

1 Environmental Quality Board

2

3 Adopted Permanent Rules Relating to Environmental Review Program

4

5 Rules as Adopted

6 4410.0200 DEFINITIONS AND ABBREVIATIONS.

7 Subpart 1. to 6. [Unchanged.]

8 Subp. 6a. Capacity. "Capacity," as used in parts

9 4410.4300, subpart 17, and 4410.4400, subpart 13, means the
10 maximum daily operational input volume a facility is designed to
11 process on a continuing basis.

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

13 Subp. 9a. Compost facility. "Compost facility" means a
14 facility used to compost or co-compost solid waste, including:

15 A. structures and processing equipment used to
16 control drainage or collect and treat leachate; and

17 B. storage areas for incoming waste, the final
18 product, and residuals resulting from the composting process.

19 Subp. 9b. Connected actions. Two projects are "connected
20 actions" if a responsible governmental unit determines they are
21 related in any of the following ways:

22 A. one project would directly induce the other;

23 B. one project is a prerequisite for the other; or

24 C. neither project is justified by itself.

25 Subp. 10. to 22. [Unchanged.]

26 Subp. 22a. Energy recovery facility. "Energy recovery
27 facility" means a facility used to capture the heat value of
28 solid waste for conversion to steam, electricity, or immediate
29 heat by direct combustion or by first converting the solid waste
30 into an intermediate fuel product. It does not include
31 facilities that produce, but do not burn, refuse-derived fuel.

32 Subp. 23. to 36. [Unchanged.]

33 Subp. 37. Hazardous waste. "Hazardous waste" has the
34 meaning given in parts 7045.0129 to 7045.0141.

35 Subp. 38. to 40. [Unchanged.]

1 Subp. 40a. Incinerator. "Incinerator" means any furnace
2 used in the process of burning solid waste for the purpose of
3 reducing the volume of waste by removing combustible matter.

4 Subp. 41. and 42. [Unchanged.]

5 Subp. 42a. Light industrial facility. "Light industrial
6 facility" means a subcategory of industrial land use with a
7 primary function other than manufacturing and less than 500
8 employees.

9 Subp. 43. to 59. [Unchanged.]

10 Subp. 60. Phased action. "Phased action" means two or
11 more projects to be undertaken by the same proposer that a RGU
12 determines:

13 A. will have environmental effects on the same
14 geographic area; and

15 B. are substantially certain to be undertaken
16 sequentially over a limited period of time.

17 Subp. 61. to 65. [Unchanged.]

18 Subp. 66. [See Repealer.]

19 Subp. 67. [Unchanged.]

20 Subp. 68. Proposer. "Proposer" means the person or
21 governmental unit that proposes to undertake or to direct others
22 to undertake a project.

23 Subp. 69. and 70. [Unchanged.]

24 Subp. 70a. PUC. "PUC" means the Minnesota Public
25 Utilities Commission.

26 Subp. 71. [Unchanged.]

27 Subp. 71a. Refuse-derived fuel. "Refuse-derived fuel"
28 means the product resulting from techniques or processes used to
29 prepare solid waste by shredding, sorting, or compacting for use
30 as an energy source.

31 Subp. 72. [See Repealer.]

32 Subp. 73. [Unchanged.]

33 Subp. 74. [See Repealer.]

34 Subp. 75. to 79. [Unchanged.]

35 Subp. 80. Sewage collection system. "Sewage collection
36 system" means a piping or conveyance system that conveys

1 wastewater to a wastewater treatment plant.

2 Subp. 81. to 84. [Unchanged.]

3 Subp. 84a. **Sports or entertainment facility.** "Sports or
4 entertainment facility" means a facility intended for the
5 presentation of sports events and various forms of entertainment
6 or amusement. Examples include sports stadiums or arenas,
7 racetracks, concert halls or amphitheaters, theaters, facilities
8 for pageants or festivals, fairgrounds, amusement parks, and
9 zoological gardens.

10 Subp. 85. to 89. [Unchanged.]

11 Subp. 89a. **Warehousing facility.** "Warehousing facility"
12 means a subcategory of industrial-commercial land use that has
13 as its primary function the storage of goods or materials.
14 Warehousing facilities may include other uses, such as office
15 space or sales, in minor amounts.

16 Subp. 90. to 92. [Unchanged.]

17 Subp. 92a. **Water-related land use management district.**

18 "Water-related land use management district" includes:

19 A. shoreland areas;

20 B. floodplains;

21 C. wild and scenic rivers districts;

22 D. areas subject to the comprehensive land use plan
23 of the Project Riverbend Board under Laws of Minnesota 1982,
24 chapter 627; and

25 E. areas subject to the comprehensive land use plan
26 of the Mississippi River Headwaters Board under Minnesota
27 Statutes, chapter 114B.

28 Subp. 92b. **Water-related land use management district**
29 **ordinance or plan, approved.** "Water-related land use management
30 district ordinance or plan, approved" means:

31 A. a state-approved shoreland ordinance;

32 B. a state-approved floodplain ordinance;

33 C. a state-approved wild and scenic rivers district
34 ordinance;

35 D. the comprehensive land use plan of the Project
36 Riverbend Board under Laws of Minnesota 1982, chapter 627; or

1 E. the comprehensive land use plan of the Mississippi
2 River Headwaters Board under Minnesota Statutes, chapter 114B.

3 Subp. 92c. Waters of the state. "Waters of the state" has
4 the meaning given in Minnesota Statutes, section 105.37,
5 subdivision 7.

6 Subp. 93. to 96. [Unchanged.]

7 4410.0400 GENERAL RESPONSIBILITIES.

8 Subpart 1. and 2. [Unchanged.]

9 Subp. 3. Governmental units, private individuals, citizen
10 groups, and business concerns; trade secret information. When
11 environmental review documents are required on a project, the
12 proposer of the project and any other person shall supply any
13 data reasonably requested by the RGU which the proposer has in
14 his or her possession or to which the proposer has reasonable
15 access.

16 Information submitted to the RGU that qualifies as trade
17 secret information under Minnesota Statutes, section 13.37,
18 subdivision 1, paragraph (b), must be treated as nonpublic data
19 in accordance with Minnesota Statutes, chapter 13.

20 Subp. 4. [Unchanged.]

21 4410.1000 PROJECTS REQUIRING AN EAW.

22 Subpart 1. to 3. [Unchanged.]

23 Subp. 4. Connected actions and phased actions. Multiple
24 projects and multiple stages of a single project that are
25 connected actions or phased actions must be considered in total
26 when determining the need for an EAW, preparing the EAW, and
27 determining the need for an EIS.

28 In connected actions and phased actions where it is not
29 possible to adequately address all the project components or
30 stages at the time of the initial EAW, a new EAW must be
31 completed before approval and construction of each subsequent
32 project component or stage. Each EAW must briefly describe the
33 past and future stages or components to which the subject of the
34 present EAW is related.

35 For proposed projects such as highways, streets, pipelines,

1 utility lines, or systems where the proposed project is related
2 to a large existing or planned network, for which a governmental
3 unit has determined environmental review is needed, the RGU
4 shall treat the present proposal as the total proposal or select
5 only some of the future elements for present consideration in
6 the threshold determination and EAW. These selections must be
7 logical in relation to the design of the total system or network
8 and must not be made merely to divide a large system into
9 exempted segments.

10 When review of the total of a project is separated under
11 this subpart, the components or stages addressed in each EAW
12 must include at least all components or stages for which permits
13 or approvals are being sought from the RGU or other governmental
14 units.

15 Subp. 5. Change in proposed project; new EAW. If after a
16 negative declaration has been issued but before the proposed
17 project has received all approvals or been implemented, the RGU
18 determines that a substantial change has been made in the
19 proposed project that may affect the potential for significant
20 adverse environmental effects, a new EAW is required.

21 4410.1100 PETITION PROCESS.

22 Subpart 1. to 4. [Unchanged.]

23 Subp. 5. Determination of RGU. The EQB's chair or
24 designee shall determine whether the petition complies with the
25 requirements of subparts 1 and 2. If the petition complies, the
26 chair or designee shall designate an RGU pursuant to part
27 4410.0500 and forward the petition to the RGU within five days
28 of receipt of the petition.

29 Subp. 6. [Unchanged.]

30 Subp. 7. Time limits. The RGU has 15 days from the date
31 of the receipt of the petition to decide on the need for an EAW.

32 If the decision must be made by a board, council, or other
33 body which meets only on a periodic basis, the time period may
34 be extended by the RGU for an additional 15 days.

35 For all other RGU's, the EQB's chair shall extend the

1 15-day period by not more than 15 additional days upon request
2 of the RGU.

3 Subp. 8. [Unchanged.]

4 Subp. 9. Duration of effect of petition. If an RGU cannot
5 act on a petition because no permit application has been filed,
6 the application has been withdrawn, or the application has been
7 denied, the petition remains in effect for no more than one year
8 from the date on which it was filed with the EQB. While the
9 petition remains in effect, part 4410.3100, subparts 1 and 2,
10 applies to any proposed project for which the nature and
11 location is substantially similar to the project identified in
12 the petition.

13 4410.1300 EAW FORM.

