

Minnesota Environmental Quality Board

Proposed Revision of Rules Governing the Environmental Review Program

Preliminary Draft of Possible Amendments

February 2, 2005

Prepared to Accompany the Request for Comments, dated February 1, 2005

This document identifies the parts and subparts of the Environmental Review Program rules which the Environmental Quality Board is considering amending, as noticed in the Request for Comments signed by the EQB Chair on February 1, 2005 and available at the EQB's website, www.eqb.state.mn.us. For each rule provision being considered for amendment, this document summarizes the issue or problem prompting consideration of revision and either presents proposed revised language or, if revised language has not yet been developed, describes the nature of the proposed revision. The possible amendments are presented in the order that the affected rule parts appear in the present rule. The text of the existing rule (chapter 4410) can be found at the website of the Revisor of Statutes, www.revisor.leg.state.mn.us,

Rule Number	Summary of Problem or Issue	Possible Amendment
1. 4410.0200, subp. 9b. Definition of "connected actions"	The definition is incomplete with respect to condition "B."	At the end of item "B," add: "and the prerequisite project is not justified by itself"
2. 4410.0200, subp. 10. Definition of "construction"	Rule provisions (at 4410.3100) prohibit starting a project until environmental review has been completed. EQB historically equates starting a project with undertaking any action fitting the definition of "construction", including site preparation (e.g., clearing and grading). However, some state permits allow grading and clearing prior to issuance. This revision would allow site preparation work to begin before environmental review is completed in cases that would qualify under criteria to be developed.	Amend the sentence regarding preparation of land with text shown by underlining: "It includes preparation of land, <u>except when [develop criteria to insert here]</u> , and fabrication of facilities." EQB is soliciting input on appropriate criteria to use to distinguish cases where site preparation should be allowed to proceed prior to the completion of environmental review.

<p>3. 4410.0200, subp. 37. Definition of “hazardous waste”</p>	<p>An MPCA rulemaking will amend the section of MPCA rules to which this subpart refers.</p>	<p>Amend the citation to MPCA’s rules to be consistent with MPCA’s revision.</p>
<p>4. 4410.0200, subps. 69 & 70. Definitions of “protected waters” and “protected wetlands.”</p>	<p>The term “protected waters” has been changed to “public waters” and “protected wetland” has been changed to “public waters wetland” in state water laws. The terminology in these rules needs to be updated.</p>	<p>Amend these definitions and make the corrections at the various places where these terms are used throughout the rules, including at parts 4410.4300, subp. 27, 4410.4400, subp. 20 (mandatory EAW & EIS categories for “wetlands & protected waters”) and 4410.4300, subp. 33, mandatory category for communication towers.</p>
<p>5. 4410.0200, subp. 81. Definition of “sewered area”</p>	<p>The 1982 rulemaking record indicates that a centralized septic tank system serving the entirety of a project and owned by the homeowners collectively was intended to be included in this definition, but the present wording is ambiguous about this.</p>	<p>Amend by inserting “or homeowner owned” after “publicly owned.”</p>
<p>6. 4410.0200, subp. 92. Definition of “wastewater treatment facility”</p>	<p>The 1982 SONAR indicates that as used here, the term “on-site treatment facilities” meant wastewater treatment facilities other than municipal facilities built by the proposer “on site” to serve a particular development. The sentence containing the term was included to ensure that such facilities were included under the definition. However, today in common usage, the term “on-site treatment” is used for septic tank/drainfield or other small-scale treatment systems serving an individual residential lot, and which are generally considered as an alternative to a “wastewater treatment facility,” not an example of one.</p>	<p>Amend by deleting the 2nd sentence (“It includes...facilities.”)</p>

