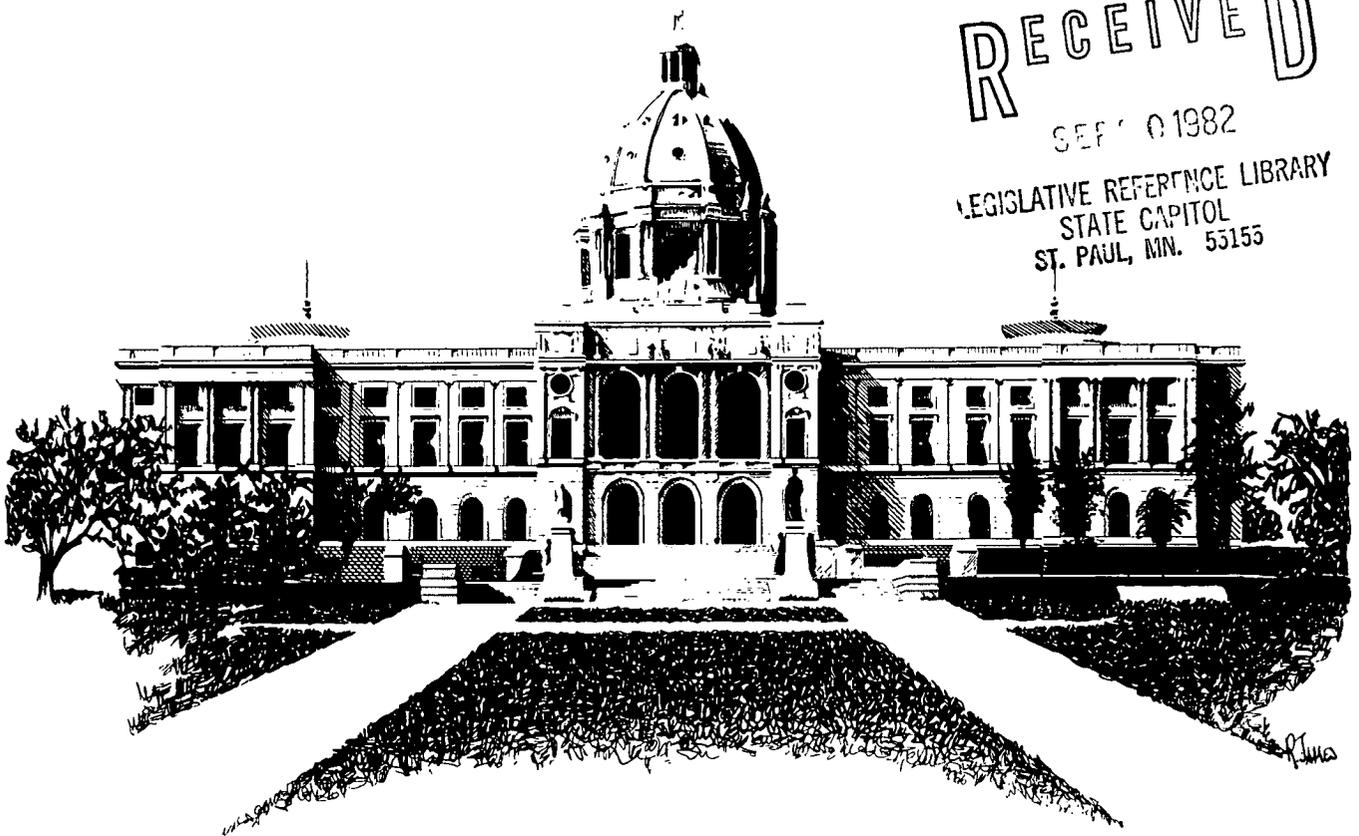


82 Sept. 20

STATE REGISTER

STATE OF MINNESOTA



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September 20, 1982

Pages 337-396



Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 7			
13	Monday Sept 13	Monday Sept 20	Monday Sept 27
14	Monday Sept 20	Monday Sept 27	Monday Oct 4
15	Monday Sept 27	Monday Oct 4	Monday Oct 11
16	Monday Oct 4	Monday Oct 11	Monday Oct 18

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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How to Follow State Agency Rulemaking Action in the State Register

State agencies must publish notice of their rulemaking action in the State Register. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION. Such notices are published in the OFFICIAL NOTICES section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
• Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
• Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
• Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
• Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
• Notice of adoption of temporary rules.
• Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the State Register will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the State Register but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The State Register publishes partial and cumulative listings of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive Issue 39, cumulative for 1-39
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PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
 2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
 3. of the manner in which persons shall request a hearing on the proposed rules;
- and
4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Board of Peace Officer Standards and Training

Proposed Rules Governing Affirmative Action Plans and Remedial Examination Procedures

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Board of Peace Officer Standards and Training proposes to adopt the above-entitled rules without a public hearing. The board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes section 15.0412, subdivision 4h (1980 and Supp. 1981 and 1982).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on a proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes section 15.0412, subdivisions 4-4g.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Mark K. Shields, Executive Director
Board of Peace Officer Standards and Training
500 Metro Square Building
St. Paul, MN 55101
(612) 296-2620

Authority for the adoption of this rule is contained in Minnesota Statutes sections 214.03, 626.843, and 626.845. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from the board upon request.

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to the above address.

A copy of the proposed rules is attached to this notice.

Copies of this notice and the proposed rules are available and may be obtained by contacting the board.

Mark K. Shields
Executive Director

Rules as Proposed**4 MCAR § 13.024 Certification of schools.**

A. Application. Upon filing a proper application, a school desiring certification shall be reviewed by the board. No certification will be issued unless the school files with the board satisfactory proof that the school will offer courses meeting the prescribed learning objectives, has reasonable training equipment and facilities, and has qualified instructors. Further, the coordinator shall file with the board a semiannual affirmative action plan and such other relevant information as the board may require. The affirmative action plan must describe objectives for the recruitment and retention of minority students and women in the law enforcement program. "Minority student" means a person of Black, Hispanic, Asian, American Indian, or native Alaskan heritage. Relevant information may include lesson plans and course outlines.

B.-F. [Unchanged.]

4 MCAR § 13.026 Licensing examinations.

A. and B. [Unchanged.]

C. Retaking examinations. ~~A person~~ An applicant who fails an examination will ~~only~~ be allowed to retake that examination two times, upon furnishing to the board a renewed written application and appropriate fee.

D. Remedial examination procedures. A third or subsequent retake of the examination will require the applicant to submit a remedial training plan to the executive director for board approval. This plan must be directed at deficiencies indicated in previous examinations and must include, at a minimum, the following:

1. training activities to be completed;
2. evaluation process to be used in verifying satisfactory completion of the listed activities; and
3. date of completion of all activities.

An additional written application and appropriate fee will be required for each administration of the examination.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

**Department of Agriculture
Food Inspection Division****Adopted Rules Governing the Candling and Grading of Eggs**

The rules proposed and published at *State Register*, Volume 7, Number 1, pages 5-11, July 5, 1982 (7 S.R. 5) are adopted as proposed.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

ADOPTED RULES

Department of Agriculture Grain Inspection Division

Notice of Withdrawal of Proposed Rules Governing the Licensing of Local Grain Warehouses and Warehouses Other than Grain or Cold Storage (Chapters Nine and Ten: PSC 240-269)

The rules proposed and published at *State Register*, Volume 6, Number 5, pages 129-136, August 3, 1981 (6 S.R. 129) are withdrawn in their entirety by the department. The rules are being withdrawn because amendments to the enabling statute, passed by the Minnesota Legislature and effective July 1, 1982, must be incorporated into the rules. The department intends to republish the rules with this additional material at a future date.

Department of Energy, Planning and Development Energy Division (Minnesota Energy Agency)

Temporary Rules for the Administration of the District Heating Bonding Act Regarding Construction Loans

Notice of Continuation

Notice is hereby given that the temporary rules governing Construction Loans under the District Heating Bonding Act, which are cited 6 MCAR §§ 2.4021 through 2.4034 [Temporary], are continued in effect for an additional 180 days or until permanent rules are effected, whichever comes first.

These temporary rules appear in the February 22, 1982 issue of the *State Register* (6 S.R. 1465) with minor modifications appearing in the April 12, 1982 issue (6 S.R. 1716). Rules became effective on March 26, 1982 when they were approved by the Attorney General.

The rules shall continue in effect for no more than 180 days from September 22, 1982.

Kent Eklund, Commissioner

Department of Energy, Planning and Development

Adopted Rules Governing Implementation of the State Energy Supply Conservation and Allocation Plan during a Petroleum Shortage

The rules published and proposed at the *State Register*, Volume 7, Number 3, page 86, July 19, 1982 are now adopted without change.

Minnesota Environmental Quality Board

Adopted Rules Governing the Environmental Review Program

The rules proposed and published at *State Register*, Volume 6, Number 10, pages 355-393, September 7, 1981 (6 S.R. 355) are adopted with the following modifications:

Rules as Adopted

Chapter Eleven: Authority, Purpose, Definitions, Responsibilities

6 MCAR § ~~3.001~~ 3.021 Authority, purpose and objectives.

A. Authority. Rules 6 MCAR §§ ~~3.001-3.036~~ 3.021-3.056 are issued under authority granted in Minn. Stat. ch. 116D to implement the environmental review procedures established by the Minnesota Environmental Policy Act.

B. Application. Rules 6 MCAR §§ ~~3.001-3.036~~ 3.021-3.056 apply to all governmental actions. Rules 6 MCAR §§ ~~3.001-3.036~~ 3.021-3.056 shall apply to ~~actions~~ projects for which environmental review has not been initiated prior to the rule's effective date. For any ~~action~~ project for which environmental review has been initiated by submission of a citizens

petition, environmental assessment worksheet, environmental impact statement preparation notice, or environmental impact statement to the EQB prior to the effective date, all governmental ~~approvals~~ decisions that may be required for that ~~action~~ project shall be acted upon in accord with prior rules.

C. Purpose. The Minnesota Environmental Policy Act recognizes that the restoration and maintenance of environmental quality is critically important to our welfare. The act also recognizes that human activity has a profound and often adverse impact on the environment.

A first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed ~~action~~ project will have on the environment. The purpose of 6 MCAR §§ ~~3.001-3.036~~ 3.021-3.056 is to aid in providing that understanding through the preparation and public review of environmental documents.

Environmental documents shall contain information which ~~address~~ addresses the significant environmental issues of a proposed action. This information shall be available to governmental units and citizens early in the decision making process.

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

D. Objectives. The process created by 6 MCAR §§ ~~3.001-3.036~~ 3.021-3.056 is designed to:

1. Provide useable information to the ~~action's~~ project proposer, governmental decision makers and the public concerning the primary environmental effects of a proposed ~~action~~ project;
2. Provide the public with systematic access to decision makers, which will help to maintain public awareness of environmental concerns and encourage accountability in public and private decision making;
3. Delegate authority and responsibility for environmental review to the governmental unit most closely involved in the ~~action~~ project;
4. Reduce delay and uncertainty in the environmental review process; and
5. Eliminate duplication.

6 MCAR § ~~3.002~~ 3.022 Abbreviations and definitions.

A. Abbreviations. For the purpose of 6 MCAR §§ ~~3.001-3.036~~ 3.021-3.056 the following abbreviations have the meanings given them.

1. "CFR" means Code of Federal Regulations.
2. "DEPD" means Department of Energy, Planning and Development.
- ~~2-~~ 3. "DNR" means Department of Natural Resources.
- ~~3-~~ 4. "DOT" means Department of Transportation.
- 4- 5. "EAW" means environmental assessment worksheet.
- ~~5-~~ 6. "EIS" means environmental impact statement.
- ~~6-~~ 7. "EQB" means Environmental Quality Board.
- ~~7-~~ 8. "HVTL" means high voltage transmission line.
- ~~8-~~ 9. "LEPGP" means large electric power generating plant.
- ~~9-~~ 10. "MCAR" means Minnesota Code of Agency Rules.
- ~~10-~~ "~~MEA~~" means Minnesota Energy Agency.
11. "~~MHD~~" "MDA" means Minnesota Department of Agriculture.
12. "MDH" means Minnesota Department of Health.
- ~~12-~~ 13. "PCA" means Pollution Control Agency.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language.

