

Environmental Quality Board

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Adopted Permanent Rules Relating to Wind Siting

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ADMINISTRATIVE
HEARINGS**4401.0100 PURPOSE.**

This chapter provides for the consideration of applications for site permits for large wind energy conversion systems by the Minnesota Environmental Quality Board. This chapter is intended to provide for the siting of large wind energy conversion systems in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources.

4401.0200 DEFINITIONS.

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

Subp. 2. **Associated facilities.** "Associated facilities" means facilities, equipment, machinery, and other devices necessary to the operation and maintenance of a large wind energy conversion system, including access roads, collector and feeder lines, and substations.

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

Subp. 4. **Chair.** "Chair" means the individual who is the chair of the board.

Subp. 5. **Construction.** "Construction" means to begin or cause to begin as part of a continuous program the placement, assembly, or installation of facilities or equipment or to conduct significant site preparation work for installation of facilities or equipment. Entering into binding power purchase contracts or obtaining wind easements from property owners or gathering wind data is not construction.

Subp. 6. **Draft site permit.** "Draft site permit" means a document prepared by the chair that indicates a preliminary decision to issue a site permit with particular terms and conditions.



1 Subp. 7. **EQB.** "EQB" means ~~the entire agency, including the board and the~~ board's
2 staff.

3 Subp. 8. **EQB Monitor.** "EQB Monitor" means the biweekly bulletin published by the
4 EQB.

5 Subp. 9. **Large wind energy conversion system or LWECS.** "Large wind energy
6 conversion system" or "LWECS" means a combination of wind energy conversion
7 systems with a combined nameplate capacity of 5,000 kilowatts or more.

8 Subp. 10. **Person.** "Person" means an individual, partnership, joint venture, private or
9 public corporation, association, firm, public service company, cooperative, political
10 subdivision, municipal corporation, government agency, public utility district, or any
11 other entity, public or private, however organized.

12 Subp. 11. **Power purchase agreement.** "Power purchase agreement" means a legally
13 enforceable agreement between two or more persons where one or more of the
14 signatories agrees to provide electrical power and one or more of the signatories agrees
15 to purchase the power.

16 Subp. 12. **Site permit.** "Site permit" means a document issued by the board
17 authorizing a person or persons to construct a large wind energy conversion system
18 under the terms and conditions specified in the document.

19 Subp. 13. **Small wind energy conversion system or SWECS.** "Small wind energy
20 conversion system" or "SWECS" means a combination of wind energy conversion
21 systems with a combined nameplate capacity of less than 5,000 kilowatts.

22 Subp. 14. **Wind energy conversion system or WECS.** "Wind energy conversion
23 system" or "WECS" means a device such as a wind charger, windmill, or wind turbine
24 and associated facilities that converts wind energy to electric energy.

25 **4401.0300 PERMIT REQUIREMENT.**

26 Subpart 1. **LWECS.** No person may construct an LWECS without a site permit from

1 the board. No person may commence construction of an LWECS until the board has
2 issued a site permit for the LWECS.

3 Subp. 2. **SWECS.** A site permit from the board is not required to construct an SWECS.
4 Nothing in this chapter precludes a local governmental unit from establishing
5 requirements for the siting and construction of an SWECS.

6 Subp. 3. **Expansion of existing system.** No person may expand an existing LWECS
7 by any amount or expand an SWECS to exceed 5,000 kilowatts without a site permit
8 from the board. A new project is considered an expansion of an existing WECS if the
9 new WECS is within five miles of any turbine in the existing WECS, both projects are
10 under common ownership, and a permit application for the new WECS is proposed
11 submitted to the EQB less than three years after the existing WECS commenced
12 operation. Two WECS are under common ownership if the proposer of the new project,
13 or a principal of the proposer, has an ownership or other financial interest in the existing
14 WECS, although two projects are not under common ownership solely because the same
15 person provided equity financing for both projects. The requirements of this subpart do
16 not apply to any proposed SWECS for which the necessary local approvals were
17 obtained prior to October 1, 2002, and for which construction started prior to December
18 31, 2002.

