

6 MCAR 3

7/6/82

[REVISOR] JCF/JC AR0003

1 Minnesota Environmental Quality Board

2

3 Adopted Rules Governing the Environmental Review Program

4

5 Rules as Adopted

6 Chapter Eleven: Authority, Purpose,

7 Definitions, Responsibilities

8 6 MCAR S ~~3-001~~ 3.021 Authority, purpose and objectives.

9 A. Authority. Rules 6 MCAR SS ~~3-001-3-036~~ 3.021-3.056 are

10 issued under authority granted in Minn. Stat. ch. 116D to

11 implement the environmental review procedures established by the

12 Minnesota Environmental Policy Act.

13 B. Application. Rules 6 MCAR SS ~~3-001-3-036~~ 3.021-3.056

14 apply to all governmental actions. Rules 6 MCAR SS ~~3-001-3-036~~

15 3.021-3.056 shall apply to ~~actions~~ projects for which

16 environmental review has not been initiated prior to the rule's

17 effective date. For any ~~action~~ project for which environmental

18 review has been initiated by submission of a citizens petition,

19 environmental assessment worksheet, environmental impact

20 statement preparation notice, or environmental impact statement

21 to the EQB prior to the effective date, all governmental

22 ~~approvals~~ decisions that may be required for that ~~action~~ project

23 shall be acted upon in accord with prior rules.

24 C. Purpose. The Minnesota Environmental Policy Act

25 recognizes that the restoration and maintenance of environmental

26 quality is critically important to our welfare. The act also

27 recognizes that human activity has a profound and often adverse

28 impact on the environment.

29 A first step in achieving a more harmonious relationship

30 between human activity and the environment is understanding the

31 impact which a proposed ~~action~~ project will have on the

32 environment. The purpose of 6 MCAR SS ~~3-001-3-036~~ 3.021-3.056

33 is to aid in providing that understanding through the

34 preparation and public review of environmental documents.

35 Environmental documents shall contain information which

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1 address addresses the significant environmental issues of a
2 proposed action. This information shall be available to
3 governmental units and citizens early in the decision making
4 process.

5 Environmental documents shall not be used to justify an
6 action a decision, nor shall indications of adverse
7 environmental effects necessarily require that an action a
8 project be disapproved. Environmental documents shall be used
9 as guides in issuing, amending, and denying permits and carrying
10 out other responsibilities of governmental units to avoid or
11 minimize adverse environmental effects and to restore and
12 enhance environmental quality.

13 D. Objectives. The process created by 6 MCAR SS ~~3-001-3-036~~
14 3.021-3.056 is designed to:

- 15 1. Provide useable information to the action's project
16 proposer, governmental decision makers and the public concerning
17 the primary environmental effects of a proposed action project;
- 18 2. Provide the public with systematic access to decision
19 makers, which will help to maintain public awareness of
20 environmental concerns and encourage accountability in public
21 and private decision making;
- 22 3. Delegate authority and responsibility for
23 environmental review to the governmental unit most closely
24 involved in the action project;
- 25 4. Reduce delay and uncertainty in the environmental
26 review process; and
- 27 5. Eliminate duplication.

28 6 MCAR S ~~3-002~~ 3.022 Abbreviations and definitions.

29 A. Abbreviations. For the purpose of 6 MCAR SS ~~3-001-3-036~~
30 3.021-3.056 the following abbreviations have the meanings given
31 them.

- 32 1. "CFR" means Code of Federal Regulations.
- 33 2. "DEPD" means Department of Energy, Planning and
34 Development.
- 35 ~~2-~~ 3. "DNR" means Department of Natural Resources.
- 36 ~~3-~~ 4. "DOT" means Department of Transportation.

- 1 4- 5. "EAW" means environmental assessment worksheet.
 2 5- 6. "EIS" means environmental impact statement.
 3 6- 7. "EQB" means Environmental Quality Board.
 4 7- 8. "HVTL" means high voltage transmission line.
 5 8- 9. "LEPGP" means large electric power generating plant.
 6 9- 10. "MCAR" means Minnesota Code of Agency Rules.
 7 10- "MEA" means Minnesota Energy Agency.
 8 11. "MHD" "MDA" means Minnesota Department of Agriculture.
 9 12. "MDH" means Minnesota Department of Health.
 10 12- 13. "PCA" means Pollution Control Agency.
 11 13- 14. "RGU" means responsible governmental unit.
 12 14- 15. "USC" means United States Code.

13 B. Definitions. For the purposes of 6 MCAR SS ~~3-001-3-036~~
 14 3.021-3.056, unless otherwise provided, the following terms have
 15 the meanings given them.

16 1- "Action" means governmental action.

17 2- "Activity" means the whole of a project which will
 18 directly or indirectly cause physical manipulation of the
 19 environment. The determination of whether an action requires
 20 environmental documents shall be made by reference to the
 21 physical activity to be undertaken and not to the governmental
 22 process of approving the action.

23 3- 1. "Agricultural land" means land which is or has,
 24 within the last five years, been devoted to the production for
 25 sale of livestock, dairy animals, dairy products, poultry and
 26 poultry products, fur bearing animals, horticultural and nursery
 27 stock, fruit, vegetables, forage, grains, or bees and apiary
 28 products. Wetlands, naturally vegetated lands and woodlands
 29 contiguous to or surrounded by agricultural land shall be
 30 considered agricultural lands if under the same ownership and or
 31 management as that of the agricultural land during the period of
 32 agricultural use.

33 4- 2. "Animal units" has the meaning given in 6 MCAR S
 34 4.8051 B.4.

35 5- 3. "Approval" means a decision by a unit of government
 36 to issue a permit or to otherwise authorize the commencement of

1 a proposed ~~activity~~ project.

2 ~~6-~~ 4. "Attached units" means a group of four or more
 3 units each of which shares one or more common walls with another
 4 unit. Developments consisting of both attached and unattached
 5 units shall be considered as an unattached unit development.

6 ~~7-~~ 5. "Biomass sources" means animal waste and all forms
 7 of vegetation, natural or cultivated.

8 ~~8-~~ 6. "Class I dam" has the meaning given in 6 MCAR S
 9 1.5031.

10 ~~9-~~ 7. "Class II dam" has the meaning given in 6 MCAR S
 11 1.5031.

12 ~~10-~~ 8. "Collector roadway" means a road that provides
 13 access to minor arterial roadways from local streets and
 14 adjacent land uses.

15 ~~11-~~ 9. "Construction" means any activity that directly
 16 alters the environment. It includes preparation of land or
 17 fabrication of facilities. It does not include surveying or
 18 mapping.

19 ~~12-~~ 10. "Cumulative impact" means the impact on the
 20 environment that results from incremental effects of an ~~action~~
 21 the project in addition to other past, present, and reasonably
 22 foreseeable future ~~actions~~ projects regardless of what person
 23 undertakes the other ~~actions~~ projects. Cumulative impacts can
 24 result from individually minor but collectively significant
 25 ~~actions~~ projects taking place over a period of time.

26 ~~13-~~ 11. "Day" in counting any period of time, shall not
 27 include the day of the event from which the designated period of
 28 time begins. The last day of the period counted shall be
 29 included, unless it is a Saturday, Sunday, or a legal holiday,
 30 in which event the period runs until the end of the next day
 31 that is not a Saturday, a Sunday, or a legal holiday. When the
 32 period of time prescribed or allowed is 15 days or less,
 33 intermediate Saturdays, Sundays, and legal holidays shall be
 34 excluded in the counting of days.

35 ~~14-~~ 12. "Disposal facility" has the meaning given in Minn.
 36 Stat. S 115A.03, subd. 10.

1 ~~15-~~ 13. "EIS actual cost" means the total of all
 ~~---~~
 2 allowable expenditures incurred by the RGU and the proposer in
 3 preparing and distributing the EIS.

4 ~~16-~~ 14. "EIS assessed cost" means that portion of the EIS
 ~~---~~
 5 estimated cost paid by the proposer in the form of a cash
 6 payment to the EQB or to the RGU for the collection and analysis
 7 of technical data incorporated in the EIS.

8 ~~17-~~ 15. "EIS estimated cost" means the total of all
 ~~---~~
 9 expenditures of the RGU and the proposer anticipated to be
 10 necessary for the preparation and distribution of the EIS.

11 ~~18-~~ 16. "Emergency" means a sudden, unexpected
 ~~---~~
 12 occurrence, natural or manmade, involving a clear and imminent
 13 danger, demanding immediate action to prevent or mitigate loss
 14 of, or damage to, life, health, property, or essential public
 15 services. "Emergency" includes fire, flood, windstorm, riot,
 16 accident, or sabotage.

17 ~~19-~~ 17. "Environment" means physical conditions existing
 ~~---~~
 18 in the area which may be affected by a proposed action project.
 19 It includes land, air, water, minerals, flora, fauna, ambient
 20 noise, energy resources, and manmade objects or natural features
 21 of historic, geologic or aesthetic significance.

22 ~~20-~~ 18. "Environmental assessment worksheet" or "EAW"
 ~~---~~
 23 means a brief document which is designed to set out the basic
 24 facts necessary to determine whether an EIS is required for a
 25 proposed action project or to initiate the scoping process for
 26 an EIS.

27 ~~21-~~ 19. "Environmental document" means EAW, draft EIS,
 ~~---~~
 28 final EIS, alternate substitute review document, and other
 ~~-----~~
 29 environmental analysis documents.

30 ~~22-~~ 20. "Environmental impact statement" or "EIS" means a
 ~~---~~
 31 detailed written statement as required by Minn. Stat. S 116D.04,
 32 subd. 2a.

33 ~~23-~~ 21. "Expansion" means an extension of the capability
 ~~---~~
 34 of a facility to produce or operate beyond its existing
 35 capacity. It excludes repairs or renovations which do not
 36 increase the capacity of the facility.

1 ~~24.~~ "Final approval" means the last action of a
2 governmental unit necessary to authorize the commencement of an
3 activity.

4 ~~25.~~ "Final decision" means the determination to grant or
5 deny a permit, or to approve or not approve an action.

6 ~~26.~~ ~~22.~~ "First class city" has the meaning given in Minn.
7 Stat. S 410.01.

8 ~~27.~~ ~~23.~~ "Flood plain" has the meaning given in rule NR 85
9 (c) of the Department of Natural Resources.

10 ~~28.~~ ~~24.~~ "Flood plain ordinance, state approved" means a
11 local governmental unit flood plain management ordinance which
12 meets the provisions of Minn. Stat. S 104.04 and has been
13 approved by the Commissioner of the DNR pursuant to rule NR 85
14 of the Department of Natural Resources.

15 ~~29.~~ ~~25.~~ "Fourth class city" has the meaning given in Minn.
16 Stat. S 410.01.

17 ~~30.~~ ~~26.~~ "Governmental action" means activities, including
18 projects wholly or partially conducted, permitted, assisted,
19 financed, regulated or approved by governmental units, including
20 the federal government.

21 ~~31.~~ ~~27.~~ "Governmental unit" means any state agency and
22 any general or special purpose unit of government in the state,
23 including watershed districts organized under Minn. Stat. ch.
24 112, counties, towns, cities, port authorities, housing
25 authorities, and the Metropolitan Council, but not including
26 courts, school districts, and regional development commissions.

27 ~~32.~~ ~~28.~~ "Gross floor space" means the total square
28 footage of all floors but does not include parking lots or
29 approach areas.

30 ~~33.~~ ~~29.~~ "Ground area" means the total surface area of
31 land that would be converted to an impervious surface by the
32 proposed activity project. It includes structures, parking
33 lots, approaches, service facilities, appurtenant structures,
34 and recreational facilities.

35 ~~34.~~ ~~30.~~ "Hazardous waste" has the meaning given in Minn.
36 Stat. S 116.06, subd. 13.

1 35- 31. "High voltage transmission line" or "HVTL" has
2 the meaning given in 6 MCAR S 3.072 E.

3 36- 32. "Highway safety improvement project" means a
4 project designed to improve safety of highway locations which
5 have been identified as hazardous or potentially hazardous.
6 Projects in this category include the removal, relocation,
7 remodeling, or shielding of roadside hazards; installation or
8 replacement of traffic signals; and the geometric correction of
9 identified high accident locations requiring the acquisition of
10 minimal amounts of right-of-way.

11 37- 33. "Large electric power generating plant" or "LEPGP"
12 has the meaning given in 6 MCAR S 3.072 G.

13 38- 34. "Local governmental unit" means any unit of
14 government other than the state or a state agency or the federal
15 government or a federal agency. It includes ~~organized~~ watershed
16 districts established pursuant to Minn. Stat. ch. 112, counties,
17 towns, cities, port authorities, housing authorities, and the
18 Metropolitan Council. It does not include courts, school
19 districts, and regional development commissions.

20 39- 35. "Marina" has the meaning given in 6 MCAR S 1.5020
21 D.

22 40- 36. "Mineral deposit evaluation" has the meaning
23 given in Minn. Stat. S 156A.071, subd. 9, clause (d).

24 37. "Minnesota River Project Riverbend area" means an
25 area subject to the comprehensive land use plan of the Project
26 Riverbend Board established pursuant to Laws of 1982, ch. 627.

27 38. "Mississippi headwaters area" means an area subject
28 to the comprehensive land use plan of the Mississippi River
29 Headwaters Board established pursuant to Laws of 1981, ch. 246;
30 Minn. Stat. ch. 114B.

31 39. "Mississippi headwaters plan" means the comprehensive
32 land use plan of the Mississippi River Headwaters Board
33 established pursuant to Laws of 1981, chapter 246; Minn. Stat.
34 ch. 114B.

35 41- 40. "Mitigation" means:

36 a. Avoiding impacts altogether by not ~~taking~~

1 undertaking a certain ~~action~~ project or parts of an ~~action~~ a
 2 ~~-----~~ ~~-----~~ ~~-----~~
 3 project;
 4 ~~-----~~

5 b. Minimizing impacts by limiting the degree of
 6 magnitude of ~~the action and its implementation~~ a project;
 7 ~~-----~~

8 c. Rectifying impacts by repairing, rehabilitating, or
 9 restoring the affected environment;

10 d. Reducing or eliminating impacts over time by
 11 preservation and maintenance operations during the life of the
 12 ~~action~~ project; or
 13 ~~-----~~

14 e. Compensating for impacts by replacing or providing
 15 substitute resources or environments.

16 ~~42-~~ 41. "Mixed municipal solid waste" has the meaning
 17 given in Minn. Stat. S 115A.03, subd. 21.
 18 ~~---~~

19 ~~43-~~ 42. "Natural watercourse" has the meaning given in
 20 Minn. Stat. S 105.37, subd. 10.
 21 ~~---~~

22 ~~44-~~ 43. "Negative declaration" means a written statement
 23 by the RGU that a proposed ~~action~~ project does not require the
 24 preparation of an EIS.
 25 ~~-----~~

26 ~~45-~~ 44. "Open space land use" means a use particularly
 27 oriented to and using the outdoor character of an area including
 28 agriculture, campgrounds, parks and recreation areas.
 29 ~~---~~

30 ~~46-~~ 45. "Permanent conversion" means a change in use of
 31 agricultural, naturally vegetated, or forest lands that impairs
 32 the ability to convert the land back to its agricultural,
 33 natural, or forest capacity in the future. It does not include
 34 changes in management practices, such as conversion to
 35 parklands, open space, or natural areas.
 36 ~~---~~

37 ~~47-~~ 46. "Permit" means a permit, lease, license,
 38 certificate, or other entitlement for use or permission to act
 39 that may be granted or issued by a governmental unit or the
 40 commitment to issue or the issuance of a discretionary contract,
 41 grant, subsidy, loan, or other form of financial assistance, by
 42 a governmental unit.
 43 ~~---~~

44 ~~48-~~ 47. "Person" means any natural person, state,
 45 municipality, or other governmental unit or political
 46 subdivision or other agency or instrumentality, public or
 47 ~~---~~

1 private corporation, partnership, firm, association, or other
2 organization, receiver, trustee, assignee, agent, or other legal
3 representative of the foregoing, and any other entity.

4 ~~49-~~ 48. "Phased action" means two or more ~~activities~~
5 projects to be undertaken by the same proposer which a RGU
6 determines:

7 a. Will have environmental effects on the same
8 geographic area;

9 b. Are substantially certain to be undertaken
10 sequentially over a limited period of time; and

11 c. Collectively have the potential to have significant
12 adverse environmental effects.

13 ~~50-~~ 49. "Positive declaration" means a written statement
14 by the RGU that a proposed ~~action~~ project requires the
15 preparation of an EIS.

16 ~~51-~~ 50. "Potentially permanent" means a dwelling for
17 human habitation that is permanently affixed to the ground or
18 commonly used as a place of residence. It includes houses,
19 seasonal and year round cabins, and mobile homes.

20 ~~52-~~ 51. "Preparation notice" means a written notice
21 issued by the RGU stating that an EIS will be prepared for a
22 proposed ~~action~~ project.

23 ~~53-~~ 52. "Processing", as used in 6 MCAR SS ~~3-018~~ 3.038
24 O.2. and 3., and ~~3-019~~ 3.039 K.3., has the meaning given in
25 Minn. Stat. S 115A.03, subd. 25.

26 53. "Project" means a governmental action, the results of
27 which would cause physical manipulation of the environment,
28 directly or indirectly. The determination of whether a project
29 requires environmental documents shall be made by reference to
30 the physical activity to be undertaken and not to the
31 governmental process of approving the project.

32 54. "Project estimated cost" means the total of all
33 allowable expenditures of the proposer anticipated to be
34 necessary for the implementation of an ~~action~~ a proposed project.

35 55. "Project Riverbend plan" means the comprehensive land
36 use plan of the Project Riverbend Board established pursuant to

1 Laws of 1982, ch. 627.

2 ~~55-~~ 56. "Proposer" means the private person or

 3 governmental unit that proposes to undertake or to direct others
 4 to undertake an ~~action~~ a project.

5 ~~56-~~ 57. "Protected waters" has the meaning given public

 6 waters in Minn. Stat. S 105.37, subd. 14.

7 ~~57-~~ 58. "Protected wetland" has the meaning given wetland

 8 in Minn. Stat. S 105.37, subd. 15.

9 ~~58-~~ 59. "Recreational development" means facilities for

 10 temporary residence while in pursuit of leisure activities.
 11 Recreational development includes, but is not limited to,
 12 recreational vehicle parks, rental or owned campgrounds, and
 13 condominium campgrounds.

14 ~~59-~~ 60. "Related action" means two or more ~~actions~~

 15 projects that will affect the same geographic area which a RGU

 16 determines:

17 a. Are planned to occur or will occur at the same
 18 time; or

19 b. Are of a nature that one of the ~~actions~~ projects

 20 will induce the other ~~action~~ project.

21 ~~60-~~ 61. "Resource recovery" has the meaning given in Minn.

 22 Stat. S 115A.03, subd. 27.

23 ~~61-~~ 62. "Resource recovery facility" has the meaning

 24 given in Minn. Stat. S 115A.03, subd. 28.

25 ~~62-~~ 63. "Responsible governmental unit" or RGU means the

 26 governmental unit which is responsible for preparation and
 27 review of environmental documents.

28 ~~63-~~ 64. "Scientific and natural area" means an outdoor

 29 recreation system unit designated pursuant to Minn. Stat. S
 30 86A.05, subd. 5.

31 65. "Scram mining" has the meaning given in 6 MCAR S

 32 1.0401 B.16.

33 ~~64-~~ 66. "Second class city" has the meaning given in Minn.

 34 Stat. S 410.01.

35 ~~65-~~ 67. "Sewer system" means a piping or conveyance

 36 system that conveys wastewater to a wastewater treatment plant.