ADOPTED RULES

~~13.~~ 14. "RGU" means responsible governmental unit.

~~14.~~ 15. "USC" means United States Code.

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

~~1.~~ "Action" means ~~governmental action.~~

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

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

~~4.~~ 2. "Animal units" has the meaning given in 6 MCAR § 4.8051 B.4.

~~5.~~ 3. "Approval" means a decision by a unit of government to issue a permit or to otherwise authorize the commencement of a proposed ~~activity~~ project.

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

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

~~8.~~ 6. "Class I dam" has the meaning given in 6 MCAR § 1.5031.

~~9.~~ 7. "Class II dam" has the meaning given in 6 MCAR § 1.5031.

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

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

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

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

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

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

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

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

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

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

~~20.~~ 18. "Environmental assessment worksheet" or "EAW" means a brief document which is designed to set out the

basic facts necessary to determine whether an EIS is required for a proposed ~~action~~ project or to initiate the scoping process for an EIS.

~~24-~~ 19. "Environmental document" means EAW, draft EIS, final EIS, ~~alternate~~ substitute review document, and other environmental analysis documents.

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

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

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

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

~~26-~~ 22. "First class city" has the meaning given in Minn. Stat. § 410.01.

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

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

~~29-~~ 25. "Fourth class city" has the meaning given in Minn. Stat. § 410.01.

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

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

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

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

~~34-~~ 30. "Hazardous waste" has the meaning given in Minn. Stat. § 116.06, subd. 13.

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

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

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

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

~~39-~~ 35. "Marina" has the meaning given in 6 MCAR § 1.5020 D.

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

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

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ADOPTED RULES

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

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

~~41-~~ 40. "Mitigation" means:

- a. Avoiding impacts altogether by not ~~taking~~ undertaking a certain ~~action~~ project or parts of ~~an action~~ a project;
- b. Minimizing impacts by limiting the degree of magnitude of ~~the action and its implementation~~ a project;
- c. Rectifying impacts by repairing, rehabilitating, or restoring the affected environment;
- d. Reducing or eliminating impacts over time by preservation and maintenance operations during the life of the ~~action~~ project; or
- e. Compensating for impacts by replacing or providing substitute resources or environments.

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

~~43-~~ 42. "Natural watercourse" has the meaning given in Minn. Stat. § 105.37, subd. 10.

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

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

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

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

~~48-~~ 47. "Person" means any natural person, state, municipality, or other governmental unit or political subdivision or other agency or instrumentality, public or private corporation, partnership, firm, association, or other organization, receiver, trustee, assignee, agent, or other legal representative of the foregoing, and any other entity.

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

- a. Will have environmental effects on the same geographic area;
- b. Are substantially certain to be undertaken sequentially over a limited period of time; and
- c. Collectively have the potential to have significant ~~adverse~~ environmental effects.

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

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

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

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

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

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

55. "Project Riverbend plan" means the comprehensive land use plan of the Project Riverbend Board established pursuant to Laws of 1982, ch. 627.

~~55-~~ 56. "Proposer" means the private person or governmental unit that proposes to undertake or to direct others to undertake ~~an action~~ a project.

~~56-~~ 57. "Protected waters" has the meaning given public waters in Minn. Stat. § 105.37, subd. 14.

~~57-~~ 58. "Protected wetland" has the meaning given wetland in Minn. Stat. § 105.37, subd. 15.

~~58-~~ 59. "Recreational development" means facilities for temporary residence while in pursuit of leisure activities. Recreational development includes, but is not limited to, recreational vehicle parks, rental or owned campgrounds, and condominium campgrounds.

~~59-~~ 60. "Related action" means two or more ~~actions~~ projects that will affect the same geographic area which a RGU determines:

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

b. Are of a nature that one of the ~~actions~~ projects will induce the other ~~action~~ project.

~~60-~~ 61. "Resource recovery" has the meaning given in Minn. Stat. § 115A.03, subd. 27.

~~61-~~ 62. "Resource recovery facility" has the meaning given in Minn. Stat. § 115A.03, subd. 28.

~~62-~~ 63. "Responsible governmental unit" or RGU means the governmental unit which is responsible for preparation and review of environmental documents.

~~63-~~ 64. "Scientific and natural area" means an outdoor recreation system unit designated pursuant to Minn. Stat. § 86A.05, subd. 5.

65. "Scram mining" has the meaning given in 6 MCAR § 1.0401 B.16.

~~64-~~ 66. "Second class city" has the meaning given in Minn. Stat. § 410.01.

~~65-~~ 67. "Sewer system" means a piping or conveyance system that conveys wastewater to a wastewater treatment plant.

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

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

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

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

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

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

~~70-~~ 71. "Solid waste" has the meaning given in Minn. Stat. § 116.06, subd. 10.

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

~~72-~~ 73. "Storage" as used in 6 MCAR § ~~3-018~~ 3.038 O.4., has the meaning given in ~~40~~ CFR title 40, section 260.10 (a)(66) (1980).

~~73-~~ 74. "Third class city" has the meaning given in Minn. Stat. § 410.01.

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

~~75-~~ 76. "Transfer station" has the meaning given in Minn. Stat. § 115A.03, subd. 33.

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ADOPTED RULES

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

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

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

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

~~80-~~ 81. "Wild and scenic rivers district" means a river, or a segment of the river, and its adjacent lands that possess outstanding scenic, recreational, natural, historical, scientific, or similar values and has been designated by the Commissioner of the DNR or by the legislature of the state of Minnesota for inclusion within the Minnesota Wild and Scenic Rivers system pursuant to Minn. Stat. §§ 104.31-104.40 or by Congress for inclusion within the National Wild and Scenic Rivers System pursuant to ~~46~~ USC title 16, sections 1274-1286 (1976).

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

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

6 MCAR § ~~3-003~~ 3.023 General responsibilities.

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

B. RGUs. RGUs shall be responsible for verifying the accuracy of environmental documents and complying with environmental review processes in a timely manner.

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

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

6 MCAR § ~~3-004~~ 3.024 RGU selection procedures.

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

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

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

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

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

1. When a single governmental unit proposes to carry out or has sole jurisdiction to approve ~~an action~~ a project, it shall be the RGU.

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

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

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

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

Chapter Twelve: Environmental Assessment Worksheet

6 MCAR § ~~3.005~~ 3.025 Projects requiring an EAW.

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

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

B. Mandatory EAW categories. An EAW shall be prepared for any activity project that meets or exceeds the thresholds of any of the EAW categories listed in 6 MCAR § ~~3.018~~ 3.038 or any of the EIS categories listed in 6 MCAR § ~~3.019~~ 3.039.

C. Discretionary EAWs. An EAW shall be prepared:

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

2. When a project is not exempt under 6 MCAR § 3.041 and when a governmental unit with ~~jurisdiction or~~ approval authority over a proposed action project determines pursuant to the petition process set forth in 6 MCAR § ~~3.006~~ 3.026 that, because of the nature or location of a proposed action project, the action project may have the potential for significant ~~adverse~~ environmental effects; ~~or~~

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

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

6 MCAR § ~~3.006~~ 3.026 Petition process.

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

B. Content. The petition shall also include:

1. A description of the action proposed project;
2. The proposer of the action project;
3. The name, address and telephone number of the representative of the petitioners;
4. A brief description of the potential ~~adverse~~ environmental effects which ~~will~~ may result from the action project; and
5. Material evidence indicating that, because of the nature or location of the proposed action project, there may be potential for significant ~~adverse~~ environmental effects.

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

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

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ADOPTED RULES

E. Determination of RGU. The EQB's chairperson or designee shall determine whether the petition complies with the requirements of A. and B.1., 2., ~~and 3., 4., and 5.~~ If the petition complies, the chairperson or designee shall designate an RGU pursuant to 6 MCAR § 3.024 and forward the petition to the RGU within five days of receipt of the petition.

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

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

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

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

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

6 MCAR § ~~3-007~~ 3.027 EAW content, preparation and distribution process.

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

1. ~~Activity~~ Identification including project name, project proposer, and project location;
2. Procedural details including identification of the RGU, EAW contact person, and instructions for interested persons wishing to submit comments;
3. ~~Activity description including a~~ Description of the project, methods of construction, quantification of physical characteristics and impacts, project site description, and land use and physical features of the surrounding area;
4. Resource protection measures that have been incorporated into the project design;
5. Major issues sections identifying potential environmental impacts and issues that may require further investigation before the project is commenced; and
6. Known governmental approvals, reviews, or financing required, applied for, or anticipated and the status of any applications made, including permit conditions that may have been ordered or are being considered.

B. EAW form.

1. The EQB shall develop an EAW form to be used by the RGU.
2. The EQB may approve the use of an alternative EAW form if an RGU demonstrates the alternative form will better accommodate the RGU's function or better address a particular type of ~~action~~ project and the alternative form will provide more complete, more accurate, or more relevant information.
3. The EAW form shall be assessed by the EQB periodically and may be altered by the EQB to improve the effectiveness of the document.

C. Preparation of an EAW.

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

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

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

D. Publication and distribution of an EAW.

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

- a. Each member of the EQB;
- b. The proposer of the action project;
- c. The U.S. Corps of Engineers;
- d. The U.S. Environmental Protection Agency;
- e. The U.S. Fish and Wildlife Service;
- f. The State Historical Society;
- g. The Environmental Conservation Library;
- h. The Legislative Reference Library;
- i. The Regional Development Commission and Regional Development Library for the region of the project site;
- j. Any local governmental unit within which the action project will take place; ~~and~~
- k. The representative of any petitioners pursuant to 6 MCAR § 3.026; and

1. Any other person upon written request.

2. Within five days of the date of submission of the EAW to the EQB staff, the RGU shall provide a press release, containing notice of the availability of the EAW for public review, to at least one newspaper of general circulation within the area where the action project is proposed. The press release shall include the name and location of the action project, a brief description of the activity project, the location at which copies of the EAW are available for review, the date the comment period expires, and the procedures for commenting. The RGU shall publish legal notice or advertisement of the availability of the EAW if the proposer requests and agrees to pay for the notice or advertisement. The notice or advertisement shall contain the information required in the press release.

3. The EQB staff shall maintain an official EAW distribution list containing the names and addresses of agencies designated to receive EAWs.

E. Comment period.

1. A 30-day period for review and comment on the EAW shall begin the day the EAW availability notice is published in the EQB Monitor.

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

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

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

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

B. Decision making process.

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

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

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ADOPTED RULES

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

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

3. The RGU shall maintain a record, including specific findings of fact, supporting its decision. This record shall either be a separately prepared document or contained within the records of the governmental unit. ~~If measures will be incorporated in the action which will mitigate the adverse environmental impacts of the action, the determination of the need for an EIS should be based on the impacts of the action with the application of the mitigation measures.~~

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

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

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

1. Type, extent, and reversability of environmental effects;
2. Cumulative potential effects of related or anticipated future ~~actions~~ projects;
3. The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and
4. The extent to which environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, or ~~an EIS~~ of EIS's previously prepared on similar ~~actions~~ projects.

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

F. Phased actions.

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

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

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

Chapter Thirteen:

Environmental Impact Statement.

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

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

B. Mandatory EIS categories. An EIS shall be prepared for any ~~activity~~ project that meets or exceeds the thresholds of any of the EIS categories listed in 6 MCAR § ~~3-019~~ 3.039.

C. Discretionary EISs. An EIS shall be prepared:

1. When the RGU determines that, based on the EAW and any comments or additional information received during the EAW comment period, the proposed ~~action~~ project has the potential for significant adverse environmental effects; or
2. When the RGU and proposer of the ~~action~~ project agree that an EIS should be prepared.

6 MCAR § ~~3-010~~ 3.030 EIS scoping process.

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

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

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

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

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

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

C. Scoping period.

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

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

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

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

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

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

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

D. Procedure for scoping.

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

2. Governmental units and other persons shall be responsible for participating in the scoping process within the time limits and in the manner prescribed in 6 MCAR §§ ~~3-001-3-036~~ 3.021-3.056.

