

1 Environmental Quality Board

2 Adopted Permanent Rules Relating to Environmental Review

3 4410.0200 DEFINITIONS AND ABBREVIATIONS.

4 [For text of subps 1 to 18, see M.R.]

5 Subp. 19. [See repealer.]

6 Subp. 20. [See repealer.]

7 Subp. 21. [See repealer.]

8 [For text of subps 22 to 29, see M.R.]

9 Subp. 30. **Floodplain.** "Floodplain" has the meaning given
10 in Minnesota Statutes, section 103F.111.

11 Subp. 31. [See repealer.]

12 [For text of subps 32 and 33, see M.R.]

13 Subp. 34. **Governmental unit.** "Governmental unit" means
14 any state agency and any general or special purpose unit of
15 government in the state, including watershed districts organized
16 under Minnesota Statutes, chapter 103D, counties, towns, cities,
17 port authorities, housing authorities, and the Metropolitan
18 Council, but not including courts, school districts, and
19 regional development commissions.

20 [For text of subps 35 to 42a, see M.R.]

21 Subp. 43. **Local governmental unit.** "Local governmental
22 unit" means any unit of government other than the state or a
23 state agency or the federal government or a federal agency. It
24 includes watershed districts established pursuant to Minnesota
25 Statutes, chapter 103D, counties, towns, cities, port
26 authorities, housing authorities, and the Metropolitan Council.
27 It does not include courts, school districts, and regional
28 development commissions.

29 [For text of subps 44 to 46, see M.R.]

30 Subp. 47. **Mineral deposit evaluation.** "Mineral deposit
31 evaluation" has the meaning given in Minnesota Statutes, section
32 103I.605, subdivision 2.

33 Subp. 48. **Minnesota River Project Riverbend area.**

34 "Minnesota River Project Riverbend area" means an area subject
35 to the comprehensive land use plan of the Project Riverbend

1 Board established under Minnesota Statutes, chapter 103F.

2 Subp. 49. **Mississippi headwaters area.** "Mississippi
3 headwaters area" means an area subject to the comprehensive land
4 use plan of the Mississippi River Headwaters Board established
5 under Minnesota Statutes, chapter 103F.

6 Subp. 50. **Mississippi headwaters plan.** "Mississippi
7 headwaters plan" means the comprehensive land use plan of the
8 Mississippi River Headwaters Board established under Minnesota
9 Statutes, chapter 103F.

10 Subp. 51. **Mitigation.** "Mitigation" means:

11 [For text of items A to C, see M.R.]

12 D. reducing or eliminating impacts over time by
13 preservation and maintenance operations during the life of the
14 project;

15 E. compensating for impacts by replacing or providing
16 substitute resources or environments; or

17 F. reducing or avoiding impacts by ~~development-and~~
18 implementation of pollution prevention ~~plans~~ measures.

19 [For text of subp 52, see M.R.]

20 Subp. 53. **Natural watercourse.** "Natural watercourse" has
21 the meaning given in Minnesota Statutes, section 103G.005,
22 subdivision 13.

23 [For text of subps 54 to 56, see M.R.]

24 Subp. 56a. **PCB.** "PCB" has the meaning given in Minnesota
25 Statutes, section 116.36, subdivision 4.

26 [For text of subps 57 to 65, see M.R.]

27 Subp. 67. **Project Riverbend Plan.** "Project Riverbend Plan"
28 means the comprehensive land use plan of the Project Riverbend
29 Board established under Minnesota Statutes, chapter 103F.

30 [For text of subp 68, see M.R.]

31 Subp. 69. **Protected waters.** "Protected waters" has the
32 meaning given public waters in Minnesota Statutes, section
33 103G.005.

34 Subp. 70. **Protected wetland.** "Protected wetland" has the
35 meaning given public waters wetland in Minnesota Statutes,
36 section 103G.005, subdivision 15a.

1 [For text of subps 70a to 77, see M.R.]

2 Subp. 78. **Scram mining operation.** "Scram mining
3 operation" has the meaning given in part 6130.0100.

4 [For text of subps 79 to 81, see M.R.]

5 Subp. 82. **Shoreland.** "Shoreland" has the meaning given in
6 part 6120.2500, subpart 15, of the Department of Natural
7 Resources.

8 Subp. 83. [See repealer.]

9 [For text of subps 84 to 92, see M.R.]

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

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

12 A. shoreland areas;

13 B. floodplains;

14 C. wild and scenic rivers districts;

15 D. areas subject to the comprehensive land use plan
16 of the Project Riverbend Board under Minnesota Statutes, chapter
17 103F; and

18 E. areas subject to the comprehensive land use plan
19 of the Mississippi River Headwaters Board under Minnesota
20 Statutes, chapter 103F.

21 Subp. 92b. **Water-related land use management district**
22 **ordinance or plan, approved.** "Water-related land use management
23 district ordinance or plan, approved" means:

24 A. a state-approved shoreland ordinance;

25 B. a state-approved floodplain ordinance;

26 C. a state-approved wild and scenic rivers district
27 ordinance;

28 D. the comprehensive land use plan of the Project
29 Riverbend Board under Minnesota Statutes, chapter 103F; or

30 E. the comprehensive land use plan of the Mississippi
31 River Headwaters Board under Minnesota Statutes, chapter 103F.

32 Subp. 92c. **Waters of the state.** "Waters of the state" has
33 the meaning given in Minnesota Statutes, section 103G.005,
34 subdivision 17.

35 [For text of subp 93, see M.R.]

36 Subp. 94. **Wild and scenic rivers district.** "Wild and

1 scenic rivers district" means a river or a segment of the river
2 and its adjacent lands that possess outstanding scenic,
3 recreational, natural, historical, scientific, or similar values
4 and has been designated by the commissioner of the DNR or by the
5 legislature of the state of Minnesota for inclusion within the
6 Minnesota wild and scenic rivers system pursuant to Minnesota
7 Statutes, sections 103F.301 to 103F.345 or by congress for
8 inclusion within the national wild and scenic rivers system
9 pursuant to United States Code 1976, title 16, sections 1274 to
10 1286.

11 [For text of subps 95 and 96, see M.R.]

12 4410.0400 GENERAL RESPONSIBILITIES.

13 [For text of subps 1 to 3, see M.R.]