1 66- 68. "Sewered area" means an area:

2 a. That is serviced by a wastewater treatment facility
3 or a publicly owned, operated, or supervised centralized septic
4 system servicing the entire development; or

5 b. That is located within the boundaries of the
6 Metropolitan Urban Service Area, as defined pursuant to the
7 development framework of the Metropolitan Council.

8 67- 69. "Shoreland" has the meaning given in rule Cons 70
9 of the Department of Natural Resources.

10 68- 70. "Shoreland ordinance, state approved" means a
11 local governmental unit shoreland management ordinance which
12 satisfies Minn. Stat. S 105.485 and has been approved by the
13 Commissioner of the DNR pursuant to rule Cons 70 or NR 82 of the
14 Department of Natural Resources.

15 69- "Sociological effects" means effects, resulting from
16 an action, which impact the social institutions, social
17 groupings, or systems of a community. It includes effects upon
18 groups of individuals, families, or households. It does not
19 include effects limited to single individuals, single families,
20 or single households.

21 70- 71. "Solid waste" has the meaning given in Minn.
22 Stat. S 116.06, subd. 10.

23 71- 72. "State trail corridor" means an outdoor
24 recreation system unit designated pursuant to Minn. Stat. S
25 86A.05, subd. 4.

26 72- 73. "Storage", as used in 6 MCAR S 3-018 3.038 0.4.,
27 has the meaning given in 40 CFR title 40, section 260.10 (a)(66)
28 (1980).

29 73- 74. "Third class city" has the meaning given in Minn.
30 Stat. S 410.01.

31 74- 75. "Tiering" means incorporating by reference the
32 discussion of an issue from a broader or more general EIS. An
33 example of tiering is the incorporation of a program or policy
34 statement into a subsequent environmental document of a more
35 narrow scope, such as a site-specific EIS.

36 75- 76. "Transfer station" has the meaning given in Minn.

1 Stat. S 115A.03, subd. 33.

2 ~~76-~~ 77. "Waste" has the meaning given in Minn. Stat. S
 3 115A.03, subd. 34.

4 ~~77-~~ 78. "Waste facility" has the meaning given in Minn.
 5 Stat. S 115A.03, subd. 35.

6 ~~78-~~ 79. "Wastewater treatment facility" means a facility
 7 for the treatment of municipal or industrial waste water. It
 8 includes on-site treatment facilities.

9 ~~79-~~ 80. "Wetland" has the meaning given in U.S. Fish and
 10 Wildlife Service Circular No. 39 (1971 edition).

11 ~~80-~~ 81. "Wild and scenic rivers district" means a river,
 12 or a segment of the river, and its adjacent lands that possess
 13 outstanding scenic, recreational, natural, historical,
 14 scientific, or similar values and has been designated by the
 15 Commissioner of the DNR or by the legislature of the state of
 16 Minnesota for inclusion within the Minnesota Wild and Scenic
 17 Rivers system pursuant to Minn. Stat. SS 104.31-104.40 or by
 18 Congress for inclusion within the National Wild and Scenic
 19 Rivers System pursuant to ~~16~~ USC title 16, sections 1274-1286
 20 (1976).

21 ~~81-~~ 82. "Wild and scenic rivers district ordinances,
 22 state approved" means a local governmental unit ordinance
 23 implementing the state management plan for the district. The
 24 ordinance must be approved by the Commissioner of the DNR
 25 pursuant to rule NR 81 or NR 2202 of the Department of Natural
 26 Resources.

27 ~~82-~~ 83. "Wilderness area" means an outdoor recreation
 28 system unit designated pursuant to Minn. Stat. S 86A.05, subd. 6.

29 6 MCAR S ~~3-003~~ 3.023 General responsibilities.

30 A. EQB. The EQB shall monitor the effectiveness of 6 MCAR
 31 SS ~~3-001-3-036~~ 3.021-3.056 and shall take appropriate measures
 32 to modify and improve their effectiveness. The EQB shall assist
 33 governmental units and interested persons in understanding and
 34 implementing the rules.

35 B. RGUs. RGUs shall be responsible for verifying the
 36 accuracy of environmental documents and complying with

1 environmental review processes in a timely manner.

2 C. Governmental units, private individuals, citizen groups,
3 and business concerns. When environmental review documents are
4 required on an action a project, the proposer of the action
5 project and any other person shall supply any data reasonably
6 requested by the RGU which he has in his possession or to which
7 he has reasonable access.

8 D. Appeal of final decisions. Decisions by a RGU on the
9 need for an EAW, the need for an EIS and the adequacy of an EIS
10 are final decisions and may be reviewed by a declaratory
11 judgment action initiated within 30 days after the RGU makes the
12 decision publication of the RGU's decision in the EQB Monitor in
13 the district court of the county where the proposed action
14 project, or any part thereof, would be undertaken.

15 6 MCAR S ~~3-004~~ 3.024 RGU selection procedures.

16 A. 6 MCAR S ~~3-018~~ or ~~3-019~~ Activity: RGU for mandatory
17 categories. For any activity project listed in 6 MCAR S ~~3-018~~
18 3.038 or ~~3-019~~ 3.039, the governmental unit specified in those
19 rules shall be the RGU.

20 B. 6 MCAR S ~~3-005 C.1.~~ Order: RGU for discretionary EAWs.
21 If a governmental unit orders an EAW pursuant to 6 MCAR S ~~3-005~~
22 3.025 C.1., that governmental unit shall be designated as the
23 RGU.

24 C. ~~Petitioned~~ EAW: RGU for petition EAWs. If an EAW is
25 ordered in response to a petition, the RGU that was designated
26 by the EQB to act on the petition shall be responsible for the
27 preparation of the EAW.

28 D. 6 MCAR S ~~3-005 C.3.~~ Order: RGU for EAW by order of EQB.
29 If the EQB orders an EAW pursuant to 6 MCAR S ~~3-005~~ 3.025 C.3.,
30 the EQB shall, at the same time, designate the RGU for that EAW.

31 E. RGU selection generally. For any activity project where
32 the RGU is not listed in 6 MCAR S ~~3-018~~ 3.038 or ~~3-019~~ 3.039 or
33 which falls into more than one category in 6 MCAR S ~~3-018~~ 3.038
34 or ~~3-019~~ 3.039, or for which the RGU is in question, the RGU
35 shall be determined as follows:

36 1. When a single governmental unit proposes to carry out

1 or has sole jurisdiction to approve an ~~action~~ a project, it
2 shall be the RGU.

3 2. When two or more governmental units propose to carry
4 out or have jurisdiction to approve an ~~action~~ the project, the
5 RGU shall be the governmental unit with the greatest
6 responsibility for supervising or approving the ~~action~~ project
7 as a whole. Where it is not clear which governmental unit has
8 the greatest responsibility for supervising or approving an
9 ~~action~~ the project or where there is a dispute about which
10 governmental unit has the greatest responsibility for
11 supervising or approving an ~~action~~ the project, the governmental
12 units shall either:

13 a. By agreement, designate which unit shall be the RGU
14 within five days of receipt of the completed data portion of the
15 ~~-----~~
EAW; or

16 b. Submit the question to the EQB chairperson, ~~which~~
17 who shall within five days of receipt of the completed data
18 ~~-----~~
portions of the EAW designate the RGU based on a consideration
19 of which governmental unit has the greatest responsibility for
20 supervising or approving the ~~action~~ project or has the expertise
21 that may be is relevant for the environmental review.

22 F. Exception. Notwithstanding A.-E., the EQB may designate,
23 within five days of receipt of the completed data portions of
24 ~~-----~~
the EAW, a different RGU for the preparation of an EAW if the
25 EQB determines the designee has greater expertise in analyzing
26 the potential impacts of the ~~action~~ project.

27 Chapter Twelve: Environmental Assessment Worksheet

28 6 MCAR S 3-005 ~~Actions~~ 3.025 Projects requiring an EAW.

29 A. Purpose of an EAW. The EAW is a brief document prepared
30 in worksheet format which is designed to rapidly assess the
31 environmental effects which may be associated with a proposed
32 ~~action~~ project. The EAW serves primarily to:

- 33 1. Aid in the determination of whether an EIS is needed
34 for a proposed ~~action~~ project; and
- 35 2. Serve as a basis to begin the scoping process for an
36 EIS.

1 B. Mandatory EAW categories. An EAW shall be prepared for
 2 any ~~activity~~ project that meets or exceeds the thresholds of any
 3 of the EAW categories listed in 6 MCAR S ~~3-018~~ 3.038 or any of
 4 the EIS categories listed in 6 MCAR S ~~3-019~~ 3.039.

5 C. Discretionary EAWs. An EAW shall be prepared:

6 1. When a project is not exempt under 6 MCAR S 3.041 and
 7 when a governmental unit with ~~jurisdiction~~ or approval authority
 8 over the proposed ~~action~~ project determines that, because of the
 9 nature or location of a proposed ~~action~~ project, the ~~action~~
 10 project may have the potential for significant adverse
 11 environmental effects;

12 2. When a project is not exempt under 6 MCAR S 3.041 and
 13 when a governmental unit with ~~jurisdiction~~ or approval authority
 14 over a proposed ~~action~~ project determines pursuant to the
 15 petition process set forth in 6 MCAR S ~~3-006~~ 3.026 that, because
 16 of the nature or location of a proposed ~~action~~ project, the
 17 ~~action~~ project may have the potential for significant adverse
 18 environmental effects; or

19 3. Whenever the EQB determines that, because of the
 20 nature or location of a proposed ~~action~~ project, the ~~action~~
 21 project may have the potential for significant adverse
 22 environmental effects. This paragraph 3 shall not be applicable
 23 to a project exempt under 6 MCAR S 3.041 or to a project for
 24 which a governmental unit, with approval authority over the
 25 project, has made a prior negative or positive determination
 26 concerning the need for an EAW concerning the project; or

27 4. When the proposer wishes to initiate environmental
 28 review to determine if a project has the potential for
 29 significant environmental effects.

30 6 MCAR S ~~3-006~~ 3.026 Petition process.

31 A. Petition. Any person may request the preparation of an
 32 EAW on an ~~action~~ a project by filing a petition that contains
 33 the signatures and mailing addresses of at least 25 individuals.

34 B. Content. The petition shall also include:

- 35 1. A description of the ~~action~~ proposed project;
- 36 2. The proposer of the ~~action~~ project;

1 3. The name, address and telephone number of the
2 representative of the petitioners;

3 4. A brief description of the potential adverse
4 environmental effects which ~~will~~ may result from the ~~action~~
5 project; and
6 -----

7 5. Material evidence indicating that, because of the
8 nature or location of the proposed ~~action~~ project, there may be
9 potential for significant adverse environmental effects.
10 -----

11 C. Filing of petition. The petition shall be filed with the
12 EQB for a determination of the RGU.

13 D. Notice to proposer. The petitioners shall notify the
14 ~~action's~~ proposer in writing at the time they file a petition
15 with the EQB.

16 E. Determination of RGU. The EQB's chairperson or designee
17 shall determine whether the petition complies with the
18 requirements of A. and B.1., 2., and 3., 4., and 5. If the
19 petition complies, the chairperson or designee shall designate
20 an RGU pursuant to 6 MCAR S 3.024 and forward the petition to
21 the RGU within five days of receipt of the petition.
22 -----

23 F. EAW decision. The RGU shall order the preparation of an
24 EAW if the evidence presented by the petitioners, proposers, and
25 other persons or otherwise known to the RGU demonstrates that,
26 because of the nature or location of the proposed ~~action~~
27 project, the ~~action~~ project may have the potential for
28 significant adverse environmental effects. The RGU shall deny
29 the petition if the evidence presented in the petition and
30 otherwise known to the RGU fails to demonstrate the ~~action~~
31 project may have the potential for significant adverse
32 environmental effects. The RGU shall maintain, either as a
33 separate document or contained within the records of the RGU, a
34 record, including specific findings of fact, of its decision on
35 the need for an EAW.
36 -----

37 G. Time limits. The RGU has 15 days from the date of the
38 receipt of the petition to decide on the need for an EAW.

39 1. If the decision must be made by a board, council, or
40 other body which meets only on a periodic basis, the time period

1 may be extended by the RGU for an additional 15 days.

2 2. For all other RGUs, the EQB's chairperson ~~may~~ shall
3 extend the 15-day period by not more than 15 additional days
4 upon request of the RGU.

5 H. Notice of decision. ~~The~~ Within five days of its
6 decision, the RGU shall ~~promptly~~ notify, in writing, the
7 proposer, the EQB staff, and the petitioner's representative of
8 its decision. ~~If the decision is to order the preparation of an~~
9 EAW, the EAW must be prepared within 25 working days of the date
10 of that decision, unless an extension of time is agreed upon by
11 the proposer and the RGU. The EQB staff shall publish notice of
12 the RGU's decision concerning the petition in the EQB Monitor.

13 6 MCAR S 3-007 3.027 EAW content, preparation and distribution
14 process.

15 A. EAW content. The EAW shall address at least the
16 following major categories in the form provided on the worksheet:

17 1. ~~Activity~~ Identification including project name,
18 project proposer, and project location;

19 2. Procedural details including identification of the
20 RGU, EAW contact person, and instructions for interested persons
21 wishing to submit comments;

22 3. ~~Activity description~~ including a Description of the
23 project, methods of construction, quantification of physical
24 characteristics and impacts, project site description, and land
25 use and physical features of the surrounding area;

26 4. Resource protection measures that have been
27 incorporated into the project design;

28 5. Major issues sections identifying potential
29 environmental impacts and issues that may require further
30 investigation before the project is commenced; and

31 6. Known governmental approvals, reviews, or financing
32 required, applied for, or anticipated and the status of any
33 applications made, including permit conditions that may have
34 been ordered or are being considered.

35 B. EAW form.

36 1. The EQB shall develop an EAW form to be used by the

1 RGU.

2 2. The EQB may approve the use of an alternative EAW form
3 if an RGU demonstrates the alternative form will better
4 accommodate the RGU's function or better address a particular
5 type of action project and the alternative form will provide
6 more complete, more accurate, or more relevant information.

7 3. The EAW form shall be assessed by the EQB periodically
8 and may be altered by the EQB to improve the effectiveness of
9 the document.

10 C. Preparation of an EAW.

11 1. The EAW shall be prepared as early as practicable in
12 the development of the action proposed project. The EAW shall
13 be prepared by the RGU or its agents.

14 2. The EAW may be prepared by the RGU, its staff or
15 agent, or by the proposer or its agent. If an RGU orders the
16 preparation of an EAW pursuant to 6 MCAR S 3.026 F., the EAW
17 must be prepared within 25 working days of the date of that
18 decision, unless an extension of time is agreed upon by the
19 proposer and the RGU.

20 3. If the proposer or its agent prepares the EAW, whether
21 voluntarily or pursuant to a mandatory category or RGU
22 determination. When an EAW is to be prepared, except pursuant to
23 6 MCAR S 3.026 F., the proposer shall submit the completed data
24 portions of the EAW to the RGU for its consideration and
25 approval for distribution. The RGU shall have 30 days to add
26 supplementary material, if necessary, and to approve the EAW for
27 distribution. The RGU shall be responsible for the completeness
28 and accuracy of all information and for decisions or
29 determinations contained in the EAW.

30 D. Publication and distribution of an EAW.

31 1. The RGU shall provide one copy of the EAW to the EQB
32 staff within five days after the RGU approves the EAW. This
33 copy shall serve as notification to the EQB staff to publish the
34 notice of availability of the EAW in the EQB Monitor. At the
35 time of submission of the EAW to the EQB staff, the RGU shall
36 also submit one copy of the EAW to:

- 1 a. Each member of the EQB;
- 2 b. The proposer of the ~~action~~ project;

- 3 c. The U.S. Corps of Engineers;
- 4 d. The U.S. Environmental Protection Agency;
- 5 e. The U.S. Fish and Wildlife Service;
- 6 f. The State Historical Society;
- 7 g. The Environmental Conservation Library;
- 8 h. The Legislative Reference Library;
- 9 i. The Regional Development Commission and Regional
10 Development Library for the region of the project site;
- 11 j. Any local governmental unit within which the ~~action~~
12 project will take place; and

- 13 k. The representative of any petitioners pursuant to 6

14 MCAR S 3.026; and

- 15 1. Any other person upon written request.
--
- 16 2. Within five days of the date of submission of the EAW
17 to the EQB staff, the RGU shall provide a press release,
18 containing notice of the availability of the EAW for public
19 review, to at least one newspaper of general circulation within
20 the area where the ~~action~~ project is proposed. The press
21 release shall include the name and location of the ~~action~~
22 project, a brief description of the ~~activity~~ project, the

23 location at which copies of the EAW are available for review,
24 the date the comment period expires, and the procedures for
25 commenting. The RGU shall publish legal notice or advertisement

26 of the availability of the EAW if the proposer requests and

27 agrees to pay for the notice or advertisement. The notice or

28 advertisement shall contain the information required in the

29 press release.

- 30 3. The EQB staff shall maintain an official EAW
31 distribution list containing the names and addresses of agencies
32 designated to receive EAWs.
- 33 E. Comment period.
- 34 1. A 30-day period for review and comment on the EAW
35 shall begin the day the EAW availability notice is published in
36 the EQB Monitor.

1 2. Written comments shall be submitted to the RGU during
 2 the 30-day review period. The comments shall address the
 3 accuracy and completeness of the material contained in the EAW,
 4 potential impacts that may warrant further investigation before
 5 the ~~action~~ project is commenced, and the need for an EIS on the
 6 proposed ~~action~~ project.

7 3. The RGU may hold one or more public meetings to gather
 8 comments on the EAW if it determines that a meeting is necessary
 9 or useful. Reasonable public notice of the meetings shall be
 10 given prior to the meetings. All meetings shall be open to the
 11 public.

12 6 MCAR S ~~3-008~~ 3.028 Decision on need for EIS.

13 A. ~~When EIS needed:~~ Standard for decision on need for EIS.
 14 An EIS shall be ordered for ~~actions~~ projects which have the
 15 potential for significant ~~adverse~~ environmental effects.

16 B. Decision making process.

17 1. The decision on the need for an EIS shall be made in
 18 compliance with one of the following time schedules:

19 a. If the decision is to be made by a board, council,
 20 or other body which meets only on a periodic basis, the decision
 21 shall be made at the body's first meeting more than ten days
 22 after the close of the review period or at a special meeting
 23 but, in either case, no later than 30 days after the close of
 24 the review period; or

25 b. For all other RGUs the decision shall be made no
 26 later than 15 days after the close of the 30-day review period.
 27 This 15-day period ~~may~~ shall be extended by the EQB chairperson
 28 by no more than 15 additional days upon request of the RGU.

29 2. The RGU's decision shall be either a negative
 30 declaration or a positive declaration. If a positive
 31 declaration, the decision shall include the RGU's proposed scope
 32 for the EIS. The RGU shall base its decision regarding the need
 33 for an EIS and the proposed scope on the information gathered
 34 during the EAW process and the comments received on the EAW.

35 3. The RGU shall maintain a record, including specific
 36 findings of fact, supporting its decision. This record shall

1 either be a separately prepared document or contained within the
 2 records of the governmental unit. If measures will be
 3 incorporated in the action which will mitigate the adverse
 4 environmental impacts of the action, the determination of the
 5 need for an EIS should be based on the impacts of the action
 6 with the application of the mitigation measures.

7 4. The RGU's decision shall be provided, within five
 8 days, to all persons on the EAW distribution list pursuant to 6
 9 MCAR S 3-007 3.027 D., to all persons and governmental units
 10 that commented in writing during the 30-day review period, and
 11 to any person upon written request. Upon notification, the EQB
 12 staff shall publish the RGU's decision in the EQB Monitor. If
 13 the decision is a positive declaration the RGU shall also
 14 indicate in the decision the date, time and place of the scoping
 15 review meeting.