E. Scoping decision.

1. The scoping decision at the least shall contain:

a. The issues to be addressed in the EIS;

b. Time limits for preparation, if they are shorter than those allowed by 6 MCAR §§ ~~3-001-3-036~~ 3.021-3.056;

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

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

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

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

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

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

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

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

~~5.~~ 3. After the scoping decision is made, the RGU ~~may~~ shall not amend the decision without the agreement of the proposer unless substantial changes are made in the proposed ~~action~~ project that affect the potential significant environmental effects of the project or substantial new information arises relating to the proposed ~~action~~ project that significantly affects the potential environmental effects of the proposed project or the availability of prudent and feasible alternatives to the project. If the scoping decision is amended after publication of the EIS preparation notice, notice and a summary of the amendment shall be published in the EQB Monitor within 30 days of the amendment.

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

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

6 MCAR ~~§ 3.011~~ 3.031 EIS preparation and distribution process.

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

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

1. Cover sheet. The cover sheet shall include:

a. The RGU;

b. The title of the proposed ~~action~~ project that is the subject of the statement and, if appropriate, the titles of related actions, together with each county or other jurisdictions, if applicable, where the ~~action~~ project is located;

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

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

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

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

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

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

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

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

5. Project description. The proposed ~~action~~ project shall be described with no more detail than is absolutely necessary to

allow the public to identify the purpose of the action project, its size, scope, environmental setting, geographic location, and the anticipated phases of development.

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

7. Alternatives. ~~Based on the analysis of the proposed action's impacts,~~ The alternatives section shall compare the environmental impacts of the proposal with ~~any~~ other reasonable alternatives to the proposed action project. Reasonable alternatives may include locational considerations, design modifications including site layout, magnitude of the action project, and consideration of alternative means by which the purpose of the action project could be met. Alternatives that were considered but eliminated shall be discussed briefly and the reasons for their elimination shall be stated. The alternative of no action shall be addressed.

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

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

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

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

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

c. Permit information that was developed and gathered concurrently with the preparation of the EIS. The information may be presented on the permitting agency's permit application forms. The appendix may reference information for the permit included in the EIS text or the information may be included within the appendix, as appropriate. If the permit information cannot conveniently be incorporated into the EIS, the EIS may simply indicate the location where the permit information may be reviewed.

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

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

E. Draft EIS.

1. A draft EIS shall be prepared in accord consistent with the scope decided upon in 6 MCAR §§ 3.021-3.056 and in accord with the scoping process determination. ~~The draft statement shall satisfy to the fullest extent possible the requirements of B.~~

2. When the draft EIS is completed, the RGU shall make the draft EIS available for public review and comment and shall hold an informational meeting in the county where the action project is proposed.

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3. The entire draft EIS with appendices shall be provided to:
 - a. Any governmental unit which has authority to permit or approve the proposed action project, to the extent known;
 - b. The proposer of the action project;
 - c. The EQB and EQB staff;
 - d. The Environmental Conservation Library;
 - e. The Legislative Reference Library;
 - f. The Regional Development Commission and Regional Development Library;
 - g. A public library or public place where the draft will be available for public review in each county where the action project will take place, to the extent known; and
 - h. To the extent possible, to any person requesting the entire EIS.
4. The summary of the draft EIS shall be provided to:
 - a. All members of the EAW distribution list that do not receive the entire draft EIS;
 - b. Any person that submitted substantive comments on the EAW that does not receive the entire draft EIS; and
 - c. Any person requesting the summary.
5. The copy provided to the EQB staff shall serve as notification to publish notice of availability of the draft EIS in the EQB Monitor.
6. The RGU shall supply a press release to at least one newspaper of general circulation within the area where the action project is proposed.
7. The notice of availability in the EQB Monitor and the press release shall contain notice of the date, time, and place of the informational meeting, notice of the location of the copy of the draft EIS available for public review, and notice of the date of termination of the comment period.
8. The informational meeting must be held not less than 15 days after publication of the notice of availability in the EQB Monitor. A typewritten or audio-recorded transcript of the meeting shall be made.
9. The record shall remain open for public comment not less than ten days after the last date of the informational meeting. Written comments on the draft EIS may be ~~received~~ submitted any time during the comment period.
10. The RGU shall respond to the timely substantive comments received on the draft EIS and prepare the final EIS. ~~Late comments need not be considered in preparation of the final EIS.~~

F. Final EIS.

1. The final EIS shall respond to the timely substantive comments on the draft EIS consistent with the scoping decision. The RGU shall discuss at appropriate points in the final EIS any responsible opposing views relating to scoped issues which were not adequately discussed in the draft EIS and shall indicate the RGU's response to the views.
2. If only minor changes in the draft EIS are suggested in the comments on the draft, the written comments and the responses may be attached to the draft or bound as a separate volume and circulated as the final EIS. If other than minor changes are required, the draft text shall be rewritten so that necessary changes in the text are incorporated in the appropriate places.
3. The RGU shall provide copies of the final EIS to:
 - a. All persons receiving copies of the entire draft EIS pursuant to E.3.;
 - b. Any person who submitted substantive comments on the draft EIS; and
 - c. To the extent possible, to any person requesting the final EIS.
4. The copy provided to the EQB staff shall serve as notification to publish notice of availability of the final EIS in the EQB Monitor.
5. The RGU shall supply a press release to at least one newspaper of general circulation within the area where the action project is proposed.
6. The notice of availability in the EQB Monitor and the press release shall contain notice of the location of the copy of the final EIS available for public review and notice of the opportunity for public comment on the adequacy of the final EIS.

G. Determination of adequacy.

~~4. The RGU shall make the determination of adequacy on the final EIS unless notified by the EQB within 60 days after publication of the preparation notice in the EQB Monitor that the EQB will make the determination. In making the decision to intervene in the determination of adequacy, the EQB shall consider:~~

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

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

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

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

3. The determination of adequacy of the final EIS shall be made at least ten days after publication in the EQB Monitor of the notice of availability of the final EIS.

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

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

- a. Addresses the issues raised in scoping so that all ~~questions~~ issues for which information can be reasonably obtained have been ~~answered~~ analyzed;
- b. Provides responses to the substantive comments received during the draft EIS review concerning issues raised in scoping; and
- c. Was prepared in ~~substantial~~ compliance with the procedures of the act and 6 MCAR § ~~3.001-3.036~~ §§ 3.021-3.056.

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

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

H. Permit decisions in cases requiring an EIS.

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

2. At the time of its permit decision, for those permits which were identified during the scoping process as requiring a record of decision, each permitting unit of government shall prepare a concise public record of how it considered the EIS in its decision. That record shall be supplied to the EQB for the purpose of monitoring the effectiveness of the process created by 6 MCAR § ~~3.001-3.036~~ §§ 3.021-3.056 and to any other person requesting the information. The record may be integrated into any other record prepared by the permitting unit of government.

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

I. Supplemental EIS.

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

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

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

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

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

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

6 MCAR § ~~3-012~~ 3.032 Prohibition on final ~~actions and~~ governmental decisions.

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

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

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

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

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

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

a. A detailed explanation of the construction proposed to be undertaken or the governmental approvals to be granted;

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

c. The reversibility of the anticipated environmental effects;

d. The reasons necessitating the variance; and

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

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

4. The EQB chairperson shall issue a press release to at least one newspaper of general circulation in the area where the action project is proposed. The notice and press release shall summarize the reasons given for the variance application and

specify that comments on whether a variance should be granted must be submitted to the EQB within 20 days after the date of publication in the EQB Monitor.

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

a. The RGU consents to a variance; and

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

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

7. Only the construction or governmental approvals necessary to avoid the consequences listed in 5. shall be undertaken or granted.

E. 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 ~~action project~~ may be undertaken without the environmental review which would otherwise be required by 6 MCAR §§ ~~3.001-3.036~~ 3.021-3.056. The governmental unit or person must demonstrate to the EQB chairperson, either orally or in writing, that immediate action is essential and must receive authorization from the EQB chairperson to proceed. Authorization to proceed shall be limited to those actions aspects of the project necessary to control the immediate impacts of the emergency. Other actions aspects of the project remain subject to review under 6 MCAR §§ ~~3.001-3.036~~ 3.021-3.056.

6 MCAR § ~~3.013~~ 3.033 Review of state ~~actions or~~ projects.

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

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

C. Decision to delay implementation. At any time prior to or within ten days after the issuance of the final decision on ~~an action~~ a project, the chairperson of the EQB may delay implementation of the ~~action project~~ by notice to the agency, the project proposer and interested parties as identified by the governmental unit. Notice may be verbal, however, written notice shall be provided as soon as reasonably possible. The chairperson's decision to delay implementation shall be effective for no more than ten days by which time the EQB must affirm or overturn the decision.

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

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

1. Written notice of the hearing shall be given to the governmental unit, the proposer, and parties, as identified by the governmental unit, no less than seven days in advance. To the extent reasonably possible, notice shall be published in the EQB Monitor and a newspaper of general circulation in each county in which the ~~action project~~ is to take place. The notice shall identify the time and place of the hearing, and provide a brief description of the ~~action project~~ and final decision to be reviewed

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and a reference to the EQB's authority to conduct the hearing. The hearing ~~may~~ shall be conducted by the EQB chairperson or a designee;

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

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

Chapter Fourteen: Substitute Forms of ~~Environmental~~ Environmental Review

6 MCAR § ~~3.014~~ 3.034 Alternative review.

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

1. The process identifies the potential environmental impacts of each proposed action project;
2. The process addresses substantially the same issues as an EIS and uses procedures similar to those used in preparing an EIS but in a more timely or more efficient manner;
3. Alternatives to the proposed action project are considered in light of their potential environmental impacts;
4. Measures to mitigate the potential environmental impacts are identified and discussed;
5. A description of the proposed action project and analysis of potential impacts, alternatives and mitigating measures are provided to other affected or interested governmental units and the general public;
6. The governmental unit shall provide notice of the availability of environmental documents to the general public in at least the area affected by the action project. A copy of environmental documents on actions projects reviewed under an alternative review procedure shall be submitted to the EQB. The EQB shall be responsible for publishing notice of the availability of the documents in the EQB Monitor;
7. Other governmental units and the public are provided with a reasonable opportunity to request environmental review and to review and comment on the information concerning the action project. The process must provide for RGU response to timely substantive comments relating to issues discussed in environmental documents relating to the project; and
8. The process must routinely develop the information required in 1.-5. and provide the notification and review opportunities in 6. and 7. for each action project that would be subject to environmental review.

B. Exemption from rules. If the EQB accepts a governmental unit's process as an adequate alternative review procedure, ~~actions projects~~ projects reviewed under that alternative review procedure shall be exempt from environmental review under 6 MCAR §§ ~~3.006, 3.007, 3.008, 3.010 and 3.014~~ 3.026, 3.027, 3.028, 3.030 and 3.031. On approval of the alternative review process, the EQB shall provide for periodic review of the alternative procedure to ensure continuing compliance with the requirements and intent of these environmental review procedures. The EQB shall withdraw its approval of an alternative review procedure if review of the procedure indicates that the procedure no longer fulfills the intent and requirements of the Minnesota Environmental Policy Act and 6 MCAR §§ ~~3.001-3.036~~ 3.021-3.056. A project in the process of undergoing review under an approved alternative process shall not be affected by the EQB's withdrawal of approval.

6 MCAR § ~~3.015~~ 3.035 Model ordinance.

A. Application. The model ordinance, set out in C. may be utilized by any local governmental unit which adopts the ordinance in lieu of 6 MCAR §§ ~~3.005-3.012~~ 3.025-3.032 for projects which qualify for review under the ordinance.

B. ~~Approval~~ Notice.

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

~~2.~~ If a local governmental unit adopts an environmental review ordinance which differs from the ordinance set out in

C. the EQB must determine whether the ordinance provides for the consideration of appropriate alternatives and ensures that decisions are made in accord with the policies and purposes of the Minnesota Environmental Policy Act. If the EQB determines the proposed ordinance meets these requirements, the EQB shall approve the ordinance for adoption and shall periodically review its implementation.