14 Subp. 4. **Appeal of final decisions.** Decisions by a RGU on
15 the need for an EAW, the need for an EIS and the adequacy of an
16 EIS are final decisions and may be reviewed by a declaratory
17 judgment action initiated within 30 days of the RGU's decision
18 in the district court of the county where the proposed project,
19 or any part thereof, would be undertaken.

20 4410.0500 RGU SELECTION PROCEDURES.

21 [For text of subps 1 and 2, see M.R.]

22 Subp. 3. **RGU for petition EAW's.** If an EAW is ordered in
23 response to a petition, the RGU that was designated by the EQB
24 to act on the petition shall be responsible for the preparation
25 of the EAW. The EQB chair or designee shall determine an RGU to
26 act on the petition as follows:

27 [For text of items A and B, see M.R.]

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

32 In applying items A, B, and C, the EQB chair or designee
33 shall not designate as the RGU any governmental unit which has
34 already made its final decisions to grant all permits or
35 approvals required from it to construct the project. If as a

1 result, the RGU cannot be designated under item A, B, or C, the
2 RGU shall be designated pursuant to subpart 5, except that no
3 completed data portions of an EAW shall be required for the
4 determination.

5 [For text of subps 4 to 6, see M.R.]

6 4410.1200 EAW CONTENT.

7 The EAW shall address at least the following major
8 categories in the form provided on the worksheet:

9 [For text of items A and B, see M.R.]

10 C. description of the project, the purpose of the
11 project, methods of construction, quantification of physical
12 characteristics and impacts, project site description, and land
13 use and physical features of the surrounding area;

14 D. resource protection measures that have been
15 incorporated into the project design;

16 E. major issues sections identifying potential
17 environmental impacts and issues that may require further
18 investigation before the project is commenced;

19 F. known governmental approvals, reviews, or
20 financing required, applied for, or anticipated and the status
21 of any applications made, including permit conditions that may
22 have been ordered or are being considered; and

23 G. if the project will be carried out by a
24 governmental unit, a brief explanation of the need for the
25 project and an identification of those who will benefit from the
26 project.

27 4410.1300 EAW FORM.

28 The EQB chair shall develop an EAW form to be used by the
29 RGU. The EQB chair may approve the use of an alternative EAW
30 form if an RGU demonstrates the alternative form will better
31 accommodate the RGU's function or better address a particular
32 type of project and the alternative form will provide more
33 complete, more accurate, or more relevant information.

34 The EAW form shall be assessed by the EQB chair
35 periodically and may be altered by the EQB chair to improve the

1 effectiveness of the document.

2 If a federal Environmental Assessment has been prepared for
3 a project, the Environmental Assessment document may be
4 circulated in place of the EAW form, provided that the
5 Environmental Assessment addresses each of the environmental
6 effects identified in the EAW form.

7 4410.1400 PREPARATION OF AN EAW.

8 The EAW shall be prepared as early as practicable in the
9 development of the proposed project. The EAW shall be prepared
10 by the RGU or its agents.

11 When an EAW is to be prepared, the proposer shall submit
12 the completed data portions of the EAW to the RGU. The RGU
13 shall promptly determine whether the proposer's submittal is
14 complete and, if complete, If the RGU determines that the
15 submittal is incomplete, the RGU shall return the submittal to
16 the proposer for completion of the missing data. If the RGU
17 determines that the submittal is complete, the RGU shall notify
18 the proposer of the acceptance of the submittal within five
19 days. The RGU shall have 30 days from notification to add
20 supplementary material to the EAW, if necessary, and to approve
21 the EAW for distribution. The RGU shall be responsible for the
22 completeness and accuracy of all information.

23 4410.1700 DECISION ON NEED FOR EIS.

24 [For text of subps 1 to 6, see M.R.]

25 Subp. 7. Criteria. In deciding whether a project has the
26 potential for significant environmental effects, the following
27 factors shall be considered:

28 [For text of items A to C, see M.R.]

29 D. the extent to which environmental effects can be
30 anticipated and controlled as a result of other available
31 environmental studies undertaken by public agencies or the
32 project proposer, ~~or of including other EISs previously-prepared~~
33 ~~on-similar-projects-or-generic-EISs-previously-prepared-pursuant~~
34 ~~to-part-4410.3800.~~

35 [For text of subp 9, see M.R.]

1 4410.2100 EIS SCOPING PROCESS.

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

9 [For text of subps 2 to 10, see M.R.]

10 Subp. 11. Modification of project; termination of EIS
11 process. After initiation of scoping for an EIS, if the
12 proposed project is modified so that an EIS is no longer
13 mandatory, or the reasons for ordering an EIS no longer apply,
14 the RGU may terminate the EIS process as described in items A
15 and B.

16 A. If the modified project meets or exceeds any
17 threshold for a mandatory EAW listed at part 4410.4300, an EAW
18 must be prepared on the modified project in accordance with
19 parts 4410.1400 to 4410.1700. The EAW shall be accompanied by a
20 notice of termination of the former EIS explaining the changes
21 made in the proposed project and the reasons for the termination
22 of the EIS.

23 B. If the modified project does not meet or exceed
24 any thresholds for a mandatory EAW listed at part 4410.4300 and
25 is not exempted pursuant to part 4410.4600, the RGU shall send
26 written notice of its intent to terminate the EIS to all persons
27 who submitted comments on the EIS scope and to all persons on
28 the EAW distribution list under part 4410.1500. The notice
29 shall summarize the reasons for the intended termination of the
30 EIS, identify a contact person to whom comments may be sent, and
31 announce the end of the comment period. The EQB staff shall
32 publish notice in the EQB Monitor, and a press release shall be
33 supplied by the RGU to at least one newspaper of general
34 circulation in the area of the project.

35 A period of not less than ten days from the date of

1 publication of the notice in the EQB Monitor shall be provided
2 for interested persons to comment on the need for an EIS on the
3 modified project and to object to the termination of the EIS.
4 If no written objections are received by the RGU within the
5 comment period, the EIS process is automatically terminated upon
6 the expiration of the comment period. If any written objections
7 are received by the RGU within the comment period, the RGU shall
8 consider the comments received and determine the need to
9 continue the EIS on the modified project in accordance with part
10 4410.1700.

11 Subp. 12. Amendment of scope by order of EQB pursuant to
12 resolution of a cost dispute. If in resolving an EIS cost
13 disagreement pursuant to part 4410.6410, the EQB finds that the
14 scope of the EIS is not in conformance with parts 4410.2100 to
15 4410.2500, the EQB may order the RGU to amend the scope of the
16 EIS to the extent necessary to ~~resolve-the-cost-disagreement~~
17 conform to the requirements of those parts, and the new scope of
18 the EIS shall be considered in resolving the cost dispute.