19 **4401.0400 FILING OF APPLICATION FOR SITE PERMIT.**

20 Subpart 1. **Number of copies.** A person seeking a site permit for an LWECS shall file
21 three copies of the application for the site permit with the EQB for review prior to
22 acceptance of the application.

23 Subp. 2. **Electronic copy.** A person filing an application for a site permit for an
24 LWECS shall provide the EQB with an electronic version of the application suitable for
25 posting on the EQB Web page. An applicant may request that the chair ~~to~~ waive this
26 requirement, completely or for in part of the application, if an electronic version of the
27 application is difficult or expensive for the applicant to obtain.

1 Subp. 3. ~~Proprietary information~~ Not public data. An applicant for a site permit for
2 an LWECS may certify, according to the Minnesota Government Data Practices Act or
3 other applicable law, that certain information in the application is trade secret
4 information or other protected data or information that is not available to the public.
5 The ~~board~~ chair shall determine if the certified data or information satisfies the
6 requirements for the protected classification and shall advise the applicant of the
7 ~~board's~~ chair's determination before releasing any certified data or information. An
8 applicant may withdraw its application if the ~~board~~ chair determines that the data or
9 information is not entitled to the protected classification. Any person aggrieved by the
10 decision of the chair regarding the status of certain data may request the board to
11 reconsider the chair's decision. The EQB shall ensure that data or information that is
12 entitled to a protected classification is used and disclosed only according to applicable
13 law.

14 4401.0450 CONTENTS OF SITE PERMIT APPLICATION.

15 Subpart 1. **Applicant.** An applicant for a site permit must provide the following
16 background information regarding the applicant:

17 A. a letter of transmittal signed by an authorized representative or agent of the
18 applicant;

19 B. the complete name, address, and telephone number of the applicant and any
20 authorized representative;

21 C. the signature of the preparer of the application if prepared by an agent or
22 consultant of the applicant;

23 D. the role of the permit applicant in the construction and operation of the LWECS;

24 E. the identity of any other LWECS located in Minnesota in which the applicant, or
25 a principal of the applicant, has an ownership or other financial interest;

26 F. the operator of the LWECS if different from the applicant; and

1 G. the name of the person or persons to be the permittees if a site permit is issued.

2 Subp. 2. **Certificate of need or other commitment.**

3 A. The applicant shall state in the application whether a certificate of need for the
4 system is required from the Minnesota Public Utilities Commission and, if so, the
5 anticipated schedule for obtaining the certificate of need. The board shall not issue a site
6 permit for an LWECS for which a certificate of need is required until the applicant
7 obtains the certificate, although the board may process the application while the
8 certificate of need request is pending before the Public Utilities Commission.

9 B. The board may request the Public Utilities Commission to determine if a
10 certificate of need is required for a particular LWECS for which the board has received a
11 site permit application.

12 C. If a certificate of need is not required from the Public Utilities Commission, the
13 applicant shall include with the application a discussion of what the applicant intends to
14 do with the power that is generated. If the applicant has a power purchase agreement or
15 some other enforceable mechanism for sale of the power to be generated by the LWECS,
16 the applicant shall, upon the request of the chair, provide the EQB with a copy of the
17 document.

18 Subp. 3. **State policy.** The applicant shall describe in the application how the
19 proposed LWECS project furthers state policy to site such projects in an orderly manner
20 compatible with environmental preservation, sustainable development, and the efficient
21 use of resources.

22 Subp. 4. **Proposed site.** The applicant shall include the following information about
23 the site proposed for the LWECS and any associated facilities:

24 A. the boundaries of the site proposed for the LWECS, which must be delineated
25 on a United States Geological Survey Map or other map as appropriate;

26 B. the following characteristics of the wind at the proposed site:

- (1) interannual variation;
- (2) seasonal variation;
- (3) diurnal conditions;
- (4) atmospheric stability, to the extent available;
- (5) turbulence, to the extent available;
- (6) extreme conditions;
- (7) speed frequency distribution;
- (8) variation with height;
- (9) spatial variations; and
- (10) wind rose, in eight or more directions;

C. other meteorological conditions at the proposed site, including the temperature, rainfall, snowfall, and extreme weather conditions; and

D. the location of other wind turbines in the general area of the proposed LWECS.

Subp. 5. **Wind rights.** The applicant shall include in the application information describing the applicant's wind rights within the boundaries of the proposed site.