16 C. Standard. In deciding whether an action a project has
 17 the potential for significant adverse environmental effects the
 18 RGU shall compare the impacts which may be reasonably expected
 19 to occur from the action project with the criteria in this
 20 rule. The criteria are not exhaustive but are indicators of the
 21 impact of the action on the environment.

22 D. Criteria. In deciding whether an action a project has
 23 the potential for significant adverse environmental effects, the
 24 following factors shall be considered:

- 25 1. Type, extent, and reversability of environmental
 26 effects;
- 27 2. Cumulative potential effects of related or anticipated
 28 future actions projects;
- 29 3. The extent to which the environmental effects are
 30 subject to mitigation by ongoing public regulatory authority;
 31 and
- 32 4. The extent to which environmental effects can be
 33 anticipated and controlled as a result of other environmental
 34 studies undertaken by public agencies or the project proposer,
 35 or an EIS of EIS's previously prepared on similar actions
 36 projects.

1 E. Related actions. When two or more ~~actions~~ projects are
 2 related actions, ~~they shall be considered as a single action and~~
 3 their cumulative potential effect on the environment shall be
 4 considered in determining whether an EIS is required.

5 F. Phased actions.

6 1. Phased actions shall be considered a single ~~action~~
 7 project for purposes of the determination of need for an EIS.

8 2. In ~~certain~~ phased actions ~~it will not be~~ where it is
 9 not possible to adequately address all the phases at the time of
 10 the initial EIS. ~~In these cases,~~ a supplemental EIS shall be
 11 completed prior to approval and construction of each subsequent
 12 phase. The supplemental EIS shall address the impacts
 13 associated with the particular phase that were not addressed in
 14 the initial EIS.

15 3. For proposed ~~actions~~ projects such as highways,
 16 streets, pipelines, utility lines, or systems where the proposed
 17 ~~action~~ project is related to a large existing or planned
 18 network, for which a governmental unit has determined
 19 environmental review is needed, the RGU may ~~at its option~~ shall
 20 treat the present proposal as the total proposal or select only
 21 some of the future elements for present consideration in the
 22 threshold determination and EIS. These selections shall be
 23 logical in relation to the design of the total system or
 24 network. They shall not be made merely to divide a large system
 25 into exempted segments.

26 Chapter Thirteen:

27 Environmental Impact Statement.

28 6 MCAR S ~~3-009~~ ~~Actions~~ 3.029 Projects requiring an EIS.

29 A. Purpose of an EIS. The purpose of an EIS is to provide
 30 information for governmental units, the proposer of the ~~action~~
 31 project, and other persons to evaluate proposed ~~actions~~ projects
 32 which have the potential for significant adverse environmental
 33 effects, to consider alternatives to the proposed ~~actions~~
 34 projects, and to ~~institute~~ explore methods for reducing adverse
 35 environmental effects.

36 B. Mandatory EIS categories. An EIS shall be prepared for

1 any activity project that meets or exceeds the thresholds of any
 2 of the EIS categories listed in 6 MCAR S ~~3-019~~ 3.039.

3 C. Discretionary EISs. An EIS shall be prepared:

4 1. When the RGU determines that, based on the EAW and any
 5 comments or additional information received during the EAW
 6 comment period, the proposed action project has the potential
 7 for significant adverse environmental effects; or

8 2. When the RGU and proposer of the action project agree
 9 that an EIS should be prepared.

10 6 MCAR S ~~3-010~~ 3.030 EIS scoping process.

11 A. Purpose. The scoping process shall be used before the
 12 preparation of an EIS to reduce the scope and bulk of an EIS,
 13 identify only those issues relevant to the proposed action
 14 project, define the form, level of detail, content,
 15 alternatives, time table for preparation, and preparers of the
 16 EIS, and to determine the permits for which information will be
 17 developed concurrently with the EIS.

18 B. EAW as scoping document. All projects requiring an EIS
 19 must have an EAW filed with the RGU. The EAW shall be the basis
 20 for the scoping process.

21 1. For actions projects which fall within a mandatory EIS
 22 category or if a voluntary EIS is planned, the EAW will be used
 23 solely as a scoping document.

24 2. If the need for an EIS has not been determined the EAW
 25 will have two functions:

26 a. To identify the need for preparing an EIS pursuant
 27 to 6 MCAR S ~~3-008~~ 3.028; and

28 b. To initiate discussion concerning the scope of the
 29 EIS if an EIS is ordered pursuant to 6 MCAR S ~~3-008~~ 3.028.

30 C. Scoping period.

31 1. If the EIS is being prepared pursuant to 6 MCAR S
 32 ~~3-009~~ 3.029 B. or C.2., the following schedule applies:

33 a. The 30-day scoping period will begin when the
 34 notice of the availability of the EAW is published in accord
 35 with 6 MCAR S ~~3-007~~ 3.027 D.1. and 2. This notice and press
 36 release shall include the time, place and date of the scoping

1 meeting;

2 b. The RGU shall provide the opportunity for at least
 3 one scoping meeting during the scoping period. This meeting
 4 shall be held not less than 15 days after publication of the
 5 notice of availability of the EAW. Notice of the time, place
 6 and date of the scoping meeting shall be published in the EQB
 7 Monitor and a press release shall be provided to a newspaper of
 8 general circulation in the area where the action is proposed.
 9 All meetings shall be open to the public; and

10 c. A final scoping decision shall be issued within 15
 11 days after the close of the 30-day scoping period.

12 2. If the EIS is being prepared pursuant to 6 MCAR S
 13 ~~3-009~~ 3.029 C.1., the following schedule applies:

14 a. At least ten days but not more than 20 days after
 15 notice of a positive declaration is published in the EQB
 16 Monitor, a public meeting shall be held to review the scope of
 17 the EIS. Notice of the time, date and place of the scoping
 18 meeting shall be published in the EQB Monitor, and a press
 19 release shall be provided to a newspaper of general circulation
 20 in the area where the ~~action~~ project is proposed. All meetings
 21 shall be open to the public; and

22 b. Within 30 days after the positive declaration is
 23 ~~issued~~ published in the EQB Monitor, the RGU shall issue its
 24 final decision regarding the scope of the EIS. If the decision
 25 of the RGU must be made by a board, council, or other similar
 26 body which meets only on a periodic basis, the decision may be
 27 made at the next regularly scheduled meeting of the body
 28 following the scoping meeting but not more than 45 days after
 29 the positive declaration is ~~issued~~ published in the EQB Monitor.

30 D. Procedure for scoping.

31 1. Written comments suggesting issues for scoping or
 32 commenting on the EAW ~~may~~ must be filed with the RGU during the
 33 scoping period. Interested persons may attend the scoping
 34 meeting to exercise their right to comment.

35 2. Governmental units and other persons shall be
 36 responsible for participating in the scoping process within the

1 time limits and in the manner prescribed in 6 MCAR SS
2 ~~3.001-3.036~~ 3.021-3.056.

3 E. Scoping decision.

4 1. The scoping decision at the least shall contain:

5 a. The issues to be addressed in the EIS;

6 b. Time limits for preparation, if they are shorter
7 than those allowed by 6 MCAR SS ~~3.001-3.036~~ 3.021-3.056;

8 c. Identification of the permits for which information
9 will be gathered concurrently with EIS preparation;

10 d. Identification of the permits for which a record of
11 decision will be required; and

12 e. Alternatives which will be addressed in the EIS;

13 f. Identification of potential impact areas resulting
14 from the project itself and from related actions which shall be
15 addressed in the EIS; and

16 g. Identification of necessary studies requiring
17 compilation of existing information or the development of new
18 data that can be generated within a reasonable amount of time
19 and at a reasonable cost.

20 2. The form of an EIS may be changed during scoping if
21 circumstances indicate the need or appropriateness of an
22 alternative form.

23 3. The scoping decision shall identify potential impact
24 areas resulting from the action itself and from related actions
25 which must be addressed in the EIS.

26 4. The issues identified in scoping shall include studies
27 requiring compilation of existing information and the
28 development of new data if the new data can be generated within
29 a reasonable amount of time and the costs of obtaining it are
30 not excessive.

31 5. 3. After the scoping decision is made, the RGU may
32 shall not amend the decision without the agreement of the
33 proposer unless substantial changes are made in the proposed
34 action project that affect the potential significant
35 environmental effects of the project or substantial new
36 information arises relating to the proposed action project that

1 significantly affects the potential environmental effects of the
 2 proposed project or the availability of prudent and feasible
 3 alternatives to the project. If the scoping decision is amended
 4 after publication of the EIS preparation notice, notice and a
 5 summary of the amendment shall be published in the EQB Monitor
 6 within 30 days of the amendment.

7 F. EIS preparation notice. An EIS preparation notice shall
 8 be published within 45 days after the scoping decision is
 9 issued. The notice shall be published in the EQB Monitor, and a
 10 press release shall be provided to at least one newspaper of
 11 general circulation in each county where the action project will
 12 occur. The notice shall contain a summary of the scoping
 13 decision.

14 G. Consultant selection. The RGU shall be responsible for
 15 expediting the selection of consultants for the preparation of
 16 the EIS.

17 6 MCAR S 3.011 3.031 EIS preparation and distribution process.

18 A. Interdisciplinary preparation. An EIS shall be prepared
 19 using an interdisciplinary approach which will insure the
 20 integrated use of the natural, environmental, and social
 21 sciences and the environmental design arts. The RGU may request
 22 that another governmental unit help in the completion of the EIS.
 23 Governmental units shall provide any unprivileged data or
 24 information, to which it has reasonable access, concerning the
 25 subjects to be discussed and shall assist in the preparation of
 26 environmental documents on any action project for which it has
 27 special expertise or access to information.

28 B. Content. An EIS shall be written in plain and objective
 29 language. An RGU shall use a format for an EIS that will
 30 encourage good analysis and clear presentation of the proposed
 31 action including alternatives to the action project. The
 32 standard format shall be:

- 33 1. Cover sheet. The cover sheet shall include:
 - 34 a. The RGU;
 - 35 b. The title of the proposed action project that is
 36 the subject of the statement and, if appropriate, the titles of

1 related actions, together with each county or other
2 jurisdictions, if applicable, where the ~~action~~ project is
3 located;

4 c. The name, address, and telephone number of the
5 person at the RGU who can supply further information;

6 d. The name and address of the proposer and the name,
7 address and telephone number of the proposer's representative
8 who can supply further information.

9 ~~d-~~ e. A designation of the statement as a draft, final
10 or supplement;

11 ~~e-~~ f. A one paragraph abstract of the EIS; and

12 ~~f-~~ g. If appropriate, the date of the public meeting
13 on the draft EIS and the date following the meeting by which
14 comments on the draft EIS must be received by the RGU.

15 2. Summary. The summary shall stress the major findings,
16 areas of controversy, and the issues to be resolved including
17 the choice among alternatives.

18 3. Table of contents. The table shall be used to assist
19 readers to locate material.

20 4. List of preparers. This list shall include the names
21 and qualifications of the persons who were primarily responsible
22 for preparing the EIS or significant background papers.

23 5. Project description. The proposed ~~action~~ project
24 shall be described with no more detail than is absolutely
25 necessary to allow the public to identify the purpose of the
26 ~~action~~ project, its size, scope, environmental setting,
27 geographic location, and the anticipated phases of development.

28 6. Governmental approvals. This section shall ~~contain~~ a
29 ~~comprehensive listing of~~ list all known governmental permits and
30 approvals required ~~for the proposed action~~ including
31 identification of the governmental unit which is responsible
32 for each permit or approval. In addition, Those permits for
33 which all necessary information has been gathered and presented
34 ~~with~~ in the EIS shall be identified.

35 7. Alternatives. Based on the analysis of the proposed
36 ~~action's impacts,~~ The alternatives section shall compare the

1 environmental impacts of the proposal with any other reasonable
2 alternatives to the proposed action project. Reasonable
3 alternatives may include locational considerations, design
4 modifications including site layout, magnitude of the action
5 project, and consideration of alternative means by which the
6 purpose of the action project could be met. Alternatives that
7 were considered but eliminated shall be discussed briefly and
8 the reasons for their elimination shall be stated. The
9 alternative of no action shall be addressed.

10 8. Environmental, economic, employment and sociological
11 impacts. For the proposed action project and each major
12 alternative there shall be a thorough but succinct discussion of
13 any direct or indirect, adverse or beneficial effect generated.
14 The discussion shall concentrate on those issues considered to
15 be significant as identified by the scoping process. Data and
16 analyses shall be commensurate with the importance of the
17 impact, with less important material summarized, consolidated or
18 simply referenced. The EIS shall identify and briefly discuss
19 any major differences of opinion concerning impacts of the
20 proposed action project and the effects the action project may
21 have on the environment.

22 9. Mitigation measures. This section shall identify
23 those measures that could reasonably eliminate or minimize any
24 adverse environmental, economic, employment or sociological
25 effects of the proposed action project.

26 10. Appendix. If a RGU prepares an appendix to an EIS
27 the appendix shall include, when applicable:

28 a. Material prepared in connection with the EIS, as
29 distinct from material which is not so prepared and which is
30 incorporated by reference;

31 b. Material which substantiates any analysis
32 fundamental to the EIS; and

33 c. Permit information that was developed and gathered
34 concurrently with the preparation of the EIS. The information
35 may be presented on the permitting agency's permit application
36 forms. The appendix may reference information for the permit

1 included in the EIS text or the information may be included
 2 within the appendix, as appropriate. If the permit information
 3 cannot conveniently be incorporated into the EIS, the EIS may
 4 simply indicate the location where the permit information may be
 5 reviewed.

6 C. Incorporation by reference. A RGU shall incorporate
 7 material into an EIS by reference when the effect will be to
 8 reduce bulk without impeding governmental and public review of
 9 the ~~action~~ project. The incorporated material shall be cited in
 10 the EIS, and its content shall be briefly described. No
 11 material may be incorporated by reference unless it is
 12 reasonably available for inspection by interested persons within
 13 the time allowed for comment.

14 D. Incomplete or unavailable information. When a RGU is
 15 evaluating significant adverse effects on the environment in an
 16 EIS and there is scientific uncertainty or gaps in relevant
 17 information, the RGU shall make clear that the information is
 18 lacking. If the information relevant to adverse the impacts is
 19 essential to a reasoned choice among alternatives and is not
 20 known and the cost of obtaining it is excessive or the
 21 information cannot be obtained within the time periods specified
 22 in G.4. or the information relevant to adverse the impacts is
 23 important to the decision and the means to obtain it are beyond
 24 the state of the art, the RGU shall weigh the need for the
 25 ~~action~~ project against the risk and severity of possible adverse
 26 impacts were the ~~action~~ project to proceed in the face of
 27 uncertainty. The EIS shall, in these circumstances, include a
 28 worst case analysis and an indication of the probability or
 29 improbability of its occurrence.

30 E. Draft EIS.

31 1. A draft EIS shall be prepared in accord consistent
 32 with the scope decided upon in 6 MCAR SS 3.021-3.056 and in
 33 accord with the scoping process determination. The draft
 34 statement shall satisfy to the fullest extent possible the
 35 requirements of B:

36 2. When the draft EIS is completed, the RGU shall make

1 the draft EIS available for public review and comment and shall
 2 hold an informational meeting in the county where the ~~action~~
 3 project is proposed.

4 -----
 4 3. The entire draft EIS with appendices shall be provided
 5 to:

6 a. Any governmental unit which has authority to permit
 7 or approve the proposed ~~action~~ project, to the extent known;
 8 -----

8 b. The proposer of the ~~action~~ project;
 9 -----

9 c. The EQB and EQB staff;

10 d. The Environmental Conservation Library;

11 e. The Legislative Reference Library;

12 f. The Regional Development Commission and Regional
 13 Development Library;

14 g. A public library or public place where the draft
 15 will be available for public review in each county where the
 16 ~~action~~ project will take place, to the extent known; and
 17 -----

17 h. To the extent possible, to any person requesting
 18 the entire EIS.

19 4. The summary of the draft EIS shall be provided to:

20 a. All members of the EAW distribution list that do
 21 not receive the entire draft EIS;

22 b. Any person that submitted substantive comments on
 23 the EAW that does not receive the entire draft EIS; and

24 c. Any person requesting the summary.

25 5. The copy provided to the EQB staff shall serve as
 26 notification to publish notice of availability of the draft EIS
 27 in the EQB Monitor.

28 6. The RGU shall supply a press release to at least one
 29 newspaper of general circulation within the area where the
 30 ~~action~~ project is proposed.

31 -----
 31 7. The notice of availability in the EQB Monitor and the
 32 press release shall contain notice of the date, time, and place
 33 of the informational meeting, notice of the location of the copy
 34 of the draft EIS available for public review, and notice of the
 35 date of termination of the comment period.

36 8. The informational meeting must be held not less than

1 15 days after publication of the notice of availability in the
2 EQB Monitor. A typewritten or audio-recorded transcript of the
3 meeting shall be made.

4 9. The record shall remain open for public comment not
5 less than ten days after the last date of the informational
6 meeting. Written comments on the draft EIS may be received
7 submitted any time during the comment period.

8 -----
9 10. The RGU shall respond to the timely substantive
10 comments received on the draft EIS and prepare the final
11 EIS.
12 ~~Late comments need not be considered in preparation of the final~~

12 F. Final EIS.

13 1. The final EIS shall respond to the timely substantive
14 comments on the draft EIS consistent with the scoping decision.
15 -----
16 The RGU shall discuss at appropriate points in the final EIS any
17 responsible opposing views relating to scoped issues which were
18 -----
19 not adequately discussed in the draft EIS and shall indicate the
20 RGU's response to the views.

21 2. If only minor changes in the draft EIS are suggested
22 in the comments on the draft, the written comments and the
23 responses may be attached to the draft or bound as a separate
24 volume and circulated as the final EIS. If other than minor
25 changes are required, the draft text shall be rewritten so that
26 necessary changes in the text are incorporated in the
27 appropriate places.

28 3. The RGU shall provide copies of the final EIS to:

29 a. All persons receiving copies of the entire draft
30 EIS pursuant to E.3.;

31 b. Any person who submitted substantive comments on
32 the draft EIS; and

33 c. To the extent possible, to any person requesting
34 the final EIS.

35 4. The copy provided to the EQB staff shall serve as
36 notification to publish notice of availability of the final EIS
in the EQB Monitor.

5. The RGU shall supply a press release to at least one

1 newspaper of general circulation within the area where the
2 action project is proposed.

3 6. The notice of availability in the EQB Monitor and the
4 press release shall contain notice of the location of the copy
5 of the final EIS available for public review and notice of the
6 opportunity for public comment on the adequacy of the final EIS.

7 G. Determination of adequacy.

8 1. The RGU shall make the determination of adequacy on
9 the final EIS unless notified by the EQB within 60 days after
10 publication of the preparation notice in the EQB Monitor that
11 the EQB will make the determination. In making the decision to
12 intervene in the determination of adequacy, the EQB shall
13 consider:

- 14 a. A request for intervention by the RGU;
- 15 b. A request for intervention by the proposer of the
16 action;
- 17 c. A request for intervention by interested parties;
- 18 d. The ability of the RGU to address complex issues of
19 the EIS; and
- 20 e. Whether the action is multi-jurisdictional.

21 1. The RGU shall determine the adequacy of the final EIS
22 unless notified by the EQB, on its own initiative or at the
23 request of the RGU, the proposer of the project or other
24 interested persons, that the EQB will determine the adequacy.
25 The EQB shall notify the RGU no later than 60 days following
26 publication of the preparation notice in the EQB Monitor. The
27 EQB shall intervene only if the EQB determines that:

- 28 a. The RGU is or will be unable to provide an
29 objective appraisal of the potential impacts of the project;
- 30 b. The project involves complex issues which the RGU
31 lacks the technical ability to assess; or
- 32 c. The project has multi-jurisdictional effects.