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

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

C. Model ordinance.

AN ORDINANCE RELATING TO THE PREPARATION AND
REVIEW OF ENVIRONMENTAL ANALYSIS

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

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

- a. Are consistent with any applicable comprehensive plan;
- b. Do not require a state permit; and
- c. The (board) (council) determines that, because of the nature or location of the action project, the action project may have the potential for significant ~~adverse~~ environmental effects; or
- d. Are listed in a mandatory EAW or EIS category of the state environmental review program, 6 MCAR §§ ~~3.018~~ 3.038 and ~~3.019~~ 3.039, one copy of which is on file with the (county auditor) (town clerk) (city clerk) (watershed district board of managers).

This ordinance shall not apply to ~~actions~~ projects which are exempted from environmental review by 6 MCAR § ~~3.021~~ 3.041 or to projects which the (board) (council) determines are so complex or have potential environmental effects which are so significant that review should be completed under the state environmental review program, 6 MCAR §§ ~~3.001~~ 3.036 ~~3.021~~-~~3.056~~.

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

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

Comments on the analysis shall be submitted to the (board) (council) within 30 days following the publication of the notice of availability in the EQB Monitor. The (board) (council) may hold a public meeting to receive comments on the analysis if it determines that a meeting is necessary and useful. The meeting may be combined with any other meeting or hearing for a permit or other approval for the activity project. Public notice of the meeting to receive comments on the analysis shall be provided at least ten days before the meeting.

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

6 MCAR § ~~3.016~~ 3.036 Generic EIS. A generic EIS may be ordered by the EQB to study types of actions projects that are not adequately reviewed on a case-by-case basis.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

ADOPTED RULES

- A. ~~Criteria.~~ A generic EIS may be ordered for any type of action for which one or more of the following criteria applies:
- ~~1. Basic research is needed to understand the impacts of the action;~~
 - ~~2. Decision makers or the public have need to be informed of the potential impacts of the action;~~
 - ~~3. Information to be presented in the generic EIS is needed for governmental or public planning;~~
 - ~~4. The cumulative impacts of the action may have the potential for significant adverse environmental effects;~~
 - ~~5. The regional or statewide significance of the impacts cannot be adequately addressed on a project-by-project basis;~~
- or
- ~~6. Governmental policies are involved that will result in a series of actions that will cause physical manipulation of the environment and may have the potential for significant adverse environmental effects.~~
- ~~B. A.~~ EQB as RGU. If the EQB orders a generic EIS, the EQB shall be the RGU for the generic EIS.
- ~~C. B.~~ Public requests for generic EIS. A governmental unit or any other person may request the EQB to order a generic EIS.
- ~~D. C.~~ Timing. Time deadlines for the preparation of a generic EIS shall be set at the scoping meeting.
- ~~E. Application of D.~~ Criteria. In determining the need for a generic EIS, the EQB shall consider:
1. If the review of a type of action can be better accomplished by a generic EIS than by project specific review;
 2. If the possible effects on the human environment from a type of action are highly uncertain or involve unique or unknown risks; ~~and~~
 3. If a generic EIS can be used for tiering in a subsequent project specific EIS;
 4. The amount of basic research needed to understand the impacts of such projects;
 5. The degree to which decision makers or the public have a need to be informed of the potential impacts of such projects;
 6. The degree to which information to be presented in the generic EIS is needed for governmental or public planning;
 7. The potential for significant environmental effects as a result of the cumulative impacts of such projects;
 8. The regional and statewide significance of the impacts and the degree to which they can be addressed on a project-by-project basis; and
 9. The degree to which governmental policies affect the number or location of such projects or the potential for significant environmental effects.
- ~~F. E.~~ Scoping. The generic EIS shall be scoped. Scoping shall be coordinated by the RGU and shall identify the issues and geographic areas to be addressed in the generic EIS. Scoping procedures shall follow the procedures in 6 MCAR § ~~3.010~~ 3.030 except for the identification of permits for which information is to be gathered concurrently with the EIS preparation, the preparation and circulation of the EAW, and the time requirements.
- ~~G. F.~~ Content. In addition to ~~any issues that may be addressed in~~ content requirements specified by the scoping process, the generic EIS shall contain the following:
1. Any new data that has been gathered or the results of any new research that has been undertaken as part of the generic EIS preparation;
 2. A description of the possible impacts and likelihood of occurrence, the extent of current use, and the possibility of future development for the type of action; and
 3. Alternatives including recommendations for geographic placement of the type of action to reduce environmental harm, different methods for construction and operation, and different types of actions that could produce the same or similar results as the subject type of action but in a less environmentally harmful manner.
- ~~H. G.~~ Relationship to project specific review. Preparation of a generic EIS does not exempt specific activities from project specific environmental review. Project specific environmental review shall use information in the generic EIS by tiering and shall reflect the recommendations contained in the generic EIS if the EQB determines that the generic EIS remains adequate at the time the specific project is subject to review.
- ~~I. H.~~ Relationship to projects. The fact that a generic EIS is being prepared shall not preclude the undertaking and completion of a specific project whose impacts are considered in the generic EIS.

6 MCAR § ~~3.017~~ 3.037 Joint federal and state ~~EIS~~ environmental documents.

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

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

C. Federal EIS as draft EIS. If a federal EIS will be or has been prepared for ~~an action~~ a project, the RGU shall utilize the draft or final federal EIS as the draft state EIS for the ~~action~~ project if the federal EIS addresses the scoped issues and satisfies the standards set forth in 6 MCAR § ~~3.008~~ 3.028 B.

**Chapter Fifteen:
Mandatory Categories**

6 MCAR § ~~3.018~~ 3.038 Mandatory EAW categories. An EAW must be prepared for ~~activities~~ projects that meet or exceed the threshold of any of A.-DD.

A. Nuclear fuels and nuclear waste.

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

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

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

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

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

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

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

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

D. Fuel conversion facilities.

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

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

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

F. Pipelines.

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

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

G. Transfer facilities.

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

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ADOPTED RULES

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

H. Underground storage.

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

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

I. Storage facilities.

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

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

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

J. Metallic mineral mining and processing.

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

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

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

K. Nonmetallic mineral mining.

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

2. Development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 40 or more acres of land to a mean depth of ten feet or more during its existence. The local government unit shall be the RGU.

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

M. Industrial, commercial and institutional facilities.

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

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

The local government unit shall be the RGU.

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

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

N. Air pollution.

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

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

O. Hazardous waste.

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

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

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

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

P. Solid waste.

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

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

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

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

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

Q. Sewage systems.

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

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

R. Residential development.

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

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

b. One hundred or more unattached or 150 or more attached units in a third or fourth class city or sewerred unincorporated area;

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

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

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ADOPTED RULES

The local government unit shall be the RGU.

2. Construction of a permanent or potentially permanent residential development of 20 or more unattached units or of 30 or more attached units, if the local governmental unit has not adopted state approved shoreland, flood plain, or wild and scenic rivers land use district ordinances, the Mississippi headwaters plan, or the Project Riverbend plan, as applicable, and either:

a. The ~~activity~~ project involves riparian frontage; or

b. Five or more acres of the development is within a shoreland, delineated flood plain, ~~or~~ a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

The local government unit shall be the RGU.

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

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

U. Highway projects.

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

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

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

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

W. Water appropriation and impoundments.

1. A new appropriation for commercial or industrial purposes of either surface water or ground water averaging 30,000,000 gallons per month, or exceeding 2,000,000 gallons in any day during the period of use; or a new appropriation of either ground water or surface water for irrigation of 540 acres or more in one continuous parcel from one source of water. The DNR shall be the RGU.

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

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

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

Y. Stream diversion. The diversion or channelization of a designated trout stream or a natural watercourse with a total watershed of ten or more square miles, unless exempted by 6 MCAR § ~~3.024~~ 3.041 P. or 6 MCAR § 3.041 M. 5. The local government unit shall be the RGU.

Z. Wetlands and protected waters.

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

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

AA. Agriculture and forestry.

1. Harvesting of timber for commercial purposes on public lands within a state park, historical area, wilderness area, scientific and natural area, wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or critical area that does not have an approved plan under Minn. Stat. § 86A.09 or 116G.07. The DNR shall be the RGU.

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

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

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

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

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

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

6 MCAR § ~~3.019~~ 3.039 **Mandatory EIS categories.** An EIS must be prepared for ~~activities~~ projects that meet or exceed the threshold of any of A.-S.

A. Nuclear fuels and nuclear waste.

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

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

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

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

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

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

D. Fuel conversion facilities.

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

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

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

F. Underground storage.

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

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

G. Metallic mineral mining and processing.

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

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

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ADOPTED RULES

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

H. Nonmetallic mineral mining.

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

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

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

J. Industrial, commercial and institutional facilities.

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

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

The local government unit shall be the RGU.

2. Construction of a new or expansion of an existing industrial, commercial, or institutional facility of 100,000 or more square feet of ground area, if the local governmental unit has not adopted state approved shoreland, flood plain, or wild and scenic rivers land use district ordinances, the Mississippi headwaters plan or the Project Riverbend plan, as applicable, and either:

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

The local government unit shall be the RGU.

K. Hazardous waste.

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

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

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

L. Solid waste.

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

2. Construction or expansion of a mixed municipal solid waste disposal facility in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or in an area characterized by soluble bedrock. The PCA or metropolitan council shall be the RGU.

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

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

M. Residential development.

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

- a. One hundred or more unattached or 150 or more attached units in an unsewered area;
- b. Four hundred or more unattached or 600 or more attached units in a third or fourth class city or sewerer unincorporated area;
- c. Six hundred or more unattached or 900 or more attached units in a second class city; or
- d. Eight hundred or more unattached or 1,200 or more attached units in a first class city.

The local government unit shall be the RGU.

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

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

The local government unit shall be the RGU.

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

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

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

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

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

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

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

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

A. Standard exemptions.

1. ~~Activities~~ Projects for which no governmental ~~action~~ is ~~decisions~~ are required.
2. ~~Activities~~ Projects for which all governmental ~~action~~ has ~~decisions~~ have been ~~completed~~ made.
3. ~~Activities~~ Projects for which, and so long as, a ~~public agency~~ governmental unit has denied a required governmental approval.
4. ~~Activities~~ Projects for which a substantial portion of the ~~activity~~ project has been completed and an EIS would not influence remaining implementation or construction.
5. ~~Activities~~ Projects for which environmental review has already been initiated under the prior rules or for which environmental review is being conducted pursuant to 6 MCAR § ~~3-014~~ 3.034 or ~~3-015~~ 3.035.

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

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ADOPTED RULES

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

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

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

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

G. Mining.

1. General mine site evaluation activities that do not result in a permanent alteration of the environment, including mapping, aerial surveying, visual inspection, geologic field reconnaissance, geophysical studies, and surveying, but excluding exploratory borings.

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

3. Scram mining operations.

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

I. Industrial, commercial and institutional facilities.

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

a. Third or fourth class city or unincorporated area—50,000 square feet;

b. Second class city—75,000 square feet; or

c. First class city—100,000 square feet.

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

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

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

K. Residential development.

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

a. Less than ten units in an unincorporated area;

b. Less than 20 units in a third or fourth class city;

c. Less than 40 units in a second class city; or

d. Less than 80 units in a first class city.