14 The EQB chair shall develop an EAW form to be used by the
15 RGU. The EQB chair may approve the use of an alternative EAW
16 form if an RGU demonstrates the alternative form will better
17 accommodate the RGU's function or better address a particular
18 type of project and the alternative form will provide more
19 complete, more accurate, or more relevant information.

20 The EAW form shall be assessed by the EQB chair
21 periodically and may be altered by the EQB chair to improve the
22 effectiveness of the document.

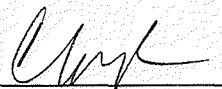
23 4410.1700 DECISION ON NEED FOR EIS.

24 Subpart 1. Standard for decision on need for EIS. An EIS
25 shall be ordered for projects that have the potential for
26 significant environmental effects.

27 Subp. 2. Decision-making process. The decision on the
28 need for an EIS shall be made in compliance with one of the
29 following time schedules:

30 A. if the decision is to be made by a board, council,
31 or other body which meets only on a periodic basis, the decision
32 shall be made between three and 30 days after the close of the
33 review period; or

34 B. for all other RGU's the decision shall be made no
35 later than 15 days after the close of the 30-day review period.



1 This 15-day period shall be extended by the EQB chair by no more
2 than 15 additional days upon request of the RGU.

3 Subp. 2a. Insufficient information. If the RGU determines
4 that information necessary to a reasoned decision about the
5 potential for, or significance of, one or more possible
6 environmental impacts is lacking, but could be reasonably
7 obtained, the RGU shall either:

8 A. make a positive declaration and include within the
9 scope of the EIS appropriate studies to obtain the lacking
10 information; or

11 B. postpone the decision on the need for an EIS, for
12 not more than 30 days, in order to obtain the lacking
13 information. If the RGU postpones the decision, it shall
14 provide written notice of its action, including a brief
15 description of the lacking information, within five days to the
16 project proposer, the EQB staff, and any person who submitted
17 substantive comments on the EAW.

18 Subp. 3. [Unchanged.]

19 Subp. 4. Record of findings supporting decision. The RGU
20 shall maintain a record, including specific findings of fact,
21 supporting its decision. The record must include specific
22 responses to all substantive and timely comments on the EAW.
23 This record shall either be a separately prepared document or
24 contained within the records of the governmental unit.

25 Subp. 5. Distribution of decision. The RGU's decision
26 shall be provided, within five days, to all persons on the EAW
27 distribution list pursuant to part 4410.1500, to all persons
28 that commented in writing during the 30-day review period, and
29 to any person upon written request. All persons who submitted
30 timely and substantive comments on the EAW shall be sent a copy
31 of the RGU's response to those comments prepared under subpart
32 4. Upon notification, the EQB staff shall publish the RGU's
33 decision in the EQB Monitor. If the decision is a positive
34 declaration, the RGU shall also indicate in the decision the
35 date, time, and place of the scoping review meeting.

36 Subp. 6. Standard. In deciding whether a project has the

1 potential for significant environmental effects the RGU shall
2 compare the impacts that may be reasonably expected to occur
3 from the project with the criteria in this part.

4 Subp. 7. **Criteria.** In deciding whether a project has the
5 potential for significant environmental effects, the following
6 factors shall be considered:

7 A. type, extent, and reversibility of environmental
8 effects;

9 B. cumulative potential effects of related or
10 anticipated future projects;

11 C. the extent to which the environmental effects are
12 subject to mitigation by ongoing public regulatory authority;
13 and

14 D. the extent to which environmental effects can be
15 anticipated and controlled as a result of other environmental
16 studies undertaken by public agencies or the project proposer,
17 or of EIS's previously prepared on similar projects.

18 Subp. 8. [See Repealer.]

19 Subp. 9. **Connected actions and phased actions.** Connected
20 actions and phased actions shall be considered a single project
21 for purposes of the determination of need for an EIS.

22 4410.2000 PROJECTS REQUIRING AN EIS.

23 Subpart 1. **Purpose of EIS.** The purpose of an EIS is to
24 provide information for governmental units, the proposer of the
25 project, and other persons to evaluate proposed projects which
26 have the potential for significant environmental effects, to
27 consider alternatives to the proposed projects, and to explore
28 methods for reducing adverse environmental effects.

29 Subp. 2. **Mandatory EIS categories.** An EIS shall be
30 prepared for any project that meets or exceeds the thresholds of
31 any of the EIS categories listed in part 4410.4400.

32 Subp. 3. **Discretionary EIS.** An EIS shall be prepared:

33 A. when the RGU determines that, based on the EAW and
34 any comments or additional information received during the EAW
35 comment period, the proposed project has the potential for



1 significant environmental effects; or

2 B. when the RGU and proposer of the project agree
3 that an EIS should be prepared.

4 Subp. 4. Connected actions and phased actions. Multiple
5 projects and multiple stages of a single project that are
6 connected actions or phased actions must be considered in total
7 when determining the need for an EIS and in preparing the EIS.

8 In connected actions and phased actions where it is not
9 possible to adequately address all the project components or
10 stages at the time of the initial EIS, a supplemental EIS must
11 be completed before approval and construction of each subsequent
12 project component or stage. The supplemental EIS must address
13 the impacts associated with the particular project component or
14 stage that were not addressed in the initial EIS.

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

25 When review of the total of a project is ~~divided-up~~
26 separated under this subpart, the components or stages addressed
27 in each EIS or supplement must include at least all components
28 or stages for which permits or approvals are being sought from
29 the RGU or other governmental units.

30 Subp. 5. Related actions EIS. An RGU may prepare a single
31 EIS for independent projects with potential cumulative
32 environmental impacts on the same geographic area if the RGU
33 determines that review can be accomplished in a more effective
34 or efficient manner through a related actions EIS. A project
35 must not be included in a related actions EIS if its inclusion
36 would unreasonably delay review of the project compared to

1 review of the project through an independent EIS.

2 4410.2100 EIS SCOPING PROCESS.

3 Subpart 1. Purpose. The scoping process shall be used
4 before the preparation of an EIS to reduce the scope and bulk of
5 an EIS, identify only those issues relevant to the proposed
6 project, define the form, level of detail, content,
7 alternatives, time table for preparation, and preparers of the
8 EIS, and to determine the permits for which information will be
9 developed concurrently with the EIS.

10 Subp. 2. EAW as scoping document. All projects requiring
11 an EIS must have an EAW filed with the RGU. The EAW shall be
12 the basis for the scoping process.

13 For projects which fall within a mandatory EIS category or
14 if a voluntary EIS is planned, the EAW will be used solely as a
15 scoping document. For such projects, the RGU shall prepare and
16 circulate with the EAW a draft scoping decision document that
17 addresses the contents specified by subpart 6 to the extent that
18 information is already available. The purpose of the draft
19 scoping decision document is to facilitate the delineation of
20 issues and analyses to be contained in the EIS. The information
21 in a draft scoping decision document shall be considered as
22 preliminary and subject to revision based on the entire record
23 of the scoping process.

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

26 A. to identify the need for preparing an EIS pursuant
27 to part 4410.1700; and

28 B. to initiate discussion concerning the scope of the
29 EIS if an EIS is ordered pursuant to part 4410.1700.

30 Subp. 3. to 10. [Unchanged.]

31 Subp. 11. Modification of project; termination of EIS
32 process. After initiation of scoping for an EIS, if the
33 proposed project is modified so that an EIS is no longer
34 mandatory, or the reasons for ordering an EIS no longer apply,
35 the RGU may terminate the EIS process through the procedures of

1 this subpart.

2 The RGU shall send written notice of its intent to
3 terminate the EIS to all persons who submitted comments on the
4 EIS scope and to all persons on the EAW distribution list under
5 part 4410.1500. The notice shall summarize the reasons for the
6 intended termination of the EIS, identify a contact person to
7 whom comments may be sent, and announce the end of the comment
8 period. The EQB staff shall publish notice in the EQB Monitor,
9 and a press release shall be supplied by the RGU to at least one
10 newspaper of general circulation in the area of the project.

11 A period of not less than 30 days from the date of
12 publication of the notice in the EQB Monitor shall be provided
13 for interested persons to comment on the need for an EIS on the
14 modified project. The RGU shall determine the need for an EIS
15 on the modified project in accordance with part 4410.1700.

16 4410.2800 DETERMINATION OF ADEQUACY.

17 Subpart 1. [Unchanged.]

18 Subp. 1a. Decision by EQB; information needs. If the EQB
19 will be determining the adequacy of the EIS, the RGU shall
20 submit to the EQB the following information within five days of
21 the filing of the final EIS:

22 A. evidence of compliance with distribution
23 requirements for the scoping EAW, draft EIS, and final EIS;

24 B. copies of press releases giving notice of EIS
25 scoping, the EIS preparation notice, the draft EIS, and the
26 final EIS, and evidence of submission of each in accordance with
27 the applicable requirements of the rules;

28 C. copies of all written comments received during the
29 scoping period;

30 D. a transcript, minutes, or summary of the public
31 scoping meeting;

32 E. a copy of the scoping decision document;

33 F. a transcript, minutes, or summary of the public
34 meeting on the draft EIS; and

35 G. copies of any comments the RGU has received on the

1 final EIS that have not also been supplied to the EQB.

