing recommendations on each permit, shall be forwarded to the coordination unit. The coordination unit shall forward copies of the report to the participating agencies and to the applicant.

Subp. 4. Costs. Costs of the joint hearing shall be apportioned by the coordination unit to each participating agency. The hearing costs shall be apportioned based on the percentage of the hearing record that is pertinent to each participating agency.

Subp. 5. **Final agency decision.** Within 60 days of receipt of the administrative law judge's report or notification by the coordination unit of its availability to those agencies not participating in the hearing, each agency shall notify the coordination unit of its final decision on the permit applications within its jurisdiction. This date may be extended by the chairman of the board for reasonable cause. A request for such extension, setting forth specific reasons, shall be filed with the coordination unit, which shall immediately notify the chairman of the board and the applicant. Such extension shall be the minimum time needed by the agency to reach a final decision and shall be considered an exception to normal operating procedure. Each final decision shall set forth the reasons for the decision together with a final order denying or granting the permit, including any conditions under which the permit is issued.

Statutory Authority: *MS s 116C.32*

History: *L 1984 c 640 s 32*

4400.6000 NONHEARING PROCEDURE.

If no joint hearing is conducted, pursuant to part 4400.5800, subpart 3, the coordination unit shall, not less than 30 days after publication of the last newspaper notice, submit a copy of all views and supporting material it has received to the agencies. The agencies shall consider such information during review of permit applications. Concurrently, the coordination unit shall notify each agency in writing of the date, 60 days after agency receipt of such notice, by which final decisions on applications shall be forwarded to the coordination unit. This date may be extended by the chairman of the board for reasonable cause. A request for such extension, setting forth specific reasons, shall be filed with the coordination unit, which shall immediately notify the chairman of the board and the applicant. Such extension shall be the minimum time needed by the agency to reach a final decision and shall be considered an exception to normal operating procedure. Every final decision shall set forth the information required by part 4400.5900, subpart 5.

Statutory Authority: *MS s 116C.32*

4400.6100 AGENCY DECISIONS.

Upon receipt by the coordination unit of all final decisions of the agencies, the coordination unit shall immediately incorporate them, without modification, into one document and transmit the document to the applicant either personally or by registered mail.

Statutory Authority: *MS s 116C.32*

4400.6200 REDRESS FOR PERSONS AGGRIEVED BY FINAL DECISION.

A person aggrieved by a final decision of an agency in granting or denying a permit shall seek redress directly and individually from that agency in the manner provided by Minnesota Statutes, chapter 14, or any other statute authorizing either judicial or administrative review of an agency decision.

Statutory Authority: *MS s 116C.32*

4400.6300 WITHDRAWAL FROM MASTER APPLICATION PROCESS.

Subpart 1. **Agency withdrawal.** An agency which has responded affirmatively under part 4400.5500, subpart 6 may withdraw from the process at any time if it has subsequently determined that it has no permit programs applicable to the project. The withdrawal becomes effective when the agency submits written notice of this determination to the coordination unit and to the applicant. The cost of a change or withdrawal of any notice required under these rules, resulting from agency withdrawal shall be paid by the applicant if such withdrawal is due to an alteration the applicant has made in the project that is not required by a public agency or if the agency's initial affirmative

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determination was based on incorrect information supplied by the applicant; in all other cases, the withdrawing agency shall pay for the change or withdrawal of notice.

Subp. 2. Applicant withdrawal. If an applicant has initiated the master application process, the applicant may at any later time withdraw from further participation in the process by submitting written notification to the coordination unit. If such withdrawal necessitates a change or withdrawal of any notice required under these rules, the applicant shall pay the cost, if any, of such change or withdrawal of notice.

Statutory Authority: *MS s 116C.32*

4400.7000 PERMIT INFORMATION CENTER GRANT PROGRAM.

Subpart 1. Applicability. Funds appropriated for grants for the establishment of regional permit information centers by Minnesota Statutes 1976, section 116C.34 and any future funding for such centers appropriated to the State Planning Agency shall be distributed to those public bodies authorized by laws pursuant to the recommendation of the director of the planning division and these rules.