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

L. Airport projects.

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

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

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

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

M. Highway projects.

1. Highway safety improvement projects.

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

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

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

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

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

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

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

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

Q. Agriculture and forestry.

1. Harvesting of timber for maintenance purposes.

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

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

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

T. Construction ~~activities~~ projects.

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

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

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

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

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

U. Land use.

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1. Individual land use variances including minor lot line adjustments and side yard and setback variances, not resulting in the creation of a new subdivided parcel of land or any change in land use character or density.
 2. Minor temporary uses of land having negligible or no permanent effect on the environment.
 3. Maintenance of existing landscaping, native growth, and water supply reservoirs, excluding the use of pesticides.
- V. Research and data collection. Basic data collection, training programs, research, experimental management, and resource evaluation projects which do not result in an extensive or permanent disturbance to an environmental resource, and do not constitute a substantial commitment to a further course of action having potential for significant adverse environmental effects.
- W. Financial transactions.
1. Acquisition or disposition of private interests in real property, including leaseholds, easements, right-of-way, or fee interests.
 2. Purchase of operating equipment, maintenance equipment, or operating supplies.
- X. Licenses.
1. Licensing or permitting decisions related to individual persons or activities directly connected with an individual's household, livelihood, transportation, recreation, health, safety, and welfare, such as motor vehicle licensing or individual park entrance permits.
 2. All licenses required under electrical, fire, plumbing, heating, mechanical and safety codes and regulations, but not including building permits.
- Y. Governmental ~~actions~~ activities.
1. Proposals and enactments of the legislature.
 2. Rules or orders of governmental units.
 3. Executive orders of the Governor, or their implementation by governmental units.
 4. Judicial orders.
 5. Submissions of proposals to a vote of the people of the State.

Chapter Sixteen: Early Notice Rules.

6 MCAR § ~~3-022~~ 3.042 Authority and purpose.

A. Bulletin. To provide early notice of impending ~~actions~~ projects which may have significant adverse environmental effects, the EQB shall, pursuant to Minn. Stat. § 116D.04, subd. 8, publish a bulletin with the name of "EQB Monitor" containing all notices as specified in 6 MCAR § ~~3-024~~ 3.044. The EQB may prescribe the form and manner in which the governmental units submit any material for publication in the EQB Monitor, and the EQB Chairperson may withhold publication of any material not submitted according to the form or procedures the EQB has prescribed.

B. Purpose. These rules are intended to provide a procedure for notice to the EQB and to the public of natural resource management and development permit applications, and impending governmental and private ~~actions~~ projects that may have significant adverse environmental effects. The notice through the early notice procedures is in addition to public notices otherwise required by law or regulations.

6 MCAR § ~~3-023~~ 3.043 Exemptions.

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

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

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

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

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

1. When ~~an action~~ a project has been noticed pursuant to 6 MCAR § ~~3-024~~ 3.044 A.3. separate notice of individual

permits required by that ~~action~~ project need not be made unless changes in the ~~action~~ project are proposed which will involve new and potentially significant ~~adverse~~ environmental effects not considered previously. No decision granting or ~~denying~~ a permit application for which notice is required to be published by this rule shall be effective until 30 days following publication of the notice.

~~a. Filling of ten or more acres of public waters. Work in the beds of public waters, Minn. Stat. § 105.42. The DNR is the permitting authority.~~

~~b. Dredging of ten or more acres of public waters. Work in the beds of public waters, Minn. Stat. § 105.42. The DNR is the permitting authority.~~

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

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

~~e. Earth removal lease, Minn. Stat. § 92.50. The DNR is the permitting authority.~~

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

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

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

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

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

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

4. Notice of the availability of a completed EAW pursuant to 6 MCAR § ~~3.007~~ 3.027 D.1.

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

~~5. 6. Notice of the time, place and date of the EIS scoping meeting pursuant to 6 MCAR § ~~3.010~~ 3.030 C.1.b. and C.2.a.~~

~~6. 7. EIS Preparation Notices pursuant to 6 MCAR § ~~3.010~~ 3.030 F.~~

~~7. 8. Amendments to the EIS scoping decision pursuant to 6 MCAR § ~~3.010~~ 3.030 E.5.~~

~~8. 9. Availability of draft and final EIS pursuant to 6 MCAR § ~~3.011~~ 3.031 E.5. and F.4.~~

~~9. 10. Notice of draft EIS informational meetings to be held pursuant to 6 MCAR § ~~3.011~~ 3.031 E.7.~~

~~10. 11. RGU's adequacy decision of the final EIS pursuant to 6 MCAR § ~~3.011~~ 3.031 G.7.~~

~~11. 12. Notice of activities undergoing environmental review under alternative review processes pursuant to 6 MCAR § ~~3.014~~ 3.034 A.6.~~

~~12. 13. Adoption of model ordinances pursuant to 6 MCAR § ~~3.015~~ 3.035 B.1. and 2.~~

~~13. 14. Environmental analyses prepared under adopted model ordinances pursuant to 6 MCAR § ~~3.015~~ 3.035 C.~~

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

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

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

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

B. ~~Governmental units~~, Optional notices. Governmental units may publish notices of general interest or information in the EQB Monitor.

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

1. Receipt of a valid petition and assignment of a RGU pursuant to 6 MCAR § ~~3-006~~ 3.026 C. and E.;
2. Decision by the EQB that it will determine the adequacy of a final EIS pursuant to 6 MCAR § ~~3-011~~ 3.031 G.1.;
3. EQB's adequacy decision of the final EIS pursuant to 6 MCAR § ~~3-011~~ 3.031 G.7;
4. Receipt by the EQB of an application for a variance pursuant to 6 MCAR § ~~3-012~~ 3.032 D.3;
5. Notice of any public hearing held pursuant to 6 MCAR § ~~3-013~~ 3.033 E.1;
6. The EQB's decision to hold public hearings on a recommended Critical Area pursuant to Minn. Stat. § 116G.06, subd. 1, clause.(c);
7. Notice of application for a Certificate of Site Compatibility or a High Voltage Transmission Line Construction Permit pursuant to Minn. Stat. §§ 116C.51-116C.69; and
8. Receipt of a consolidated permit application pursuant to 6 MCAR § 3.102 A.

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

- A. **Identification of applicant.** Identification of applicant, by name and mailing address.
- B. **Location of project.** The location of the proposed project, or description of the area affected by the ~~action~~ project by county, minor civil division, public land survey township number, range number, and section number.
- C. **Identification of permit or project.** The name of the permit applied for, or a description of the proposed project or other action to be undertaken in sufficient detail to enable other state agencies to determine whether they have jurisdiction over the proposed ~~action~~ project.
- D. **Public hearings.** A statement of whether the agency intends to hold public hearings on the proposed ~~action~~ project, along with the time and place of the hearings if they are to be held in less than 30 days from the date of this notice.
- E. **Identification of governmental unit.** The identification of the governmental unit publishing the notice, including the manner and place at which comments on the ~~action~~ project can be submitted and additional information can be obtained.

6 MCAR § ~~3-026~~ 3.046 **Statement of compliance.** Each governmental permit or agency authorizing order subject to the requirements of 6 MCAR § ~~3-024~~ 3.044 A.1. issued or granted by a governmental unit shall contain a statement by the unit concerning whether the provisions of 6 MCAR §§ ~~3-022-3026~~ 3.042-3.046 have been complied with, and publication dates of the notices, if any, concerning that permit or authorization.

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

6 MCAR § ~~3-028~~ 3.048 **Cost and distribution.**

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

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

Chapter Seventeen: Assessing the Cost of Preparing Environmental Impact Statements.

6 MCAR § ~~3-029~~ 3.049 **Projects requiring an assessment of the EIS preparation cost.**

When a private person proposes to undertake ~~an action~~ a project, and the final determination has been made that an EIS will be prepared by a governmental unit on that ~~action~~ project, the proposer shall be assessed for the reasonable costs of preparing and distributing that EIS in accord with 6 MCAR §§ ~~3-030-3.034~~ 3.050-3.054.

6 MCAR § ~~3-030~~ 3.050 **Determining the EIS assessed cost.**

A. **Proposer and RGU agreement.** Within 30 days after the EIS preparation notice has been issued, the RGU shall submit to

the EQB a written agreement signed by the proposer and the RGU. The agreement shall include the EIS estimated cost, the EIS assessed cost, and a brief description of the tasks and the cost of each task to be performed by each party in preparing and distributing the EIS. Those items identified in 6 MCAR § ~~3-034~~ 3.051 A. and B. may be used as a guideline in determining the EIS estimated cost. The EIS assessed cost shall identify the proposer's costs for the collection and analysis of technical data to be supplied to the RGU and the costs which will result in a cash payment by the proposer to the EQB if a state agency is the RGU or to a local governmental unit when it is the RGU. If an agreement cannot be reached, the RGU shall so notify the EQB within 30 days after the final determination has been made that an EIS will be prepared.

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

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

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

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

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

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

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

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

6 MCAR § ~~3-034~~ 3.051 Determining the EIS estimated cost, the EIS actual cost and the project estimated cost.

A. EIS estimated or actual costs; inclusions. In determining the EIS estimated cost or the EIS actual cost, the following items shall be included:

1. The cost of the RGU's staff time including direct salary and fringe benefit costs.
2. The cost of consultants hired by the RGU.
3. The proposer's costs for the collection and analysis of technical data expended for the purpose of preparing the EIS.
4. Other direct costs of the RGU for the collection and analysis of information or data necessary for the preparation of the EIS. These costs shall be specifically identified.
5. Indirect costs of the RGU not to exceed the RGU's normal operating overhead rate.
6. The cost of printing and distributing the draft EIS and the final EIS.
7. The cost of any public hearings or public meetings held in conjunction with the preparation of the final EIS.

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

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

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

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

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

1. The current market value of all the land interests, owned or to be owned by the proposer, which are included in the boundaries of the action project. The boundaries shall be those defined by the action project which is the subject of the EIS preparation notice;

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

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

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

5. The cost of permanent fixtures.

6 MCAR § 3.032 3.052 Revising the EIS assessed cost.

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

1. If the change will likely result in a net change of greater than five percent in the EIS assessed cost, the proposer and the RGU shall make a new determination of the EIS assessed cost. The determination shall give consideration to costs previously expended or irrevocably obligated, additional information needed to complete the EIS and the adaptation of existing information to the revised action project. The RGU shall submit either a revised agreement or a notice that an agreement cannot be reached following the procedures of 6 MCAR § ~~3.030~~ 3.050 A. except that such agreement or notice shall be provided to the EQB within 20 days after the proposer notifies the RGU and the EQB of the change in the action project. If the changed action project results in a revised project estimated cost of one million dollars or less, the proposer shall not be liable for further cash payments to the EQB or to the local governmental unit beyond what has been expended or irrevocably obligated by the RGU at the time it was notified by the proposer of the change in the action project.

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

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

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

B. New significant environmental problem. If, after the EIS assessed cost has been determined, the RGU or the proposer uncovers a significant environmental problem that could not have been reasonably foreseen when determining the EIS assessed cost, the party making the discovery shall immediately notify the other party and the EQB. If the discovery will likely result in a net change of greater than five percent in the EIS assessed cost, the proposer and the RGU shall make a new determination of the EIS assessed cost. The RGU shall submit either a revised agreement or a notice that an agreement cannot be reached following the procedures of 6 MCAR § ~~3.030~~ 3.050 A. except that such agreement or notice shall be provided to the EQB within 20 days after both parties and the EQB were notified.

6 MCAR § ~~3.033~~ 3.053 Disagreements regarding the EIS assessed cost.

A. Notice to EQB, ~~information disagreement.~~ If the proposer and the RGU disagree about ~~the information to be included in the EIS or~~ the EIS assessed cost, the proposer and the RGU shall each submit a written statement to the EQB identifying ~~the information each recommends be included in the EIS,~~ the EIS estimated cost, and the project estimated cost within ten days after the RGU notifies the EQB that an agreement could not be reached. The statements shall include ~~a discussion of the need to include the information to the EIS, the identification of the information and data to be provided by each party,~~ the EIS preparation costs identified in 6 MCAR § ~~3.034~~ 3.051 A. and B. as they pertain to the information to be included in the EIS, a brief explanation of the costs, and a discussion of alternative methods of preparing the EIS and the costs of those alternatives.

B. Estimated cost disagreement, ~~process~~. If the proposer and the RGU disagree about the project estimated cost, the proposer shall submit in writing a detailed project estimated cost in addition to the requirements of A. The RGU may submit a written detailed project estimated cost in addition to the requirements of A. The statements shall be submitted to the EQB within ten days after the RGU notifies the EQB that an agreement could not be reached. The project estimated cost shall include the costs as identified in 6 MCAR § ~~3-034~~ 3.051 C. and a brief explanation of the costs. The estimates shall be prepared according to the categories in 6 MCAR § ~~3-034~~ 3.051 so as to allow a reasonable examination as to their completeness.