Subp. 6. **Design of project.** The applicant shall provide the following information regarding the design of the proposed project:

A. a project layout, including a map showing a proposed array spacing of the turbines;

B. a description of the turbines and towers and other equipment to be used in the project, including the name of the manufacturers of the equipment;

C. a description of the LWECS electrical system, including transformers at both low voltage and medium voltage; and

D. a description and location of associated facilities.

1 Subp. 7. **Environmental impacts.** An applicant for a site permit shall include with the
2 application an analysis of the potential impacts of the project, proposed mitigative
3 measures, and any adverse environmental effects that cannot be avoided, in the
4 following areas:

- 5 A. demographics, including people, homes, and businesses;
- 6 B. noise;
- 7 C. visual impacts;
- 8 D. public services and infrastructure;
- 9 E. cultural and archaeological impacts;
- 10 F. recreational resources;
- 11 G. public health and safety, including air traffic, electromagnetic fields, and
12 security and traffic;
- 13 H. hazardous materials;
- 14 I. land-based economics, including agriculture, forestry, and mining;
- 15 J. tourism and community benefits;
- 16 K. topography;
- 17 L. soils;
- 18 M. geologic and groundwater resources;
- 19 N. surface water and floodplain resources;
- 20 O. wetlands;
- 21 P. vegetation;
- 22 Q. wildlife; and
- 23 R. rare and unique natural resources.

24 The analysis of the environmental impacts required by this subpart satisfies the
4401.0450

1 environmental review requirements of chapter 4410 and Minnesota Statutes, chapter
2 116D. No environmental assessment worksheet or environmental impact statement shall
3 be required on a proposed LWECs project.

4 Subp. 8. **Construction of project.** The applicant shall describe the manner in which
5 the project, including associated facilities, will be constructed.

6 Subp. 9. **Operation of project.** The applicant shall describe how the project will be
7 operated and maintained after construction, including a maintenance schedule.

8 Subp. 10. **Costs.** The applicant shall describe the estimated costs of design and
9 construction of the project and the expected operating costs.

10 Subp. 11. **Schedule.** The applicant shall include an anticipated schedule for
11 completion of the project, including the time periods for land acquisition, obtaining a
12 site permit, obtaining financing, procuring equipment, and completing construction.
13 The applicant shall identify the expected date of commercial operation.

14 Subp. 12. **Energy projections.** The applicant shall identify the energy expected to be
15 generated by the project.

16 Subp. 13. **Decommissioning and restoration.** The applicant shall include the
17 following information regarding decommissioning of the project and restoring the site:

18 A. the anticipated life of the project;

19 B. the estimated decommissioning costs in current dollars;

20 C. the method and schedule for updating the costs of decommissioning and
21 restoration;

22 D. the method of ensuring that funds will be available for decommissioning and
23 restoration; and

24 E. the anticipated manner in which the project will be decommissioned and the site
25 restored.

1 Subp. 14. **Identification of other permits.** The applicant shall include in the
2 application a list of all known federal, state, and local agencies or authorities, and titles
3 of the permits they issue that are required for the proposed LWECS.

4 **4401.0460 ACCEPTANCE OF APPLICATION.**

5 Subpart 1. **Action by chair.** Within 30 days after receipt of an application for a site
6 permit, the chair shall accept, conditionally accept, or reject the application. If the chair
7 conditionally accepts or rejects an application, the chair shall advise the applicant in
8 writing of the deficiencies in the application and the manner in which the deficiencies
9 can be addressed. Upon refiling of a revised application, the chair shall again act on the
10 application within 30 days after receipt.