33 2. Interested persons may submit written comments on the
34 adequacy of the final EIS to the RGU or the EQB, if applicable,
35 at any time prior to the final determination of adequacy.

36 3. The determination of adequacy of the final EIS shall

1 be made at least ten days after publication in the EQB Monitor
2 of the notice of availability of the final EIS.

3 4. The determination of adequacy of the final EIS shall
4 be made within 280 days after the preparation notice was
5 published in the EQB Monitor unless the time is extended by
6 consent of the ~~parties~~ proposer and the RGU or by the Governor
7 for good cause.

8 5. The final EIS shall be determined adequate if it:

9 a. Addresses the issues raised in scoping so that all
10 ~~questions~~ issues for which information can be reasonably
11 obtained have been ~~answered~~ analyzed;

12 b. Provides responses to the substantive comments
13 received during the draft EIS review concerning issues raised in
14 scoping; and

15 c. Was prepared in ~~substantial~~ compliance with the
16 procedures of the act and 6 MCAR S ~~3-001-3-036~~ SS 3.021-3.056.

17 6. If the RGU or the EQB determine that the EIS is
18 inadequate, the RGU shall have 60 days in which to prepare an
19 adequate EIS. The revised EIS shall be circulated in accord
20 with F.3.

21 7. The RGU shall notify all persons receiving copies of
22 the final EIS pursuant to F.3. of its adequacy decision within
23 five days of the adequacy decision. Public notice of the
24 decision shall be published in the EQB Monitor.

25 H. Permit decisions in cases requiring an EIS.

26 1. Within 90 days after the determination of adequacy of
27 a final EIS, final decisions shall be made by the appropriate
28 governmental units on those permits which were identified as
29 required in the scoping process and for which information was
30 developed concurrently with the preparation of the EIS. The
31 90-day period may be extended with the consent of the permit
32 applicant or where a longer period is required by federal law or
33 state statute.

34 2. At the time of its permit decision, for those permits
35 which were identified during the scoping process as requiring a
36 record of decision, each permitting unit of government shall

1 prepare a concise public record of how it considered the EIS in
 2 its decision. That record shall be supplied to the EQB for the
 3 purpose of monitoring the effectiveness of the process created
 4 by 6 MCAR S ~~3-001-3-036~~ SS 3.021-3.056 and to any other person
 5 requesting the information. The record may be integrated into
 6 any other record prepared by the permitting unit of government.

7 3. The RGU or other governmental unit shall, upon
 8 request, inform commenting governmental units and interested
 9 parties on the progress in carrying out mitigation measures
 10 which the commenting governmental units have proposed and which
 11 were adopted by the RGU making the decision.

12 I. Supplemental EIS.

13 1. A RGU shall prepare a supplement to a final EIS
 14 whenever the RGU determines that:

15 a. Substantial changes have been made in the proposed
 16 ~~action~~ project that affect the potential significant adverse
 17 environmental effects of the ~~action~~ project; or

18 b. There is substantial new information or new
 19 circumstances that significantly affect the potential
 20 environmental effects from the proposed ~~action~~ project which
 21 have not been considered in the final EIS or that significantly
 22 affect the availability of prudent and feasible alternatives
 23 with lesser environmental effects.

24 2. A supplement to an existing EIS shall be utilized in
 25 lieu of a new EIS for expansions of existing projects for which
 26 an EIS has been prepared if the RGU determines that a supplement
 27 can adequately address the environmental impacts of the project.

28 3. A RGU shall prepare, circulate, and file a
 29 supplemental EIS in the same manner as a draft and final EIS
 30 unless alternative procedures are approved by the EQB.

31 4. The determination of adequacy of the supplemental EIS
 32 shall be made within 120 days after the notice of preparation of
 33 the supplemental EIS was published in the EQB Monitor unless the
 34 time is extended by consent of the proposer and the RGU or by
 35 the Governor for good cause.

36 6 MCAR S ~~3-012~~ 3.032 Prohibition on final ~~actions~~ and

1 governmental decisions.

2 A. EAW filed or required. On any ~~action~~ project for which a
 3 petition for an EAW is filed or an EAW is required or ordered
 4 under 6 MCAR SS ~~3-001-3-036~~ 3.021-3.056, no final governmental
 5 decision to grant ~~or deny~~ a permit or other approval required,
 6 or to commence the ~~action~~ project shall be made until either a
 7 petition has been dismissed, a negative declaration has been
 8 issued, or a determination of adequacy of the EIS has been made.

9 B. EIS adequate or filed. Except for projects under D. or
 10 E., for any ~~action~~ project for which an EIS is required, no
 11 final governmental decision to grant ~~or deny~~ a permit or other
 12 approval required, or to commence the ~~action~~ project shall be
 13 made until the RGU or the EQB has determined the final EIS is
 14 adequate. Where public hearings are required by law to precede
 15 issuance of a permit, public hearings shall not be held until
 16 after filing of a draft EIS.

17 C. Construction prohibited, exceptions. No physical
 18 construction of a project shall occur for any project subject to
 19 review under 6 MCAR SS ~~3-001-3-036~~ 3.021-3.056 until a petition
 20 has been dismissed, a negative declaration has been issued, or
 21 until the final EIS has been determined adequate by the RGU or
 22 the EQB, unless the ~~action~~ project is an emergency under E. or a
 23 variance is granted under D. The EQB's statutory authority to
 24 halt ~~actions~~ projects or impose other temporary relief is in no
 25 way limited by this paragraph.

26 D. Variance. Construction may begin on an ~~activity~~ a
 27 project if the proposer applies for and is granted a variance
 28 from C. A variance for certain governmental approvals to be
 29 granted prior to completion of the environmental review process
 30 may also be requested.

31 1. A variance may be requested at any time after the
 32 commencement of the 30-day review period following the filing of
 33 an EAW.

34 2. The proposer shall submit an application for a
 35 variance to the EQB together with:

36 a. A detailed explanation of the construction proposed

1 to be undertaken or the governmental approvals to be granted;

2 b. The anticipated environmental effects of
3 undertaking the proposed construction or granting the
4 governmental approvals;

5 c. The reversibility of the anticipated environmental
6 effects;

7 d. The reasons necessitating the variance; and

8 e. A statement describing how approval would affect
9 subsequent approvals needed for the ~~action~~ project and how
10 approval would affect the purpose of environmental review.

11 3. The EQB chairperson shall publish a notice of the
12 variance application in the EQB Monitor within 15 days after
13 receipt of the application.

14 4. The EQB chairperson shall issue a press release to at
15 least one newspaper of general circulation in the area where the
16 ~~action~~ project is proposed. The notice and press release shall
17 summarize the reasons given for the variance application and
18 specify that comments on whether a variance should be granted
19 must be submitted to the EQB within 20 days after the date of
20 publication in the EQB Monitor.

21 5. At its first meeting more than ten days after the
22 comment period expires, the EQB shall grant or deny the
23 variance. A variance shall be granted if:

24 a. The RGU consents to a variance; and

25 b. On the basis of the variance application and the
26 comments, construction is necessary in order to avoid excessive
27 and unusual economic hardship, or avoid a serious threat to
28 public health or safety. Unusual economic hardship means that
29 the hardship is caused by unique conditions and circumstances
30 which are peculiar to the project and are not characteristic of
31 other similar projects or general economic conditions of the
32 area or state and that the hardship is not caused by the
33 proposer's own action or inaction.

34 6. The EQB shall set forth in writing its reasons for
35 granting or denying each request for a variance.

36 7. Only the construction or governmental approvals

1 necessary to avoid the consequences listed in 5. shall be
2 undertaken or granted.

3 E. Emergency action. In the rare situation when immediate
4 action by a governmental unit or person is essential to avoid or
5 eliminate an imminent threat to the public health or safety or a
6 serious threat to natural resources, a proposed ~~action~~ project
7 may be undertaken without the environmental review which would
8 otherwise be required by ~~6 MCAR SS 3-001-3-036~~ 3.021-3.056. The
9 governmental unit or person must demonstrate to the EQB
10 chairperson, either orally or in writing, that immediate action
11 is essential and must receive authorization from the EQB
12 chairperson to proceed. Authorization to proceed shall be
13 limited to those ~~actions~~ aspects of the project necessary to
14 control the immediate impacts of the emergency. Other ~~actions~~
15 aspects of the project remain subject to review under 6 MCAR SS
16 ~~3-001-3-036~~ 3.021-3.056.

17 6 MCAR S ~~3-013~~ 3.033 Review of state ~~actions~~ or projects.

18 A. Applicability. This rule applies to any project wholly
19 or partially conducted by a state agency if an EIS or a generic
20 EIS has been prepared for that project.

21 B. Prior notice required. At least seven working days prior
22 to the final decision of any state agency concerning an ~~action~~
23 project subject to this rule, that agency shall provide the EQB
24 with notice of its intent to issue a decision. The notice shall
25 include a brief description of the ~~action~~ project, the date the
26 final decision is expected to be issued, the title and date of
27 ~~EIS~~ EISs prepared on the ~~agency~~ ~~action~~ project and the name,
28 address and phone number of the project proposer and parties to
29 any proceeding on the ~~action~~ project. If the ~~action~~ project is
30 required by the existence of a public emergency advance notice
31 shall not be required. If advance notice is precluded by public
32 emergency or statute notice shall be given at the earliest
33 possible time but not later than three calendar days after the
34 final decision is rendered.

35 C. Decision to delay implementation. At any time prior to
36 or within ten days after the issuance of the final decision on

1 ~~an action~~ a project, the chairperson of the EQB may delay
 2 implementation of the ~~action~~ project by notice to the agency,
 3 the project proposer and interested parties as identified by the
 4 governmental unit. Notice may be verbal, however, written
 5 notice shall be provided as soon as reasonably possible. The
 6 chairperson's decision to delay implementation shall be
 7 effective for no more than ten days by which time the EQB must
 8 affirm or overturn the decision.

9 D. Basis for decision to delay implementation. The EQB, or
 10 the chairperson of the EQB, shall delay implementation of an
 11 ~~action~~ a project where there is substantial reason to believe
 12 that the ~~action~~ project or its approval is inconsistent with the
 13 policies and standards of Minn. Stat. SS 116D.01-116D.06.

14 E. Notice and hearing. Promptly upon issuance of a decision
 15 to delay implementation of an ~~action~~ a project, the EQB shall
 16 order a hearing. When the hearing will determine the rights of
 17 any private individual, the hearing shall be conducted pursuant
 18 to Minn. Stat. S 15.0418. In all other cases, the hearing shall
 19 be conducted as follows:

20 1. Written notice of the hearing shall be given to the
 21 governmental unit, the proposer, and parties, as identified by
 22 the governmental unit, no less than seven days in advance. To
 23 the extent reasonably possible, notice shall be published in the
 24 EQB Monitor and a newspaper of general circulation in each
 25 county in which the ~~action~~ project is to take place. The notice
 26 shall identify the time and place of the hearing, and provide a
 27 brief description of the ~~action~~ project and final decision to be
 28 reviewed and a reference to the EQB's authority to conduct the
 29 hearing. The hearing ~~may~~ shall be conducted by the EQB
 30 chairperson or a designee;

31 2. Any person may submit written or oral evidence tending
 32 to establish the consistency or inconsistency of the ~~action~~
 33 project with the policies and standards of Minn. Stat. SS
 34 116D.01-116D.06. Evidence shall also be taken of the
 35 governmental unit's final decision; and

36 3. Upon completion of the hearing, the EQB shall

1 determine whether to affirm, reverse, or modify the governmental
 2 unit's decision. If modification is required, the EQB shall
 3 specifically state those modifications. The EQB shall prepare
 4 specific findings of fact regarding its decision. If the EQB
 5 fails to act within 45 days of notice given pursuant to C. the
 6 agency's decision shall stand as originally issued.

7 Chapter Fourteen:

8 Substitute Forms of ~~Environmental~~ Environmental Review

9 6 MCAR S ~~3-014~~ 3.034 Alternative review.

10 A. Implementation. The EQB Governmental units may approve
 11 the use request EQB approval of an alternative form of
 12 environmental review for categories of projects which undergo
 13 environmental review under other governmental processes. The
 14 governmental processes must address substantially the same
 15 issues as the EAW and EIS process and use procedures similar in
 16 effect to those of the EAW and EIS process. To qualify The EQB
 17 shall approve the governmental process as an alternative form of
 18 environmental review if the governmental unit shall demonstrate
 19 to the EQB that its review demonstrates the process meets the
 20 following conditions:

- 21 1. The process identifies the potential environmental
 22 impacts of each proposed action project;
- 23 2. The process addresses substantially the same issues as
 24 an EIS and uses procedures similar to those used in preparing an
 25 EIS but in a more timely or more efficient manner;
- 26 3. Alternatives to the proposed action project are
 27 considered in light of their potential environmental impacts;
- 28 4. Measures to mitigate the potential environmental
 29 impacts are identified and discussed;
- 30 5. A description of the proposed action project and
 31 analysis of potential impacts, alternatives and mitigating
 32 measures are provided to other affected or interested
 33 governmental units and the general public;
- 34 6. The governmental unit shall provide notice of the
 35 availability of environmental documents to the general public in
 36 at least the area affected by the action project. A copy of

1 environmental documents on ~~actions~~ projects reviewed under an
 2 alternative review procedure shall be submitted to the EQB. The
 3 EQB shall be responsible for publishing notice of the
 4 availability of the documents in the EQB Monitor;

5 7. Other governmental units and the public are provided
 6 with a reasonable opportunity to request environmental review
 7 and to review and comment on the information concerning the
 8 ~~action~~ project. The process must provide for RGU response to
 9 timely substantive comments relating to issues discussed in
 10 environmental documents relating to the project; and

11 8. The process must routinely develop the information
 12 required in 1.-5. and provide the notification and review
 13 opportunities in 6. and 7. for each ~~action~~ project that would be
 14 subject to environmental review.

15 B. Exemption from rules. If the EQB accepts a governmental
 16 unit's process as an adequate alternative review procedure,
 17 ~~actions~~ projects reviewed under that alternative review
 18 procedure shall be exempt from environmental review under 6 MCAR
 19 SS ~~3-006, 3-007, 3-008, 3-010 and 3-011~~ 3.026, 3.027, 3.028,
 20 3.030 and 3.031. On approval of the alternative review process,
 21 the EQB shall provide for periodic review of the alternative
 22 procedure to ensure continuing compliance with the requirements
 23 and intent of these environmental review procedures. The EQB
 24 shall withdraw its approval of an alternative review procedure
 25 if review of the procedure indicates that the procedure no
 26 longer fulfills the intent and requirements of the Minnesota
 27 Environmental Policy Act and 6 MCAR SS ~~3-001-3-036~~ 3.021-3.056.
 28 A project in the process of undergoing review under an approved
 29 alternative process shall not be affected by the EQB's
 30 withdrawal of approval.

31 6 MCAR S ~~3-015~~ 3.035 Model ordinance.

32 A. Application. The model ordinance, set out in C. may be
 33 utilized by any local governmental unit which adopts the
 34 ordinance in lieu of 6 MCAR SS ~~3-005-3-012~~ 3.025-3.032 for
 35 projects which qualify for review under the ordinance.

36 B. Approval Notice.

1 1- If a local governmental unit adopts the ordinance
 2 exactly as set out in C. it shall be effective without prior
 3 approval by the EQB. A copy of the adopted ordinance shall be
 4 forwarded to the EQB. Notice of adoption of the ordinance shall
 5 be made in the EQB Monitor.

6 2- If a local governmental unit adopts an environmental
 7 review ordinance which differs from the ordinance set out in C.
 8 the EQB must determine whether the ordinance provides for the
 9 consideration of appropriate alternatives and ensures that
 10 decisions are made in accord with the policies and purposes of
 11 the Minnesota Environmental Policy Act. If the EQB determines
 12 the proposed ordinance meets these requirements, the EQB shall
 13 approve the ordinance for adoption and shall periodically review
 14 its implementation.

15 3- Notice of adoption of the model ordinance pursuant to
 16 1- and 2- shall be made in the EQB Monitor.

17 4- If the EQB determines that the proposed local
 18 ordinance does not meet its requirements, the local governmental
 19 unit shall be notified of the reasons for this decision in
 20 writing within 30 days.

21 C. Model ordinance.

22 AN ORDINANCE RELATING TO THE PREPARATION AND
 23 REVIEW OF ENVIRONMENTAL ANALYSIS

24 The (county board) (town board) (city council) (watershed
 25 board) of ordains:

26 Section 1. Application. This ordinance shall apply to all
 27 actions projects which:

- 28 a. Are consistent with any applicable comprehensive plan;
- 29 b. Do not require a state permit; and

30 c. The (board) (council) determines that, because of the
 31 nature or location of the action project, the action project may
 32 have the potential for significant adverse environmental
 33 effects; or

34 d. Are listed in a mandatory EAW or EIS category of the
 35 state environmental review program, 6 MCAR SS 3-018 3.038 and
 36 3-019 3.039, one copy of which is on file with the (county

1 auditor) (town clerk) (city clerk) (watershed district board of
2 managers).

3 This ordinance shall not apply to ~~actions~~ projects which are
4 exempted from environmental review by ~~6 MCAR S 3-021~~ 3.041 or to
5 projects which the (board) (council) determines are so complex
6 or have potential environmental effects which are so significant
7 that review should be completed under the state environmental
8 review program, ~~6 MCAR SS 3-001-3-036~~ 3.021-3.056.

9 Section 2. Preparation. Prior to or together with any
10 application for a permit or other form of approval for an
11 ~~activity~~ a project, the proposer of the ~~action~~ project shall
12 prepare an analysis of the ~~action's~~ project's environmental
13 effects, reasonable alternatives to the project and measures for
14 mitigating the adverse environmental effects. The analysis
15 should not exceed 25 pages in length. The (board) (council)
16 shall review the information in the analysis and determine the
17 adequacy of the document. The (board) (council) shall use the
18 standards of the state's environmental review program rules in
19 its determination of adequacy. If the (board) (council)
20 determines the document is inadequate, it shall return the
21 document to the proposer to correct the inadequacies.

22 Section 3. Review. Upon filing the analysis with the
23 (board) (council), the (board) (council) shall publish notice in
24 a newspaper of general circulation in the (county) (city) (town)
25 (district) that the analysis is available for review. A copy of
26 the analysis shall be provided to any person upon request. A
27 copy of the analysis shall also be provided to every local
28 governmental unit within which the proposed project would be
29 located and to the EQB. The EQB shall publish notice of the
30 availability of the analysis in the EQB Monitor.

31 Comments on the analysis shall be submitted to the (board)
32 (council) within 30 days following the publication of the notice
33 of availability in the EQB Monitor. The (board) (council) may
34 hold a public meeting to receive comments on the analysis if it
35 determines that a meeting is necessary or useful. The meeting
36 may be combined with any other meeting or hearing for a permit

1 or other approval for the activity project. Public notice of
 2 the meeting to receive comments on the analysis shall be
 3 provided at least ten days before the meeting.

4 Section 4. Decision. In issuing any permits or granting any
 5 other required approvals for an activity a project subject to
 6 review under this ordinance, the (board) (council) shall
 7 consider the analysis and the comments received on it. The
 8 (board) (council) shall, whenever practicable and consistent
 9 with other laws, require that mitigation measures identified in
 10 the analysis be incorporated in the project's design and
 11 construction.

12 6 MCAR S 3-016 3.036 Generic EIS. A generic EIS may be ordered
 13 by the EQB to study types of actions projects that are not
 14 adequately reviewed on a case-by-case basis.