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

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

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

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

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

6 MCAR § ~~3-034~~ 3.054 Payment of the EIS assessed cost.

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

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

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

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

a. The proposer may withhold final cash payment of the EIS assessed cost until the RGU has submitted a detailed accounting of its EIS actual cost to the proposer and the EQB. If the proposer chooses to wait, the remaining portion of the EIS assessed cost shall be paid within 30 days after the EIS actual cost statement has been submitted to the proposer and the EQB.

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

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

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

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. Strike outs indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language.

ADOPTED RULES

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

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

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

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

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

G. Time period extension. All time periods included in 6 MCAR §§ ~~3.030-3.034~~ 3.050-3.054 may be extended by the EQB chairperson only for good cause upon written request by the proposer or the RGU.

Chapter Eighteen: Special Rules for Certain Large Energy Facilities

6 MCAR § ~~3.035~~ 3.055 Special rules for LEPGP.

A. Applicability. Environmental review for LEPGP as defined in Minn. Stat. § 116C.52, subd. 4 shall be conducted according to the procedures set forth in this rule unless a utility has filed an application for emergency certification pursuant to Minn. Stat. § 116C.57, subd. 3. Environmental review shall consist of an environmental report at the certificate of need stage and an EIS at the site certificate stage. Energy facilities subject to Minn. Stat. § 116H.13, but excluded under Minn. Stat. § 116C.52, subd. 4, shall not be subject to this rule. Except as expressly provided in this rule, 6 MCAR §§ ~~3.004-3.016~~ 3.024-3.036 shall not apply to ~~facilities~~ LEPGPs subject to this rule. No EAW ~~need~~ shall be prepared for any ~~facilities~~ LEPGPs subject to this rule. If a utility has filed an application for emergency certification pursuant to Minn. Stat. § 116C.57, subd. 3, the procedures and standards specified in 6 MCAR § 3.077 shall constitute alternative environmental review and neither 6 MCAR §§ 3.024-3.036 nor 6 MCAR § 3.055 shall apply.

B. Environmental report at certificate of need stage.

1. The ~~MEA~~ DEPD shall be responsible for preparation of an environmental report on a LEPGP subject to this rule.
2. The environmental report shall be prepared for inclusion in the record of certificate of need hearings conducted under Minn. Stat. § 116H.13. The report and comments thereon shall be included in the record of the hearings.
3. The environmental report on the certificate of need application shall include:
 - a. A brief description of the proposed facility;
 - b. An identification of reasonable alternative facilities including, as appropriate, the alternatives of different sized facilities, facilities using different fuels, different facility types, and combinations of alternatives;
 - c. A general evaluation, including the availability, estimated reliability, and economic, employment and environmental impacts, of the proposal and ~~alternatives~~ reasonable alternative facilities identified in 3.b.; and
 - d. A general analysis of the alternatives of no facility, different levels of capacity, and delayed construction of the facility. The analysis shall include consideration of conservation and load management measures that could be used to reduce the need for the proposed facility.
4. The environmental report ~~need~~ shall not be as exhaustive or detailed as an EIS ~~nor need it consider site-differentiating factors~~ and shall consider only those site-differentiating factors identifiable pursuant to the information requirements of 6 MCAR § 2.0633A.5.
5. Upon completion of the draft environmental report, the report shall be circulated as provided in 6 MCAR § ~~3.011~~ 3.031 E.3. In addition, one copy shall go to each regional development commission in the state. At least one copy shall be available for public review during the hearings conducted under Minn. Stat. § 116H.13.
6. The ~~MEA~~ DEPD shall provide notice of the date and locations at which the draft environmental report shall be available for public review. Notice shall be provided in the manner used to provide notice of public hearings conducted under Minn. Stat. § 116H.13 and may be provided in the notice of the hearings.
7. Comments on the draft environmental report shall be received during and entered into the record of hearing conducted under Minn. Stat. § 116H.13. The DEPDP shall respond to the timely substantive comments on the draft environmental report.

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

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

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

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

12. ~~A supplement to an environmental report may be required pursuant to 6 MCAR § 3.011 I. if a determination pursuant to Minn. Stat. § 116H.13 is pending before the MEA. A supplement to an environmental report shall be required if the tests described in 6 MCAR § 3.031 I. are met and a Minn. Stat. § 116H.13 determination is pending before the DEPD.~~

C. EIS at certificate of site compatibility stage.

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

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

3. The draft EIS shall conform to 6 MCAR § ~~3.011~~ 3.031 B. It shall contain a brief summary of the environmental report and the certificate of need decision relating to the project, if available. Alternatives shall include those sites designated for public hearings pursuant to Minn. Stat. § 116C.57, subd. 1 and rules promulgated thereunder. Significant issues to be considered in the EIS shall be identified by the EQB in light of the citizen evaluation process established in Minn. Stat. § 116C.59 rather than through a formal scoping process.

The EIS ~~need~~ shall not consider need for the facility and other issues determined by the ~~MEA~~ DEPD. Unless a specific site has already been designated, the EIS shall not contain detailed data which are pertinent to the specific conditions of subsequent construction and operating permits and which may be reasonably obtained only after a specific site is designated.

4. Upon completion, the draft EIS shall be distributed as provided in 6 MCAR § ~~3.011~~ 3.031 E.3. In addition, one copy shall go to each regional development commission representing a county in which a site under consideration is located. At least one copy shall be available for public review during the hearings conducted under Minn. Stat. § 116C.58.

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

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

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

8. Within 60 days after the last day for comments, the EQB shall prepare responses to the comments and shall make necessary revisions in the draft. The draft EIS as revised shall constitute the final EIS. The final EIS shall conform to 6 MCAR § ~~3.011~~ 3.031 F.

9. Upon completion of a final EIS, notice thereof shall be published in the EQB Monitor. Copies of the final EIS shall be distributed as provided in 4.

10. Prior to submission of the final EIS into the record of a hearing under Minn. Stat. § 116C.58, the EQB shall determine the EIS to be adequate pursuant to 6 MCAR § ~~3.011~~ 3.031 G.

11. If required pursuant to 6 MCAR § 3.031 I., a supplement to an EIS ~~may~~ shall be ~~required pursuant to 6 MCAR § 3.011 I~~ prepared.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

ADOPTED RULES

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

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

6 MCAR § ~~3-036~~ 3.056 Special rules for HVTL.

A. Applicability. Environmental review for a HVTL as defined in Minn. Stat. § 116C.52, subd. 3, ~~unless exempted pursuant to Minn. Stat. § 116C.57, subd. 5,~~ shall be conducted according to the procedures set forth in this rule unless a utility has filed an application for emergency certification pursuant to Minn. Stat. § 116C.57, subd. 3., or for an exemption pursuant to Minn. Stat. § 116C.57, subd. 5. Environmental review shall consist of an environmental report at the certificate of need stage and an EIS at the route designation and construction permit stage. ~~Energy facilities subject to Minn. Stat. § 116H.13 but excluded under Minn. Stat. § 116C.52, subd. 3, or exempted under Minn. Stat. § 116C.57, subd. 5 shall not be subject to this rule.~~ Except as expressly provided in this rule, 6 MCAR §§ ~~3-004~~ ~~3-016~~ 3.024-3.036 shall not apply to facilities HVTLs subject to this rule. No EAW ~~need~~ shall be prepared for any facilities HVTLs subject to this rule. If a utility has filed an application for emergency certification pursuant to Minn. Stat. § 116C.57, subd. 3., or for an exemption pursuant to Minn. Stat. § 116C.57, subd. 5., the procedures and standards specified in 6 MCAR §§ 3.077 and 3.078, respectively, shall constitute alternative environmental review and neither 6 MCAR §§ 3.024-3.036 nor 6 MCAR § 3.056 shall apply.

B. Environmental report at certificate of need stage.

1. The ~~MEA~~ DEPD shall be responsible for preparation of an environmental report on an HVTL subject to this rule.
2. The environmental report shall be prepared for inclusion in the record of the certificate of need hearings conducted under Minn. Stat. § 116H.13. The report and comments thereon shall be included in the record of the hearings.
3. The environmental report on the certificate of need application shall include:
 - a. A brief description of the proposed facility;
 - b. An identification of reasonable alternatives of a different sized facility, a transmission line with different endpoints, upgrading existing transmission lines, and additional generating facilities;
 - c. A general evaluation, including the availability, estimated reliability, and economic, employment and environmental impacts, of the proposal and alternatives; ~~and~~
 - d. A general analysis of the alternatives of no facility and delayed construction of the facility. The analysis shall include consideration of conservation and load management measures that could be used to reduce the need for the proposed facility-;
 - e. The environmental report ~~need~~ shall not be as exhaustive or detailed as an EIS ~~nor need it consider factors that depend upon specific routes or facility designs,~~ and shall consider only those route differentiating factors identifiable pursuant to the information requirements of 6 MCAR §§ 3.0634 A. and B.; and

f. The report shall be reviewed in the manner provided in 6 MCAR § ~~3-035~~ 3.055 B.5.-12.

C. EIS at route designation and construction permit stage.

1. The EQB shall be responsible for preparation of an EIS on a HVTL subject to this rule.
2. The draft of the EIS shall be prepared for inclusion in the record of the hearings to designate a route for a HVTL under Minn. Stat. § 116C.58. The draft EIS and final EIS shall be included in the record of the hearing.
3. The draft shall conform to 6 MCAR § ~~3-011~~ 3.031 B. It shall contain a brief summary of the environmental report and the certificate of need decision relating to the project, if applicable. Alternatives shall include those routes designated for public hearing pursuant to Minn. Stat. § 116C.57, subd. 2 and rules promulgated thereunder. Significant issues to be considered in the EIS shall be identified by the EQB in light of the citizen evaluation process established pursuant to Minn. Stat. § 116C.59 rather than through a formal scoping process. Need for the facility and other issues determined by the MEA ~~need~~ DEPD shall not be considered in the EIS.
4. The draft EIS shall be reviewed in the manner provided in 6 MCAR § ~~3-035~~ 3.055 C.4.-11.
5. The EQB shall make no final decision designating a route until the final EIS has been found adequate. No governmental unit having authority to grant approvals subsequent to a route designation shall ~~grant issue~~ any final approval decision for the construction or operation of a facility subject to this rule until the final EIS has been found adequate.

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

E. Cooperative processes. 6 MCAR §§ ~~3.008~~ 3.028 D. and E., 3.012 D. and E., ~~3.016~~ 3.036 and ~~3.017~~ 3.037 shall apply to facilities subject to this rule. Variance applications may be submitted without preparation of an EAW.

Repealer. Rules 6 MCAR §§ 3.024-3.032, 3.040 and 3.047 as existing on the day before the effective date of these proposed rules are repealed.

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota**Tax Court**

Cheryl Kiklas, as personal
representative of the estate
of Runnell C. Carrigan a/k/a
R. C. Carrigan, deceased,

Appellant,

v.

The Commissioner of Revenue,
Appellee.

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER FOR JUDGMENT

Order dated September 2, 1982
Docket No. 3264

The above matter was submitted to the Minnesota Tax Court, Judge Carl A. Jensen presiding, on the basis of a Stipulation of Facts and Briefs of the parties.

Lee E. Doering of Quarnstrom, Doering, Pederson, Leary & Murphy appeared on behalf of the Appellant.

Thomas K. Overton, Special Assistant Attorney General, appeared on behalf of Appellee.

Syllabus

The deduction in an estate for Minnesota and Federal Income Taxes based on a long-term capital gain that is "income in respect of a decedent" is computed on that percentage portion of the gain that is subject to income tax. The percentage of long-term gain subject to Minnesota Income Tax is 50% and for the Federal Income Tax is 40%.

Findings of Fact

1. Runnell C. Carrigan died June 1, 1979. Decedent's estate included several items of income in respect of the decedent. Those items include accrued dividends, accrued interest and a vendor's interest in a contract for deed. The long term capital gain portion of the vendor's interest in the contract for deed was \$193,717.

2. In computing Minnesota inheritance taxes, decedent's estate was entitled to a deduction for Minnesota and Federal Income Taxes on income in respect of the decedent pursuant to Minn. Stat. § 291.07, subds. 1 and 3.