11 Subp. 2. **Notice of application acceptance.** Within 15 days after chair acceptance of an
12 application, the applicant shall provide notice of the application to the county board,
13 each city council, and each township board in each county where the LWECS is
14 proposed to be located and shall publish notice of the application in a newspaper of
15 general circulation in each county. Failure to give this notice or a delay in providing this
16 notice constitutes cause to reject an application or delay a decision by the board. The
17 chair may elect to give this notice in lieu of requiring the applicant to provide the notice.

18 Subp. 3. **Additional copies.** Upon acceptance of the application by the chair, the chair
19 shall advise the applicant of how many additional copies of the application to submit to
20 the EQB. The applicant shall also provide a copy of the accepted application to the
21 Public Utilities Commission, the Minnesota Historical Society, and to each landowner
22 within the boundaries of the proposed LWECS site. The applicant shall also provide a
23 copy to the office of each regional development commission of a development region,
24 the auditor of each county, and the clerk of each city and township in which the LWECS
25 is to be located. Each county auditor, city clerk, and township clerk shall retain the
26 application and make it available for public inspection upon request. The applicant shall
27 maintain a list of all persons to whom copies of the application are provided.

4401.0470 PUBLIC ADVISOR.

Upon acceptance of an application for a site permit, the chair shall designate a staff person to act as the public advisor on the project. The public advisor shall be available to answer questions from the public about the permitting process. The public advisor shall not give legal advice or other advice that may affect the legal rights of the person being advised, and the public advisor shall not act as an advocate on behalf of any person.

4401.0500 PRELIMINARY DETERMINATION AND DRAFT SITE PERMIT.

Subpart 1. **Preliminary determination.** Within 45 days after acceptance of the application by the chair, the chair shall make a preliminary determination whether a permit may be issued or should be denied. If the preliminary determination is to issue a permit, the chair shall prepare a draft site permit for the project. The draft site permit must identify the person or persons who will be the permittee, describe the proposed LWECS, and include proposed permit conditions.

Subp. 2. **Effect of draft site permit.** A draft site permit does not authorize a person to construct an LWECS. The board may change the draft site permit in any respect before final issuance or may deny the site permit.

4401.0550 PUBLIC PARTICIPATION.

Subpart 1. **Public notice.** Upon preparation of a draft site permit, the EQB shall provide public notice of the draft site permit. The public notice must include the following:

- A. the name and address of the applicant for the site permit;
- B. a concise description of the proposed LWECS project;
- C. the location where a copy of the site permit application may be reviewed and how a copy of the application may be obtained;
- D. a statement of the availability of the draft site permit;

1 E. the name of the public advisor and how the public advisor may be contacted to
2 obtain more information;

3 F. the time and place of a public information meeting;

4 G. a statement that during the comment period any person may submit comments
5 to the board on the draft site permit, a statement of the dates on which the comment
6 period commences and terminates, and a statement that any person may request a
7 contested case hearing on the matter; and

8 H. a brief description of the anticipated procedures for reaching a final decision on
9 the permit application.

10 Subp. 2. **Distribution of public notice.** The EQB shall publish the notice in a
11 newspaper in each county in which the proposed LWECS is to be located. The EQB shall
12 also mail the public notice to those persons known to the EQB to be interested in the
13 proposed LWECS project, including governmental officials in each county in which the
14 LWECS is proposed to be located. The EQB shall also publish notice in the EQB
15 Monitor.

16 Subp. 3. **Public comments on draft site permit.** The EQB shall afford the public a
17 minimum of 30 days after publication of the draft site permit notice in the EQB Monitor
18 to submit written comments to the EQB. The chair may extend the public comment
19 period if necessary to afford the public adequate time to review the application and
20 other pertinent information in order to formulate complete comments on the draft site
21 permit and the project.

22 Subp. 4. **Public information meeting.** The EQB shall hold at least one public
23 information meeting in a convenient location in the vicinity of the proposed LWECS
24 project. The EQB shall give the public at least ten days' notice of the public information
25 meeting. The public information meeting must be held more than ten days prior to the
26 end of the public comment period on the draft site permit. The chair shall extend the
27 comment period if necessary to meet this requirement.