15 A. Criteria. A generic EIS may be ordered for any type of
 16 action for which one or more of the following criteria applies:

17 1. Basic research is needed to understand the impacts of
 18 the action;

19 2. Decision makers or the public have need to be informed
 20 of the potential impacts of the action;

21 3. Information to be presented in the generic EIS is
 22 needed for governmental or public planning;

23 4. The cumulative impacts of the action may have the
 24 potential for significant adverse environmental effects;

25 5. The regional or statewide significance of the impacts
 26 cannot be adequately addressed on a project-by-project basis; or

27 6. Governmental policies are involved that will result in
 28 a series of actions that will cause physical manipulation of the
 29 environment and may have the potential for significant adverse
 30 environmental effects.

31 B. A. EQB as RGU. If the EQB orders a generic EIS, the EQB
 32 shall be the RGU for the generic EIS.

33 C. B. Public requests for generic EIS. A governmental unit
 34 or any other person may request the EQB to order a generic EIS.

35 D. C. Timing. Time deadlines for the preparation of a
 36 generic EIS shall be set at the scoping meeting.

1 E- Application of D. Criteria. In determining the need for
2 a generic EIS, the EQB shall consider:

3 1. If the review of a type of action can be better
4 accomplished by a generic EIS than by project specific review;

5 2. If the possible effects on the human environment from
6 a type of action are highly uncertain or involve unique or
7 unknown risks; and

8 3. If a generic EIS can be used for tiering in a
9 subsequent project specific EIS;

10 4. The amount of basic research needed to understand the
11 impacts of such projects;

12 5. The degree to which decision makers or the public have
13 a need to be informed of the potential impacts of such projects;

14 6. The degree to which information to be presented in the
15 generic EIS is needed for governmental or public planning;

16 7. The potential for significant environmental effects as
17 a result of the cumulative impacts of such projects;

18 8. The regional and statewide significance of the impacts
19 and the degree to which they can be addressed on a
20 project-by-project basis; and

21 9. The degree to which governmental policies affect the
22 number or location of such projects or the potential for
23 significant environmental effects.

24 F- E. Scoping. The generic EIS shall be scoped. Scoping
25 shall be coordinated by the RGU and shall identify the issues
26 and geographic areas to be addressed in the generic EIS.
27 Scoping procedures shall follow the procedures in 6 MCAR S 3-010
28 3.030 except for the identification of permits for which
29 information is to be gathered concurrently with the EIS
30 preparation, the preparation and circulation of the EAW, and the
31 time requirements.

32 G- F. Content. In addition to any issues that may be
33 addressed in content requirements specified by the scoping
34 process, the generic EIS shall contain the following:

35 1. Any new data that has been gathered or the results of
36 any new research that has been undertaken as part of the generic

1 EIS preparation;

2 2. A description of the possible impacts and likelihood
3 of occurrence, the extent of current use, and the possibility of
4 future development for the type of action; and

5 3. Alternatives including recommendations for geographic
6 placement of the type of action to reduce environmental harm,
7 different methods for construction and operation, and different
8 types of actions that could produce the same or similar results
9 as the subject type of action but in a less environmentally
10 harmful manner.

11 H. G. Relationship to project specific review. Preparation
12 of a generic EIS does not exempt specific activities from
13 project specific environmental review. Project specific
14 environmental review shall use information in the generic EIS by
15 tiering and shall reflect the recommendations contained in the
16 generic EIS if the EQB determines that the generic EIS remains
17 adequate at the time the specific project is subject to review.

18 I. H. Relationship to projects. The fact that a generic EIS
19 is being prepared shall not preclude the undertaking and
20 completion of a specific project whose impacts are considered in
21 the generic EIS.

22 6 MCAR S 3-017 3.037 Joint federal and state EIS
23 environmental documents.

24 A. Cooperative processes. Governmental units shall
25 cooperate with federal agencies to the fullest extent possible
26 to reduce duplication between Minn. Stat. ch. 116D and the
27 National Environmental Policy Act, 42 USC title 42, sections
28 4321-4361 (1976).

29 B. Joint responsibility. Where a joint federal and state
30 EIS environmental document is prepared, the RGU and one or more
31 federal agencies shall be jointly responsible for preparing the
32 EIS its preparation. Where federal laws have EIS environmental
33 document requirements in addition to but not in conflict with
34 those in Minn. Stat. S 116D.04, governmental units shall
35 cooperate in fulfilling these requirements as well as those of
36 state laws so that one document can comply with all applicable

1 laws.

2 C. Federal EIS as draft EIS. If a federal EIS will be or
3 has been prepared for an ~~action~~ a project, the RGU shall utilize
4 the draft or final federal EIS as the draft state EIS for the
5 ~~action~~ project if the federal EIS addresses the scoped issues
6 and satisfies the standards set forth in 6 MCAR S ~~3-008~~ 3.028 B.

7 Chapter Fifteen:

8 Mandatory Categories

9 6 MCAR S ~~3-018~~ 3.038 Mandatory EAW categories. An EAW must be
10 prepared for ~~activities~~ projects that meet or exceed the
11 threshold of any of A.-DD.

12 A. Nuclear fuels and nuclear waste.

13 1. Construction or expansion of a facility for the
14 storage of high level nuclear waste. The EQB shall be the RGU.

15 2. Construction or expansion of a facility for the
16 storage of low level nuclear waste for one year or longer. The
17 ~~MHD~~ MDH shall be the RGU.

18 3. Expansion of a high level nuclear waste disposal
19 site. The EQB shall be the RGU.

20 4. Expansion of a low level nuclear waste disposal site.
21 The ~~MHD~~ MDH shall be the RGU.

22 5. Expansion of an away-from-reactor facility for
23 temporary storage of spent nuclear fuel. The EQB shall be the
24 RGU.

25 6. Construction or expansion of an on-site pool for
26 temporary storage of spent nuclear fuel. The EQB shall be the
27 RGU.

28 B. Electric generating facilities. Construction of an
29 electric power generating plant and associated facilities
30 designed for or capable of operating at a capacity of 25
31 megawatts or more. The EQB shall be the RGU.

32 C. Petroleum refineries. Expansion of an existing petroleum
33 refinery facility which increases its capacity by 10,000 or more
34 barrels per day. The PCA shall be the RGU.

35 D. Fuel conversion facilities.

36 1. Construction of a facility for the conversion of coal,

1 peat, or biomass sources to gaseous, liquid, or solid fuels if
 2 that facility has the capacity to utilize 25,000 dry tons or
 3 more per year of input. The PCA shall be the RGU.

4 2. Construction or expansion of a facility for the
 5 production of alcohol fuels which would have or would increase
 6 its capacity by 5,000,000 or more gallons per year of alcohol
 7 produced. The PCA shall be the RGU.

8 E. Transmission lines. Construction of a transmission line
 9 at a new location with a nominal capacity of 70 kilovolts or
 10 more with 20 or more miles of its length in Minnesota. The EQB
 11 shall be the RGU.

12 F. Pipelines.

13 1. Construction of a pipeline, greater than six inches in
 14 diameter and having more than 50 miles of its length in
 15 Minnesota, used for the transportation of coal, crude petroleum
 16 fuels, or oil or their derivatives. The EQB shall be the RGU.

17 2. Construction of a pipeline for transportation of
 18 natural or synthetic gas at pressures in excess of 200 pounds
 19 per square inch with 50 miles or more of its length in
 20 Minnesota. The EQB shall be the RGU.

21 G. Transfer facilities.

22 1. Construction of a facility designed for or capable of
 23 transferring 300 tons or more of coal per hour or with an annual
 24 throughput of 500,000 tons of coal from one mode of
 25 transportation to a similar or different mode of transportation;
 26 or the expansion of an existing facility by these respective
 27 amounts. The PCA shall be the RGU.

28 2. Construction of a new facility or the expansion by 50
 29 percent or more of an existing facility for the bulk transfer of
 30 hazardous materials with the capacity of 10,000 or more gallons
 31 per transfer, if the facility is located in a shoreland area,
 32 delineated flood plain, or a state or federally designated wild
 33 and scenic rivers district Minnesota River Project Riverbend
 34 area, or the Mississippi headwaters area. The PCA shall be the
 35 RGU.

36 H. Underground storage.

1 1. Expansion of an underground storage facility for gases
2 or liquids that requires a permit, pursuant to Minn. Stat. S
3 84.57. The DNR shall be the RGU.

4 2. Expansion of an underground storage facility for gases
5 or liquids, using naturally occurring rock materials, that
6 requires a permit pursuant to Minn. Stat. S 84.621. The DNR
7 shall be the RGU.

8 I. Storage facilities.

9 1. Construction of a facility designed for or capable of
10 storing more than 7,500 tons of coal or with an annual
11 throughput of more than 125,000 tons of coal; or the expansion
12 of an existing facility by these respective amounts. The PCA
13 shall be the RGU.

14 2. Construction of a facility on a single site designed
15 for or capable of storing 1,000,000 gallons or more of hazardous
16 materials. The PCA shall be the RGU.

17 3. Construction of a facility designed for or capable of
18 storing on a single site 100,000 gallons or more of liquified
19 natural gas or synthetic gas. The PCA shall be the RGU.

20 J. Metallic mineral mining and processing.

21 1. Mineral deposit evaluation of metallic mineral
22 deposits other than natural iron ore and taconite. The DNR
23 shall be the RGU.

24 2. Expansion of a stockpile, tailings basin, or mine by
25 320 or more acres. The DNR shall be the RGU.

26 3. Expansion of a metallic mineral plant processing
27 facility that is capable of increasing production by 25 percent
28 per year or more, provided that increase is in excess of
29 1,000,000 tons per year in the case of facilities for processing
30 natural iron ore or taconite. The DNR shall be the RGU.

31 K. Nonmetallic mineral mining.

32 1. Development of a facility for the extraction or mining
33 of peat which will result in the excavation of 160 or more acres
34 of land during its existence. The DNR shall be the RGU.

35 2. Development of a facility for the extraction or mining
36 of sand, gravel, stone, or other nonmetallic minerals, other

1 than peat, which will excavate 40 or more acres of land to a
2 mean depth of ten feet or more during its existence. The local
3 government unit shall be the RGU.

4 L. Paper or pulp processing mills. Expansion of an existing
5 paper or pulp processing facility that will increase its
6 production capacity by 50 percent or more. The PCA shall be the
7 RGU.

8 M. Industrial, commercial and institutional facilities.

9 1. Construction of a new or expansion of an existing
10 industrial, commercial, or institutional facility equal to or in
11 excess of the following thresholds, expressed as gross floor
12 space:

- 13 a. Unincorporated area - 100,000 square feet
- 14 b. Third or fourth class city - 200,000 square feet
- 15 c. Second class city - 300,000 square feet
- 16 d. First class city - 400,000 square feet

17 The local government unit shall be the RGU.

18 2. Construction of a new or expansion of an existing
19 industrial, commercial, or institutional facility of 20,000 or
20 more square feet of ground area, if the local governmental unit
21 has not adopted approved shoreland, flood plain, or wild and
22 scenic rivers land use district ordinances, the Mississippi
23 headwaters plan or the Project Riverbend plan, as applicable,
24 and either:

- 25 a. The activity project involves riparian frontage; or
- 26 b. Twenty thousand or more square feet of ground area
27 to be developed is within a shoreland area, delineated flood
28 plain, or state or federally designated wild and scenic rivers
29 district, Minnesota River Project Riverbend area, or the
30 Mississippi headwaters area. The local government unit shall be
31 the RGU.

32 N. Air pollution.

33 1. Construction of a stationary source facility that
34 generates 100 tons or more per year of any single air pollutant
35 after installation of air pollution control equipment. The PCA
36 shall be the RGU.

1 2. Construction of a new parking facility for 1,000 or
2 more vehicles. The PCA shall be the RGU.

3 O. Hazardous waste.

4 1. Construction or expansion of a hazardous waste
5 disposal facility. The PCA shall be the RGU.

6 2. Construction of a hazardous waste processing facility
7 which sells processing services to generators, other than the
8 owner and operator of the facility, of 1,000 or more kilograms
9 per month capacity, or expansion of the facility by 1,000 or
10 more kilograms per month capacity. The PCA shall be the RGU.

11 3. Construction of a hazardous waste processing facility
12 of 1,000 or more kilograms per month capacity or expansion of a
13 facility by 1,000 or more kilograms per month capacity if the
14 facility is located in a shoreland area, delineated flood plain,
15 state or federally designated wild and scenic rivers district,
16 the Minnesota River Project Riverbend area, the Mississippi
17 ~~headwaters area, or in an area characterized by soluble~~
18 bedrock. The PCA shall be the RGU.

19 4. Construction or expansion of a facility ~~for the~~
20 ~~storage of hazardous waste of 5,000 or more gallons capacity or~~
21 ~~expansion of a facility by 5,000 gallons or more capacity which~~
22 ~~sells hazardous waste storage services to generators other than~~
23 ~~the owner and operator of the facility or construction of a~~
24 ~~facility at which a generator's own hazardous wastes will be~~
25 ~~stored for a time period in excess of 90 days, if the facility~~
26 is located in a shoreland area, delineated flood plain, state or
27 federally designated wild and scenic rivers district, the
28 Minnesota River Project Riverbend area, Mississippi headwaters
29 ~~area, or in an area characterized by soluble bedrock. The PCA~~
30 shall be the RGU.

31 P. Solid waste.

32 1. Construction of a mixed municipal solid waste disposal
33 facility for up to 100,000 cubic yards of waste fill per year.
34 The PCA or metropolitan council shall be the RGU.

35 2. Expansion by 25 percent or more of previous capacity
36 of a mixed municipal solid waste disposal facility for up to

1 100,000 cubic yards of waste fill per year. The PCA or
2 metropolitan council shall be the RGU.

3 3. Construction or expansion of a mixed municipal solid
4 waste transfer station for 300,000 or more cubic yards per
5 year. The PCA or metropolitan council shall be the RGU.

6 4. Construction or expansion of a mixed municipal solid
7 waste resource recovery facility for 100 or more tons per day of
8 input. The PCA or metropolitan council shall be the RGU.

9 5. Expansion by at least ten percent but less than 25
10 percent of previous capacity of a mixed municipal solid waste
11 disposal facility for 100,000 cubic yards or more of waste per
12 year. The PCA or metropolitan council shall be the RGU.

13 Q. Sewage systems.

14 1. Construction of a new municipal or domestic wastewater
15 treatment facility or sewer system with a capacity of 30,000
16 gallons per day or more. The PCA shall be the RGU.

17 2. Expansion of an existing municipal or domestic
18 wastewater treatment facility or sewer system by an increase in
19 capacity of 50 percent or more over existing capacity or by
20 50,000 gallons per day or more. The PCA shall be the RGU.

21 R. Residential development.

22 1. Construction of a permanent or potentially permanent
23 residential development of:

24 a. Fifty or more unattached or 75 or more attached
25 units in an unsewered area;

26 b. One hundred or more unattached or 150 or more
27 attached units in a third or fourth class city or sewerd
28 unincorporated area;

29 c. One hundred and fifty or more unattached or 225 or
30 more attached units in a second class city; or

31 d. Two hundred or more unattached or 300 or more
32 attached units in a first class city.

33 The local government unit shall be the RGU.

34 2. Construction of a permanent or potentially permanent
35 residential development of 20 or more unattached units or of 30
36 or more attached units, if the local governmental unit has not

1 adopted state approved shoreland, flood plain, or wild and
2 scenic rivers land use district ordinances, the Mississippi
3 headwaters plan, or the Project Riverbend plan, as applicable,
4 and either:

- 5 a. The activity project involves riparian frontage; or
- 6 b. Five or more acres of the development is within a
7 shoreland, delineated flood plain, or state or federally
8 designated wild and scenic rivers district, the Minnesota River
9 Project Riverbend area, or the Mississippi headwaters area.

10 The local government unit shall be the RGU.

11 S. Recreational development. Construction of a seasonal or
12 permanent recreational development, accessible by vehicle,
13 consisting of 50 or more sites. The local government unit shall
14 be the RGU.

15 T. Airport projects. Construction of a runway extension
16 that would upgrade an existing airport runway to permit usage by
17 aircraft over 12,500 pounds that are at least three decibels
18 louder than aircraft currently using the runway. The DOT or
19 local government unit shall be the RGU.

20 U. Highway projects.

21 1. Construction of a road on a new location over one mile
22 in length that will function as a collector roadway. The DOT or
23 local government unit shall be the RGU.

24 2. Construction of additional travel lanes on an existing
25 road for a length of one or more miles. The DOT or local
26 government unit shall be the RGU.

27 3. The addition of one or more new interchanges to a
28 completed limited access highway. The DOT or local government
29 unit shall be the RGU.

30 V. Barge fleetings. Construction of a new or expansion of an
31 existing barge fleetings facility. The DOT or port authority
32 shall be the RGU.

33 W. Water appropriation and impoundments.

34 1. A new appropriation for commercial or industrial
35 purposes of either surface water or ground water averaging
36 30,000,000 gallons per month, or exceeding 2,000,000 gallons in

1 any day during the period of use; or a new appropriation of
2 either ground water or surface water for irrigation of 540 acres
3 or more in one continuous parcel from one source of water. The
4 DNR shall be the RGU.

5 2. A new or additional permanent impoundment of water
6 creating a water surface of 160 or more acres. The DNR shall be
7 the RGU.

8 3. Construction of a Class II dam. The DNR shall be the
9 RGU.

10 X. Marinas. Construction or cumulative expansion of a
11 marina or harbor project which results in a total of 20,000 or
12 more square feet of temporary or permanent water surface area
13 used for docks, docking, or maneuvering of watercraft. The
14 local government unit shall be the RGU.

15 Y. Stream diversion. The diversion or channelization of a
16 designated trout stream or a natural watercourse with a total
17 watershed of ten or more square miles, unless exempted by 6 MCAR
18 S 3-021 3.041 P. or 6 MCAR S 3.041 M. 5. The local government
19 unit shall be the RGU.

20 Z. Wetlands and protected waters.

21 1. Actions Projects that will change or diminish the
22 course, current, or cross section of one acre or more of any
23 protected water or protected wetland except for those to be
24 drained without a permit pursuant to Minn. Stat. S 105.391,
25 subd. 3. The local government unit shall be the RGU.

26 2. Actions Projects that will change or diminish the
27 course, current, or cross section of 40 percent or more or five
28 or more acres of a Type 3 through 8 wetland of 2.5 acres or
29 more, excluding protected wetlands, if any part of the wetland
30 is within a shoreland area, delineated flood plain or, a state
31 or federally designated wild and scenic rivers district, the
32 Minnesota River Project Riverbend area, or the Mississippi
33 headwaters area. The local government unit shall be the RGU.

34 AA. Agriculture and forestry.

35 1. Harvesting of timber for commercial purposes on public
36 lands within a state park, historical area, wilderness area,

1 scientific and natural area, wild and scenic rivers district,
 2 the Minnesota River Project Riverbend area, the Mississippi
 3 headwaters area, or critical area that does not have an approved
 4 plan under Minn. Stat. S 86A.09 or 116G.07. The DNR shall be
 5 the RGU.

6 2. A clearcutting of 80 or more contiguous acres of
 7 forest, any part of which is located within a shoreland area and
 8 within 100 feet of the ordinary high water mark of the lake or
 9 river. The DNR shall be the RGU.

10 3. ~~Actions~~ Projects resulting in the conversion of 640 or
 11 more acres of forest or naturally vegetated land to a differing
 12 open space land use. The local government unit shall be the RGU.

13 4. ~~Actions~~ Projects resulting in the permanent conversion
 14 of 80 or more acres of agricultural, forest, or naturally
 15 vegetated land to a more intensive, developed land use. The
 16 local government unit shall be the RGU.