3. In computing the amount of the deduction for state and federal income taxes, the estate applied ordinary income tax ratios to the full \$193,717. Thus computed, the deduction for state and federal income tax was \$158,517 (\$33,637 for state income tax plus \$124,880 for federal income tax).

4. The department objected to the estate's computation because only 50% of the long term capital gain is subject to Minnesota income tax at ordinary tax rates and because only 40% of the long term capital gain is subject to federal income tax at

TAX COURT

ordinary tax rates. As determined by the commissioner, the amount of the deduction for state and federal income tax should be \$61,037 (\$17,171 for state income tax and \$43,866 for federal income tax).

5. This matter was considered by Duane R. Harves, Chief Hearing Examiner, who issued a recommendation dated December 17, 1980, recommending that the Commissioner of Revenue's objection dated August 28, 1989, should be upheld.

6. Minnesota Statutes 1978, Section 291.07, subd. 1(10), allows a deduction for "Minnesota and Federal Income Taxes on income in respect of a decedent as computed under subdivision 3". Subdivision 3 provides for computation of the deduction as follows:

(a) The Minnesota and federal income tax allowed as deductions under subdivision 1, clause (10) . . . shall be computed as follows:

The table of rates required to be used by single taxpayers who itemize their allowable deductions shall be applied to the "income in respect of a decedent" as though such "income in respect of a decedent" constituted the entire income of the decedent taxable after giving effect to all allowable deductions. The amount of Minnesota or federal income tax as so computed shall not be diminished by any credits allowable by Minnesota or federal income tax laws.

(b) The deductions allowed herein shall be the only deductions allowed under this chapter for "income in respect of a decedent," without regard to the actual liability for income taxes that may be due and payable subsequently with respect to such "income in respect of a decedent."

7. Minnesota Statutes Section 290.077 provides in part as follows:

Minn. Stat. § 290.077, subd. 1(1). The amount of all items of *gross income in respect of a decedent* which are not properly included in [the decedent's] . . . taxable period in which falls the date of his death or a prior period . . . shall be included in the *gross income*, for the taxable year when received [by the estate or beneficiary];

* * *

(3) The right, described in paragraph (1), to receive an amount shall be treated, in the hands of the . . . [estate or beneficiary] as if it had been acquired by the [estate or beneficiary] in the transaction in which the right to receive the income was originally derived; and the amount includible in *gross income* under paragraph (1) . . . shall be considered in the hands of the . . . [estate or beneficiary] to have the character which it would have had in the hands of the decedent if the decedent had lived and received such amount.

(4) In the case of an installment obligation received by a decedent on the sale or other disposition of property, the income from which was properly reportable by the decedent on the installment basis under section 290.07, subdivision 3, . . .

(a) An amount equal to the excess of the face amount of such obligation over the basis of the obligation in the hands of the decedent (determined under section 290.07, subdivision 3) shall, for the purpose of paragraph (1), be considered as an item of *gross income* in respect of the decedent; and

(b) Such obligation shall, for purposes of paragraphs (2) and (3), be considered a right to receive an item of gross income in respect of the decedent, but the amount includible in *gross income* under paragraph (2) shall be reduced by an amount equal to the basis of the obligation in the hands of the decedent (determined under section 290.07, subdivision 3).

* * *

Subdivision 4. DEDUCTION FOR FEDERAL ESTATE TAX AND MINNESOTA INHERITANCE OR ESTATE TAX. (1) ALLOWANCE OF DEDUCTION; FEDERAL ESTATE TAX. (A) GENERAL RULE. A person who includes an amount in gross income under this section, shall be allowed, for the same taxable year, as a deduction an amount which bears the same ratio to the estate tax attributable to the net value for estate tax purposes of all the items described in Subdivision 1, as the value for estate tax purposes of the items of gross income or portions thereof in respect of which such person included the amount in gross income (or the amount included in gross income, whichever is lower) bears to the value for estate tax purposes of all the items described in subdivision 1.

(Emphasis added.)

8. Minnesota Statutes Section 290.01, subd. 20, defines gross income and reads in part as follows:

"The term 'gross income' in its application to individuals, estates and trusts shall mean the adjusted gross income as computed for federal income tax purposes as defined in the Internal Revenue Code of 1954, as amended through the date specified herein for the applicable tax year, with the modifications specified in this section."

* * *

"(16) An amount equal to one-sixth of any gain from the sale or other disposition of property deducted under sections 1202(a) and 1202(c)1 of the Internal Revenue Code of 1954;"

9. Considering all of the statutes together, the deduction for state and federal income taxes based on income in respect of a decedent is calculated on the basis of that amount of the gain that is actually subject to tax.

Conclusions of Law

1. The Order of the Commissioner of Revenue dated December 23, 1980, assessing additional estate taxes is hereby affirmed.
IT IS SO ORDERED.

By the Court,
Carl A. Jensen, Judge
Minnesota Tax Court

Memorandum

The issue in this case involves the interpretation of Minnesota Statutes Section 291.07 which is previously quoted. That statute provides for a deduction from the estate in the amount of Minnesota and Federal Income Tax on the income in respect of a decedent (hereinafter referred to as IRD) computed as follows:

"The table of rates shall be applied to the 'income in respect of a decedent' as though such 'income in respect of a decedent' constituted the entire income of the decedent taxable after giving effect to all allowable deductions. The amount of Minnesota or Federal Income Tax as so computed shall not be diminished by any credits allowable by Minnesota or federal income tax laws."

The language is not as explicit as it could be. In this case the IRD is principally a large capital gain, but IRD includes other types of income besides capital gain. If the statute had tried to explicitly explain the handling of capital gains, it would have become much more cumbersome than it already is.

Where there is doubt as to the meaning of a statute, the general purpose of the statute must be considered. In this case it appears that the general purpose of the statute is to prevent double taxation. For example, if the contract had provided that the balance due was payable shortly before the death of the decedent, then he would have reported this income on his individual income tax return and the federal and state income taxes would have been approximately the amount calculated by the commissioner, and this amount would then not be part of the decedent's estate. The net result would be that the estate taxes would be exactly as the commissioner has determined them.

If we followed the Appellant's line of reasoning, the inheritance taxes would have been considerably less and a large portion of the estate would be subject to neither estate taxes or income taxes. It appears to us that the purpose of the statute was to eliminate inheritance taxes on that part of the estate which would not have existed if the income taxes had been paid on the IRD.

We do not observe any similar treatment in the Federal Estate Tax Law. Both the Federal Income Tax Law and the Minnesota Income Tax Law make provisions for deducting from IRD the proportionate amount of estate taxes that have been paid. Actually this appears to eliminate double taxation.

Both parties have discussed gross income and adjusted gross income and what IRD means under Minnesota Statutes Section 291.07. That section does refer to allowable deductions and in effect says that there shall be no deductions from the IRD in computing the taxes that are going to be allowed as deductions from the estate.

Under Federal Income Tax Law 40% of long-term gains is taxable and under Minnesota Income Tax Law 50% of long-term capital gains is taxable. It is true that in calculating the amount of long-term capital gains for purposes of taxation the form does provide for a subtraction of 60% from the total long-term capital gains to arrive at the 40% that is taxable. In a sense this can be considered a deduction, but we hold that it is not the kind of deduction referred to in Minnesota Statutes Section 291.07, subd. 3, when the statute uses the words "allowable deductions".

We agree with the opinion of the hearing examiner who stated as follows:

"The Estate argues that the language of Minn. Stat. § 291.07, subd. 3, requires that no deductions can be allowed once the amount of the actual IRD is determined, that the tax must be based on 100% of that amount, and that the capital gain deduction must be viewed as any other deduction under the income tax laws. Such a position would make the intent of the IRD deduction, which is mitigation of double taxation, illogical in that the law was intended to provide a deduction for an income tax liability, which is as close as possible in amount to the actual liability. To allow the deduction as proposed would result in the allowance of a deduction as approximately double the amount of the actual income tax liability, which would be inequitable and an unreasonable and absurd result as those terms are used in Minn. Stat. § 645.17, which must be looked to for guidance in determining legislative intent in that the law in this situation is not clear nor free from all ambiguity."

Because of the fact that most of the IRD in this case is going to be received by several recipients over a period of several years, the actual income tax that will be paid by these recipients on this amount will undoubtedly be considerably less than the amount of taxes allowed as a deduction by the commissioner, and the heirs will be receiving a substantial amount that was never subjected to Minnesota inheritance taxes.

TAX COURT

As we have previously noted, the Federal Tax Law does not provide for a similar deduction and simply provides for a deduction by the recipient of any estate taxes paid on the IRD. This appears to meet the objection of double taxation. Minnesota provides this and in addition provides for the deduction from the estate of a fictitious amount. This in some sense allows a double deduction. We would suggest that the legislature might well consider clarifying these provisions.

C.A.J.

SUPREME COURT

Decisions Filed Friday, September 10, 1982

Compiled by John McCarthy, Clerk

81-1142 Hilltop Construction, Inc. v. Lou Park Apartments, *et al.*, Appellants. Hennepin County.

A party challenging the award of an arbitration panel failed to meet the burden of clearly showing that the arbitrators exceeded their powers in arriving at the award.

Pursuant to Minn. Stat. § 572.16 (1980), upon application of a party to an arbitration proceeding for confirmation of the arbitration award, the court has the discretion to submit the award to the arbitration panel for clarification, but failure to exercise that discretion in this case was not an abuse of that discretion.

In an action to foreclose a mechanics lien commenced pursuant to Minn. Stat. § 514 *et seq.*, the claimant does not lose rights to attorneys fees when the court stays further proceedings in that action pending court-ordered arbitration.

Affirmed in part, reversed in part and remanded for further proceedings consistent herewith. Kelley, J. Took no part, Coyne, J.

Decisions Filed Tuesday, August 31, 1982

51322, 51326 Patrick Handy, Patricia Handy, and Edith Handy v. Richard E. Garmaker, Appellant (51326) and Bergstedt Realty Co., and William R. Bergstedt, Appellants (51322). Ramsey County.

A real estate agent who fails to disclose to his principal the fact he is also acting as agent for the buyer of the principal's property forfeits both his commission and any profits the agent realizes as a result of concealing his plan to obtain title for himself.

Notwithstanding their termination of association under Minn. Stat. § 82.20, subd. 5, 6, and 9, a real estate broker is liable for fraud committed by a salesman he has employed until such time as the broker no longer seeks a license for his employee and has advised the Commissioner of Securities and Real Estate that the employment relationship has been terminated.

Affirmed. Otis, J. Dissenting, Todd, J. Took no part, Kelley, J.

51788 White Bear Docking and Storage, Inc. v. City of White Bear Lake, Appellant. Ramsey County.

The record does not support a finding that the City Council of White Bear Lake acted capriciously and arbitrarily in denying an application for an amended special use permit to install a 10 foot by 50 foot mobile trailer office on the shore of White Bear Lake.

Reversed. Otis, J. Dissenting, Todd, J., Amdahl, C. J., and Scott, J. Took no part, Kelley, J.

81-700 Alden Wells Veterinarian Clinics, Inc., Appellant, v. Grant Wood, etc., *et al.* Faribault County.

Submission to the jury of the question of plaintiff's negligence was not error when there was sufficient evidence to uphold the finding that plaintiff's failure to sheetrock a furnace room was the proximate cause of the resulting fire damage.

Affirmed. Otis, J. Dissenting, Todd, J., Peterson, J., Yetka, J., and Wahl, J.

81-1012, 18-1013 Leroy S. Kabes, *et al.*, Relators, 81-1012 v. Rolf Middleton, Commissioner, Minnesota Department of Economic Security, Minneapolis Star and Tribune Company and Clayton Goines, *et al.*, Relators, 81-1013 v. Rolf Middleton, Commissioner, Minnesota Department of Economic Security, Minneapolis Star and Tribune Company. Department of Economic Security.

There is substantial evidentiary support for the conclusion that the employer sustained its burden of establishing that the claimants failed or refused to accept or perform available and customary work at the establishment Minn. Stat. § 268.09, subd. 3 (1980).