19 4410.2300 CONTENT OF EIS.

20 An EIS shall be written in plain and objective language.
21 An RGU shall use a format for an EIS that will encourage good
22 analysis and clear presentation of the proposed action including
23 alternatives to the project. The standard format shall be:

24 [For text of items A to F, see M.R.]

25 G. Alternatives: the EIS shall compare the
26 potentially significant impacts of the proposal with those of
27 other reasonable alternatives to the proposed project. The EIS
28 must address one or more alternatives of each of the following
29 types of alternatives or provide a ~~succinct-but-thorough~~ concise
30 explanation of why ~~there-is~~ no ~~potentially-environmentally~~
31 ~~superior~~ alternative of that a particular type ~~that-would-meet~~
32 ~~the-underlying-need-for-or-purpose-of-the-project~~ is included in
33 the EIS: alternative sites, alternative technologies, modified
34 designs or layouts, modified scale or magnitude, and
35 alternatives incorporating reasonable mitigation measures

1 identified through comments received during the comment periods
2 for EIS scoping or for the draft EIS. An alternative may be
3 excluded from analysis in the EIS if it would not meet the
4 underlying need for or purpose of the project, it would likely
5 not have any significant environmental benefit compared to the
6 project as proposed, or another alternative, of any type, that
7 will be analyzed in the EIS would likely have similar
8 environmental benefits but substantially less adverse economic,
9 employment, or sociological impacts. Alternatives included in
10 the scope of the EIS as established under part 4410.2100 that
11 were considered but eliminated based on information developed
12 through the EIS analysis shall be discussed briefly and the
13 reasons for their elimination shall be stated. The alternative
14 of no action shall be addressed.

15 H. Environmental, economic, employment, and
16 sociological impacts: for the proposed project and each major
17 alternative there shall be a thorough but succinct discussion of
18 potentially significant direct or indirect, adverse, or
19 beneficial effects generated. Data and analyses shall be
20 commensurate with the importance of the impact and the relevance
21 of the information to a reasoned choice among alternatives and
22 to the consideration of the need for mitigation measures; the
23 RGU shall consider the relationship between the cost of data and
24 analyses and the relevance and importance of the information in
25 determining the level of detail of information to be prepared
26 for the EIS. Less important material may be summarized,
27 consolidated, or simply referenced. The EIS shall identify and
28 briefly discuss any major differences of opinion concerning
29 significant impacts of the proposed project on the environment.

30 [For text of items I and J, see M.R.]

31 4410.2400 INCORPORATION BY REFERENCE IN EIS.

32 An RGU shall incorporate material into an EIS by reference
33 when the effect will be to reduce bulk without impeding
34 governmental and public review of the project. The incorporated
35 material shall be cited in the EIS, and its content shall be

1 briefly described. No material may be incorporated by reference
2 unless it is reasonably available for inspection by interested
3 persons within the time allowed for comment.

4 4410.2500 INCOMPLETE OR UNAVAILABLE INFORMATION.

5 If information about potentially significant environmental
6 effects is essential to a reasoned choice among alternatives and
7 is not known and the cost of obtaining it is excessive, the
8 information cannot be obtained within the time periods specified
9 in part 4410.2800, subpart 3, or the means to obtain the
10 information are beyond the state of the art, the RGU shall
11 include the following information in the EIS:

12 A. a statement that the information is incomplete or
13 unavailable and a brief explanation of why it is lacking;

14 B. an explanation of the relevance of the lacking
15 information to evaluation of potentially significant
16 environmental impacts and their mitigation and to a reasoned
17 choice among alternatives;

18 C. a brief summary of existing credible scientific
19 evidence that is relevant to evaluating the potential
20 significant environmental impacts; and

21 D. the RGU's evaluation of such impacts from the
22 project and its alternatives based upon theoretical approaches
23 or research methods generally accepted in the scientific
24 community.

25 4410.2800 DETERMINATION OF ADEQUACY.

26 [For text of subps 1 to 3, see M.R.]

27 Subp. 4. Conditions. The final EIS shall be determined
28 adequate if it:

29 A. addresses the potentially significant issues and
30 alternatives raised in scoping so that all significant issues
31 for which information can be reasonably obtained have been
32 analyzed ~~at-a-level-of-detail-commensurate-with-their~~
33 ~~significance-and-their-relevance-to-a-reasoned-choice-among~~
34 alternatives in conformance with part 4410.2300, items G and H;

35 B. provides responses to the substantive comments

1 received during the draft EIS review concerning issues raised in
2 scoping; and

3 C. was prepared in compliance with the procedures of
4 the act and parts 4410.0200 to 4410.6500.

5 [For text of subps 5 and 6, see M.R.]

6 4410.3100 PROHIBITION ON FINAL GOVERNMENTAL DECISIONS.

7 Subpart 1. Prohibitions. If an EAW or EIS is required for
8 a governmental action under parts 4410.0200 to 4410.7500, or if
9 a petition for an EAW is filed under part 4410.1100, a project
10 may not be started and a final governmental decision may not be
11 made to grant a permit, approve a project, or begin a project,
12 until:

13 [For text of items A to D, see M.R.]

14 Subp. 2. Public projects, prohibitions. If a project
15 subject to review under parts 4410.0200 to 4410.7500 is proposed
16 to be carried out or sponsored by a governmental unit, the
17 governmental unit shall not take any action with respect to the
18 project, including the acquisition of property, if the action
19 will prejudice the ultimate decision on the project, until a
20 petition has been dismissed, a negative declaration has been
21 issued, or until the final EIS has been determined adequate by
22 the RGU or the EQB, unless the project is an emergency under
23 subpart 9 or a variance is granted under subparts 4 to 8. An
24 action prejudices the ultimate decision on a project if it tends
25 to determine subsequent development or to limit alternatives or
26 mitigative measures.

27 Subp. 4. Variance. Construction may begin on a project if
28 the proposer applies for and is granted a variance from subparts
29 1 and 2. A variance for certain governmental approvals to be
30 granted prior to completion of the environmental review process
31 may also be requested. A variance may be requested at any time
32 after the commencement of the 30-day review period following the
33 filing of an EAW. The proposer shall submit an application for
34 a variance to the EQB together with:

35 [For text of items A to E, see M.R.]