<p>7. 4410.1000, subp. 5.</p> <p>Under what conditions is a new EAW required if the project is not constructed for some time after the EAW process is completed?</p>	<p>The present rule requires a new EAW only if the project changes and sets no time limit on the validity of an EAW. Comparison with the criteria for supplementing an EIS suggests that a change in circumstances should also trigger a new EAW if the changes may result in significant adverse impacts not covered by the EAW.</p>	<p>Amend so that a new EAW is required if “the RGU determines that a substantial change has been made in the proposed project, <u>or has occurred in its circumstances</u>, that may affect the potential for significant adverse environmental effects <u>that were not addressed in the existing EAW.</u>”</p>
<p>8. 4410.1100, subp. 6.</p> <p>RGU decision on need for an EAW when petition filed</p>	<p>The standard in this rule does not address whether or not the RGU should consider mitigation and regulation applicable to the project.</p>	<p>Amend by adding language specifying the RGU should consider the extent to which the project is subject to mitigation and regulation.</p>
<p>9. 4410.1200.</p> <p>EAW content requirements.</p>	<p>The EAW content requirements do not now address compatibility of the project with approved local plans and do not mention cumulative impacts.</p>	<p>Amend by inserting a new item G: “compatibility of the project with local government approved plans” and adding “cumulative impacts” to the list in item C.</p>
<p>10. 4410.1400.</p> <p>EAW preparation; time limits.</p>	<p>The rule now states that after the proposer submits the completed data portions of the EAW to the RGU, the “RGU shall <i>promptly</i> determine whether the proposer’s submittal is complete,” however, “promptly” is not defined and is subject to disputes between RGUs and proposers.</p>	<p>Amend by deleting the word “promptly” and adding the phrase “within 30 days or such other time period as the RGU and the proposer agree upon” at the end of the sentence.</p>
<p>11. 4410.1500, item A.</p> <p>EAW distribution</p>	<p>The list of institutions to which all EAWs must be distributed is out-of-date.</p>	<p>Amend by deleting #8, the Legislative Reference Library (at their request) and adding the Office of the State Archeologist and the Indian Affairs Council</p>
<p>12. 4410.1700, subp. 2a.</p> <p>Insufficient information; time extension for EIS need decision</p>	<p>The current rules allow for an extension of no more than 30 days to get missing information, while in practice longer extensions are frequently taken if the proposer agrees.</p>	<p>Amend by adding, after “for not more than 30 days,” the phrase “or such other period of time as the proposer and RGU agree upon.”</p>

<p>13. 4410.1700, subp. 3.</p> <p>Form & basis of the EIS need decision; contents of a “positive declaration.”</p>	<p>In cases where the RGU issues a “positive declaration,” (i.e., orders an EIS be prepared) the existing rule requires that the RGU also develop a draft EIS scope at the same time. In practice, this has proven to be very difficult for governmental units to do. RGUs need a period of time after ordering an EIS to develop a proposed EIS scope.</p>	<p>Amend by deleting the 2nd sentence (“If a positive declaration,...for the EIS”) and, in the 3rd sentence, by deleting the phrase “and the proposed scope”</p> <p>NOTE: also see at 4410.2100, subp. 4 below for additional changes to the procedure for scoping after a positive declaration.</p>
<p>14. 4410.1700, subp. 7, item B.</p> <p>EIS need criterion #2.</p>	<p>Is it significant that the wording of this criterion is similar to, but not identical to, that for the definition of “cumulative impacts”? This ambiguity was integral to a legal challenge to a negative declaration that went to the Court of Appeals (and may go to the Supreme Court).</p>	<p>Amend the wording as needed based on the outcome of the court case and/or otherwise reconcile it with the definition of “cumulative impacts.”</p>
<p>15. 4410.2100, subp. 4.</p> <p>EIS scoping for discretionary EISs (i.e., those ordered through EAW process)</p>	<p>Scoping procedures in this rule part are inconsistent with provisions of part 4410.6500, subp. 1, item A, regarding the proposer’s payment to the RGU for scoping costs.</p>	<p>Amend item A by deleting “positive declaration” in the first sentence and replacing it with “public scoping meeting;” At the beginning of 2nd sentence of A add: “Within 10 days of receipt of the proposer’s scoping cost payment pursuant to part 4410.6500, subpart 1, item A,”</p> <p>Amend item B by deleting the phrase “30 days...EQB Monitor” and replacing it “15 days after the public scoping meeting”.</p>
<p>16. 4410.2100, subp. 8.</p> <p>Amendment of EIS scoping decision</p>	<p>The current rule states that a notice must be given in the EQB Monitor whenever the scope of an EIS is revised by the RGU. However, if the draft or final EIS document is near release it would be more efficient to announce the scope revision as part of the notice of those documents rather than as a separate notice.</p>	<p>Amend by adding a sentence at the end of the subpart: “The notice may be incorporated into notice of the draft or final EIS availability.”</p>