2 Subp. 2. **Written comments.** Interested persons may submit
3 written comments on the adequacy of the final EIS to the RGU or
4 the EQB, if applicable, for a period of not less than ten days
5 following publication in the EQB Monitor of the notice of
6 availability of the final EIS. The notice of availability of
7 the final EIS shall indicate when the comment period expires.

8 Subp. 3. to 6. [Unchanged.]

9 4410.3000 SUPPLEMENTING AN EIS.

10 Subpart 1. **Applicability.** An RGU shall supplement an EIS
11 by preparing a supplemental EIS document in accordance with this
12 part.

13 Subp. 2. **EIS addendum.** An RGU may make minor revisions to
14 a final EIS by use of an EIS addendum. An EIS addendum may not
15 be used to make revisions required under subpart 3. The
16 addendum shall be distributed to the EQB, to any person who
17 received the final EIS document, and to any other person upon
18 written request. The EQB shall publish notice of the
19 availability of the addendum in the EQB Monitor.

20 Subp. 3. **Supplement to an EIS.** An RGU shall prepare a
21 supplement to an EIS under any of the following circumstances:

22 A. whenever after a final EIS has been determined
23 adequate, but before the project becomes exempt under part
24 4410.4600, subpart 2, item B or D, the RGU determines that
25 either:

26 (1) substantial changes have been made in the
27 proposed project that affect the potential significant adverse
28 environmental effects of the project; or

29 (2) there is substantial new information or new
30 circumstances that significantly affect the potential
31 environmental effects from the proposed project that have not
32 been considered in the final EIS or that significantly affect
33 the availability of prudent and feasible alternatives with
34 lesser environmental effects;

35 B. whenever an EIS has been prepared for an ongoing

1 governmental action and the RGU determines that the conditions
2 of item A, subitem (1) or (2), are met with respect to the
3 action; or

4 C. whenever an EIS has been prepared for one or more
5 phases of a phased action or one or more components of a
6 connected action and a later phase or another component is
7 proposed for approval or implementation that was not evaluated
8 in the initial EIS.

9 Subp. 4. Request for supplement to an EIS. Any person may
10 request preparation of a supplement to an EIS by submitting a
11 written request to the RGU containing material evidence that a
12 supplement is required under subpart 3. A copy of the request
13 must be sent to the EQB. The RGU shall make a decision on the
14 need for a supplement within 30 days of receipt of the request,
15 and shall notify the requesting person and the EQB staff of its
16 decision within five days. If the RGU denies the request, the
17 notice must explain the basis for its decision and respond to
18 the issues raised by the requesting person. If the RGU orders a
19 supplement, its basis for the decision must be incorporated into
20 the supplement preparation notice.

21 Subp. 5. Procedure for preparing a supplement to an EIS.
22 A supplement to an EIS shall be prepared, circulated, and
23 reviewed according to the procedures in items A to E.

24 A. The scope of a supplement to an EIS must be
25 limited to impacts, alternatives, and mitigation measures not
26 addressed or inadequately addressed in the final EIS. The RGU
27 shall adopt a scope for the supplement as part of the
28 preparation notice. The RGU may consult with any person in
29 order to obtain information relevant to the scoping of a
30 supplement, and may hold public meetings to obtain the
31 information. Reasonable notice must be given of any meetings.
32 All meetings must be open to the public.

33 B. The RGU shall adopt and distribute a notice of the
34 preparation of the supplement to the EIS. The notice must
35 contain:

36 (1) the title of the EIS being supplemented and

1 its approximate date of completion;

2 (2) a brief description of the situation
3 necessitating the preparation of the supplement, including a
4 description of how the changes in the proposed project or new
5 information may affect the potential significant environmental
6 effects from the project or the availability of prudent and
7 feasible alternatives;

8 (3) the scope of the supplement including issues
9 to be analyzed, alternatives to be examined, and studies to be
10 undertaken; and

11 (4) the proposed time schedule for the
12 preparation of the supplement.

13 The preparation notice must be distributed to all persons
14 who received the final EIS and, to all persons on the EAW
15 distribution list under part 4410.1500, and to any person who
16 requested that a supplement be prepared under subpart 4,
17 provided that if more than one person signed a letter or other
18 document requesting a supplement, notice need only be
19 distributed to their representative or to the person whose
20 signature first appears on the document. The EQB shall publish
21 a summary of the preparation notice in the EQB Monitor.

22 If, within 20 days of publication of the preparation notice
23 in the EQB Monitor, any person submits written comments to the
24 RGU objecting to the scope of the supplement, the RGU shall give
25 due consideration to modifying its scope based on the comments.
26 The RGU shall include in the draft supplement document a copy of
27 any timely comments received objecting to the scope and its
28 response to the comments.

29 C. The RGU shall prepare a draft supplement for the
30 purposes of receiving public comments. The draft document must
31 conform to the requirements of parts 4410.2300, items D to J,
32 4410.2400, and 4410.2500. The draft supplement must be
33 distributed and reviewed in accordance with part 4410.2600,
34 subparts 2 to 10, except that the informational meeting must be
35 held not less than ten days after publication of notice in the
36 EQB Monitor.

1 D. The RGU shall prepare and distribute a final
2 supplement to an EIS in accordance with part 4410.2700.

3 E. The determination of adequacy of the final
4 supplement to an EIS must be made in accordance with part
5 4410.2800.

6 Subp. 6. Time limit for supplement to an EIS. A
7 determination of the adequacy of a supplement to an EIS must be
8 made within 120 days of the order for preparation of the
9 supplement, unless the time is extended by the consent of the
10 proposer and RGU or by the governor for good cause.

11 Subp. 7. Treatment of expansions of a project for which an
12 EIS was prepared. Subsequent expansions of, or additions to,
13 implemented projects for which an EIS was prepared must be
14 treated as independent projects for the determination of the
15 need for environmental review and must be reviewed in accordance
16 with parts 4410.1000 to 4410.2800 rather than according to this
17 part, unless the expansion or addition is part of a phased
18 action or connected action requiring review under subpart 3,
19 item C. Tiering of information from the original EIS may be
20 used to minimize duplication of paperwork, provided that the
21 original EIS is reasonably available for public and agency
22 review.

23 4410.3100 PROHIBITION ON FINAL GOVERNMENTAL DECISIONS.

24 Subpart 1. Prohibitions. If an EAW or EIS is required for
25 a governmental action under parts 4410.0200 to 4410.7800, or if
26 a petition for an EAW is filed under part 4410.1100, a project
27 may not be started and a final governmental decision may not be
28 made to grant a permit, approve a project, or begin a project,
29 until:

30 A. a petition for an EAW is dismissed;

31 B. a negative declaration on the need for an EIS is
32 issued;

33 C. an EIS is determined adequate; or

34 D. a variance is granted under subparts 3 to 7 or the
35 action is an emergency under subpart 8.

1 Subp. 2. **Public projects, prohibitions.** If a project
2 subject to review under parts 4410.0200 to 4410.7800 is proposed
3 to be carried out or sponsored by a governmental unit, the
4 governmental unit shall not take any action with respect to the
5 project, including the acquisition of property, if the action
6 will prejudice the ultimate decision on the project, until a
7 petition has been dismissed, a negative declaration has been
8 issued, or until the final EIS has been determined adequate by
9 the RGU or the EQB, unless the project is an emergency under
10 subpart 9 or a variance is granted under subparts 4 to 8. An
11 action prejudices the ultimate decision on a project if it tends
12 to determine subsequent development or to limit alternatives or
13 mitigative measures.

14 Subp. 3. [See Repealer.]

15 Subp. 4. [Unchanged.]

16 Subp. 5. **Variance applications.** The EQB chair shall
17 publish a notice of the variance application in the EQB Monitor
18 within 15 days after receipt of the application. The EQB chair
19 shall issue a press release to at least one newspaper of general
20 circulation in the area where the project is proposed. The
21 notice and press release shall summarize the reasons given for
22 the variance application and specify that comments on whether a
23 variance should be granted must be submitted to the EQB within
24 20 days after the date of publication in the EQB Monitor.

25 Subp. 6. to 8. [Unchanged.]

26 Subp. 9. **Emergency action.** In the rare situation when
27 immediate action by a governmental unit or person is essential
28 to avoid or eliminate an imminent threat to the public health or
29 safety or a serious threat to natural resources, a proposed
30 project may be undertaken without the environmental review which
31 would otherwise be required by parts 4410.0200 to 441.7800. The
32 governmental unit or person must demonstrate to the EQB chair,
33 either orally or in writing, that immediate action is essential
34 and must receive authorization from the EQB chair to proceed.
35 Authorization to proceed shall be limited to those aspects of
36 the project necessary to control the immediate impacts of the

1 emergency. Other aspects of the project remain subject to
2 review under parts 4410.0200 to 4410.6500.

3 4410.3110 ALTERNATIVE URBAN AREAWIDE REVIEW PROCESS.

4 Subpart 1. **Applicability.** A local unit of government may
5 use the procedures of this part instead of the procedures of
6 parts 4410.1100 to 4410.1700 and 4410.2100 to 4410.3000 to
7 review anticipated residential and commercial development in a
8 particular geographic area within its jurisdiction, if the local
9 unit has adopted a comprehensive plan that includes at least the
10 elements in items A to C. The local unit of government is the
11 RGU for any review conducted under this part.