[For text of subps 5 to 8, see M.R.]

Subp. 9. **Emergency action.** In the rare situation when immediate action by a governmental unit or person is essential to avoid or eliminate an imminent threat to the public health or safety or a serious threat to natural resources, a proposed project may be undertaken without the environmental review which would otherwise be required by parts 4410.0200 to 4410.7500. The governmental unit or person must demonstrate to the EQB chair, either orally or in writing, that immediate action is essential and must receive authorization from the EQB chair to proceed. Authorization to proceed shall be limited to those aspects of the project necessary to control the immediate impacts of the emergency. Other aspects of the project remain subject to review under parts 4410.0200 to 4410.6500.

4410.3610 ALTERNATIVE URBAN AREAWIDE REVIEW PROCESS.

Subpart 1. **Applicability.** A local unit of government may use the procedures of this part instead of the procedures of parts 4410.1100 to 4410.1700 and 4410.2100 to 4410.3000 to review anticipated residential, commercial, warehousing, and light industrial development and associated infrastructure in a particular geographic area within its jurisdiction, if the local unit has adopted a comprehensive plan that includes at least the elements in items A to C. For purposes of this part, "light industrial development, facility, or project" includes a development, facility, or project engaged in the assembly of products from components that are not produced at the site, but does not include any development, facility, or project, including an assembly development, facility, or project, meeting the requirements for a mandatory EAW in part 4410.4300, subparts 2 to 13, 15 to 18, or 24, or a mandatory EIS in part 4410.4400, subparts 2 to 10, 12, 13, or 25. The local unit of government is the RGU for any review conducted under this part.

[For text of items A to C, see M.R.]

Subp. 2. **Relationship to specific development projects.** Upon completion of review under this part, residential,

1 commercial, warehousing, and light industrial development
2 projects and associated infrastructure within the boundaries
3 established under subpart 3 that are consistent with development
4 assumptions established under subpart 3 are exempt from review
5 under parts 4410.1100 to 4410.1700 and 4410.2100 to 4410.3000 as
6 long as the approval and construction of the project complies
7 with the conditions of the plan for mitigation developed under
8 subpart 5.

9 If a specific residential, commercial, warehousing, light
10 industrial, or associated infrastructure project, that is
11 subject to an EAW or EIS, is proposed within the boundaries of
12 an area for which an alternative review under this part is
13 planned but has not yet been completed, the RGU may, at its
14 discretion, review the specific project either through the
15 alternative areawide review procedures or through the EAW or EIS
16 procedures. If the project is reviewed through the alternative
17 areawide review procedures, at least one set of development
18 assumptions used in the process must be consistent with the
19 proposed project, and the project must incorporate the
20 applicable mitigation measures developed through the process.

21 The prohibitions of part 4410.3100, subparts 1 to 3, apply
22 to all projects for which review under this part substitutes for
23 review under parts 4410.1100 to 4410.1700 or 4410.2100 to
24 4410.3000. These prohibitions terminate upon the adoption by
25 the RGU of the environmental analysis document and plan for
26 mitigation under subpart 5.

27 Subp. 3. Order for review; geographic area designation and
28 specification of development. The RGU shall adopt an order for
29 each review under this part that specifies the boundaries of the
30 geographic area within which the review will apply and specifies
31 the anticipated nature, location, and intensity of residential,
32 commercial, warehousing, and light industrial development and
33 associated infrastructure within those boundaries. The RGU may
34 specify more than one scenario of anticipated development
35 provided that at least one scenario is consistent with the
36 adopted comprehensive plan. At least one scenario must be

1 consistent with any known development plans of property owners
2 within the area. The RGU may delineate subareas within the
3 area, as appropriate to facilitate planning and review of future
4 development, and allocate the overall anticipated development
5 among the subareas.

6 Subp. 4. **Environmental analysis document; form and content.**

7 The content and format must be similar to that of the EAW, but
8 must provide for a level of analysis comparable to that of an
9 EIS for impacts typical of urban residential, commercial,
10 warehousing, and light industrial development and associated
11 infrastructure. The content and format must provide for a
12 certification by the RGU that the comprehensive plan
13 requirements of subpart 1 are met.

14 Subp. 5. **Procedures for review.** The procedures in items A
15 to H must be used for review under this part.

16 [For text of items A to D, see M.R.]

17 E. Unless an objection is filed in accordance with
18 item D, the RGU shall adopt the revised environmental analysis
19 document and the plan for mitigation at its first regularly
20 scheduled meeting held 15 or more days after the distribution of
21 the revised document. The RGU shall submit evidence of the
22 adoption of the document and plan for mitigation to the EQB
23 staff and all agencies that have stated that they wish to be
24 informed of any future projects within the area as part of their
25 comments on the draft environmental analysis document. The EQB
26 shall publish a notice of the adoption of the documents and the
27 completion of the review process in the EQB Monitor.

28 Upon adoption of the environmental analysis document and
29 the plan for mitigation, residential, commercial, warehousing,
30 and light industrial projects and associated infrastructure
31 within the area that are consistent with the assumptions of the
32 document and that comply with the plan for mitigation are exempt
33 from review under parts 4410.1100 to 4410.1700 and 4410.2100 to
34 4410.2800.

35 [For text of items F to H, see M.R.]

36 [For text of subps 6 to 8, see M.R.]

1 4410.4000 TIERED EIS.

2 An RGU may use a series of tiered EISs to fulfill
3 environmental review requirements for an action where decisions
4 on which alternative to select must be made in stages,
5 progressing from the general to the specific. Prior to each
6 decision which would eliminate from further consideration any
7 alternatives under consideration, a tiered EIS must be completed
8 which addresses the issues and alternatives relevant to the
9 decisions to be made in that tier, at a level of detail
10 appropriate to that tier. The level of detail in earlier tiers
11 need not be as great as that in later tiers, provided that it is
12 sufficient to reasonably inform decision makers of
13 the significant environmental ~~and-other-significant~~
14 consequences, economic, employment, and sociological impacts of
15 the choices made in that tier.

16 The procedures for preparing tiered EISs shall be the same
17 as those for a regular EIS, as specified in parts 4410.2100 to
18 4410.3000.

19 A tiered EIS may incorporate by reference material
20 developed in an earlier tier.

21 4410.4300 MANDATORY EAW CATEGORIES.