<p>17. 4410.2800, subp. 3. EIS preparation time limits.</p>	<p>Rule currently is inconsistent with other rule provisions. It does not explicitly provide for an extension of the EIS preparation deadline due to the proposer’s failure to pay the EIS cost assessment as required by part 4410.6500.</p>	<p>Amend this provision to extend the EIS preparation deadline in circumstances where the proposer fails to comply with the schedule for paying the EIS assessed costs as required by part 4410.6500. Coordinate this amendment with that to part 4410.6500, at item #40.</p>
<p>18. 4410.3100, subp. 1. Prohibitions on governmental approvals when a citizens’ petition is filed.</p>	<p>The current rules are unclear about whether the prohibition on governmental decisions to approve a project begins when a petition is filed or when the EQB staff verifies its completeness. Until the petition is verified as complete and the RGU is notified, is the RGU (or other governmental units) prohibited from taking action on permit applications?</p>	<p>Amend this subpart to read: “...or if a petition is filed under part 4410.1100 <u>that complies with the requirements of subparts 1 and 2 of that part...</u>”</p>
<p>19. 4410.3100, subp. 1. Prohibitions on starting a project when environmental review is required.</p>	<p>This rule provision uses the terms “started” (with respect to a project) and “begin a project” but does not specify their exact meanings. Long-standing practice is to equate these terms with the initiation of “construction” which is a defined term (at 4410.0200, subp. 10.).</p>	<p>Amend by adding a new paragraph at the end of the subpart stating: “To start or begin a project includes taking any action within the meaning of construction as defined at part 4410.0200, subp. 10.”</p>
<p>20. 4410.3610, subp. 1. AUAR process; applicability.</p>	<p>Amendments adopted in 1997 to provide that light industrial projects are eligible for review through the AUAR process inadvertently created ambiguity about whether certain types of projects are eligible. The ambiguity could be cleared up by deleting the definition of “light industrial” and relying solely on the list of excluded categories of projects that is now in the subpart. Also, clarification is needed about which of the three items of subpart 18 are included in the exclusions.</p>	<p>Amend by deleting the words in the second sentence up to the reference to various subparts of part 4410.4300, and by adding new wording indicating that projects within the listed subparts are not eligible for AUAR review. In list of ineligible project types, include only item B & C of subpart 18 so that wastewater treatment facilities, but not sewage collection systems, are excluded from review through the AUAR process.</p>

<p>21. 4410.3610, subp. 1.</p> <p>AUAR process; use for review of individual projects</p>	<p>Current rule language does not prohibit an RGU to use the AUAR process for individual projects, although it was developed primarily to enable the review of an area expected to develop without the need for plans for specific projects. Critics have questioned whether the use of the AUAR process for the review of individual projects reduces the quality of the review compared to what would be achieved if the project was reviewed through the regular EAW/EIS process. The critics suggest that the rules be amended to prohibits review through an AUAR for a single project that would otherwise require an EIS.</p>	<p>Add rule language that prohibits AUARs for a single project that would otherwise require an EIS.</p>
<p>22. 4410.3610, subp.2.</p> <p>AUAR process; relationship to specific development projects</p>	<p>Current rule language allows the RGU to remove from the AUAR planning area specific projects that would not by themselves require project-specific environmental review. However, if a project is removed from the AUAR planning area, it is no longer subject to the mitigation plan developed through the AUAR. Removing a project during the AUAR process conflicts with the purpose of conducting an AUAR on a geographic area.</p>	<p>Add rule language that would allows projects to be removed from an in-process AUAR only if they will receive project-specific environmental review (EAW or EIS).</p>
<p>23. 4410.3610, subp.3.</p> <p>AUAR process; development scenarios</p>	<p>4410.3610, subp.1 requires that the RGU have an adopted comprehensive plan in order to use the AUAR process. Subp.3 requires that at least one development scenario in the AUAR be consistent with the adopted comprehensive plan. RGUs sometimes also include development scenarios that do not conform to the adopted plan (often based on</p>	<p>Add rule language requiring all development scenarios examined in an AUAR be consistent with the adopted comprehensive plan.</p>