Affirmed. Otis, J. Dissenting, Yetka, J., Todd, J., and Scott, J.

51102 In the Matter of the Petition for Disciplinary Action against Ellis Olkon, a Minnesota Lawyer. Supreme Court.

Yetka, J. Dissenting, Todd, Peterson and Kelley, JJ. Took no part, Amdahl, C. J.

81-966 State of Minnesota v. Howard E. Rono, Appellant. Crow Wing County.

Evidence of defendant's guilt was sufficient and trial court did not prejudicially err in refusing to submit lesser offense or in failing to give instruction on eyewitness identification testimony requested by defense counsel.

Affirmed. Yetka, J.

82-157 State of Minnesota v. James Carl Johnson, Appellant. Anoka County.

Criminal defendant was not denied a fair trial by (1) witness' violation of sequestration order, (2) trial court's evidentiary rulings, (3) prosecutor's closing argument, or (4) defense counsel's representation of him.

Affirmed. Yetka, J.

51670, 51752 Donald and Lena Hudson v. Snyder Body, Inc., Appellant (51670), Perfection Cobey Co., Appellant (51752), Potomac Ford Truck Sales, third party defendant, Jack L. Olsen, Inc., third party defendant. St. Louis County.

The trial court did not err in allowing the plaintiffs' expert witness, Sapetta, to testify.

The evidence supports the jury's findings of strict liability against Snyder, Perfection and Potomac.

Where the evidence is insufficient to support a finding that Potomac was negligent, the jury's answers to special interrogatories were not so perverse as to require a new trial.

The trial court did not err in denying Olsen's motions for a directed verdict and for judgment notwithstanding the verdict where the evidence was sufficient to support a finding that Olsen was causally negligent.

A third-party tortfeasor may recover contribution from a negligent employer whether or not the employee, in a direct suit, would have been barred from recovery under the comparative fault statute.

Affirmed in part; reversed in part. Wahl, J. Concurring in part, Dissenting in part, Simonett, J. Took no part, Kelley, J.

Decision Filed Tuesday, September 7, 1982

82-373 State of Minnesota, Plaintiff, v. Thomas James Kulseth. Nicollet County.

Statute authorizing imposition of surcharge or assessment against defendants convicted of felonies, gross misdemeanors, or misdemeanors, other than traffic or parking violations, is presumptively constitutional; final determination of constitutional issues certified to this court by trial court must await a case in which the issues are fully litigated and both sides of the issues represented.

Appeal dismissed. Wahl, J. Took no part, Coyne, J.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Health Health Systems Division

Evaluation of Certificate of Need Program: Solicitation of Public Comments

Many of the studies which have been conducted on certificate of need programs throughout the country seriously question the effectiveness of such programs in containing health care costs. In light of the fact that the certificate of need review process

OFFICIAL NOTICES

imposes a burden on regulated institutions and on taxpayers who financially support the review process, consideration was given in the last legislative session to abolishing Minnesota's Certificate of Need program. Instead, the Legislature modified the program and extended it through March 1984, requesting an evaluation of the program, and particularly of the impact of the 1982 modifications.

The modifications embodied in the 1982 amendments exempted certain (lower cost) projects from review by raising the thresholds for review (level of capital expenditure above which review is required), and established additional grounds for waiver eligibility.

To provide an empirical basis for monitoring the Certificate of Need program and assessing the impact of the 1982 modifications, the amendments further required that industry economic performance indicators be defined and observed over time. What follows is a list of indicators which are proposed for this purpose. Following a period for public review and comment on these proposed indicators, final indicators will be published. The proposed indicators are presented in four categories, the first three of which pertain to the certificate of need review process. The first category will capture all review activity for projects which were subject to certificate of need review both before and after the 1982 program modifications (e.g. major construction or equipment acquisition projects). The second category pertains to capital expenditure projects which previously were subject to review, but were exempted from review by the 1982 amendments. Capital construction projects estimated to cost from \$150,000 to \$600,000 or equipment-related expenditures between \$150,000 and \$400,000 are the most common examples. The amendments instruct health care facilities to inform the commissioner of health of the commencement of such projects and the estimated capital expenditures associated with them.

The third category of indicators pertains to projects which required review prior to the amendments, but now, under new eligibility rules, are eligible for a waiver. Examples include expenditures exclusively for ambulatory care services or for an experimental or demonstration project.

A fourth category of indicators contains measures of health system characteristics.

Indicators for Monitoring the Certificate of Need Process and Health Facility Capital Investment

A. Activity subject to certificate of need review before and after 1982 amendments

1. Letters of Intent
2. Applications
3. Approvals/denials/withdrawals/remands
4. Capital expenditures
5. Specific equipment acquisition

(For example, hypothetically in a given time period 130 letters of intent may have been received (1); 100 applications for certificate of need review received (2); 94 approved, 5 denied, and 1 remanded (3); representing \$95 million of expenditures approved, \$3.3 million denied, and \$475,000 remanded (4). Of the 94 approved projects, 4 included acquisition of CT scanners (5).)

B. Activity exempted from certificate of need review by 1982 amendments (raised thresholds)

1. Number of projects
2. Capital expenditures
3. Specific equipment acquisition

(For example, hypothetically in a given time period 10 projects may have been undertaken (1); representing \$3 million in capital expenditures (2); with 3 projects including acquisition of ultrasound equipment (3).)

C. Activity newly eligible for waivers under 1982 amendments

1. Requests for waivers
2. Waivers granted/denied
3. Capital expenditures

(For example, hypothetically in a given time period 4 requests for waivers based on the new waiver eligibility rules may have been received (1); 3 may have been granted and 1 denied (2); representing \$1.3 million of capital expenditures exempted from certificate of need review and \$720,000 denied a waiver and required to go through formal review (3).)

D. Health System Characteristics

1. Total licensed beds

2. Licensed beds or treatment facilities for specific services
3. Plant assets
4. Total hospital revenue

(For example, hypothetically in a given time period for a specific geographic area and set of hospitals the number of licensed beds may have decreased by 3 percent (1); the number of beds for pediatric care may have decreased by 15 percent while the number of beds for treatment of chemical dependency may have decreased by 2 percent (2); the value of plant assets may have increased by 3 percent (3); and hospital net revenues may have increased by 2 percent (4).)

Each indicator will be classified by type of capital expenditure project and by type of facility.

Types of Capital Expenditure Projects

Construction

- acquisition
- modification or renovation
- expansion
- replacement

Equipment

- new acquisition
- expansion or extension
- replacement

Change in Service

- new service
- expansion
- relocation
- consolidation

Types of Facilities Subject to Certificate of Need Regulation

Hospitals

Nursing Homes

Boarding Care Homes

Supervised Living Facilities

Free Standing Surgical Centers

Other

Working with these indicators, the types of measures to be examined in assessing the impact of Certificate of Need program modifications, where feasible and appropriate, may include, but not be limited to: changes in rates (e.g. of applications, of capital expenditures) over time; changes in per capita measures over time; changes in the composition of capital investment projects by size of project, type of project, and type of facility; and changes in bed supply, service availability, plant assets and plant assets per bed, and hospital revenues.

Public comment on this list of proposed indicators is invited and should be directed to Marianne Miller, Health Systems Division, Minnesota Department of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440 no later than October 22, 1982.

Sept. 13, 1982

George R. Pettersen, M.D.
Commissioner of Health

Metropolitan Council

Public Hearing on Revision of Transportation Policy Plan

The Metropolitan Council will conduct a public hearing on Tuesday, October 12, 1982 at 7 p.m. in the Metropolitan Council Chambers, 300 Metro Square Building, St. Paul, Minnesota 55109 to receive comments on a proposed revision of the Transportation Policy Plan. The Transportation Policy Plan will replace the current Transportation Chapter in the Development Guide. All persons are encouraged to offer comments on the revision. Persons may register to speak by contacting the Council's Public Information Office at 291-6464. Copies of the Transportation Policy Plan revision are available free of charge from the Council's Public Information Office at 291-6464.

Charles Weaver, Chairman
Metropolitan Council

Minnesota Public Utilities Commission

Notice of Intent to Solicit Outside Opinion Regarding Gas and Electric Rates

A number of significant issues have developed in recent gas and electric rate cases which The Minnesota Public Utilities Commission feels transcend the confines of individual rate cases. The commission believes that the most appropriate forum for developing a base of information on these issues is in a general setting focusing on these rather than in a specific rate case.

The commission has set three public meetings to receive comments from the public and regulated industries on:

1. Low income assistance programs
2. Special "medically necessary" rates
3. The conservation rate break impacts on conservation and low income customers.

The public meetings will be held at the following locations on the dates indicated:

BRAINERD, MN. on Monday, October 25, 1982 at 7:30 P.M. at the Crow Wing County Service Building, Laurel Street.

MANKATO, MN. on Wednesday, October 27, 1982 at 7:30 P.M. at the Minnesota Valley Regional Library, 100 East Main St.

ST. PAUL, MN. on Thursday, October 28, 1982 at 7:30 P.M. in the Commission's Large Hearing Room, American Center Building, Seventh Floor, Kellogg Blvd. and Robert St.

The general public, public interest organizations, and regulated companies are invited to present comments on these issues at the meetings. If possible, a written copy of the comments should be provided to the commission either in advance or at the meeting.

Any questions regarding these public meetings should be directed to Randall D. Young, Executive Secretary, Minnesota Public Utilities Commission, American Center Building, Seventh Floor, St. Paul, MN 55101.

Department of Transportation

Order Prohibiting the Driving or Operating of Certain Vehicles on the Bemidji Bypass, Trunk Highway No. 2 in Beltrami County

Order No. 67038

WHEREAS, the Commissioner of Transportation, pursuant to Minn. Stat. § 169.305 (1980) is authorized to prohibit or regulate the use of controlled access trunk highways by any class or kind of traffic which is found to be incompatible with the normal and safe flow of traffic; and

WHEREAS, the Commissioner finds that the operation of snowmobiles on that portion of controlled access Trunk Highway No. 2 from its intersection with Beltrami County Road 11 to its intersection with proposed County Road 50 (C.S. 0406 and in part C.S. 0408—the Bemidji Bypass) in Beltrami County is incompatible with the normal and safe flow of traffic; and

WHEREAS, The Commissioner finds that the operation of any vehicles on said portion of controlled access Trunk Highway No. 2 other than on its ramps, driving surfaces and roadway shoulders is incompatible with the normal and safe flow of traffic;

STATE CONTRACTS

NOW THEREFORE, IT IS HEREBY ORDERED:

1. That no person shall drive or operate a snowmobile on any of the above described portions of controlled access Trunk Highway No. 2.
2. That no person shall drive or operate any vehicle on the above described portion of controlled access Trunk Highway No. 2 except on the ramps, driving surfaces and roadway shoulders.

Dated this 9th day of September, 1982.

Richard P. Braun
Commissioner of Transportation

Water Planning Board

Notice of Meeting

Notice is hereby given that the Water Planning Board will hold a meeting on Thursday, September 30, 1982 in the Department of Natural Resources third floor conference room in the Centennial Office Building, 658 Cedar Street, St. Paul at 1:30 p.m. An agenda for the meeting may be obtained one week prior to the meeting by contacting the undersigned at 600 American Center Building, 150 E. Kellogg Boulevard, St. Paul, Minnesota 55101.

Thomas Kalitowski, Chairman
Minnesota Water Planning Board

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Minnesota Housing Finance Agency Home Improvement Division

Notice of Request for Proposals for Advertising Services

The Minnesota Housing Finance Agency, (MHFA) Home Improvement Division, is seeking proposals for a \$25,000 contract for advertising services between October 1, 1982 and June 30, 1983. The advertising agency awarded the contract will develop statewide advertising for the MHFA low-interest home improvement loan program.

Proposals must be in writing and must be received by MHFA no later than 4:30 p.m. on October 4, 1982.

General inquiries and proposals should be addressed to:

Mary Tingerthal, Director
Home Improvement Programs
Minnesota Housing Finance Agency
333 Sibley Street - Suite 200
St. Paul, MN 55101
(612) 297-3126

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