22 Subpart 1. **Threshold test.** An EAW must be prepared for
23 projects that meet or exceed the threshold of any of subparts 2
24 to 37, unless the project meets or exceeds any thresholds of
25 part 4410.4400, in which case an EIS must be prepared.

26 If the proposed project is an expansion or additional stage
27 of an existing project, the cumulative total of the proposed
28 project and any existing stages or components of the existing
29 project must be included when determining if a threshold is met
30 or exceeded if construction was begun within three years before
31 the date of ~~the-determination~~ application for a permit or
32 approval from a governmental unit for the expansion or
33 additional stage but after the effective date of this amendment,
34 except that any existing stage or component that was reviewed
35 under a previously completed EAW or EIS need not be included.

1 Multiple projects and multiple stages of a single project
2 that are connected actions or phased actions must be considered
3 in total when comparing the project or projects to the
4 thresholds of this part and part 4410.4400.

5 [For text of subps 2 to 8, see M.R.]

6 Subp. 9. **Underground storage.** Items A and B designate the
7 RGU for the type of project listed:

8 A. For expansion of an underground storage facility
9 for gases or liquids that requires a permit, pursuant to
10 Minnesota Statutes, section 103I.681, subdivision 1, paragraph
11 (a), the DNR shall be the RGU.

12 B. For expansion of an underground storage facility
13 for gases or liquids, using naturally occurring rock materials,
14 that requires a permit pursuant to Minnesota Statutes, section
15 103I.681, subdivision 1, paragraph (b), the DNR shall be the RGU.

16 [For text of subps 10 to 13, see M.R.]

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

20 [For text of items A and B, see M.R.]

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

34 D. This subpart does not apply to projects for which
35 there is a single mandatory category specified in subparts 2 to
36 13, 16, 17, 20, 23, 25, 29, or 34, or part 4410.4400, subparts 2

1 to 10, 12, 13, 17, or 22, regardless of whether the project in
2 question meets or exceeds any threshold specified in those
3 subparts. In those cases, the need for an EAW must be
4 determined by comparison of the project to the threshold
5 specified in the applicable subpart, and the RGU must be the
6 governmental unit assigned by that subpart.

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

9 A. For construction of a stationary source facility
10 that generates 100 tons or more per year or modification of a
11 stationary source facility that increases generation by 100 tons
12 or more per year of any single air pollutant after installation
13 of air pollution control equipment, the PCA shall be the RGU.

14 B. For construction of a new parking facility for
15 2,000 or more vehicles, the PCA shall be the RGU, except that
16 this category does not apply to any parking facility which is
17 part of a project reviewed pursuant to part 4410.4300, subpart
18 14, 19, 32, or 34, or part 4410.4400, subpart 11, 14, 21, or 22.

19 [For text of subp 16, see M.R.]

20 Subp. 17. **Solid waste.** Items A to G designate the RGU for
21 the type of project listed:

22 A. For construction of a mixed municipal solid waste
23 disposal facility for up to 100,000 cubic yards of waste fill
24 per year, the PCA is the RGU.

25 B. For expansion by 25 percent or more of previous
26 capacity of a mixed municipal solid waste disposal facility for
27 up to 100,000 cubic yards of waste fill per year, the PCA is the
28 RGU.

29 C. For construction or expansion of a mixed municipal
30 solid waste transfer station for 300,000 or more cubic yards per
31 year, the PCA is the RGU.

32 D. For construction or expansion of a mixed municipal
33 solid waste energy recovery facility or incinerator, or the
34 utilization of an existing facility for the combustion of mixed
35 municipal solid waste or refuse-derived fuel, with a capacity of
36 30 or more tons per day of input, the PCA is the RGU.

1 E. For construction or expansion of a mixed municipal
2 solid waste compost facility or a refuse-derived fuel production
3 facility with a capacity of 50 or more tons per day of input,
4 the PCA is the RGU.

5 F. For expansion by at least ten percent but less
6 than 25 percent of previous capacity of a mixed municipal solid
7 waste disposal facility for 100,000 cubic yards or more of waste
8 fill per year, the PCA is the RGU.

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

13 Subp. 18. Wastewater systems. Items A to C designate the
14 RGU for the type of project listed:

15 A. For expansion, modification, or replacement of a
16 municipal sewage collection system resulting in an increase in
17 design average daily flow of any part of that system by
18 1,000,000 gallons per day or more, the PCA shall be the RGU.

19 B. For expansion or reconstruction of an existing
20 municipal or domestic wastewater treatment facility which
21 results in an increase by 50 percent or more and by at least
22 50,000 gallons per day of its average wet weather design flow
23 capacity, or construction of a new municipal or domestic
24 wastewater treatment facility with an average wet weather design
25 flow capacity of 50,000 gallons per day or more, the PCA shall
26 be the RGU.

27 C. For expansion or reconstruction of an existing
28 industrial process wastewater treatment facility which increases
29 its design flow capacity by 50 percent ~~of~~ or more and by at
30 least 200,000 gallons per day or more, or construction of a new
31 industrial process wastewater treatment facility with a design
32 flow capacity of 200,000 gallons per day or more, 5,000,000
33 gallons per month or more, or 20,000,000 gallons per year or
34 more, the PCA shall be the RGU. This category does not apply to
35 industrial process wastewater treatment facilities that
36 discharge to a publicly owned treatment works or to a tailings

1 basin reviewed pursuant to subpart 11, item B.

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

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

29 A. 50 or more unattached or 75 or more attached units
30 in an unsewered unincorporated area or 100 unattached units or
31 150 attached units in a sewerred unincorporated area;

32 B. 100 unattached units or 150 attached units in a
33 city that does not meet the conditions of item D;

34 C. 100 unattached units or 150 attached units in a
35 city meeting the conditions of item D if the project is not
36 consistent with the adopted comprehensive plan; or

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

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

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

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

22 (4) a capital improvements plan for public
23 facilities; and

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

31 Subp. 20. **Campgrounds and RV Parks.** For construction of a
32 seasonal or permanent recreational development, accessible by
33 vehicle, consisting of 50 or more sites, or the expansion of
34 such a facility by 50 or more sites, the local government unit
35 shall be the RGU.

36 Subp. 21. **Airport projects.** Items A and B designate the

1 RGU for the type of project listed:

2 A. For construction of a paved, new airport runway,
3 the DOT, local governmental unit, or the Metropolitan Airports
4 Commission shall be the RGU.