	<p>project designs preferred by project proposers), and then after the AUAR process is complete, amend their comprehensive plan to conform to a preferred development scenario. Critics of the AUAR process have suggested that this is inconsistent with the intent of the AUAR process, and that the AUAR should not determine the content of a comprehensive plan since an adopted comprehensive plan is supposed to be a prerequisite of the AUAR process.</p>	
<p>24. 44103610, subp. 4. AUAR environmental analysis document; form and content</p>	<p>Current rules do not require the draft AUAR document to include a draft version of the mitigation plan. Reviewers have informed the EQB staff that they would like to have a draft mitigation plan to review along with the impact analysis instead of needing to wait for the final AUAR.</p>	<p>Amend by adding a phrase requiring the AUAR form to provide for a mitigation plan at both the draft and final AUAR stages.</p>
<p>25. 44103610, subp. 4. AUAR environmental analysis document; form and content</p>	<p>A cumulative impact analysis is not explicitly required by rule. (Note that it proposed also to be added to the required EAW contents at 4410.1200.)</p>	<p>Add rule language that requires an AUAR to include a cumulative impacts analysis.</p>
<p>26. 4410.3800, subp. 5. Criteria for ordering a GEIS</p>	<p>Existing criteria do not cover all reasons why a GEIS might be ordered. Two additional reasons have been identified.</p>	<p>Amend by adding two new criteria to the list in this subpart: (1) degree to which the cost of obtaining basic information ought to be borne by the public rather than individual project proposers; and (2) need to explore issues raised by a type of project that go beyond the scope of review of individual projects.</p>

<p>27. 4410.3800, subp. 8.</p> <p>Relationship of a GEIS to project-specific review.</p>	<p>The <i>Governor's Primary Forest Products Advisory Task Force Implementation Environmental Review and Permit Streamlining Subcommittee</i> Final Report, dated July 20, 2004, recommends that the EQB amend this section of its rules to provide that, under limited circumstances, a GEIS may directly substitute for review of specific projects.</p>	<p>Amend by revising the first sentence of the subpart as follows: “Preparation of a Generic EIS does not exempt specific activities from project-specific environmental review, <u>unless the activity is declared to be exempt from project-specific review by the EQB when it orders the Generic EIS and any conditions specified by the EQB as necessary for the Generic EIS to be used as a substitute for project-specific environmental review have been satisfied. Conditions shall include, but not be limited to, the continued validity of material assumptions and timely implementation of any mitigations identified in the Generic EIS.</u>”</p>
<p>28. 4410.3800, subp. 8.</p> <p>Relationship of a GEIS to project-specific review</p>	<p>The original motivation for this provision was concern that RGUs would ignore GEIS recommendations and require project proposers to restudy issues already covered by a GEIS in review of specific projects. This concern has turned out to be a non-issue. However, when the provision was first applied in 2000, its use revealed a number of unexpected problems. The provision seems to require an EQB determination prior to <i>each</i> time a GEIS is to be used. This could be an administrative nightmare if there were many projects related to a certain GEIS. The provision provides no guidance about how the EQB should determine if the GEIS recommendations remain adequate, and seems to require EQB’s decision be made with respect to the <i>GEIS as a whole</i> without regard to how an RGU may intend to use it</p>	<p>Amend this subpart to resolve the identified problems.</p> <p>The EQB is interested in receiving comments on how the identified problems with this subpart could be resolved.</p>