12 A. A land use plan designating the existing and
13 proposed location, intensity, and extent of use of land and
14 water for residential, commercial, industrial, agricultural, and
15 other public and private purposes.

16 B. A public facilities plan describing the character,
17 location, timing, sequence, function, use, and capacity of
18 existing and future public facilities of the local governmental
19 unit. The public facilities plan must include at least the
20 following parts:

21 (1) a transportation plan describing,
22 designating, and scheduling the location, extent, function, and
23 capacity of existing and proposed local public and private
24 transportation facilities and services; and

25 (2) a sewage collection system policy plan
26 describing, designating, and scheduling the areas to be served
27 by the public system, the existing and planned capacities of the
28 public system, and the standards and conditions under which the
29 installation of private sewage treatment systems will be
30 permitted.

31 C. An implementation program describing public
32 programs, fiscal devices, and other actions to be undertaken to
33 implement the comprehensive plan. The implementation plan must
34 include a description of official controls addressing the
35 matters of zoning, subdivision, and private sewage treatment

1 systems, a schedule for the implementation of those controls,
2 and a capital improvements program for public facilities.

3 A local governmental unit that has an adopted comprehensive
4 plan that lacks any of the elements required by this subpart may
5 qualify for the use of the procedures of this part upon a
6 demonstration to the EQB chair that the lacking element would
7 have no substantial effect on the purpose of or outcome of the
8 environmental review and upon receiving authorization from the
9 EQB chair to use these procedures.

10 Subp. 2. Relationship to specific development projects.

11 Upon completion of review under this part, residential and
12 commercial development projects within the boundaries
13 established under subpart 3 that are consistent with development
14 assumptions established under subpart 3 are exempt from review
15 under parts 4410.1100 to 4410.1700 and 4410.2100 to 4410.3000 as
16 long as the approval and construction of the project complies
17 with the conditions of the plan for mitigation developed under
18 subpart 5.

19 If a specific residential or commercial project, that is
20 subject to an EAW or EIS, is proposed within the boundaries of
21 an area for which an alternative review under this part is
22 planned but has not yet been completed, the RGU may, at its
23 discretion, review the specific project either through the
24 alternative areawide review procedures or through the EAW or EIS
25 procedures. If the project is reviewed through the alternative
26 areawide review procedures, at least one set of development
27 assumptions used in the process must be consistent with the
28 proposed project, and the project must incorporate the
29 applicable mitigation measures developed through the process.

30 The prohibitions of part 4410.3100, subparts 1 to 3, apply
31 to all projects for which review under this part substitutes for
32 review under parts 4410.1100 to 4410.1700 or 4410.2100 to
33 4410.3000. These prohibitions terminate upon the adoption by
34 the RGU of the environmental analysis document and plan for
35 mitigation under subpart 5.

36 Subp. 3. Order for review; geographic area designation and

1 specification of development. The RGU shall adopt an order for
2 each review under this part that specifies the boundaries of the
3 geographic area within which the review will apply and specifies
4 the anticipated nature, location, and intensity of residential
5 and commercial development within those boundaries. The RGU may
6 specify more than one scenario of anticipated development
7 provided that at least one scenario is consistent with the
8 adopted comprehensive plan. At least one scenario must be
9 consistent with any known development plans of property owners
10 within the area. The RGU may delineate subareas within the
11 area, as appropriate to facilitate planning and review of future
12 development, and allocate the overall anticipated development
13 among the subareas.

14 Subp. 4. Environmental analysis document; form and
15 content. ~~The EQB chair shall develop a standard list of content~~
16 ~~and format for the environmental analysis document to be used~~
17 ~~for review under this part.~~ The standard content and format
18 must be similar to that of the EAW, but must provide for a level
19 of analysis comparable to that of an EIS for impacts typical of
20 urban residential and commercial development. The standard
21 content and format must provide for a certification by the RGU
22 that the comprehensive plan requirements of subpart 1 are met.
23 ~~The EQB chair shall periodically review the standard content and~~
24 ~~format and make revisions to improve its utility.~~

25 Subp. 5. Procedures for review. The procedures in items A
26 to H must be used for review under this part.

27 A. The RGU shall prepare a draft environmental
28 analysis document addressing each of the development scenarios
29 selected under subpart 2 using the standard content and format
30 provided by the EQB under subpart 4. The draft document must be
31 distributed and noticed in accordance with part 4410.1500.

32 B. Reviewers shall have 30 days from the date of
33 notice of availability of the draft environmental analysis in
34 the EQB Monitor to submit written comments to the RGU.
35 Reviewers that are governmental units shall be granted a 15-day
36 extension by the RGU upon a written request for good cause. A

1 copy of the request must be sent to the EQB.

2 Comments must address the accuracy and completeness of the
3 information provided in the draft analysis, potential impacts
4 that warrant further analysis, further information that may be
5 required in order to secure permits for specific projects in the
6 future, and mitigation measures or procedures necessary to
7 prevent significant environmental impacts within the area when
8 actual development occurs.

9 Governmental units shall also state in their comments
10 whether or not they wish to be notified by the RGU upon receipt
11 of applications for specific development projects within the
12 area.

13 C. The RGU shall revise the environmental analysis
14 document based on comments received during the comment period.
15 The RGU shall include in the document a section specifically
16 responding to each timely, substantive comment received that
17 indicates in what way the comment has been addressed. If the
18 RGU believes a request for additional analysis is unreasonable,
19 it may consult with the EQB chair before responding to the
20 comment.

21 The RGU shall include in the document a plan for mitigation
22 specifying the mitigation measures that will be imposed upon
23 future development within the area in order to avoid or mitigate
24 potential environmental impacts. The plan shall contain a
25 description of how each mitigation measure will be implemented,
26 including a description of the involvement of other agencies, if
27 appropriate.

28 D. The RGU shall distribute the revised environmental
29 analysis document in the same manner as the draft document and
30 also to any persons who commented on the draft document and to
31 the EQB staff. State agencies and the Metropolitan Council of
32 the Twin Cities have ten days from the date of receipt of the
33 revised document to file an objection to the document with the
34 RGU. A copy of any letter of objection must be filed with the
35 EQB staff. An objection may be filed only if the agency filing
36 the objection has evidence that the revised document contains

1 inaccurate or incomplete information relevant to the
2 identification and mitigation of potentially significant
3 environmental impacts or that the proposed plan for mitigation
4 will be inadequate to prevent potentially significant
5 environmental impacts from occurring.

6 E. Unless an objection is filed in accordance with
7 item D, the RGU shall adopt the revised environmental analysis
8 document and the plan for mitigation at its first regularly
9 scheduled meeting held 15 or more days after the distribution of
10 the revised document. The RGU shall submit evidence of the
11 adoption of the document and plan for mitigation to the EQB
12 staff and all agencies that have stated that they wish to be
13 informed of any future projects within the area as part of their
14 comments on the draft environmental analysis document. The EQB
15 shall publish a notice of the adoption of the documents and the
16 completion of the review process in the EQB Monitor.

17 Upon adoption of the environmental analysis document and
18 the plan for mitigation, residential and commercial projects
19 within the area that are consistent with the assumptions of the
20 document and that comply with the plan for mitigation are exempt
21 from review under parts 4410.1100 to 4410.1700 and 4410.2100 to
22 4410.2800.

23 F. If an objection is filed with the RGU in
24 accordance with item D, within five days of receipt of the
25 objection the RGU shall consult with the objecting agency about
26 the issues raised in the objection and shall advise the EQB
27 staff of its proposed response to the objection. At the request
28 of the RGU, the objecting agency, the EQB staff, and any other
29 affected agency shall meet with the RGU as soon as practicable
30 to attempt to resolve the issues raised in the objection.

31 Within 30 days after receipt of the objection the RGU shall
32 submit a written response to the objecting agency and the EQB
33 chair. The response shall address each of the issues raised in
34 the objection. The RGU may address an issue by either revising
35 the environmental analysis document or plan for mitigation, or
36 by explaining why it believes that the issue is not relevant to



1 the identification and mitigation of potentially significant
2 environmental impacts.

3 G. Within five days of receipt of the RGU's response
4 to the objection, the objecting agency shall advise the EQB
5 chair of whether it accepts the response and withdraws its
6 objection or continues to object. If the objecting agency
7 continues to object, the EQB chair shall place the matter on the
8 agenda of the next regularly scheduled EQB meeting or of a
9 special meeting.

10 H. If the matter is referred to the EQB under item G,
11 the EQB shall determine whether the environmental analysis
12 document and plan for mitigation are adequate, conditionally
13 adequate, or inadequate. If the EQB finds the documents
14 conditionally adequate or inadequate, the EQB shall specify the
15 revisions necessary for adequacy. The EQB shall only find the
16 documents inadequate if it determines that they contain
17 inaccurate or incomplete information necessary to the
18 identification and mitigation of potentially significant
19 environmental impacts or that the proposed plan for mitigation
20 will be inadequate to prevent the occurrence of potentially
21 significant environmental impacts.