5 B. For construction of a runway extension that would
6 upgrade an existing airport runway to permit usage by aircraft
7 over 12,500 pounds that are at least three decibels louder than
8 aircraft currently using the runway, the DOT, local government
9 unit, or the Metropolitan Airports Commission shall be the RGU.

10 The RGU shall be selected according to part 4410.0500, subpart 5.

11 [For text of subps 22 and 23, see M.R.]

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

14 [For text of item A, see M.R.]

15 B. For a new permanent impoundment of water creating
16 additional water surface of 160 or more acres or for an
17 additional permanent impoundment of water creating additional
18 water surface of 160 or more acres, the DNR shall be the RGU.

19 C. For construction of a dam with an upstream
20 drainage area of 50 square miles or more, the DNR shall be the
21 RGU.

22 Subp. 25. **Marinas.** For construction or expansion of a
23 marina or harbor that results in a 20,000 or more square foot
24 total or a 20,000 or more square foot increase of water surface
25 area used temporarily or permanently for docks, docking, or
26 maneuvering of watercraft, the local government unit shall be
27 the RGU.

28 Subp. 26. **Stream diversion.** For a diversion, realignment,
29 or channelization of any designated trout stream, or affecting
30 greater than 500 feet of natural watercourse with a total
31 drainage area of ten or more square miles unless exempted by
32 part 4410.4600, subpart 14, item E, or 17, the local government
33 unit shall be the RGU.

34 Subp. 27. **Wetlands and protected waters.** Items A and B
35 designate the RGU for the type of project listed:

36 A. For projects that will change or diminish the

1 course, current, or cross-section of one acre or more of any
2 protected water or protected wetland except for those to be
3 drained without a permit pursuant to Minnesota Statutes, chapter
4 103G, the local government unit shall be the RGU.

5 [For text of item B, see M.R.]

6 Subp. 28. **Forestry.** Items A and B designate the RGU for
7 the type of project listed:

8 [For text of items A and B, see M.R.]

9 [For text of subps 29 and 30, see M.R.]

10 Subp. 31. **Historical places.** For the destruction, in
11 whole or part, or the moving of a property that is listed on the
12 National Register of Historic Places or State Register of
13 Historic Places, the permitting state agency or local unit of
14 government shall be the RGU, except this does not apply to
15 projects reviewed under section 106 of the National Historic
16 Preservation Act of 1966, United States Code, title 16, section
17 470, or the federal policy on lands, wildlife and waterfowl
18 refuges, and historic sites pursuant to United States Code,
19 title 49, section 303.

20 [For text of subp 32, see M.R.]

21 Subp. 33. **Communications towers.** For construction of a
22 communications tower equal to or in excess of 500 feet in
23 height, or 300 feet in height within 1,000 feet of any protected
24 water or protected wetland or within two miles of the
25 Mississippi, Minnesota, Red, or St. Croix rivers or ~~the-north~~
26 ~~shore-of~~ Lake Superior, the local governmental unit is the RGU.

27 [For text of subps 34 and 35, see M.R.]

28 Subp. 36. **Land use conversion, including golf courses.**
29 Items A and B designate the RGU for the type of project listed:

30 A. For golf courses, residential development where
31 the lot size is less than five acres, and other projects
32 resulting in the permanent conversion of 80 or more acres of
33 agricultural, native prairie, forest, or naturally vegetated
34 land, the local government unit shall be the RGU, except that
35 this subpart does not apply to agricultural land inside the
36 boundary of the Metropolitan Urban Service Area established by

1 the Metropolitan Council.

2 B. For projects resulting in the conversion of 640 or
3 more acres of forest or naturally vegetated land to a different
4 open space land use, the local government unit shall be the RGU.

5 4410.4400 MANDATORY EIS CATEGORIES.

6 [For text of subps 1 to 6, see M.R.]

7 Subp. 7. **Underground storage.** Items A and B designate the
8 RGU for the type of project listed:

9 A. For construction of an underground storage
10 facility for gases or liquids that requires a permit pursuant to
11 Minnesota Statutes, section 103I.681, subdivision 1, paragraph
12 (a), the DNR shall be the RGU.

13 B. For construction of an underground storage
14 facility for gases or liquids, using naturally occurring rock
15 materials, that requires a permit pursuant to Minnesota
16 Statutes, section 103I.681, subdivision 1, paragraph (b), the
17 DNR shall be the RGU.

18 [For text of subps 8 to 10, see M.R.]

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

22 [For text of items A and B, see M.R.]

23 C. This subpart applies to any industrial,
24 commercial, or institutional project which includes multiple
25 components, if there are mandatory categories specified in
26 subparts 2 to 10, 12, 13, 15, or 17, or part 4410.4300, subparts
27 2 to 13, 16, 17, 20, 21, 23, 25, or 29 for two or more of the
28 components, regardless of whether the project in question meets
29 or exceeds any threshold specified in those subparts. In those
30 cases, the entire project must be compared to the thresholds
31 specified in items A and B to determine the need for an EIS. If
32 the project meets or exceeds the thresholds specified in any
33 other subparts as well as those in item A or B, the RGU must be
34 determined as provided in part 4410.0500, subpart 1.

35 D. This subpart does not apply to projects for which

1 there is a single mandatory category specified in subparts 2 to
2 10, 12, 13, 17, or 22, or part 4410.4300, subparts 2 to 13, 16,
3 17, 20, 23, 25, 29, or 34, regardless of whether the project in
4 question meets or exceeds any threshold specified in those
5 subparts. In those cases, the need for an EIS or an EAW must be
6 determined by comparison of the project to the threshold
7 specified in the applicable subpart, and the RGU must be the
8 governmental unit assigned by that subpart.

9 [For text of subp 12, see M.R.]

10 Subp. 13. **Solid waste.** Items A to E designate the RGU for
11 the type of project listed:

12 A. For construction of a mixed municipal solid waste
13 disposal facility for 100,000 cubic yards or more of waste fill
14 per year, the PCA is the RGU.

15 B. For construction or expansion of a mixed municipal
16 solid waste disposal facility in a water-related land use
17 management district, or in an area characterized by soluble
18 bedrock, the PCA is the RGU.