<p>29. 4410.4300, subp. 12, item B</p> <p>Mandatory EAW Category: Nonmetallic mineral mining other than peat mining</p>	<p>The recommendation to revise this threshold came out of the EQB’s 2004 Study of Environmental Review Categories. Consult the Nonmetallic Mineral Mining report from this Study (available at www.eqb.state.mn.us, under “Environmental Policy, Planning, and Research”) for additional background information. The results from the RGU surveys indicated that only about half of the respondents felt the existing threshold was appropriate. Among the half that thought the threshold should be changed, twice as many supported lowering it (36%) as supported raising it (18%). In addition, in a discussion with members of the Aggregate & Ready Mix Association of Minnesota, the industry representatives suggested that the EAW threshold be lowered to 20 acres.</p> <p>Experience with specific projects has identified several issues in addition to the question of the appropriate thresholds:</p> <p>(1) what is meant by a nonmetallic mining “facility”? Is it the same as the area proposed to be excavated, or does it include other areas as well; in particular, does it include past mined areas in the vicinity if they have not yet been reclaimed?</p> <p>(2) what is meant by the phrase “during its existence”? Does this phrase imply that an existing or former mine that has not been reclaimed must be included as a phased action with respect to any expansions or new mines in the area regardless of the “3-year look-back rule” at part 4410.4300, subpart 1?</p>	<p>Amend by changing the threshold from 40 acres to 20 acres (retaining the 10 foot minimum depth requirement).</p> <p>In addition, clarify the three issues described by appropriate language changes, coordinating any changes here with those made at item #13.</p> <p>The EQB is interested in any ideas from interested parties about how the three issues could be addressed by wording changes.</p>
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	(3) how does the principle of cumulative impact assessment relate to past or potential mines in the area when determining the need for review of a mining proposal and in preparing environmental documents.	
30. 4410.4300, subp. 15. Mandatory EAW Category: Air pollution.	The recommendation to revise these thresholds came out of the EQB's 2004 Study of Environmental Review Categories. For a description of the background and rationale for the recommended changes, consult the Air Pollution category report from this study (available at www.eqb.state.mn.us , under "Environmental Policy, Planning, and Research").	Amend item A by changing the threshold from 100 tons per year (tpy) to 250 tpy. Amend item B, the parking facilities threshold, by deleting it entirely.
31. 4410.4300, subp. 18 Mandatory EAW Category: Wastewater Systems	The recommendation to revise these thresholds came out of the EQB's 2004 Study of Environmental Review Categories. For a description of the background and rationale for the recommended changes, consult the Wastewater Systems Category report from this study (available at www.eqb.state.mn.us , under "Environmental Policy, Planning, and Research").	Amend item A, for sewer extension projects, by adding a second higher threshold for those sewer extensions that discharge to larger wastewater treatment facilities (with a capacity of at least 20-50 million gallons per day); the new threshold level would be somewhere between 2-5 million gpd. Amend item B, for wastewater treatment facilities, by raising the threshold for new facilities from 50,000 gpd to 200,000 gpd, and by raising the threshold for expansions of existing facilities from 50,000 gpd to 200,000 gpd while keeping the 50%

		<p>increase in capacity restriction.</p> <p>(No revisions are suggested for item C, industrial wastewater facilities).</p>
<p>32. 4410.4300, subp.19.</p> <p>Mandatory EAW Category: Residential development</p>	<p>The threshold description does not recognize that comprehensive plans or annexation agreements may plan an area for future urbanization that is not yet reflected in the zoning ordinances.</p>	<p>In the 2nd sentence, after “applicable zoning ordinance” add “comprehensive plan, or annexation agreement.”</p>
<p>33. 4410.4300, subp. 29.</p> <p>Mandatory EAW Category: Animal Feedlots</p>	<p>The recommendation to revise this threshold comes out of the EQB’s 2004 Study of Environmental Review Categories. Consult the Animal Feedlot category report from this Study (available at www.eqb.state.mn.us, under “Environmental Policy, Planning, and Research”) for additional background information. In addition, the Governor’s Livestock Advisory Task Force issued a report in June 2004 to fulfill its charge to “evaluate the status of Minnesota’s animal agriculture industry and make</p>	<p>Amend by adding an additional higher threshold that would apply to projects subject to local regulation meeting certain minimum standards (to be specified in the rule; one possible example would be a required setback distance from neighboring dwellings) or to projects that incorporate certain mitigation measures in the project design (also to be specified in the rule; one likely example would be a manure digester).</p> <p>The EQB is interested in receiving comments about: (1) the size of the proposed additional</p>