22 If the EQB finds the documents adequate or conditionally
23 adequate, the RGU shall adopt the documents under item E. If
24 the documents were found conditionally adequate by the EQB, the
25 RGU shall first revise the documents as directed by the EQB. If
26 the EQB finds the documents inadequate, the RGU has 30 days to
27 revise the documents and circulate them for review in accordance
28 with items D to H.

29 Subp. 6. Time limit. Unless an objection is filed under
30 subpart 5, item D, the RGU shall adopt the environmental
31 analysis document and plan for mitigation no later than at its
32 first meeting held more than 120 days after the date on which
33 the RGU ordered review under this part. The time limit may be
34 extended upon the agreement of all proposers whose project
35 schedules are affected by the review.

36 Subp. 7. Updating the review. To remain valid as a



1 substitute form of review, the environmental analysis document
2 and the plan for mitigation must be revised if any of the
3 circumstances in items A to H apply.

4 A. Five years have passed since the RGU adopted the
5 original environmental analysis document and plan for mitigation
6 or the latest revision. This item does not apply if all
7 development within the area has been given final approval by the
8 RGU.

9 B. A comprehensive plan amendment is proposed that
10 would allow an increase in development over the levels assumed
11 in the environmental analysis document.

12 C. Total development within the area would exceed the
13 maximum levels assumed in the environmental analysis document.

14 D. Development within any subarea delineated in the
15 environmental analysis document would exceed the maximum levels
16 assumed for that subarea in the document.

17 E. A substantial change is proposed in public
18 facilities intended to service development in the area that may
19 result in increased adverse impacts on the environment.

20 F. Development or construction of public facilities
21 will occur on a schedule other than that assumed in the
22 environmental analysis document or plan for mitigation so as to
23 substantially increase the likelihood or magnitude of potential
24 adverse environmental impacts or to substantially postpone the
25 implementation of identified mitigation measures.

26 G. New information demonstrates that important
27 assumptions or background conditions used in the analysis
28 presented in the environmental analysis document are
29 substantially in error and that environmental impacts have
30 consequently been substantially underestimated.

31 H. The RGU determines that other substantial changes
32 have occurred that may affect the potential for, or magnitude
33 of, adverse environmental impacts.

34 The environmental analysis document and plan for mitigation
35 must be revised by preparing, distributing, and reviewing
36 revised documents in accordance with subpart 5, items D to H,

1 except that the documents must be distributed to all persons on
2 the EAW distribution list under part 4410.1500. Persons not
3 entitled to object to the documents under subpart 5, item D, may
4 submit comments to the RGU suggesting changes in the documents.

5 Subp. 8. Report to EQB. The EQB chair may ask the RGU to
6 report on the status of actual development within the area, and
7 on the status of implementation of the plan for mitigation.
8 Upon request, the RGU shall report to the EQB chair within 30
9 days.

10 4410.3600 ALTERNATIVE REVIEW.

11 Subpart 1. [Unchanged.]

12 Subp. 2. Exemption. If the EQB accepts a governmental
13 unit's process as an adequate alternative review procedure,
14 projects reviewed under that alternative review procedure shall
15 be exempt from environmental review under parts 4410.1100 to
16 4410.1700, and 4410.2100 to 4410.3000 but the EQB retains its
17 authority under part 4410.2800~~7-subpart-17~~ to determine the
18 adequacy of the environmental documents that substitute for the
19 EIS in the approved process. On approval of the alternative
20 review process, the EQB shall provide for periodic review of the
21 alternative procedure to ensure continuing compliance with the
22 requirements and intent of these environmental review
23 procedures. The EQB shall withdraw its approval of an
24 alternative review procedure if review of the procedure
25 indicates that the procedure no longer fulfills the intent and
26 requirements of the Minnesota Environmental Policy Act and parts
27 4410.0200 to 4410.6500. A project in the process of undergoing
28 review under an approved alternative process shall not be
29 affected by the EQB's withdrawal of approval.

30 4410.3800 GENERIC EIS.

31 Subpart 1. Order for. A generic EIS may be ordered by the
32 EQB to study types of projects that are not adequately reviewed
33 on a case-by-case basis.

34 Subp. 2. RGU. The EQB may be the RGU for the generic EIS
35 or may designate another governmental unit to be the RGU, if

1 that governmental unit consents to be the RGU. In determining
2 which governmental unit should be the RGU for a generic EIS, the
3 EQB shall consider the following factors with respect to each
4 prospective RGU:

5 A. the nature and extent of the permit or approval
6 authority;

7 B. expertise in the subject matter of the generic
8 EIS, including the ability to address any complex issues;

9 C. available resources to complete the generic EIS;
10 and

11 D. ability to provide an objective appraisal of
12 potential impacts.

13 Whether the generic EIS is done by the EQB or another
14 governmental unit, the document must be prepared using an
15 interdisciplinary approach in accordance with part 4410.2200.

16 Subp. 3. to 6. [Unchanged.]

17 Subp. 7. **Content.** In addition to content requirements
18 specified by the scoping process, the generic EIS shall contain
19 the following:

20 A. any new data that has been gathered or the results
21 of any new research that has been undertaken as part of the
22 generic EIS preparation;

23 B. a description of the possible impacts and
24 likelihood of occurrence, the extent of current use, and the
25 possibility of future development for the type of action;

26 C. alternatives including recommendations for
27 geographic placement of the type of action to reduce
28 environmental harm, different methods for construction and
29 operation, and different types of actions that could produce the
30 same or similar results as the subject type of action but in a
31 less environmentally harmful manner; and

32 D. if appropriate, a description of an alternative
33 form of review that is proposed to be used to review specific
34 projects whose impacts have been considered in the generic EIS.

35 An alternative review proposal contained in a generic EIS must
36 be approved by the EQB under part 4410.3600 prior to use.



1 Subp. 8. and 9. [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 34, unless the project meets or exceeds any thresholds of
6 part 4410.4400, in which case an EIS must be prepared.

7 Multiple projects and multiple stages of a single project
8 that are connected actions or phased actions must be considered
9 in total when comparing the project or projects to the
10 thresholds of this part and part 4410.4400.

11 Subp. 2. to 6. [Unchanged.]

12 Subp. 7. **Pipelines.** Items A and B designate the RGU for
13 the type of project listed:

14 A. For routing of a pipeline, greater than six inches
15 in diameter and having more than 0.75 miles of its length in
16 Minnesota, used for the transportation of coal, crude petroleum
17 fuels, or oil or their derivatives, the EQB shall be the RGU.

18 B. For routing of a pipeline for transportation of
19 natural or synthetic gas at pressures in excess of 275 pounds
20 per square inch with 0.75 miles or more of its length in
21 Minnesota, the EQB shall be the RGU.

22 Items A and B do not apply to repair or replacement of an
23 existing pipeline within an existing right-of-way or to a
24 pipeline located entirely within a refining, storage, or
25 manufacturing facility.

26 Subp. 8. and 9. [Unchanged.]

27 Subp. 10. **Storage facilities.** Items A to C designate the
28 RGU for the type of project listed:

29 A. For construction of a facility designed for or
30 capable of storing more than 7,500 tons of coal or with an
31 annual throughput of more than 125,000 tons of coal; or the
32 expansion of an existing facility by these respective amounts,
33 the PCA shall be the RGU.

34 B. For construction of a facility on a single site
35 designed for or capable of storing 1,000,000 gallons or more of

1 hazardous materials, the PCA shall be the RGU.

2 C. For construction of a facility designed for or
3 capable of storing on a single site 100,000 gallons or more of
4 liquefied natural gas, synthetic gas, or anhydrous ammonia, the
5 PCA shall be the RGU.

6 Subp. 11. to 13. [Unchanged.]

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

10 A. For construction of a new or expansion of an
11 existing warehousing or light industrial facility equal to or in
12 excess of the following thresholds, expressed as gross floor
13 space, the local governmental unit shall be the RGU:

- 14 (1) unincorporated area, 150,000;
- 15 (2) third or fourth class city, 300,000;
- 16 (3) second class city, 450,000;
- 17 (4) first class city, 600,000.

18 B. For construction of a new or expansion of an
19 existing industrial, commercial, or institutional facility,
20 other than a warehousing or light industrial facility, equal to
21 or in excess of the following thresholds, expressed as gross
22 floor space, the local government unit shall be the RGU:

- 23 (1) unincorporated area, 100,000 square feet;
- 24 (2) third or fourth class city, 200,000 square
25 feet;
- 26 (3) second class city, 300,000 square feet;
- 27 (4) first class city, 400,000 square feet.

28 C. For construction of a new or expansion of an
29 existing industrial, commercial, or institutional facility of
30 20,000 or more square feet of ground area, if the local
31 governmental unit has not adopted approved water-related land
32 use management district ordinances or plans, as applicable, and
33 either the project involves riparian frontage or 20,000 or more
34 square feet of ground area to be developed is within a
35 water-related land use management district, the local government
36 unit shall be the RGU. However, this item only applies to

1 shoreland areas, floodplains, and state wild and scenic rivers
2 land use districts if the local unit of government has received
3 official notice from the Department of Natural Resources that it
4 must adopt applicable land use management district ordinances
5 within a specific period of time.