Subp. 2. Eligibility. A regional development commission may apply for a grant from the director of the State Planning Agency for the establishment of a regional permit information center; provided that the grant application is submitted before May 1 of the fiscal year for which the legislative appropriation was made; the amount of the grant application does not exceed the legislative appropriation; and the regional development commission agrees to perform the following functions for at least one year following approval of the grant application:

A. designate one person to act as liaison between the regional permit information center and the environmental permit coordination unit;

B. provide an information and referral system to assist the public in understanding and complying with the requirements of state and local government rules and regulations concerning the use of natural resources and protection of the environment;

C. provide for the dissemination of printed materials concerning the requirements of state and local government regulations;

D. publicize the availability and location of the permit information center;

E. provide information to the public on the regulatory functions relating to the environment of the local government units in its region;

F. establish and maintain a file for applicable state resource agency permits, including pertinent rules, criteria for permit issuance and use, and compliance with relevant statute requirements;

G. maintain information on state environmental programs; and

H. maintain a list or directory of pertinent state agency contacts in each region and in Saint Paul as well as a list of local government unit contacts for its region.

Subp. 3. Grants. Within 30 days after receipt of a completed grant application, the director of the State Planning Agency shall approve the grant or notify the regional development commission in writing of the reasons why the grant application was denied.

Statutory Authority: *MS s 116C.32*

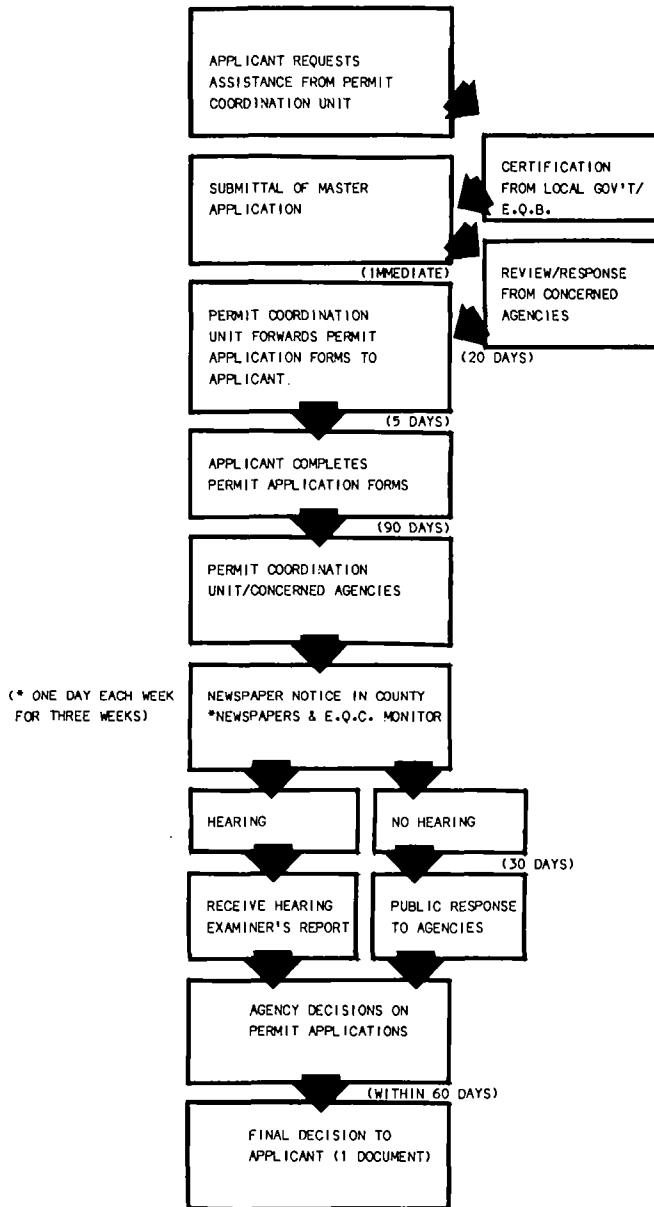
History: *L 1983 c 289 s 115 subd 1*

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4400.9910 MASTER APPLICATION PROCEDURE.



Statutory Authority: *MS s 116C.32*