19 C. For construction or expansion of a mixed municipal
20 solid waste energy recovery facility or incinerator, or the
21 utilization of an existing facility for the combustion of mixed
22 municipal solid waste or refuse-derived fuel, with a capacity of
23 250 or more tons per day of input, the PCA is the RGU.

24 D. For construction or expansion of a mixed municipal
25 solid waste compost facility or a refuse-derived fuel production
26 facility with a capacity of 500 or more tons per day of input,
27 the PCA is the RGU.

28 E. For expansion by 25 percent or more of previous
29 capacity of a mixed municipal solid waste disposal facility for
30 100,000 cubic yards or more of waste fill per year, the PCA is
31 the RGU.

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, or if
9 the maximum number of units allowable per acre is not specified
10 in an applicable zoning ordinance, by the overall average number
11 of units per acre indicated in the plans of the proposer for
12 those lands for which plans exist. If the total project
13 requires review but future phases are uncertain, the RGU may
14 review the ultimate project sequentially in accordance with part
15 4410.2000, subpart 4.

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

23 If a project consists of mixed unattached and attached
24 units, an EIS must be prepared if the sum of the quotient
25 obtained by dividing the number of unattached units by the
26 applicable unattached unit threshold, plus the quotient obtained
27 by dividing the number of attached units by the applicable
28 attached unit threshold, equals or exceeds one.

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

31 A. 100 or more unattached or 150 or more attached
32 units in an unsewered unincorporated area or 400 unattached
33 units or 600 attached units in a sewerer unincorporated area;

34 B. 400 unattached units or 600 attached units in a
35 city that does not meet the conditions of item D;

36 C. 400 unattached units or 600 attached units in a

1 city meeting the conditions of item D if the project is not
2 consistent with the adopted comprehensive plan; or

3 D. 1,000 unattached units or 1,500 attached units in
4 a city within the seven-county Twin Cities metropolitan area
5 that has adopted a comprehensive plan under Minnesota Statutes,
6 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 (1) a land use plan designating the existing and
11 proposed location, intensity, and extent of use of land and
12 water for residential, industrial, agricultural, and other
13 public and private purposes;

14 (2) 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 (3) 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 (4) a capital improvements plan for public
25 facilities; and

26 (5) 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 item.

33 [For text of subps 15 to 19, see M.R.]

34 Subp. 20. **Wetlands and protected waters.** For projects
35 that will eliminate a protected water or protected wetland , the
36 local government unit shall be the RGU.

1 [For text of subps 21 to 24, see M.R.]

2 Subp. 25. Incineration of wastes containing PCBs. For the
3 incineration of wastes containing PCB's for which an EIS is
4 required by Minnesota Statutes, section 116.38, subdivision 2,
5 the PCA shall be the RGU.

6 4410.4600 EXEMPTIONS.

7 Subpart 1. Scope of exemption. Projects within subparts 2
8 and 26 are exempt from parts 4410.0200 to 4410.6500. Projects
9 within subparts 3 to 25 are exempt from parts 4410.0200 to
10 4410.6500, unless they have characteristics which meet or exceed
11 any of the thresholds specified in part 4410.4300 or 4410.4400.

12 [For text of subps 2 to 9, see M.R.]

13 Subp. 10. Industrial, commercial, and institutional
14 facilities. The following projects are exempt:

15 A. Construction of a new or expansion of an existing
16 warehousing, light industrial, commercial, or institutional
17 facility of less than the following thresholds, expressed as
18 gross floor space:

19 [For text of subitems (1) to (3), see M.R.]

20 B. The construction of a warehousing, light
21 industrial, commercial, or institutional facility with less than
22 4,000 square feet of gross floor space, and with associated
23 parking facilities designed for 20 vehicles or less, is exempt.

24 [For text of item C, see M.R.]

25 [For text of subps 11 to 26, see M.R.]

26 4410.5200 EQB MONITOR PUBLICATION REQUIREMENTS.

27 [For text of subps 1 and 2, see M.R.]

28 Subp. 3. Required EQB notices. The EQB is required to
29 publish the following in the EQB Monitor:

30 [For text of items A to D, see M.R.]

31 E. the EQB's decision to hold public hearings on a
32 recommended critical area pursuant to Minnesota Statutes,
33 section 116G.06, subdivision 1, clause (c);

34 F. notice of application for a certificate of site
35 compatibility or a high voltage transmission line construction

1 permit pursuant to Minnesota Statutes, sections 116C.51 to
2 116C.69; and

3 G. receipt of a consolidated permit application
4 pursuant to part 4400.5500, subpart 1.

5 4410.6100 DETERMINING EIS ASSESSED COST.

6 Subpart 1. **Proposer and RGU agreement.** Within 30 days
7 after the EIS preparation notice has been published, the RGU
8 shall submit to the EQB a written agreement signed by the
9 proposer and the RGU. The agreement shall include the EIS
10 estimated cost and a brief description of the tasks and the cost
11 of each task to be performed by each party in preparing and
12 distributing the EIS. Those items identified in part 4410.6200
13 may be used as a guideline in determining the EIS estimated cost.
14 If an agreement cannot be reached, the RGU or the proposer shall
15 so notify the EQB.

16 Subp. 3. [See repealer.]

17 Subp. 4. **Federal-state EIS.** When a joint federal-state
18 EIS is prepared pursuant to part 4410.3900 and the EQB
19 designates a nonfederal agency as the RGU, only those costs of
20 the state RGU may be assessed to the proposer.

21 Subp. 5. **Related actions EIS.** When specific projects are
22 included in a related actions EIS, only the portion of the EIS
23 cost that is attributable to each specific project may be used
24 in determining the EIS assessed cost for its proposer.

25 4410.6200 DETERMINING EIS COST.

26 Subpart 1. **EIS cost inclusions.** In determining the
27 reasonable cost of preparing and distributing an EIS, the
28 following items shall be included:

29 A. the cost of the RGU's staff time including direct
30 salary and fringe benefit costs;

31 B. the cost of consultants hired by the RGU;

32 C. other direct costs of the RGU for the collection
33 and analysis of information or data necessary for the
34 preparation of the EIS;

35 D. indirect costs of the RGU not to exceed the RGU's

1 normal operating overhead rate;

2 E. the cost of printing and distributing the scoping
3 EAW and draft scoping decision document, draft EIS and the final
4 EIS and of public notices of the availability of the documents;
5 and

6 F. the cost of any public hearings or public meetings
7 held in conjunction with the preparation of the EIS.

8 Subp. 2. **EIS cost exclusions.** The following items shall
9 not be included in the cost assessed to the project proposer for
10 the preparation and distribution of an EIS:

11 [For text of items A to C, see M.R.]

