

1 Environmental Quality Board

2

3 Adopted Permanent Rules Relating to Environmental Review
4 Programs

5

6 Rules as Adopted

7 4410.0200 DEFINITIONS AND ABBREVIATIONS.

8 Subpart 1. to 4. [Unchanged.]

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

12 Subp. 6. to 29. [Unchanged.]

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

15 Subp. 31. to 81. [Unchanged.]

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

19 Subp. 83. to 96. [Unchanged.]

0 4410.0500 RGU SELECTION PROCEDURES.

1 Subpart 1. RGU for mandatory categories. For any project
2 listed in part 4410.4300 or 4410.4400, the governmental unit
23 specified in those rules shall be the RGU unless the project
24 will be carried out by a state agency, in which case that state
25 agency shall be the RGU. For any project listed in both parts
26 4410.4300 and 4410.4400, the RGU shall be the unit specified in
27 part 4410.4400. For any project listed in two or more subparts
28 of part 4410.4300 or two or more subparts of part 4410.4400, the
29 RGU shall be determined as specified in subpart 5.

30 Subp. 2. [Unchanged.]

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

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

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

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

12 Subp. 4. and 5. [Unchanged.]

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

18 4410.3100 PROHIBITION ON FINAL GOVERNMENTAL DECISIONS.

19 Subpart 1. to 5. [Unchanged.]

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

23 A. the RGU consents to a variance;

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

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

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

7 Subp. 7. to 9. [Unchanged.]

8 4410.3600 ALTERNATIVE REVIEW.

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

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

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

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

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

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

35 F. to H. [Unchanged.]

1 Subp. 2. [Unchanged.]

2 4410.4300 MANDATORY EAW CATEGORIES.

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

7 Subp. 2. to 13. [Unchanged.]

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

11 A. and B. [Unchanged.]

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

25 D. This subpart does not apply to projects for which
26 there is a single mandatory category specified in subparts 2 to
27 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2
28 to 10, 12, 13, 15, or 17, regardless of whether the project in
29 question meets or exceeds any threshold specified in those
30 subparts. In those cases, the need for an EAW must be
31 determined by comparison of the project to the threshold
32 specified in the applicable subpart, and the RGU must be the
33 governmental unit assigned by that subpart.

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

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

5 B. For construction of a new parking facility for
6 1,000 or more vehicles, the PCA shall be the RGU, except that
7 this category does not apply to any parking facility which is
8 part of a project reviewed pursuant to part 4410.4300, subpart
9 14 or 19, or part 4410.4400, subpart 11 or 14.

10 Subp. 16. and 17. [Unchanged.]

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

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

16 (1) 500,000 gallons per day or more in a first or
17 second class city and in any city served by the Metropolitan
18 Waste Control Commission System or the Western Lake Superior
19 Sanitary Sewer District System;

20 (2) 100,000 gallons per day or more in a third
21 class city not served by the Metropolitan Waste Control
22 Commission System or the Western Lake Superior Sanitary Sewer
23 District System;

24 (3) 50,000 gallons per day or more in a fourth
25 class city not served by the Metropolitan Waste Control
26 Commission System or the Western Lake Superior Sanitary Sewer
27 District System; or

28 (4) 50,000 gallons per day or more in an
29 unincorporated sewered area, the PCA shall be the RGU.

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

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

6 A. and B. [Unchanged.]

7 Subp. 20. to 31. [Unchanged.]

8 4410.4400 MANDATORY EIS CATEGORIES.

9 Subpart 1. to 10. [Unchanged.]

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

13 A. and B. [Unchanged.]

14 C. This subpart applies to any industrial,
15 commercial, or institutional project which includes multiple
16 components, if there are mandatory categories specified in
17 subparts 2 to 10, 12, 13, 15, or 17, or part 4410.4300, subparts
18 2 to 13, 16, 17, 20, 21, 23, 25, or 29 for two or more of the
19 components, regardless of whether the project in question meets
20 or exceeds any threshold specified in those subparts. In those
21 cases, the entire project must be compared to the thresholds
22 specified in items A and B to determine the need for an EIS. If
23 the project meets or exceeds the thresholds specified in any
24 other subparts as well as those in item A or B, the RGU must be
25 determined as provided in part 4410.0500, subpart 1.

26 D. This subpart does not apply to projects for which
27 there is a single mandatory category specified in subparts 2 to
28 10, 12, 13, 15, or 17, or part 4410.4300, subparts 2 to 13, 16,
29 17, 20, 21, 23, 25, or 29, regardless of whether the project in
30 question meets or exceeds any threshold specified in those
31 subparts. In those cases, the need for an EIS or an EAW must be
32 determined by comparison of the project to the threshold
33 specified in the applicable subpart, and the RGU must be the
34 governmental unit assigned by that subpart.

35 Subp. 12. and 13. [Unchanged.]

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

6 A. and B. [Unchanged.]

7 Subp. 15. to 20. [Unchanged.]

8 4410.4600 EXEMPTIONS.

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

14 Subp. 2. to 26. [Unchanged.]

15 4410.7500 ENVIRONMENTAL REPORT AT CERTIFICATE OF NEED STAGE.

16 Subpart 1. to 3. [Unchanged.]

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

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

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

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

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

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