	<p>recommendations to support its retention and growth in Minnesota.” The report, which was endorsed by the Governor, contained a recommendation: “Direct the EQB to evaluate animal unit thresholds triggering EAWs.”</p> <p>Since the adoption of the animal feedlot mandatory category thresholds in 1999, a major revision to the Minnesota feedlot rules (Minn. Rules Chapter 7020) and federal CAFO regulations were adopted, and many local feedlot regulations, comprehensive plans, and zoning ordinances have been adopted and updated. These new developments may justify a two-tiered threshold with a second level above the 1000 animal unit level that would apply when there is a higher level of local planning and/or controls.</p>	<p>threshold; (2) features of local regulations that would qualify a project for the higher threshold; and (3) mitigation measures in the project design that would qualify a project for the higher threshold.</p>
<p>34. 4410.4300, subp. 31. Mandatory EAW Category: Historical Places</p>	<p>The recommendation to revise this threshold came out of the EQB’s 2004 Study of Environmental Review Categories. Consult the Historical Places category report from this Study (available at www.eqb.state.mn.us, under “Environmental Policy, Planning, and Research”) for additional background information. The results from the RGU surveys for the Historical Places category indicated a higher degree of dissatisfaction than for any other single category surveyed. Eighty-three percent of the respondents indicated that the threshold should be raised. The staff held discussions about the present category thresholds with the staff of the Minnesota Historical Society’s State Historic</p>	<p>Amend the threshold to: (1) exclude a project from the mandatory EAW requirements if it will be reviewed by a certified local heritage preservation commission; and (2) exclude demolition of a non-contributing structure in a historic district from the mandatory EAW requirements. (If a structure is not listed as “non-contributing” in the official district designation, then the State Historic Preservation Office will determine if it is non-contributing.)</p>

	<p>Preservation Office. These discussions resulted in the suggestions for changes in the category reflected in this report.</p> <p>Where there is an established local historic preservation commission and a good preservation ordinance in place there is adequate oversight over historic places without preparation of an EAW.</p> <p>A “non-contributing structure” is a structure located within the boundaries of a designated historic district but which itself is not historic and does not contribute to the historical attributes of the district as a whole. Often, non-contributing structures are buildings constructed many years after the period during which the historic buildings of the district were built.</p>	
<p>35. 4410.4300, new subpart.</p> <p>Mandatory EAW Category: Lakeshore Development</p>	<p>The recommendation to revise this threshold comes out of the EQB’s 2004 Study of Environmental Review Categories. Consult the Lakeshore Development report from this Study (available at www.eqb.state.mn.us, under “Environmental Policy, Planning, and Research”) for additional background information. During the 2004 legislative session bills were introduced in the House and Senate directing the EQB to develop special Environmental Review categories for lakeshore development. Although the legislation did not pass during the session, several legislators who supported the bill wrote a letter to the EQB asking the EQB to develop lakeshore categories without waiting for a legislative directive to do so.</p>	<p>Amend the mandatory EAW category list to add a new category specific to lakeshore development which would take into account the environmental impacts of modern lakeshore developments. As part of developing the category, consider the issue of which governmental unit should be the RGU where the lake lies in multiple counties.</p> <p>The EQB is interested in receiving comments about the threshold factors and sizes that could be used for a lakeshore category.</p> <p>It is very likely that the EQB will form a stakeholders’ advisory group to assist the EQB staff in the development of this new mandatory category. Anyone interested in being considered for this group is asked to contact the EQB staff</p>