12 Subp. 3. **EIS scoping costs.** The cost of any items
13 specified in subpart 1 incurred by the RGU during the scoping of
14 an EIS are part of the reasonable costs of preparing and
15 distributing an EIS and are to be assessed to the project
16 proposer by the RGU.

17 Subp. 4. **Change in EIS scope.** If the RGU alters the scope
18 of an EIS pursuant to part 4410.2100, subpart 8, the EIS cost
19 shall be revised to reflect the change in scope.

20 Subp. 5. **Termination of project.** If the proposer decides
21 not to proceed with the proposed project while the EIS is under
22 preparation, the proposer shall immediately notify the RGU in
23 writing. The RGU shall immediately cease expending and
24 obligating the proposer's funds for the preparation of the EIS.
25 If the cash payments previously made by the proposer exceed the
26 RGU's expenditures or irrevocable obligations at the time of the
27 notification, the RGU shall refund the remaining funds within 30
28 days. If the previous cash payments are less than the RGU's
29 expenditures or irrevocable obligations at the time of
30 notification, the RGU shall notify the proposer of the balance
31 due within ten days of the notice. The proposer shall pay the
32 balance due within 30 days.

33 4410.6410 DISAGREEMENTS REGARDING EIS ASSESSED COST.

34 Subpart 1. **EQB to determine cost.** If, after the RGU has
35 issued its scoping decision under part 4410.2100, the RGU and

1 the proposer disagree about the cost assessed by the RGU to the
2 proposer, either party may request in writing that the EQB
3 determine the appropriate cost assessment. The request must be
4 accompanied by a description of the cost dispute together with
5 relevant supporting documentation; a copy of the request must be
6 supplied to the other party. The other party shall provide a
7 written explanation of its position on the cost dispute,
8 together with any relevant supporting information, to the EQB
9 and the other party within ten days of receipt of its copy of
10 the request to the EQB. The chair of the EQB may request any
11 additional information from either party that is needed to
12 understand and resolve the cost dispute.

13 Subp. 2. **Issuance of determination.** The EQB shall
14 determine the appropriate cost in dispute at its first meeting
15 held 15 or more days after receipt of complete information from
16 both parties. The EQB may order a contested case hearing if it
17 determines that a hearing is necessary to obtain the information
18 necessary to make a decision. If the EQB orders a hearing it
19 shall determine the appropriate cost at its first meeting held
20 15 or more days after receipt of the report from the
21 administrative law judge.

22 Subp. 3. **Half cash payment.** Nothing in subparts 1 and 2
23 shall prevent the proposer from making one-half of the cash
24 payment as recommended by the RGU's proposed EIS cost for the
25 purpose of commencing preparation of the draft EIS. If the
26 proposer makes the above cash payment, preparation of the draft
27 EIS shall immediately begin. If the required cash payment is
28 altered by the EQB's determination, the remaining cash payments
29 shall be adjusted accordingly.

30 4410.6500 PAYMENT OF EIS COST.

31 Subpart 1. **Schedule of payments.** The proposer shall make
32 all cash payments to the RGU according to the following schedule:

33 A. The proposer shall pay the RGU for the full cost
34 estimated by the RGU to be necessary for the scoping of the EIS
35 not later than the date of submission by the proposer of the

1 completed data portions of the scoping EAW. The RGU shall not
2 proceed with the scoping process until this payment is made.
3 Upon issuance of the scoping decision, the RGU shall provide the
4 proposer with a written accounting of the scoping expenditures.
5 If the payment made by the proposer exceeds the expenditures,
6 the balance shall be credited against the cash payments required
7 from the proposer for preparation of the draft EIS. If the
8 RGU's reasonable expenditures for scoping exceed the cash
9 payment received, the proposer shall pay the balance before the
10 RGU commences preparation of the draft EIS.

11 B. At least one-half of the proposer's cash payment
12 shall be paid within ten days after the RGU and the proposer
13 agree to the estimated cost of preparing and distributing an EIS
14 in accordance with the scoping decision issued under part
15 4410.2100 or the cost has been determined by the EQB pursuant to
16 part 4410.6410, subpart 2. The RGU shall not proceed to prepare
17 the draft EIS until this payment has been received.

18 C. ~~At least 90 percent~~ The remainder of the
19 proposer's cash payment shall be paid ~~prior to the distribution~~
20 ~~by the RGU of the draft EIS~~ on a schedule agreed to by the RGU
21 and the proposer.

22 D. ~~The final cash payment shall be paid within 30~~
23 ~~days after the EIS has been determined adequate and the RGU has~~
24 ~~submitted a detailed accounting of its EIS actual cost to the~~
25 ~~proposer.~~ If there is a disagreement over the EIS cost, such
26 payment shall be made within 30 days after the EQB has
27 determined the EIS cost pursuant to part 4410.6410.

28 If the cash payments made by the proposer exceed the RGU's
29 actual EIS costs, the RGU shall refund the overpayment. The
30 refund shall be paid ~~as expeditiously as possible~~ within 30 days
31 of completion of the RGU of the accounting of the EIS costs.

32 Subp. 2. [See repealer.]

33 Subp. 3. [See repealer.]

34 Subp. 4. [See repealer.]

35 Subp. 5. [See repealer.]

36 Subp. 6. Prohibition on state agency permits until notice

1 of final payment. Upon receipt of final payment from the
2 proposer, the RGU shall promptly notify the EQB of receipt of
3 final payment, unless the EIS cost is in dispute under part
4 4410.6410. Upon notice of receipt of the final payment by the
5 proposer, the EQB shall notify each state agency having a
6 possible governmental permit interest in the project that the
7 final payment has been received.

8 Other laws notwithstanding, a state agency shall not issue
9 any governmental permits for the construction or operation of a
10 project for which an EIS is prepared until the required cash
11 payments of the EIS assessed cost for that project or that
12 portion of a related actions EIS have been paid in full.

13 Subp. 7. [See repealer.]

14 **REPEALER.** Minnesota Rules, parts 4410.0200, subparts 19, 20,
15 21, 31, and 83; 4410.3200, 4410.6100, subpart 3; 4410.6300;
16 4410.6400; 4410.6500, subparts 2, 3, 4, 5, and 7, are repealed.