1 Subp. 5. **Contested case hearing.**

2 A. Any person may request in writing that a contested case hearing be held on an
3 application for a site permit for a proposed LWECS project. The contested case hearing
4 request must be filed within the time period established for submitting comments on the
5 draft site permit. The person requesting the public hearing shall include, as part of the
6 request, the issues to be addressed in the hearing and the reasons a hearing is required
7 to resolve those issues.

8 B. The board shall order a contested case hearing if the board finds that the person
9 requesting the contested case hearing has raised a material issue of fact and that holding
10 a hearing would aid the EQB in making a final determination on the permit application.

11 C. The hearing must be conducted according to the rules of the Office of
12 Administrative Hearings.

13 D. For a contested case hearing, the board shall identify the issues to be resolved
14 and limit the scope and conduct of the hearing according to applicable law, due process,
15 and fundamental fairness. Alternatively, the board may request the administrative law
16 judge to identify the issues and determine the appropriate scope and conduct of the
17 hearing according to applicable law, due process, and fundamental fairness.

18 **4401.0600 FINAL SITE PERMIT DECISION.**

19 Subpart 1. **Board action.** Upon completion of the procedures and requirements of this
20 chapter, the matter must be brought to the board for a final decision. If a contested case
21 hearing has been held, the board shall act according to applicable requirements for
22 action in a contested case proceeding. If no contested case hearing has been held, the
23 board shall compile the record that has been created and make a decision on the basis of
24 that record.

25 Subp. 2. **Time limit for decision.** The board shall take final action on the application
26 for a site permit for an LWECS within 180 days after acceptance of an application by the

1 chair, unless the applicant agrees to an extension or the board extends this deadline for
2 cause.

3 Subp. 3. **Determination by board.** The board shall not issue a site permit for an
4 LWECS unless the board determines that the project is compatible with environmental
5 preservation, sustainable development, and the efficient use of resources, and the
6 applicant has complied with this chapter.

7 Subp. 4. **Conditions.** The board may include in a site permit conditions for turbine
8 type and designs, site layout and construction, and operation and maintenance of the
9 LWECS, including the requirement to restore, to the extent possible, the area affected by
10 construction of the LWECS to the natural conditions that existed immediately before
11 construction of the LWECS and other conditions that the board determines are
12 reasonable to protect the environment, enhance sustainable development, and promote
13 the efficient use of resources.

14 Subp. 5. **Term.** The term of a site permit for an LWECS is 30 years. The board may
15 renew the permit for an appropriate period of time upon request of the permit holder.

16 **4401.0610 EFFECT OF PERMIT.**

17 Subpart 1. **Wind rights.** Nothing in a site permit for an LWECS shall be construed to
18 convey the right to install a wind turbine in an area within the boundaries of the project
19 for which the permittee does not hold the wind rights.

20 Subp. 2. **Other LWECS construction.** Nothing in a site permit for an LWECS shall be
21 construed to preclude another person from seeking a site permit to construct an LWECS
22 in an area within the boundaries of the project covered by the permit if the permittee
23 does not hold exclusive wind rights for the areas.

24 Subp. 3. **Power purchase agreement.** A site permit does not authorize construction of
25 the project until the permittee has obtained a power purchase agreement or some other
26 enforceable mechanism for sale of the power to be generated by the project. If the

1 permittee does not have a power purchase agreement or other enforceable mechanism
2 at the time the permit is issued, the board shall provide in the permit that the permittee
3 shall advise the board when it obtains a commitment for purchase of the power. The
4 board may establish as a condition in the permit a date by which the permittee must
5 obtain a power purchase agreement or other enforceable mechanism or the site permit is
6 null and void.

7 **4401.0620 DELAY IN CONSTRUCTION.**

8 If the permittee has not commenced construction of the project within two years after
9 issuance of the site permit, the permittee must advise the board of the reasons
10 construction has not commenced. In such event, the board may determine whether the
11 permit should be revoked. No revocation of a permit for failure to commence
12 construction may be undertaken except in accordance with part 4401.0700, subpart 4.