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

19 E. This subpart does not apply to projects for which
20 there is a single mandatory category specified in subparts 2 to
21 13, 16, 17, 20, 23, 25, 29, or 34, or part 4410.4400, subparts 2
22 to 10, 12, 13, 17, or 22, regardless of whether the project in
23 question meets or exceeds any threshold specified in those
24 subparts. In those cases, the need for an EAW must be
25 determined by comparison of the project to the threshold
26 specified in the applicable subpart, and the RGU must be the
27 governmental unit assigned by that subpart.

28 Subp. 15. Air pollution. Items A and B designate the RGU
29 for the type of project listed:

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

34 B. For construction of a new parking facility for
35 2,000 or more vehicles, the PCA shall be the RGU, except that
36 this category does not apply to any parking facility which is

1 part of a project reviewed pursuant to part 4410.4300, subpart
2 14, 19, 32, or 34, or part 4410.4400, subpart 11, 14, 21, or 22.

3 Subp. 16. **Hazardous waste.** Items A to D designate the RGU
4 for the type of project listed:

5 A. For construction or expansion of a hazardous waste
6 disposal facility, the PCA shall be the RGU.

7 B. For construction of a hazardous waste processing
8 facility with a capacity of 1,000 or more kilograms per month,
9 the PCA shall be the RGU.

10 C. For expansion of a hazardous waste processing
11 facility that increases its capacity by ten percent or more, the
12 PCA shall be the RGU.

13 D. For construction or expansion of a facility that
14 sells hazardous waste storage services to generators other than
15 the owner and operator of the facility or construction of a
16 facility at which a generator's own hazardous wastes will be
17 stored for a time period in excess of 90 days, if the facility
18 is located in a water-related land use management district, or
19 in an area characterized by soluble bedrock, the PCA shall be
20 the RGU.

21 Subp. 17. **Solid waste.** For the type of project listed in
22 items A to F, the PCA is the RGU unless the project will be
23 constructed within the seven-county Twin Cities metropolitan
24 area, in which case the Metropolitan Council is the RGU.

25 A. Construction of a mixed municipal solid waste
26 disposal facility for up to 100,000 cubic yards of waste fill
27 per year.

28 B. Expansion by 25 percent or more of previous
29 capacity of a mixed municipal solid waste disposal facility for
30 up to 100,000 cubic yards of waste fill per year.

31 C. Construction or expansion of a mixed municipal
32 solid waste transfer station for 300,000 or more cubic yards per
33 year.

34 D. Construction or expansion of a mixed municipal
35 solid waste energy recovery facility or incinerator, or the
36 utilization of an existing facility for the combustion of mixed

1 municipal solid waste or refuse-derived fuel, with a capacity of
2 30 or more tons per day of input.

3 E. Construction or expansion of a mixed municipal
4 solid waste compost facility or a refuse-derived fuel production
5 facility with a capacity of 50 or more tons per day of input.

6 F. Expansion by at least ten percent but less than 25
7 percent of previous capacity of a mixed municipal solid waste
8 disposal facility for 100,000 cubic yards or more of waste fill
9 per year.

10 G. For construction or expansion of a mixed municipal
11 solid waste ~~resource~~ energy recovery facility ash landfill
12 receiving ash from an incinerator that burns refuse-derived fuel
13 or mixed municipal solid waste, the PCA is the RGU.

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

16 A. For expansion, modification, or replacement of a
17 municipal or domestic sewage collection system resulting in an
18 increase in design average daily flow of any part of that system
19 by:

20 (1) 500,000 gallons per day or more in a first or
21 second class city and in any city served by the Metropolitan
22 Waste Control Commission System or the Western Lake Superior
23 Sanitary Sewer District System;

24 (2) 100,000 gallons per day or more in a third
25 class city not served by the Metropolitan Waste Control
26 Commission System or the Western Lake Superior Sanitary Sewer
27 District System;

28 (3) 50,000 gallons per day or more in a fourth
29 class city not served by the Metropolitan Waste Control
30 Commission System or the Western Lake Superior Sanitary Sewer
31 District System; or

32 (4) 50,000 gallons per day or more in an
33 unincorporated sewered area, the PCA shall be the RGU.

34 B. For expansion or reconstruction of an existing
35 municipal or domestic wastewater treatment facility which
36 results in an increase of 50 percent or more of its average wet

1 weather design flow capacity, or construction of a new municipal
2 or domestic wastewater treatment facility with an average wet
3 weather design flow capacity of 50,000 gallons per day or more,
4 the PCA shall be the RGU.

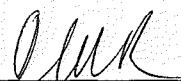
5 Subp. 19. Residential development. An EAW is required for
6 residential development if the total number of units that may
7 ultimately be developed on all contiguous land owned or under an
8 option to purchase by the proposer, and that is zoned for
9 residential development or is identified for residential
10 development by an applicable comprehensive plan, equals or
11 exceeds a threshold of this subpart. In counting the total
12 number of ultimate units, the RGU shall include the number of
13 units in any plans of the proposer; for land for which the
14 proposer has not yet prepared plans, the RGU shall use as the
15 number of units the product of the number of acres multiplied by
16 the maximum number of units per acre allowable under the
17 applicable zoning ordinance. If the total project requires
18 review but future phases are uncertain, the RGU may review the
19 ultimate project sequentially in accordance with part 4410.1000,
20 subpart 4.

21 If a project consists of mixed unattached and attached
22 units, an EAW must be prepared if the sum of the quotient
23 obtained by dividing the number of unattached units by the
24 applicable unattached unit threshold of item A or B, plus the
25 quotient obtained by dividing the number of attached units by
26 the applicable attached unit threshold of item A or B, equals or
27 exceeds one. Items A and B designate the RGU for the type of
28 project listed.

29 A. The local governmental unit is the RGU for
30 construction of a permanent or potentially permanent residential
31 development of:

32 (1) 50 or more unattached or 75 or more attached
33 units in an unsewered unincorporated area or 100 unattached
34 units or 150 attached units in a sewerred unincorporated area;

35 (2) 100 unattached units or 150 attached units in
36 a city that does not meet the conditions of subitem (4);



1 (3) 100 unattached units or 150 attached units in
2 a city meeting the conditions of subitem (4) if the project is
3 not consistent with the adopted comprehensive plan; or

4 (4) 250 unattached units or 375 attached units in
5 a city within the seven-county Twin Cities metropolitan area
6 that has adopted a comprehensive plan under Minnesota Statutes,
7 section 473.859, or in a city not located within the
8 seven-county Twin Cities metropolitan area that has filed with
9 the EQB chair a certification that it has adopted a
10 comprehensive plan containing the following elements:

11 (i) a land use plan designating the existing
12 and proposed location, intensity, and extent of use of land and
13 water for residential, industrial, agricultural, and other
14 public and private purposes;

15 (ii) a transportation plan describing,
16 designating, and scheduling the location, extent, function, and
17 capacity of existing and proposed local public and private
18 transportation facilities and services;

19 (iii) a sewage collection system policy plan
20 describing, designating, and scheduling the areas to be served
21 by the public system, the existing and planned capacities of the
22 public system, and the standards and conditions under which the
23 installation of private sewage treatment systems will be
24 permitted;

25 (iv) a capital improvements plan for public
26 facilities; and

27 (v) an implementation plan describing public
28 programs, fiscal devices, and other actions to be undertaken to
29 implement the comprehensive plan, and a description of official
30 controls addressing the matters of zoning, subdivision, private
31 sewage systems, and a schedule for the implementation of those
32 controls. The EQB chair may specify the form to be used for
33 making a certification under this subitem.

34 B. For construction of a permanent or potentially
35 permanent residential development of 20 or more unattached units
36 or of 30 or more attached units, if the local governmental unit

1 has not adopted approved water-related land use management
2 district ordinances or plans, as applicable, and either, the
3 project involves riparian frontage or five or more acres of the
4 development is within a water-related land use management
5 district, the local government unit shall be the RGU. However,
6 this item only applies to shoreland areas, floodplains, and
7 state wild and scenic rivers land use districts if the local
8 governmental unit has received official notice from the
9 Department of Natural Resources that it must adopt applicable
10 land use management district ordinances within a specified
11 period of time.

12 Subp. 20. [Unchanged.]

13 Subp. 21. **Airport runway projects.** For construction of a
14 runway extension that would upgrade an existing airport runway
15 to permit usage by aircraft over 12,500 pounds that are at least
16 three decibels louder than aircraft currently using the runway,
17 the DOT or local government unit shall be the RGU.

18 Subp. 22. and 23. [Unchanged.]

19 Subp. 24. **Water appropriation and impoundments.** Items A
20 to C designate the RGU for the type of project listed:

21 A. For a new appropriation for commercial or
22 industrial purposes of either surface water or ground water
23 averaging 30,000,000 gallons per month; or a new appropriation
24 of either ground water or surface water for irrigation of 540
25 acres or more in one continuous parcel from one source of water,
26 the DNR shall be the RGU.

27 B. For a new or additional permanent impoundment of
28 water creating a water surface of 160 or more acres, the DNR
29 shall be the RGU.

30 C. For construction of a Class II dam, the DNR shall
31 be the RGU.

32 Subp. 25. [Unchanged.]

33 Subp. 26. **Stream diversion.** For the diversion or
34 channelization of a natural watercourse with a total watershed
35 of ten or more square miles or a designated trout stream, unless
36 exempted by part 4410.4600, subpart 14, item E, or 17, the local



1 government unit shall be the RGU.