17 BB. Animal feedlots. The construction of an animal feedlot
 18 facility with a capacity of 1,000 animal units or more or the
 19 expansion of an existing facility by 1,000 animal units or
 20 more. The PCA shall be the RGU if the feedlot is in a
 21 shoreland, delineated flood plain or Karst area; otherwise the
 22 local unit of government shall be the RGU.

23 CC. Natural areas. ~~Actions~~ Projects resulting in the
 24 permanent physical encroachment on lands within a national park,
 25 state park, wilderness area, state lands and waters within the
 26 boundaries of the Boundary Waters Canoe Area, scientific and
 27 natural area, or state trail corridor when the encroachment is
 28 inconsistent with laws applicable to or the management plan
 29 prepared for the recreational unit. The DNR or local government
 30 unit shall be the RGU.

31 DD. Historical places. Destruction of a property that is
 32 listed on the national register of historic places. The
 33 permitting state agency or local unit of government shall be the
 34 RGU.

35 6 MCAR S ~~3-019~~ 3.039 Mandatory EIS categories. An EIS must be
 36 prepared for ~~activities~~ projects that meet or exceed the

1 threshold of any of A.-S.

2 A. Nuclear fuels and nuclear waste.

3 1. The construction or expansion of a nuclear fuel or
4 nuclear waste processing facility, including fuel fabrication
5 -----
6 facilities, reprocessing plants, and uranium mills. The DNR for
7 uranium mills, otherwise the PCA shall be the RGU.

8 2. Construction of a high level nuclear waste disposal
9 site. The EQB shall be the RGU.

10 3. Construction of an away-from-reactor facility for
11 temporary storage of spent nuclear fuel. The EQB shall be the
12 RGU.

13 4. Construction of a low level nuclear waste disposal
14 site. The ~~MHD~~ MDH shall be the RGU.

15 B. Electric generating facilities. Construction of a large
16 electric power generating plant pursuant to 6 MCAR S 3.035. The
17 EQB shall be the RGU.

18 C. Petroleum refineries. Construction of a new petroleum
19 refinery facility. The PCA shall be the RGU.

20 D. Fuel conversion facilities.

21 1. Construction of a facility for the conversion of coal,
22 peat, or biomass sources to gaseous, liquid or solid fuels if
23 that facility has the capacity to utilize 250,000 dry tons or
24 more per year of input. The PCA shall be the RGU.

25 2. Construction or expansion of a facility for the
26 production of alcohol fuels which would have or would increase
27 its capacity by 50,000,000 or more gallons per year of alcohol
28 produced. The PCA shall be the RGU.

29 E. Transmission lines. Construction of a high voltage
30 transmission line pursuant to 6 MCAR S 3.036. The EQB shall be
31 the RGU.

32 F. Underground storage.

33 1. Construction of an underground storage facility for
34 gases or liquids that requires a permit pursuant to Minn. Stat.
35 S 84.57. The DNR shall be the RGU.

36 2. Construction of an underground storage facility for
37 gases or liquids, using naturally occurring rock materials, that

1 requires a permit pursuant to Minn. Stat. S 84.621. The DNR
2 shall be the RGU.

3 G. Metallic mineral mining and processing.

4 1. Mineral deposit evaluation involving the extraction of
5 1,000 tons or more of material that is of interest to the
6 proposer principally due to its radioactive characteristics.
7 The DNR shall be the RGU.

8 2. Construction of a new facility for mining metallic
9 minerals or for the disposal of tailings from a metallic mineral
10 mine. The DNR shall be the RGU.

11 3. Construction of a new metallic mineral processing
12 facility. The DNR shall be the RGU.

13 H. Nonmetallic mineral mining.

14 1. Development of a facility for the extraction or mining
15 of peat which will utilize 320 acres of land or more during its
16 existence. The DNR shall be the RGU.

17 2. Development of a facility for the extraction or mining
18 of sand, gravel, stone, or other nonmetallic minerals, other
19 than peat, which will excavate 160 acres of land or more to a
20 mean depth of ten feet or more during its existence. The local
21 government unit shall be the RGU.

22 I. Paper or pulp processing. Construction of a new paper or
23 pulp processing mill. The PCA shall be the RGU.

24 J. Industrial, commercial and institutional facilities.

25 1. Construction of a new or expansion of an existing
26 industrial, commercial, or institutional facility equal to or in
27 excess of the following thresholds, expressed as gross floor
28 space:

- 29 a. Unincorporated area - 250,000 square feet;
- 30 b. Third or fourth class city - 500,000 square feet;
- 31 c. Second class city - 750,000 square feet;
- 32 d. First class city - 1,000,000 square feet.

33 The local government unit shall be the RGU.

34 2. Construction of a new or expansion of an existing
35 industrial, commercial, or institutional facility of 100,000 or
36 more square feet of ground area, if the local governmental unit

1 has not adopted state approved shoreland, flood plain, or wild
2 and scenic rivers land use district ordinances, the Mississippi
3 headwaters plan or the Project Riverbend plan, as applicable,
4 and either:

- 5 a. The activity project involves riparian frontage, or
- 6 b. One hundred thousand or more square feet of ground
- 7 area to be developed is within a shoreland area, delineated
- 8 flood plain, or state or federally designated wild and scenic
- 9 rivers district, the Minnesota River Project Riverbend area, or
- 10 the Mississippi headwaters area.

11 The local government unit shall be the RGU.

12 K. Hazardous waste.

13 1. Construction or expansion of a hazardous waste
14 disposal facility for 1,000 or more kilograms per month. The
15 PCA shall be the RGU.

16 2. The construction or expansion of a hazardous waste
17 disposal facility in a shoreland area, delineated flood plain,
18 state or federally designated wild and scenic rivers district,
19 the Minnesota River Project Riverbend area, the Mississippi
20 headwaters area, or in an area characterized by soluble
21 bedrock. The PCA shall be the RGU.

22 3. Construction or expansion of a hazardous waste
23 processing facility which sells processing services to
24 generators other than the owner and operator of the facility, if
25 the facility is located in a shoreland area, delineated flood
26 plain, state or federally designated wild and scenic rivers
27 district, the Minnesota River Project Riverbend area, the
28 Mississippi headwaters area, or in an area characterized by
29 soluble bedrock. The PCA shall be the RGU.

30 L. Solid waste.

31 1. Construction of a mixed municipal solid waste disposal
32 facility for 100,000 cubic yards or more of waste fill per
33 year. The PCA or metropolitan council shall be the RGU.

34 2. Construction or expansion of a mixed municipal solid
35 waste disposal facility in a shoreland area, delineated flood
36 plain, state or federally designated wild and scenic rivers

1 district, the Minnesota River Project Riverbend area, the
 2 -----
 3 Mississippi headwaters area, or in an area characterized by
 4 -----
 5 soluble bedrock. The PCA or metropolitan council shall be the
 6 RGU.

7 3. Construction or expansion of a mixed municipal solid
 8 waste resource recovery facility for 500 or more tons per day of
 9 input. The PCA or metropolitan council shall be the RGU.

10 4. Expansion by 25 percent or more of previous capacity
 11 of a mixed municipal solid waste disposal facility for 100,000
 12 cubic yards or more of waste fill per year. The PCA or
 13 metropolitan council shall be the RGU.

14 M. Residential development.

15 1. Construction of a permanent or potentially permanent
 16 residential development of:

17 a. One hundred or more unattached or 150 or more
 18 attached units in an unsewered area;

19 b. Four hundred or more unattached or 600 or more
 20 attached units in a third or fourth class city or sewerred
 21 unincorporated area;

22 c. Six hundred or more unattached or 900 or more
 23 attached units in a second class city; or

24 d. Eight hundred or more unattached or 1,200 or more
 25 attached units in a first class city.

26 The local government unit shall be the RGU.

27 2. Construction of a permanent or potentially permanent
 28 residential development of 40 or more unattached units or of 60
 29 or more attached units, if the local governmental unit has not
 30 adopted state approved shoreland, flood plain, or wild and
 31 scenic rivers land use district ordinances, the Mississippi
 32 -----
 33 headwaters plan, or the Project Riverbend plan as applicable,
 34 -----
 35 and either:

36 a. The activity project involves riparian frontage, or
 37 -----

38 b. Ten or more acres of the development is within a
 39 shoreland, delineated flood plain, or state or federally
 40 designated wild and scenic rivers district, the Minnesota River
 41 -----
 42 Project Riverbend area, or the Mississippi headwaters area.
 43 -----

1 The local government unit shall be the RGU.

2 N. Airport projects. Construction of a paved and lighted
3 airport runway of 5,000 feet of length or greater. The DOT or
4 local government unit shall be the RGU.

5 O. Highway projects. Construction of a road on a new
6 location which is four or more lanes in width and two or more
7 miles in length. The DOT or local government unit shall be the
8 RGU.

9 P. Barge fleeting facilities. Construction of a barge
10 fleeting facility at a new off-channel location that involves
11 the dredging of 1,000 or more cubic yards. The DOT or port
12 authority shall be the RGU.

13 Q. Water appropriation and impoundments. Construction of a
14 Class I dam. The DNR shall be the RGU.

15 R. Marinas. Construction of a new or expansion of an
16 existing marina, harbor, or mooring project on a state or
17 federally designated wild and scenic river. The local
18 government unit shall be the RGU.

19 S. Wetlands and protected waters. ~~Actions~~ Projects that
20 will eliminate a protected water or protected wetland except for
21 those to be drained without a permit pursuant to Minn. Stat. S
22 105.391, subd. 3. The local government unit shall be the RGU.

23 ~~6 MCAR S 3-020 3.040~~ Discretionary EAW. A governmental unit
24 with jurisdiction may order the preparation of an EAW for any
25 ~~activity~~ project that does not exceed the mandatory thresholds
26 designated in 6 MCAR S ~~3-018 3.038~~ or ~~3-019 3.039~~ if the
27 governmental unit determines that because of the nature or
28 location of the proposed ~~action~~ project the ~~action~~ project may
29 have the potential for significant adverse environmental
30 effects, and the primary purpose of the ~~action~~ project is not
31 exempted pursuant to 6 MCAR S ~~3-021 3.041~~.

32 6 MCAR S ~~3-021 3.041~~ Exemptions. ~~Activities~~ Projects
33 within A.-Y. are exempt from 6 MCAR SS ~~3-001-3-036 3.021-3.056~~.

34 A. Standard exemptions.

35 1. ~~Activities~~ Projects for which no governmental ~~action~~

1 is decisions are required.

2 2. ~~Activities~~ Projects for which all governmental action
3 has decisions have been completed made.

4 3. ~~Activities~~ Projects for which, and so long as, a
5 public agency governmental unit has denied a required
6 governmental approval.

7 4. ~~Activities~~ Projects for which a substantial portion of
8 the activity project has been completed and an EIS would not
9 influence remaining implementation or construction.

10 5. ~~Activities~~ Projects for which environmental review has
11 already been initiated under the prior rules or for which
12 environmental review is being conducted pursuant to 6 MCAR S
13 3-014 3.034 or 3-015 3.035.

14 B. Electric generating facilities. Construction of an
15 electric generating plant or combination of plants at a single
16 site with a combined capacity of less than five megawatts.

17 C. Fuel conversion facilities. Expansion of a facility for
18 the production of alcohol fuels which would have or would
19 increase its capacity by less than 500,000 gallons per year of
20 alcohol produced.

21 D. Transmission lines. Construction of a transmission line
22 with a nominal capacity of 69 kilovolts or less.

23 E. Transfer facilities. Construction of a facility designed
24 for or capable of transferring less than 30 tons of coal per
25 hour or with an annual throughput of less than 50,000 tons of
26 coal from one mode of transportation to a similar or different
27 mode of transportation; or the expansion of an existing facility
28 by these respective amounts.

29 F. Storage facilities. Construction of a facility designed
30 for or capable of storing less than 750 tons of coal or more,
31 with an annual throughput of less than 12,500 tons of coal; or
32 the expansion of an existing facility by these respective
33 amounts.

34 G. Mining.

35 1. General mine site evaluation activities that do not
36 result in a permanent alteration of the environment, including

1 mapping, aerial surveying, visual inspection, geologic field
2 reconnaissance, geophysical studies, and surveying, but
3 excluding exploratory borings.

4 2. Expansion of metallic mineral plant processing
5 facilities that are capable of increasing production by less
6 than ten percent per year, provided the increase is less than
7 100,000 tons per year in the case of facilities for processing
8 natural iron ore or taconite.

9 3. Scram mining operations.

10 H. Paper or pulp processing facilities. Expansion of an
11 existing paper or pulp processing facility that will increase
12 its production capacity by less than ten percent.

13 I. Industrial, commercial and institutional facilities.

14 1. Construction of a new or expansion of an existing
15 industrial, commercial, or institutional facility of less than
16 the following thresholds, expressed as gross floor space, if no
17 part of the development is within a shoreland area, delineated
18 flood plain, ~~or~~ state or federally designated wild and scenic
19 rivers district, the Minnesota River Project Riverbend area, or
20 the Mississippi headwaters area:

- 21 a. Third or fourth class city or unincorporated area -
- 22 50,000 square feet;
- 23 b. Second class city - 75,000 square feet; or
- 24 c. First class city - 100,000 square feet.

25 2. The construction of an industrial, commercial, or
26 institutional facility with less than 4,000 square feet of gross
27 floor space, and with associated parking facilities designed for
28 20 vehicles or less.

29 3. Construction of a new parking facility for less than
30 100 vehicles if the facility is not located in a shoreland area,
31 delineated flood plain, ~~or~~ state or federally designated wild
32 and scenic rivers district, the Minnesota River Project
33 Riverbend area, or the Mississippi headwaters area.

34 J. Sewage systems. Construction of a new wastewater
35 treatment facility or sewer system with a capacity of less than
36 3,000 gallons per day or the expansion of an existing facility

1 by less than that amount.

2 K. Residential development.

3 1. Construction of a sewered residential development, no
4 part of which is within a shoreland area, delineated flood plain
5 ~~or~~ state or federally designated wild and scenic rivers
6 district, the Minnesota River Project Riverbend area, or the
7 Mississippi headwaters area, of:

- 8 a. Less than ten units in an unincorporated area;
- 9 b. Less than 20 units in a third or fourth class city;
- 10 c. Less than 40 units in a second class city; or
- 11 d. Less than 80 units in a first class city.

12 2. Construction of a single residence or multiple
13 residence with four dwelling units or less and accessory
14 appurtenant structures and utilities.

15 L. Airport projects.

16 1. Runway, taxiway, apron, or loading ramp construction
17 or repair work including reconstruction, resurfacing, marking,
18 grooving, fillets and jet blast facilities, except where the
19 ~~action~~ project will create environmental impacts off airport
20 property.

21 2. Installation or upgrading of airfield lighting
22 systems, including beacons and electrical distribution systems.

23 3. Construction or expansion of passenger handling or
24 parking facilities including pedestrian walkway facilities.

25 4. Grading or removal of obstructions and erosion control
26 ~~activities~~ projects on airport property except where the
27 ~~activities~~ projects will create environmental impacts off
28 airport property.

29 M. Highway projects.

30 1. Highway safety improvement projects.

31 2. Installation of traffic control devices, individual
32 noise barriers, bus shelters and bays, loading zones, and access
33 and egress lanes for transit and paratransit vehicles.

34 3. Modernization of an existing roadway or bridge by
35 resurfacing, restoration, or rehabilitation which may involve
36 the acquisition of minimal amounts of right-of-way.

1 4. Roadway landscaping, construction of bicycle and
2 pedestrian lanes, paths, and facilities within existing
3 right-of-way.

4 5. Any stream diversion or channelization within the
5 right-of-way of an existing public roadway associated with
6 bridge or culvert replacement.

7 6. Reconstruction or modification of an existing bridge
8 structure on essentially the same alignment or location which
9 may involve the acquisition of minimal amounts of right-of-way.

10 N. Water impoundments. A new or additional permanent
11 impoundment of water creating a water surface of less than ten
12 acres.

13 O. Marinas. Construction of private residential docks for
14 use by four or less boats and utilizing less than 1,500 square
15 feet of water surface.

16 P. Stream diversion. Routine maintenance or repair of a
17 drainage ditch within the limits of its original construction
18 flow capacity, performed within 20 years of construction or
19 major repair.

20 Q. Agriculture and forestry.

21 1. Harvesting of timber for maintenance purposes.

22 2. Public and private forest management practices, other
23 than clearcutting or the application of pesticides, that involve
24 less than 20 acres of land.

25 R. Animal feedlots. The construction of an animal feedlot
26 facility of less than 100 animal units or the expansion of an
27 existing facility by less than 100 animal units no part of
28 either of which is located within a shoreland area, delineated
29 flood plain, ~~or~~ state or federally designated wild and scenic
30 rivers district, the Minnesota River Project Riverbend area, or
31 the Mississippi headwaters area.

32 S. Utilities. Utility extensions as follows: Water service
33 mains of 500 feet or less and one and a half inches diameter or
34 less; sewer lines of 500 feet or less and eight inch diameter or
35 less; local electrical service lines; gas service mains of 500
36 feet or less and one inch diameter or less; and telephone

1 services lines.

2 T. Construction ~~activities~~ projects.

3 1. Construction of accessory appurtenant structures
4 including garages, carports, patios, swimming pools,
5 agricultural structures, excluding feedlots, or other similar
6 buildings not changing land use or density.

7 2. Accessory signs appurtenant to any commercial,
8 industrial, or institutional facility.

9 3. Operation, maintenance, or repair work having no
10 substantial impact on existing structures, land use or natural
11 resources.

12 4. Restoration or reconstruction of a structure provided
13 that the structure is not of historical, cultural,
14 architectural, archeological, or recreational value.

15 5. Demolition or removal of buildings and related
16 structures except where they are of historical, archeological,
17 or architectural significance.

18 U. Land use.

19 1. Individual land use variances including minor lot line
20 adjustments and side yard and setback variances, not resulting
21 in the creation of a new subdivided parcel of land or any change
22 in land use character or density.

23 2. Minor temporary uses of land having negligible or no
24 permanent effect on the environment.

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

27 V. Research and data collection. Basic data collection,
28 training programs, research, experimental management, and
29 resource evaluation projects which do not result in an extensive
30 or permanent disturbance to an environmental resource, and do
31 not constitute a substantial commitment to a further course of
32 action having potential for significant adverse environmental
33 effects.

34 W. Financial transactions.

35 1. Acquisition or disposition of private interests in
36 real property, including leaseholds, easements, right-of-way, or

1 fee interests.

2 2. Purchase of operating equipment, maintenance
3 equipment, or operating supplies.

4 X. Licenses.

5 1. Licensing or permitting decisions related to
6 individual persons or activities directly connected with an
7 individual's household, livelihood, transportation, recreation,
8 health, safety, and welfare, such as motor vehicle licensing or
9 individual park entrance permits.

10 2. All licenses required under electrical, fire,
11 plumbing, heating, mechanical and safety codes and regulations,
12 but not including building permits.

13 Y. Governmental ~~actions~~ activities.

14 1. Proposals and enactments of the legislature.

15 2. Rules or orders of governmental units.

16 3. Executive orders of the Governor, or their
17 implementation by governmental units.

18 4. Judicial orders.

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

21 Chapter Sixteen: Early Notice Rules.

22 6 MCAR S ~~3-022~~ 3.042 Authority and purpose.

23 A. Bulletin. To provide early notice of impending ~~actions~~
24 projects which may have significant ~~adverse~~ environmental

25 effects, the EQB shall, pursuant to Minn. Stat. S 116D.04, subd.
26 8, publish a bulletin with the name of "EQB Monitor" containing
27 all notices as specified in 6 MCAR S ~~3-024~~ 3.044. The EQB may

28 prescribe the form and manner in which the governmental units
29 submit any material for publication in the EQB Monitor, and the
30 EQB Chairperson may withhold publication of any material not
31 submitted according to the form or procedures the EQB has
32 prescribed.