13 **4401.0700 SITE PERMIT AMENDMENT OR REVOCATION.**

14 Subpart 1. **New boundary.** Once construction of an LWECS is completed, the
15 permittee shall advise the chair of the completion of the project and the chair shall
16 amend the site permit to specifically define the area authorized for the LWECS. The
17 boundary must be no larger than necessary to allow for efficient operation of the
18 LWECS. If any person objects to the amendment of the permit to reflect the actual
19 boundaries of the project, the chair shall bring the matter to the board for decision in
20 accordance with applicable procedural requirements.

21 Subp. 2. **Permit amendment.** The board may amend a site permit for an LWECS at
22 any time if the board has good cause to do so.

23 Subp. 3. **Permit revocation.** The board may revoke a site permit for an LWECS at any
24 time if the board determines that any of the following has occurred:

25 A. the applicant knowingly made a false statement in the application or in
26 accompanying statements or studies required of the applicant, if a true statement would
27 have warranted a change in the board's findings;

1 B. the applicant has failed to comply with a material condition or term of the
2 permit;

3 C. the permitted LWECS endangers human health or the environment and the
4 danger cannot be resolved by modification of the permit or LWECS; or

5 D. the permittee has violated other laws that reflect an inability of the permittee to
6 comply with the permit.

7 Subp. 4. **Procedure.** The board may initiate action to consider amendment or
8 revocation of a site permit for an LWECS on its own initiative or upon the request of
9 any person. No site permit may be amended or revoked without first providing notice
10 and affording due process to the permit holder.

11 **4401.0710 TRANSFER OF PERMIT.**

12 Subpart 1. Request for transfer. A permittee of a site permit for an LWECS may
13 apply to the EQB for the transfer of its permit. The permittee must provide the name of
14 the existing permittee, the name and description of the person to whom the permit is to
15 be transferred, the reasons for the transfer, a description of the facilities affected, and the
16 requested date of the transfer. The person to whom the permit is to be transferred shall
17 provide the EQB with information required by the EQB to determine whether the new
18 permittee can comply with the conditions of the permit. The permittee shall provide
19 notice of the request to those persons identified by the EQB as persons interested in the
20 matter.

21 Subp. 2. Approval of transfer. The board shall approve the transfer if the board
22 determines that the new permittee will comply with the conditions of the permit. The
23 board, in approving the transfer of a permit, may impose reasonable additional
24 conditions in the permit as part of the approval. The board may hold a public meeting
25 to provide the public with an opportunity to comment on the request for the transfer
26 prior to making a decision.

1 **4401.0800 FEES.**

2 Subpart 1. **Fee requirement.** An applicant for a site permit under Minnesota Statutes,
3 section 116C.694, shall pay an application fee to the EQB. The purpose of the application
4 fee is to cover actual costs necessarily and reasonably incurred in processing an
5 application for a site permit, including, but not limited to, staff time, expenses for public
6 notice and meetings, environmental review, administrative overhead, and legal
7 expenses.

8 Subp. 2. **Determination of EQB budget.** Upon receipt of an application for a site
9 permit, the chair shall estimate the costs the EQB expects to incur in processing the
10 application and establish an estimated budget. If the applicant disagrees with the
11 amount of the estimated budget determined by the chair, the applicant may request that
12 the board determine the appropriate estimated budget.

13 Subp. 3. **Initial payment.** Upon determination of the estimated budget, the applicant
14 shall pay at least 50 percent of the estimated budget to the EQB. The chair shall not
15 process a permit application until the first portion of the fee is submitted. The EQB shall
16 deposit all money received from an applicant for permit fees in a special account.

17 Subp. 4. **Periodic payments.** The remaining costs incurred by the EQB must be paid
18 in periodic payments upon receipt of an invoice from the EQB. The EQB shall not make
19 a final decision on a site permit application if any assessed fees are unpaid.

20 Subp. 5. **Final accounting.** At the end of the permitting process, including any
21 judicial review of the board's final decision, the EQB shall provide a final accounting to
22 the applicant of the total cost of processing the permit application. The applicant may
23 review all actual costs associated with processing an application and present objections
24 to the board. The applicant shall make the final payment within 30 days of notification,
25 or the EQB shall refund any excess payments within 30 days of the final accounting.