2 Subp. 27. [Unchanged.]

3 Subp. 28. **Agriculture and forestry.** Items A to D
4 designate the RGU for the type of project listed:

5 A. to C. [Unchanged.]

6 D. For projects resulting in the permanent conversion
7 of 80 or more acres of agricultural, forest, or naturally
8 vegetated land to a more intensive, developed land use, the
9 local government unit shall be the RGU, except that this item
10 does not apply to agricultural land inside the boundary of the
11 Metropolitan Urban Service Area established by the Metropolitan
12 Council.

13 Subp. 29. **Animal feedlots.** For the construction of an
14 animal feedlot facility with a capacity of 1,000 animal units or
15 more or the expansion of an existing facility by 1,000 animal
16 units or more or construction of a total confinement animal
17 feedlot facility of 2,000 animal units or more or the expansion
18 of an animal feedlot facility by 2,000 animal units or more if
19 the expansion is a total confinement facility, the PCA shall be
20 the RGU.

21 Subp. 30. and 31. [Unchanged.]

22 Subp. 32. **Mixed residential and industrial-commercial**
23 **projects.** If a project includes both residential and
24 industrial-commercial components, the project must have an EAW
25 prepared if the sum of the quotient obtained by dividing the
26 number of residential units by the applicable residential
27 threshold of subpart 19, plus the quotient obtained by dividing
28 the amount of industrial-commercial gross floor space by the
29 applicable industrial-commercial threshold of subpart 14, equals
30 or exceeds one. The local governmental unit is the RGU.

31 Subp. 33. **Communications towers.** For construction of a
32 communications tower equal to or in excess of 500 feet in
33 height, the local governmental unit is the RGU.

34 Subp. 34. **Sports or entertainment facilities.** For
35 construction of a new sports or entertainment facility designed
36 for or expected to accommodate a peak attendance of 5,000 or

1 more persons, or the expansion of an existing sports or
2 entertainment facility by this amount, the local governmental
3 unit is the RGU.

4 4410.4400 MANDATORY EIS CATEGORIES.

5 Subpart 1. **Threshold test.** An EIS must be prepared for
6 projects that meet or exceed the threshold of any of subparts 2
7 to 24. Multiple projects and multiple stages of a single
8 project that are connected actions or phased actions must be
9 considered in total when comparing the project or projects to
10 the thresholds of this part.

11 Subp. 2. to 10. [Unchanged.]

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

15 A. For construction of a new or expansion of an
16 existing warehousing or light industrial facility equal to or in
17 excess of the following thresholds, expressed as gross floor
18 space, the local governmental unit is the RGU:

- 19 (1) unincorporated area, 375,000;
20 (2) third or fourth class city, 750,000;
21 (3) second class city, 1,000,000;
22 (4) first class city, 1,500,000.

23 B. For construction of a new or expansion of an
24 existing industrial, commercial, or institutional facility,
25 other than a warehousing or light industrial facility, equal to
26 or in excess of the following thresholds, expressed as gross
27 floor space, the local government unit shall be the RGU:

- 28 (1) unincorporated area, 250,000 square feet;
29 (2) third or fourth class city, 500,000 square
30 feet;
31 (3) second class city, 750,000 square feet;
32 (4) first class city, 1,000,000 square feet.

33 C. For construction of a new or expansion of an
34 existing industrial, commercial, or institutional facility of
35 100,000 or more square feet of ground area, if the local

1 governmental unit has not adopted approved water-related land
2 use management district ordinances or plans, as applicable, and
3 either the project involves riparian frontage or 100,000 or more
4 square feet of ground area to be developed is within a
5 water-related land use management district, the local government
6 unit shall be the RGU. However, this item only applies to
7 shoreland areas, floodplains, and state wild and scenic rivers
8 land use districts if the local governmental unit has received
9 official notice from the Department of Natural Resources that it
10 must adopt applicable land use management ordinances within a
11 specified period of time.

12 D. 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 10, 12, 13, 15, or 17, or part 4410.4300, subparts
16 2 to 13, 16, 17, 20, 21, 23, 25, or 29 for two or more of the
17 components, regardless of whether the project in question meets
18 or exceeds any threshold specified in those subparts. In those
19 cases, the entire project must be compared to the thresholds
20 specified in items A and B to determine the need for an EIS. If
21 the project meets or exceeds the thresholds specified in any
22 other subparts as well as those in item A or B, the RGU must be
23 determined as provided in part 4410.0500, subpart 1.

24 E. This subpart does not apply to projects for which
25 there is a single mandatory category specified in subparts 2 to
26 10, 12, 13, 17, or 22, or part 4410.4300, subparts 2 to 13, 16,
27 17, 20, 23, 25, 29, or 34, regardless of whether the project in
28 question meets or exceeds any threshold specified in those
29 subparts. In those cases, the need for an EIS or an EAW must be
30 determined by comparison of the project to the threshold
31 specified in the applicable subpart, and the RGU must be the
32 governmental unit assigned by that subpart.

33 Subp. 12. Hazardous waste. Items A to C designate the RGU
34 for the type of project listed:

35 A. For construction or expansion of a hazardous waste
36 disposal facility for 1,000 or more kilograms per month, the PCA

1 shall be the RGU.

2 B. For the construction or expansion of a hazardous
3 waste disposal facility in a water-related land use management
4 district, or in an area characterized by soluble bedrock, the
5 PCA shall be the RGU.

6 C. For construction or expansion of a hazardous waste
7 processing facility if the facility is located in a
8 water-related land use management district, or in an area
9 characterized by soluble bedrock, the PCA shall be the RGU.

10 Subp. 13. Solid waste. For the type of projects listed in
11 items A to ~~D~~ E, the PCA is the RGU unless the project will be
12 constructed within the seven-county Twin Cities metropolitan
13 area, in which case the Metropolitan Council is the RGU.

14 A. Construction of a mixed municipal solid waste
15 disposal facility for 100,000 cubic yards or more of waste fill
16 per year.

17 B. Construction or expansion of a mixed municipal
18 solid waste disposal facility in a water-related land use
19 management district, or in an area characterized by soluble
20 bedrock.

21 C. Construction or expansion of a mixed municipal
22 solid waste energy recovery facility or incinerator, or the
23 utilization of an existing facility for the combustion of mixed
24 municipal solid waste or refuse-derived fuel, with a capacity of
25 250 or more tons per day of input.

26 D. Construction or expansion of a mixed municipal
27 solid waste compost facility or a refuse-derived fuel production
28 facility with a capacity of 500 or more tons per day of input.

29 E. Expansion by 25 percent or more of previous
30 capacity of a mixed municipal solid waste disposal facility for
31 100,000 cubic yards or more of waste fill per year.

32 Subp. 14. Residential development. An EIS is required for
33 residential development if the total number of units that the
34 proposer may ultimately develop on all contiguous land owned by
35 the proposer or for which the proposer has an option to
36 purchase, and that is zoned for residential development or is

1 identified for residential development by an applicable
2 comprehensive plan, equals or exceeds a threshold of this
3 subpart. In counting the total number of ultimate units, the
4 RGU shall include the number of units in any plans of the
5 proposer; for land for which the proposer has not yet prepared
6 plans, the RGU shall use as the number of units the product of
7 the number of acres multiplied by the maximum number of units
8 per acre allowable under the applicable zoning ordinance. If
9 the total project requires review but future phases are
10 uncertain, the RGU may review the ultimate project sequentially
11 in accordance with part 4410.2000, subpart 4.

12 The RGU may review an initial stage of the project, that
13 may not exceed ten percent of the applicable EIS threshold, by
14 means of the procedures of parts 4410.1200 to 4410.1700 instead
15 of the procedures of parts 4410.2000 to 4410.2800. If the RGU
16 determines that this stage requires preparation of an EIS under
17 part 4410.1700, it may be reviewed through a separate EIS or
18 through an EIS that also covers later stages of the project.

19 If a project consists of mixed unattached and attached
20 units, an EIS must be prepared if the sum of the quotient
21 obtained by dividing the number of unattached units by the
22 applicable unattached unit threshold of item A or B, plus the
23 quotient obtained by dividing the number of attached units by
24 the applicable attached unit threshold of item A or B, equals or
25 exceeds one. Items A and B designate the RGU for the type of
26 project listed.