33 B. Purpose. These Rules are intended to provide a procedure
34 for notice to the EQB and to the public of natural resource
35 management and development permit applications, and impending
36 governmental and private ~~actions~~ projects that may have

1 significant adverse environmental effects. The notice through
2 the early notice procedures is in addition to public notices
3 otherwise required by law or regulations.

4 6 MCAR S ~~3-023~~ 3.043 Exemptions.

5 A. EPA permit exception. All National Pollutant Discharge
6 Elimination System Permits granted by the PCA, under the
7 authority given by the Environmental Protection Agency, shall be
8 exempt from 6 MCAR SS ~~3-001-3-036~~ 3.021-3.056 unless otherwise
9 provided by resolution of the EQB.

10 B. ~~Governmental unit;~~ Non-strict observance. Where, in the
11 opinion of any governmental unit, strict observance of 6 MCAR SS
12 ~~3-022-3-026~~ 3.042-3.046 would jeopardize the public health,
13 safety, or welfare, or would otherwise generally compromise the
14 public interest, the governmental unit shall comply with these
15 rules as far as practicable. In such cases, the governmental
16 unit shall carry out alternative means of public notification
17 and shall communicate the same to the EQB chairperson.

18 C. Federal permits, exemption. Any federal permits for
19 which review authority has been delegated to a non-federal
20 governmental unit by the federal government may be exempted by
21 resolution of the EQB.

22 6 MCAR S ~~3-024~~ 3.044 EQB Monitor publication requirements.

23 A. ~~Governmental units;~~ Required notices. Governmental units
24 are required to publish notice of the items listed in 1.-15. in
25 the EQB Monitor except that this rule constitutes a request and
26 not a requirement with respect to federal agencies.

27 1. When an ~~action~~ a project has been noticed pursuant to
28 6 MCAR S ~~3-024~~ 3.044 A.3. separate notice of individual permits
29 required by that ~~action~~ project need not be made unless changes
30 in the ~~action~~ project are proposed which will involve new and
31 potentially significant adverse environmental effects not
32 considered previously. No decision granting ~~or denying~~ a permit
33 application for which notice is required to be published by this
34 rule shall be effective until 30 days following publication of
35 the notice.

1 a. Filling of ten or more acres of public waters. Work
2 in the beds of public waters, Minn. Stat. S 105.42. The DNR is
3 the permitting authority.

4 b. Dredging of ten or more acres of public waters.
5 Work in the beds of public waters, Minn. Stat. S 105.42. The
6 DNR is the permitting authority.

7 e. a. All public hearings conducted pursuant to water
8 resources permit applications, Minn. Stat. ch. 105. The DNR is
9 the permitting authority.

10 d. Permit to mine or lease to prospect for iron ore,
11 copper-nickel, or other materials, Minn. Stat. SS 93.16, 93.335,
12 93.351. The DNR is the permitting authority.

13 e. Earth removal lease, Minn. Stat. S 92.50. The DNR
14 is the permitting authority.

15 b. Notice of public sales of permits for or leases to
16 mine iron ore, copper-nickel, or other minerals on state-owned
17 or administered mineral rights, Minn. Stat. SS 93.16, 93.335,
18 93.351, and 6 MCAR NR 94e. The DNR is the permitting authority.

19 f. c. Section 401 certifications, 33 USC title 33,
20 section 1341 (1976); Minn. Stat. S 115.03. The PCA is the
21 permitting authority.

22 g. d. Construction of a public use airport, Minn.
23 Stat. S 360.018, subd. 6. The DOT is the permitting authority.

24 h. e. Special local need registration for pesticides,
25 Minn. Stat. S 18A.23; 3 MCAR S 1.0338 B. The Department of
26 Agriculture MDA is the permitting authority.

27 2. Impending actions projects proposed by state agencies
28 when the proposed action project may have the potential for
29 significant adverse environmental effects.

30 3. Notice of the decision on the need for an EAW pursuant
31 to 6 MCAR S 3.026 F.

32 4. Notice of the availability of a completed EAW pursuant
33 to 6 MCAR S 3.007 3.027 D.1.

34 4. 5. RGU's decision on the need to prepare an EIS
35 pursuant to 6 MCAR S 3.008 3.028 A.4.

36 5. 6. Notice of the time, place and date of the EIS

1 scoping meeting pursuant to 6 MCAR S ~~3-010~~ 3.030 C.1.b. and
2 C.2.a.

3 ~~6-~~ 7. EIS Preparation Notices pursuant to 6 MCAR S ~~3-010~~
4 3.030 F.

5 ~~7-~~ 8. Amendments to the EIS scoping decision pursuant to
6 6 MCAR S ~~3-010~~ 3.030 E.5.

7 ~~8-~~ 9. Availability of draft and final EIS pursuant to 6
8 MCAR S ~~3-011~~ 3.031 E.5. and F.4.

9 ~~9-~~ 10. Notice of draft EIS informational meetings to be
10 held pursuant to 6 MCAR S ~~3-011~~ 3.031 E.7.

11 ~~10-~~ 11. RGU's adequacy decision of the final EIS pursuant
12 to 6 MCAR S ~~3-011~~ 3.031 G.7.

13 ~~11-~~ 12. Notice of activities undergoing environmental
14 review under alternative review processes pursuant to 6 MCAR S
15 ~~3-014~~ 3.034 A.6.

16 ~~12-~~ 13. Adoption of model ordinances pursuant to 6 MCAR S
17 ~~3-015~~ 3.035 B.1. and 2.

18 ~~13-~~ 14. Environmental analyses prepared under adopted
19 model ordinances pursuant to 6 MCAR S ~~3-015~~ 3.035 C.

20 15. Notice of the application for a Certificate of Need
21 for a large energy facility, pursuant to Minn. Stat. S 116H.03.

22 16. Notice of the availability of a draft environmental
23 report, pursuant to 6 MCAR S 3.055 B.5.

24 17. Notice of the availability of a final environmental
25 report, pursuant to 6 MCAR S 3.055 B.10.

26 ~~14-~~ 18. Notice of other actions that the EQB may specify
27 by resolution.

28 B. ~~Governmental units~~; Optional notices. Governmental units
29 may publish notices of general interest or information in the
30 EQB Monitor.

31 C. Required EQB notices. The EQB is required to publish the
32 following in the EQB Monitor:

33 1. Receipt of a valid petition and assignment of a RGU
34 pursuant to 6 MCAR S ~~3-006~~ 3.026 C. and E.;

35 2. Decision by the EQB that it will determine the
36 adequacy of a final EIS pursuant to 6 MCAR S ~~3-011~~ 3.031 G.1.;

1 3. EQB's adequacy decision of the final EIS pursuant to 6
2 MCAR S ~~3-011~~ 3.031 G.7;

3 4. Receipt by the EQB of an application for a variance
4 pursuant to 6 MCAR S ~~3-012~~ 3.032 D.3;

5 5. Notice of any public hearing held pursuant to 6 MCAR S
6 ~~3-013~~ 3.033 E.1;

7 6. The EQB's decision to hold public hearings on a
8 recommended Critical Area pursuant to Minn. Stat. S 116G.06,
9 subd. 1, clause (c);

10 7. Notice of application for a Certificate of Site
11 Compatibility or a High Voltage Transmission Line Construction
12 Permit pursuant to Minn. Stat. SS 116C.51-116C.69; and

13 8. Receipt of a consolidated permit application pursuant
14 to 6 MCAR S 3.102 A.

15 6 MCAR S ~~3-025~~ 3.045 Content of notice. The information to be
16 included in the notice for natural resources management and
17 development permit applications and other items in 6 MCAR S
18 ~~3-024~~ 3.044 A.1. and 2. shall be submitted by the governmental
19 unit on a form approved by the EQB. This information shall
20 include but not be limited to:

21 A. Identification of applicant. Identification of
22 applicant, by name and mailing address.

23 B. Location of project. The location of the proposed
24 project, or description of the area affected by the action
25 project by county, minor civil division, public land survey
26 township number, range number, and section number.

27 C. Identification of permit or project. The name of the
28 permit applied for, or a description of the proposed project or
29 other action to be undertaken in sufficient detail to enable
30 other state agencies to determine whether they have jurisdiction
31 over the proposed action project.

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

36 E. Identification of governmental unit. The identification

1 of the governmental unit publishing the notice, including the
2 manner and place at which comments on the ~~action~~ project can be
3 submitted and additional information can be obtained.

4 6 MCAR S ~~3-026~~ 3.046 Statement of compliance. Each
5 governmental permit or agency authorizing order subject to the
6 requirements of 6 MCAR S ~~3-024~~ 3.044 A.1. issued or granted by a
7 governmental unit shall contain a statement by the unit
8 concerning whether the provisions of 6 MCAR SS ~~3-022-3-026~~
9 3.042-3.046 have been complied with, and publication dates of
10 the notices, if any, concerning that permit or authorization.

11 6 MCAR S ~~3-027~~ 3.047 Publication. The EQB shall publish the
12 EQB Monitor whenever it is necessary, except that material
13 properly submitted to the EQB shall not remain unpublished for
14 more than 13 working days.

15 6 MCAR S ~~3-028~~ 3.048 Cost and distribution.

16 A. ~~Government publication;~~ Costs of publication. When a
17 governmental unit properly submits material to the EQB for
18 publication, the EQB shall then be accountable for the
19 publication of the same in the EQB Monitor. The EQB shall
20 require each governmental unit which is required to publish
21 material or requests the publication of material in the EQB
22 Monitor, including the EQB itself, to pay its proportionate cost
23 of the EQB Monitor unless other funds are provided and are
24 sufficient to cover the cost of the EQB Monitor.

25 B. Distribution. The EQB may further provide at least one
26 copy to the Documents Division for the mailing of the EQB
27 Monitor to any person, governmental unit, or organization if so
28 requested. The EQB may assess reasonable costs to the
29 requesting party. Ten copies of each issue of the EQB Monitor,
30 however, shall be provided without cost to the legislative
31 reference library and ten copies to the state law library, and
32 at least one copy to designated EQB depositories.

33 Chapter Seventeen:

34 Assessing the Cost of

35 Preparing Environmental Impact Statements.

1 6 MCAR S ~~3-039~~ Actions 3.049 Projects requiring an assessment
2 of the EIS preparation cost.

3 When a private person proposes to undertake an action a
4 project, and the final determination has been made that an EIS
5 will be prepared by a governmental unit on that action project,
6 the proposer shall be assessed for the reasonable costs of
7 preparing and distributing that EIS in accord with 6 MCAR SS
8 ~~3-039-3-034~~ 3.050-3.054.

9 6 MCAR S ~~3-039~~ 3.050 Determining the EIS assessed cost.

10 A. Proposer and RGU agreement. Within 30 days after the EIS
11 preparation notice has been issued, the RGU shall submit to the
12 EQB a written agreement signed by the proposer and the RGU. The
13 agreement shall include the EIS estimated cost, the EIS assessed
14 cost, and a brief description of the tasks and the cost of each
15 task to be performed by each party in preparing and distributing
16 the EIS. Those items identified in 6 MCAR S ~~3-031~~ 3.051 A. and
17 B. may be used as a guideline in determining the EIS estimated
18 cost. The EIS assessed cost shall identify the proposer's costs
19 for the collection and analysis of technical data to be supplied
20 to the RGU and the costs which will result in a cash payment by
21 the proposer to the EQB if a state agency is the RGU or to a
22 local governmental unit when it is the RGU. If an agreement
23 cannot be reached, the RGU shall so notify the EQB within 30
24 days after the final determination has been made that an EIS
25 will be prepared.

26 B. EIS assessed cost limits. The EIS assessed cost shall
27 not exceed the following amounts unless the proposer agrees to
28 an additional amount.

29 1. There shall be no assessment for the preparation and
30 distribution of an EIS for an action a project which has a
31 project estimated cost of one million dollars or less.

32 2. For an action a project whose project estimated cost
33 is more than one million dollars but is ten million dollars or
34 less, the EIS assessed cost shall not exceed .3 percent of the
35 project estimated cost except that the project estimated cost

1 shall not include the first one million dollars of such cost.

2 3. For an ~~action~~ a project whose project estimated cost
 3 is more than ten million dollars but is 50 million dollars or
 4 less, the EIS assessed cost shall not exceed .2 percent of each
 5 dollar of such cost over ten million dollars in addition to the
 6 assessment in 2.

7 4. For an ~~action~~ a project whose project estimated cost
 8 is more than 50 million dollars, the EIS assessed cost shall not
 9 exceed .1 percent of each dollar of such cost over 50 million
 10 dollars in addition to the assessment in 3.

11 C. Data costs. The proposer and the RGU shall include in
 12 the EIS assessed cost the proposer's costs for the collection
 13 and analysis of technical data which the RGU incorporates into
 14 the EIS. The amount included shall not exceed one-third of the
 15 EIS assessed cost unless a greater amount is agreed to by the
 16 RGU. When practicable, the proposer shall consult with the RGU
 17 before incurring such costs.

18 D. Federal/state EIS. When a joint federal/state EIS is
 19 prepared pursuant to 6 MCAR S ~~3-017~~ 3.037 and the EQB designates
 20 a non-federal agency as the RGU, only those costs of the state
 21 RGU may be assessed to the proposer. The RGU and the proposer
 22 shall determine the appropriate EIS assessed cost and shall
 23 forward that determination to the EQB in accord with 6 MCAR SS
 24 ~~3-001-3-036~~ 3.021-3.056.

25 E. Related actions EIS. When specific ~~actions~~ projects are
 26 included in a related actions EIS, only the portion of the EIS
 27 estimated cost that is attributable to each specific ~~action~~
 28 project may be used in determining the EIS assessed cost for its
 29 proposer. The RGU and each proposer shall determine the
 30 appropriate EIS assessed cost and shall forward that
 31 determination to the EQB in accord with 6 MCAR SS ~~3-001-3-036~~
 32 3.021-3.056.

33 6 MCAR S ~~3-031~~ 3.051 Determining the EIS estimated cost, the
 34 EIS actual cost and the project estimated cost.

35 A. EIS estimated or actual costs; inclusions. In
 36 determining the EIS estimated cost or the EIS actual cost, the

1 following items shall be included:

2 1. The cost of the RGU's staff time including direct
3 salary and fringe benefit costs.

4 2. The cost of consultants hired by the RGU.

5 3. The proposer's costs for the collection and analysis
6 of technical data expended for the purpose of preparing the EIS.

7 4. Other direct costs of the RGU for the collection and
8 analysis of information or data necessary for the preparation of
9 the EIS. These costs shall be specifically identified.

10 5. Indirect costs of the RGU not to exceed the RGU's
11 normal operating overhead rate.

12 6. The cost of printing and distributing the draft EIS
13 and the final EIS.

14 7. The cost of any public hearings or public meetings
15 held in conjunction with the preparation of the final EIS.

16 B. EIS estimated or actual costs; exclusions. The following
17 items shall not be included in determining the EIS estimated
18 cost or the EIS actual cost:

19 1. The cost of collecting and analyzing information and
20 data incurred before the final determination has been made that
21 an EIS will be prepared unless the information and data were
22 obtained for the purpose of being included in the EIS;

23 2. Costs incurred by a private person other than the
24 proposer or a governmental unit other than the RGU, unless the
25 costs are incurred at the direction of the RGU for the
26 preparation of material to be included in the EIS; and

27 3. The capital costs of equipment purchased by the RGU or
28 its consultants for the purpose of establishing a data
29 collection program, unless the proposer agrees to include such
30 costs.

31 C. Project estimated costs. The following items shall be
32 included in determining the project estimated cost:

33 1. The current market value of all the land interests,
34 owned or to be owned by the proposer, which are included in the
35 boundaries of the ~~action~~ project. The boundaries shall be those
36 defined by the ~~action~~ project which is the subject of the EIS

1 preparation notice;

2 2. Costs of architectural and engineering studies for the
3 design or construction of the ~~action~~ project;

4 3. Expenditures necessary to begin the physical
5 construction or operation of the ~~action~~ project;

6 4. Construction costs required to implement the ~~action~~
7 project including the costs of essential public service
8 facilities where such costs are directly attributable to the
9 proposed ~~action~~ project; and

10 5. The cost of permanent fixtures.

11 6 MCAR S ~~3-032~~ 3.052 Revising the EIS assessed cost.

12 A. ~~Proposer alters scope of action.~~ Alteration of project
13 scope. If the proposer substantially alters the scope of the
14 ~~action~~ project after the final determination has been made that
15 an EIS will be prepared and the EIS assessed cost has been
16 determined, the proposer shall immediately notify the RGU and
17 the EQB.

18 1. If the change will likely result in a net change of
19 greater than five percent in the EIS assessed cost, the proposer
20 and the RGU shall make a new determination of the EIS assessed
21 cost. The determination shall give consideration to costs
22 previously expended or irrevocably obligated, additional
23 information needed to complete the EIS and the adaptation of
24 existing information to the revised ~~action~~ project. The RGU
25 shall submit either a revised agreement or a notice that an
26 agreement cannot be reached following the procedures of 6 MCAR S
27 ~~3-030~~ 3.050 A. except that such agreement or notice shall be
28 provided to the EQB within 20 days after the proposer notifies
29 the RGU and the EQB of the change in the ~~action~~ project. If the
30 changed ~~action~~ project results in a revised project estimated
31 cost of one million dollars or less, the proposer shall not be
32 liable for further cash payments to the EQB or to the local
33 governmental unit beyond what has been expended or irrevocably
34 obligated by the RGU at the time it was notified by the proposer
35 of the change in the ~~action~~ project.

36 2. If the proposer decides not to proceed with the

1 proposed ~~action~~ project, the proposer shall immediately notify
 2 the RGU and the EQB. The RGU shall immediately cease expending
 3 and obligating the proposer's funds for the preparation of the
 4 EIS.

5 a. If cash payments previously made by the proposer
 6 exceed the RGU's expenditures or irrevocable obligations at the
 7 time of notification, the proposer may apply to the EQB or to
 8 the local governmental unit for a refund of the overpayment.
 9 The refund shall be paid as expeditiously as possible.

10 b. If cash payments previously made by the proposer
 11 are less than the RGU's expenditures or irrevocable obligations
 12 at the time of notification, the RGU shall notify the proposer
 13 and the EQB within ten days after it was notified of the
 14 project's withdrawal. Such costs shall be paid by the proposer
 15 within 30 days after the RGU notifies the proposer and the EQB.

16 B. New significant environmental problem. If, after the EIS
 17 assessed cost has been determined, the RGU or the proposer
 18 uncovers a significant environmental problem that could not have
 19 been reasonably foreseen when determining the EIS assessed cost,
 20 the party making the discovery shall immediately notify the
 21 other party and the EQB. If the discovery will likely result in
 22 a net change of greater than five percent in the EIS assessed
 23 cost, the proposer and the RGU shall make a new determination of
 24 the EIS assessed cost. The RGU shall submit either a revised
 25 agreement or a notice that an agreement cannot be reached
 26 following the procedures of 6 MCAR S 3-030 3.050 A. except that
 27 such agreement or notice shall be provided to the EQB within 20
 28 days after both parties and the EQB were notified.

29 6 MCAR S 3-033 3.053 Disagreements regarding the EIS assessed
 30 cost.

31 A. Notice to EQB; ~~information disagreement~~. If the proposer
 32 and the RGU disagree about ~~the information to be included in the~~
 33 ~~EIS or~~ the EIS assessed cost, the proposer and the RGU shall
 34 each submit a written statement to the EQB identifying ~~the~~
 35 ~~information each recommends be included in the EIS;~~ the EIS
 36 estimated cost, and the project estimated cost within ten days

1 after the RGU notifies the EQB that an agreement could not be
 2 reached. The statements shall include a discussion of the need
 3 to include the information in the EIS, the identification of the
 4 information and data to be provided by each party, the EIS
 5 preparation costs identified in 6 MCAR S ~~3-031~~ 3.051 A. and B.
 6 as they pertain to the information to be included in the EIS, a
 7 brief explanation of the costs, and a discussion of alternative
 8 methods of preparing the EIS and the costs of those alternatives.

9 B. Estimated cost disagreement, process. If the proposer
 10 and the RGU disagree about the project estimated cost, the
 11 proposer shall submit in writing a detailed project estimated
 12 cost in addition to the requirements of A. The RGU may submit a
 13 written detailed project estimated cost in addition to the
 14 requirements of A. The statements shall be submitted to the EQB
 15 within ten days after the RGU notifies the EQB that an agreement
 16 could not be reached. The project estimated cost shall include
 17 the costs as identified in 6 MCAR S ~~3-031~~ 3.051 C. and a brief
 18 explanation of the costs. The estimates shall be prepared
 19 according to the categories in 6 MCAR S ~~3-031~~ 3.051 so as to
 20 allow a reasonable examination as to their completeness.

21 C. EIS assessed cost ~~revision~~ disagreement. If the proposer
 22 and the RGU disagree about a revision of the EIS assessed cost
 23 prepared following the procedures in 6 MCAR S ~~3-032~~ 3.052, the
 24 proposer and the RGU shall use the applicable procedures
 25 described in A. or B. in resolving their disagreement except
 26 that all written statements shall be provided to the EQB within
 27 ten days after the RGU notifies the EQB that an agreement cannot
 28 be reached.

29 D. EIS actual cost disagreement. If the proposer and the
 30 RGU disagree about the EIS actual cost as determined by 6 MCAR S
 31 ~~3-034~~ 3.054 B., the proposer and the RGU shall prepare a written
 32 statement of their EIS actual cost and an estimate of the other
 33 party's EIS actual cost. The items included in 6 MCAR S ~~3-031~~
 34 3.051 A. and B. shall be used in preparing the EIS actual cost
 35 statements. These statements shall be submitted to the EQB and
 36 the other party within 20 days after the final EIS has been

1 accepted as adequate by the RGU or the EQB.

2 E. EQB determination. The EQB at its first meeting held
3 more than 15 days after being notified of a disagreement shall
4 make any determination required by A.-D. The EQB shall consider
5 the information provided by the proposer and the RGU and may
6 consider other reasonable information in making its
7 determination. This time limit shall be waived if a hearing is
8 held pursuant to F.

9 F. Hearing. If either the proposer or the RGU so requests,
10 the EQB shall hold a hearing to facilitate it in making its
11 determination.

12 G. Half cash payment, EIS preparation. Nothing in A.-F.
13 shall prevent the proposer from making one half of the cash
14 payment as recommended by the RGU's proposed EIS assessed cost
15 for the purpose of commencing the EIS process. If the proposer
16 makes the above cash payment, preparation of the EIS shall
17 immediately begin. If the required cash payment is altered by
18 the EQB's determination, the remaining cash payments shall be
19 adjusted accordingly.

20 6 MCAR S 3-034 3.054 Payment of the EIS assessed cost.

21 A. Schedule of payments. The proposer shall make all cash
22 payments to the EQB or to the local governmental unit according
23 to the following schedule:

24 1. At least one-half of the proposer's cash payment shall
25 be paid within 30 days after the EIS assessed cost has been
26 submitted to the EQB pursuant to 6 MCAR S 3-030 3.050 A. or has
27 been determined by the EQB pursuant to 6 MCAR S 3-033 3.053 E.
28 or F.

29 2. At least three-fourths of the proposer's cash payment
30 shall be paid within 30 days after the draft EIS has been
31 submitted to the EQB.

32 3. The final cash payment shall be paid within 30 days
33 after the final EIS has been submitted to the EQB.

34 a. The proposer may withhold final cash payment of the
35 EIS assessed cost until the RGU has submitted a detailed
36 accounting of its EIS actual cost to the proposer and the EQB.

1 If the proposer chooses to wait, the remaining portion of the
2 EIS assessed cost shall be paid within 30 days after the EIS
3 actual cost statement has been submitted to the proposer and the
4 EQB.

5 b. If the proposer has withheld the final cash payment
6 of the EIS assessed cost pending resolution of a disagreement
7 over the EIS actual cost, such payment shall be made within 30
8 days after the EQB has determined the EIS actual cost.

9 B. Refund. The proposer and the RGU shall submit to each
10 other and to the EQB a detailed accounting of the actual costs
11 incurred by them in preparing and distributing the EIS within
12 ten days after the final EIS has been submitted to the EQB. If
13 the cash payments made by the proposer exceed the RGU's EIS
14 actual cost, the proposer may apply to the EQB or to the local
15 governmental unit for a refund of the overpayment. The refund
16 shall be paid as expeditiously as possible.

17 C. State agency as RGU. If the RGU is a state agency, the
18 proposer shall make all cash payments of the EIS assessed cost
19 to the EQB which shall deposit such payments in the state's
20 general fund.

21 D. Local government unit as RGU. If the RGU is a local
22 governmental unit, the proposer shall make all cash payments of
23 the EIS assessed cost directly to the local governmental unit.

24 The local governmental unit shall notify the EQB in
25 writing of receipt of each payment within ten days following its
26 receipt.

27 E. Payment prerequisite to EIS. No RGU shall commence with
28 the preparation of an EIS until at least one-half of the
29 proposer's required cash payment of the EIS assessed cost has
30 been paid.

31 F. Notice of final payment. Upon receipt or notice of
32 receipt of the final payment by the proposer, the EQB shall
33 notify each state agency having a possible governmental permit
34 interest in the ~~action~~ project that the final payment has been
35 received.

36 Other laws notwithstanding, a state agency shall not issue

1 any governmental permits for the construction or operation of an
2 ~~action~~ a project for which an EIS is prepared until the required
3 cash payments of the EIS assessed cost for that ~~action~~ project
4 or that portion of a related actions EIS have been paid in full.

5 G. Time period extension. All time periods included in 6
6 MCAR SS ~~3-030-3-034~~ 3.050-3.054 may be extended by the EQB
7 chairperson only for good cause upon written request by the
8 proposer or the RGU.

9 Chapter Eighteen:

10 Special Rules for Certain Large Energy Facilities

11 6 MCAR S ~~3-035~~ 3.055 Special rules for LEPCP.

12 A. Applicability. Environmental review for LEPCP as defined
13 in Minn. Stat. S 116C.52, subd. 4 shall be conducted according
14 to the procedures set forth in this rule unless a utility has
15 filed an application for emergency certification pursuant to
16 Minn. Stat. S 116C.57, subd. 3. Environmental review shall
17 consist of an environmental report at the certificate of need
18 stage and an EIS at the site certificate stage. Energy
19 facilities subject to Minn. Stat. S 116H.13, but excluded under
20 Minn. Stat. S 116C.52, subd. 4, shall not be subject to this
21 rule. Except as expressly provided in this rule, 6 MCAR SS
22 ~~3-004-3-016~~ 3.024-3.036 shall not apply to ~~facilities~~ LEPCPs
23 subject to this rule. No EAW need shall be prepared for any
24 ~~facilities~~ LEPCPs subject to this rule. If a utility has filed
25 an application for emergency certification pursuant to Minn.
26 Stat. S 116C.57, subd. 3, the procedures and standards specified
27 in 6 MCAR S 3.077 shall constitute alternative environmental
28 review and neither 6 MCAR SS 3.024-3.036 nor 6 MCAR S 3.055
29 shall apply.

30 B. Environmental report at certificate of need stage.

31 1. The MEA DEPD shall be responsible for preparation of
32 an environmental report on a LEPCP subject to this rule.

33 2. The environmental report shall be prepared for
34 inclusion in the record of certificate of need hearings
35 conducted under Minn. Stat. S 116H.13. The report and comments
36 thereon shall be included in the record of the hearings.

1 3. The environmental report on the certificate of need
2 application shall include:

3 a. A brief description of the proposed facility;

4 b. An identification of reasonable alternative
5 facilities including, as appropriate, the alternatives of
6 different sized facilities, facilities using different fuels,
7 different facility types, and combinations of alternatives;

8 c. A general evaluation, including the availability,
9 estimated reliability, and economic, employment and
10 environmental impacts, of the proposal and alternatives

11 reasonable alternative facilities identified in 3.b.; and

12 d. A general analysis of the alternatives of no
13 facility, different levels of capacity, and delayed construction
14 of the facility. The analysis shall include consideration of
15 conservation and load management measures that could be used to
16 reduce the need for the proposed facility.

17 4. The environmental report need shall not be as

18 exhaustive or detailed as an EIS nor need it consider
19 site-differentiating factors and shall consider only those

20 site-differentiating factors identifiable pursuant to the

21 information requirements of 6 MCAR S 2.0633 A.5.

22 5. Upon completion of the draft environmental report, the
23 report shall be circulated as provided in 6 MCAR S 3-011 3.031

24 E.3. In addition, one copy shall go to each regional
25 development commission in the state. At least one copy shall be
26 available for public review during the hearings conducted under
27 Minn. Stat. S 116H.13.

28 6. The MEA DEPD shall provide notice of the date and

29 locations at which the draft environmental report shall be
30 available for public review. Notice shall be provided in the
31 manner used to provide notice of public hearings conducted under
32 Minn. Stat. S 116H.13 and may be provided in the notice of the
33 hearings.

34 7. Comments on the draft environmental report shall be
35 received during and entered into the record of hearing conducted
36 under Minn. Stat. S 116H.13. The DEPD shall respond to the

1 timely substantive comments on the draft environmental report.

2 8. The draft environmental report and, any comments
3 received during the hearings, and responses to the timely
4 substantive comments shall constitute the final environmental
5 report.

6 9. Preparation and review of the report, including
7 submission and distribution of comments, shall be completed in
8 sufficient time to enable the Director of the MEA Commissioner
9 of the DEPD to take final action pursuant to Minn. Stat. S
10 116H.13 within the time limits set by that statute.

11 10. Upon completion of a final environmental report,
12 notice thereof shall be published in the EQB Monitor. Copies of
13 the final environmental report shall be distributed as provided
14 in 5.

15 11. The MEA DEPD shall not make a final determination of
16 need for the project until the final environmental report has
17 been completed.

18 12. A supplement to an environmental report may be
19 required pursuant to 6 MCAR S 3.031 I. if a determination
20 pursuant to Minn. Stat. S 116H.13 is pending before the MEA. A
21 supplement to an environmental report shall be required if the
22 tests described in 6 MCAR S 3.031 I. are met and a Minn. Stat. S
23 116H.13 determination is pending before the DEPD.

24 C. EIS at certificate of site compatibility stage.

25 1. The EQB shall be responsible for preparation of the
26 EIS on a LEPGP subject to this rule.

27 2. The draft of the EIS shall be prepared for inclusion
28 in the record of the hearings to designate a site for a LEPGP
29 under Minn. Stat. S 116C.58. The draft EIS and final EIS shall
30 be included in the record of the hearing.

31 3. The draft EIS shall conform to 6 MCAR S 3.031 3.031

32 B. It shall contain a brief summary of the environmental report
33 and the certificate of need decision relating to the project, if
34 available. Alternatives shall include those sites designated
35 for public hearings pursuant to Minn. Stat. S 116C.57, subd. 1
36 and rules promulgated thereunder. Significant issues to be

1 considered in the EIS shall be identified by the EQB in light of
 2 the citizen evaluation process established in Minn. Stat. S
 3 116C.59 rather than through a formal scoping process.

4 The EIS need shall not consider need for the facility and
 5 other issues determined by the MEA ~~nor~~ DEP. Unless a specific
 6 site has already been designated, the EIS shall not contain
 7 detailed data which are pertinent to the specific conditions of
 8 subsequent construction and operating permits and which may be
 9 reasonably obtained only after a specific site is designated.

10 4. Upon completion, the draft EIS shall be distributed as
 11 provided in 6 MCAR S ~~3-011~~ 3.031 E.3. In addition, one copy
 12 shall go to each regional development commission representing a
 13 county in which a site under consideration is located. At least
 14 one copy shall be available for public review during the
 15 hearings conducted under Minn. Stat. S 116C.58.

16 5. The EQB shall provide notice of the date and location
 17 at which the draft EIS shall be available for public review.
 18 The notice shall be provided in the manner used to provide
 19 notice of the public hearings conducted under Minn. Stat. S
 20 116C.58 and may be provided in the notice of the hearings.

21 6. The EQB or a designee shall conduct a meeting to
 22 receive comments on the draft EIS. The meeting may but need not
 23 be conducted in conjunction with hearings conducted under Minn.
 24 Stat. S 116C.58. Notice of the meeting shall be given at least
 25 ten days before the meeting in the manner provided in B.6. and
 26 may be given with the notice of hearing.

27 7. The EQB shall establish a final date for submission of
 28 written comments after the meeting. After that date comments
 29 need not be accepted.

30 8. Within 60 days after the last day for comments, the
 31 EQB shall prepare responses to the comments and shall make
 32 necessary revisions in the draft. The draft EIS as revised
 33 shall constitute the final EIS. The final EIS shall conform to
 34 6 MCAR S ~~3-011~~ 3.031 F.

35 9. Upon completion of a final EIS, notice thereof shall
 36 be published in the EQB Monitor. Copies of the final EIS shall

1 be distributed as provided in 4.

2 10. Prior to submission of the final EIS into the record
3 of a hearing under Minn. Stat. S 116C.58, the EQB shall
4 determine the EIS to be adequate pursuant to 6 MCAR S 3-011
5 3.031 G.

6 11. If required pursuant to 6 MCAR S 3.031 I., a
7 supplement to an EIS may shall be required pursuant to 6 MCAR S
8 3-011 I prepared.

9 12. The EQB shall make no final decision designating a
10 site until the final EIS has been found adequate. No
11 governmental unit having authority to grant approvals subsequent
12 to a site designation shall grant issue any final approval
13 decision for the construction or operation of a facility subject
14 to this rule until the final EIS has been found adequate.

15 D. Cooperative processes. 6 MCAR SS 3-008 3.028 D. and E.,
16 3-012 3.032 D. and E., 3-016 3.036 and 3-017 3.037 shall
17 apply to energy facilities subject to this rule. Variance
18 applications may be submitted without preparation of an EAW.

19 6 MCAR S 3-036 3.056 Special rules for HVTL.

20 A. Applicability. Environmental review for a HVTL as
21 defined in Minn. Stat. S 116C.52, subd. 3, unless exempted
22 pursuant to Minn. Stat. S 116C.57, subd. 5, shall be conducted
23 according to the procedures set forth in this rule unless a
24 utility has filed an application for emergency certification
25 pursuant to Minn. Stat. S 116C.57, subd. 3., or for an exemption
26 pursuant to Minn. Stat. S 116C.57, subd. 5. Environmental
27 review shall consist of an environmental report at the
28 certificate of need stage and an EIS at the route designation
29 and construction permit stage. Energy facilities subject to
30 Minn. Stat. S 116H.13 but excluded under Minn. Stat. S 116C.52,
31 subd. 3, or exempted under Minn. Stat. S 116C.57, subd. 5 shall
32 not be subject to this rule. Except as expressly provided in
33 this rule, 6 MCAR SS 3-004-3-016 3.024-3.036 shall not apply to
34 facilities HVTLs subject to this rule. No EAW need shall be
35 prepared for any facilities HVTLs subject to this rule. If a
36 utility has filed an application for emergency certification

1 pursuant to Minn. Stat. S 116C.57, subd. 3., or for an exemption
 2 pursuant to Minn. Stat. S 116C.57, subd. 5., the procedures and
 3 standards specified in 6 MCAR SS 3.077 and 3.078, respectively,
 4 shall constitute alternative environmental review and neither 6
 5 MCAR SS 3.024-3.036 nor 6 MCAR S 3.056 shall apply.

6 B. Environmental report at certificate of need stage.

7 1. The MEA DEPD shall be responsible for preparation of
 8 an environmental report on an HVTL subject to this rule.

9 2. The environmental report shall be prepared for
 10 inclusion in the record of the certificate of need hearings
 11 conducted under Minn. Stat. S 116H.13. The report and comments
 12 thereon shall be included in the record of the hearings.

13 3. The environmental report on the certificate of need
 14 application shall include:

- 15 a. A brief description of the proposed facility;
- 16 b. An identification of reasonable alternatives of a
 17 different sized facility, a transmission line with different
 18 endpoints, upgrading existing transmission lines, and additional
 19 generating facilities;

- 20 c. A general evaluation, including the availability,
 21 estimated reliability, and economic, employment and
 22 environmental impacts, of the proposal and alternatives; and

- 23 d. A general analysis of the alternatives of no
 24 facility and delayed construction of the facility. The analysis
 25 shall include consideration of conservation and load management
 26 measures that could be used to reduce the need for the proposed
 27 facility;

- 28 e. The environmental report need shall not be as
 29 exhaustive or detailed as an EIS nor need it consider factors
 30 that depend upon specific routes or facility designs and shall
 31 consider only those route differentiating factors identifiable
 32 pursuant to the information requirements of 6 MCAR SS 3.0634 A.
 33 and B.; and

- 34 f. The report shall be reviewed in the manner provided
 35 in 6 MCAR S ~~3.035~~ 3.055 B.5.-12.

36 C. EIS at route designation and construction permit stage.

1 1. The EQB shall be responsible for preparation of an EIS
2 on a HVTL subject to this rule.

3 2. The draft of the EIS shall be prepared for inclusion
4 in the record of the hearings to designate a route for a HVTL
5 under Minn. Stat. S 116C.58. The draft EIS and final EIS shall
6 be included in the record of the hearing.

7 3. The draft shall conform to 6 MCAR S ~~3-011~~ 3.031 B. It
8 shall contain a brief summary of the environmental report and
9 the certificate of need decision relating to the project, if
10 applicable. Alternatives shall include those routes designated
11 for public hearing pursuant to Minn. Stat. S 116C.57, subd. 2
12 and rules promulgated thereunder. Significant issues to be
13 considered in the EIS shall be identified by the EQB in light of
14 the citizen evaluation process established pursuant to Minn.
15 Stat. S 116C.59 rather than through a formal scoping process.
16 Need for the facility and other issues determined by the MEA
17 need DEPD shall not be considered in the EIS.

18 4. The draft EIS shall be reviewed in the manner provided
19 in 6 MCAR S ~~3-035~~ 3.055 C.4.-11.

20 5. The EQB shall make no final decision designating a
21 route until the final EIS has been found adequate. No
22 governmental unit having authority to grant approvals subsequent
23 to a route designation shall ~~grant~~ issue any final approval
24 decision for the construction or operation of a facility subject
25 to this rule until the final EIS has been found adequate.

26 D. Review of HVTL requiring no certificate of need. An EIS
27 for a HVTL subject to Minn. Stat. SS 116C.51-116C.69 but not
28 subject to Minn. Stat. S 116H.13 shall consist of an EIS to be
29 prepared as provided in C. ~~The alternative of no action shall~~
30 ~~be considered.~~

31 E. Cooperative processes. 6 MCAR SS ~~3-008~~ 3.028 D. and E.,
32 3.012 D. and E., ~~3-016~~ 3.036 and ~~3-017~~ 3.037 shall apply to
33 facilities subject to this rule. Variance applications may be
34 submitted without preparation of an EAW.

35 Repealer. Rules 6 MCAR SS 3.024-3.032, 3.040 and 3.047 as
36 existing on the day before the effective date of these proposed

7/6/82

[REVISOR] JCF/JC AR0003

1 rules are repealed.