27 A. The local governmental unit is the RGU for
28 construction of a permanent or potentially permanent residential
29 development of:

30 (1) 100 or more unattached or 150 or more
31 attached units in an unsewered unincorporated area or 400
32 unattached units or 600 attached units in a sewer
33 unincorporated area;

34 (2) 400 unattached units or 600 attached units in
35 a city that does not meet the conditions of subitem (4);

36 (3) 400 unattached units or 600 attached units in



1 a city meeting the conditions of subitem (4) if the project is
2 not consistent with the adopted comprehensive plan; or

3 (4) 1,000 unattached units or 1,500 attached
4 units in a city within the seven-county Twin Cities metropolitan
5 area that has adopted a comprehensive plan under Minnesota
6 Statutes, section 473.859, or in a city not located within the
7 seven-county Twin Cities metropolitan area that has filed with
8 the EQB chair a certification that it has adopted a
9 comprehensive plan containing the following elements:

10 (i) a land use plan designating the existing
11 and proposed location, intensity, and extent of use of land and
12 water for residential, industrial, agricultural, and other
13 public and private purposes;

14 (ii) a transportation plan describing,
15 designating, and scheduling the location, extent, function, and
16 capacity of existing and proposed local public and private
17 transportation facilities and services;

18 (iii) a sewage collection system policy plan
19 describing, designating, and scheduling the areas to be served
20 by the public system, the existing and planned capacities of the
21 public system, and the standards and conditions under which the
22 installation of private sewage treatment systems will be
23 permitted;

24 (iv) a capital improvements plan for public
25 facilities; and

26 (v) an implementation plan describing public
27 programs, fiscal devices, and other actions to be undertaken to
28 implement the comprehensive plan, and a description of official
29 controls addressing the matters of zoning, subdivision, private
30 sewage systems, and a schedule for the implementation of the
31 controls. The EQB chair may specify the form to be used for
32 making a certification under this subitem.

33 B. For construction of a permanent or potentially
34 permanent residential development of 40 or more unattached units
35 or of 60 or more attached units, if the local governmental unit
36 has not adopted approved water-related land use management



1 district ordinances or plans, as applicable, and either the
2 project involves riparian frontage or ten or more acres of the
3 development are within a water-related land use management
4 district, the local government unit shall be the RGU. However,
5 this item only applies to shoreland areas, floodplains, and
6 state wild and scenic rivers land use districts if the local
7 governmental unit has received official notice from the
8 Department of Natural Resources that it must adopt applicable
9 land use management district ordinances within a specific period
10 of time.

11 Subp. 15. **Airport runway projects.** For construction of a
12 paved and lighted airport runway of 5,000 feet of length or
13 greater, the DOT or local government unit shall be the RGU.

14 Subp. 16. to 20. [Unchanged.]

15 Subp. 21. **Mixed residential and commercial-industrial**
16 **projects.** If a project includes both residential and
17 commercial-industrial components, the project must have an EIS
18 prepared if the sum of the quotient obtained by dividing the
19 number of residential units by the applicable residential
20 threshold of subpart 14, plus the quotient obtained by dividing
21 the amount of industrial-commercial gross floor space by the
22 applicable industrial-commercial threshold of subpart 11, equals
23 or exceeds one.

24 Subp. 22. **Sports or entertainment facilities.** For
25 construction of a new outdoor sports or entertainment facility
26 designed for or expected to accommodate a peak attendance of
27 20,000 or more persons or a new indoor sports or entertainment
28 facility designed for or expected to accommodate a peak
29 attendance of 30,000 or more persons, or the expansion of an
30 existing facility by these amounts, the local governmental unit
31 is the RGU.

32 Subp. 23. **Water diversions.** For a diversion of waters of
33 the state to an ultimate location outside the state in an amount
34 equal to or greater than 2,000,000 gallons per day, expressed as
35 a daily average over any 30-day period, the ~~Department-of~~
36 ~~Natural-Resources~~ DNR is the RGU.

1 Subp. 24. Pipelines. For routing of a pipeline subject to
2 the pipeline routing permit process under Minnesota Statutes,
3 section 116I.015, the EQB is the RGU.

4 4410.4600 EXEMPTIONS.

5 Subpart 1. [Unchanged.]

6 Subp. 2. Standard exemptions. The following projects are
7 standard exemptions:

8 A. projects for which no governmental decisions are
9 required;

10 B. projects for which all governmental decisions have
11 been made. However, this exemption does not in any way alter
12 the prohibitions on final governmental decisions to approve a
13 project under part 4410.3100;

14 C. projects for which, and so long as, a governmental
15 unit has denied a required governmental approval;

16 D. projects for which a substantial portion of the
17 project has been completed and an EIS would not influence
18 remaining implementation or construction; and

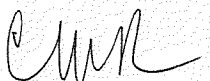
19 E. projects for which environmental review has
20 already been initiated under the prior rules or for which
21 environmental review is being conducted pursuant to part
22 4410.3600 or 4410.3700.

23 Subp. 3. to 10. [Unchanged.]

24 Subp. 11. Sewage systems. Construction of a new
25 wastewater treatment facility with a capacity of less than 5,000
26 gallons per day average wet weather flow or the expansion of an
27 existing wastewater treatment facility by less than 5,000
28 gallons per day average wet weather flow or the expansion of a
29 sewage collection system by less than 5,000 gallons per day
30 design daily average flow or a sewer line of 1,000 feet or less
31 and eight-inch diameter or less, is exempt.

32 Subp. 12. to 16. [Unchanged.]

33 Subp. 17. Ditch maintenance or repair. Routine
34 maintenance or repair of a drainage ditch within the limits of
35 its original construction flow capacity, performed within 20



1 years of construction or major repair, is exempt.

2 Subp. 18. and 19. [Unchanged.]

3 Subp. 20. Utilities. Utility extensions are exempt as
4 follows:

5 A. water service mains of 500 feet or less and 1-1/2
6 inches diameter or less;

7 B. local electrical service lines;

8 C. gas service mains of 500 feet or less and one inch
9 diameter or less; and

10 D. telephone services lines.

11 Subp. 21. to 26. [Unchanged.]

12 4410.5000 AUTHORITY AND PURPOSE.

13 Subpart 1. Bulletin. To provide early notice of impending
14 projects which may have significant environmental effects, the
15 EQB shall, pursuant to Minnesota Statutes, section 116D.04,
16 subdivision 8, publish a bulletin with the name of "EQB Monitor"
17 containing all notices as specified in part 4410.5200. The EQB
18 chair may prescribe the form and manner in which the
19 governmental units submit any material for publication in the
20 EQB Monitor, and the EQB chair may withhold publication of any
21 material not submitted according to the form or procedures the
22 EQB chair has prescribed.

23 Subp. 2. Purpose. These rules are intended to provide a
24 procedure for notice to the EQB and to the public of natural
25 resource management and development permit applications, and
26 impending governmental and private projects that may have
27 significant environmental effects. The notice through the early
28 notice procedures is in addition to public notices otherwise
29 required by law, rule, or regulation.

30 4410.6000 PROJECTS REQUIRING AN ASSESSMENT OF EIS PREPARATION
31 COST.

32 The RGU shall assess the project proposer for its
33 reasonable costs of preparing and distributing an EIS in accord
34 with parts 4410.6100 to 4410.6500.

1 4410.6200 DETERMINING EIS ESTIMATED COST AND EIS ACTUAL COST.

2 Subpart 1. and 2. [Unchanged.]

3 Subp. 3. [See Repealer.]

4 4410.6300 REVISING EIS ASSESSED COST.

5 Subpart 1. Alteration of project scope. If the proposer
6 substantially alters the scope of the project after the final
7 determination has been made that an EIS will be prepared and the
8 EIS assessed cost has been determined, the proposer shall
9 immediately notify the RGU and the EQB.

10 If the change will likely result in a net change of greater
11 than five percent in the EIS assessed cost, the proposer and the
12 RGU shall make a new determination of the EIS assessed cost.
13 The determination shall give consideration to costs previously
14 expended or irrevocably obligated, additional information needed
15 to complete the EIS and the adaptation of existing information
16 to the revised project. The RGU shall submit either a revised
17 agreement or a notice that an agreement cannot be reached
18 following the procedures of part 4410.6100, subpart 1, except
19 that such agreement or notice shall be provided to the EQB
20 within 20 days after the proposer notifies the RGU and the EQB
21 of the change in the project.

22 If the proposer decides not to proceed with the proposed
23 project, the proposer shall immediately notify the RGU and the
24 EQB. The RGU shall immediately cease expending and obligating
25 the proposer's funds for the preparation of the EIS.

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

31 If cash payments previously made by the proposer are less
32 than the RGU's expenditures or irrevocable obligations at the
33 time of notification, the RGU shall notify the proposer and the
34 EQB within ten days after it was notified of the project's
35 withdrawal. Such costs shall be paid by the proposer within 30



1 days after the RGU notifies the proposer and the EQB.

2 Subp. 2. [Unchanged.]

3 4410.6400 DISAGREEMENTS REGARDING EIS ASSESSED COST.

4 Subpart 1. Notice to EQB. If the proposer and the RGU
5 disagree about the EIS assessed cost, the proposer and the RGU
6 shall each submit a written statement to the EQB identifying the
7 EIS estimated cost within ten days after the RGU notifies the
8 EQB that an agreement could not be reached. The statements
9 shall include the EIS preparation costs identified in part
10 4410.6200, subparts 1 and 2 as they pertain to the information
11 to be included in the EIS, a brief explanation of the costs, and
12 a discussion of alternative methods of preparing the EIS and the
13 costs of those alternatives.

14 Subp. 2. [See Repealer.]

15 Subp. 3. to 7. [Unchanged.]

16

17 REPEALER. Minnesota Rules, parts 4410.0200, subparts 66,
18 72, and 74; 4410.1700, subpart 8; 4410.3100, subpart 3;
19 4410.6100, subpart 2; 4410.6200, subpart 3; and 4410.6400,
20 subpart 2, are repealed.