	<p>The diminishing amount of undeveloped lakeshore in the state has led to noticeable changes in the types of lakeshore projects being proposed and in the nature of the lakeshores under consideration for development. The increasing pressure of these new developments has led to a recognition that the existing mandatory review categories may not be adequate to ensure the needed review of today’s lakeshore development projects.</p>	<p>as directed in the Request for Comments under “Advisory Groups.”</p>
<p>36. 4410.4300, new subpart (or new item B to subpart 30, Natural Areas).</p> <p>Mandatory EAW Category: Highly-Important Natural Resources.</p>	<p>In the course of discussions regarding lakeshore development (see item #34), it has become apparent that lakeshores are not the only valuable areas threatened by serious development pressures; similar pressures are affecting many other highly important natural resources. Increasing development pressure and the accumulated effects of past and continuing habitat loss has prompted EQB and many others to conclude that the existing mandatory review categories may no longer be adequate to ensure effective review of development projects near many of Minnesota’s most valuable natural resources. EQB has been asked to adopt a new category designed to address development on the edges of such non-lakeshore highly important natural resources.</p>	<p>Working with stakeholders, develop revised or new mandatory EAW and EIS categories specifically taking into account the environmental impacts of developments on the periphery of highly important natural resources. As part of developing the categories, consider the issue of what entity should be the RGU where the highly important natural resource lies in multiple counties.</p> <p>The EQB is interested in receiving comments about the types of highly important natural resources that should be included in this category and the threshold factors and sizes that could be used.</p> <p>It is very likely that the EQB will form a stakeholders’ advisory group to assist the EQB staff in the development of this new mandatory category. Anyone interested in being considered for this group is asked to contact the EQB staff as directed in the Request for Comments under “Advisory Groups.”</p>

<p>37. 4410.4400, subp. 14.</p> <p>Mandatory EIS category: Residential development</p>	<p>See the discussion at item #28 for 4410.4300, subp 19.</p>	<p>Amend this EIS category analogously to the EAW category at 4410.4300, subp 19, item #28.</p>
<p>38. 4410.4400, new subparts.</p> <p>Mandatory EIS categories: Lakeshore development & Highly-important Natural Resources</p>	<p>See the discussion at item #34 & 35, for a new lakeshore development EAW category and a new highly-important natural resources category..</p>	<p>The EQB will simultaneously consider developing mandatory EIS categories as it considers mandatory EAW categories for lakeshore development and highly important natural resources.</p>
<p>39. 4410.4600, subp. 2, item D.</p> <p>Standard Exemption Category</p>	<p>Current wording states that a project is not exempted until construction is substantially completed and construction and “implementation” could no longer be influenced by EIS information. The rule does not specify what “implementation” here refers to, and it has been interpreted to mean the <i>operation</i> of a project <i>after construction</i>. The previous rule (pre-1982) was worded slightly differently and used “implemented” as an alternative to “constructed,” apparently referring to actions that may affect the environment but do not build something (e.g., pesticide application programs). When the 1982 rules were adopted the slight revision of the language obscured this connotation; this was apparently inadvertent because the 1982 SONAR does not indicate this was done by intent.</p>	<p>Amend the language to remove any implication that the post-permitting, post-construction, operation of a project is subject to environmental review. One way to do this would be to delete the words “implementation or.” Another way would be to end the sentence after the word “completed.”</p>
<p>40. 4410.4600, subp. 2, item E.</p> <p>Standard Exemption Category</p>	<p>This item still refers to projects “for which environmental review has already been initiated under the <u>prior</u> rules,” meaning the pre-1982 rule amendments. At the same time,</p>	<p>Amend item E by rewording to read:” projects for which environmental review has already been <u>completed</u> [delete “initiated”] in compliance with parts 4410.0200 to 4410.7070.”</p>

	the current rules nowhere actually state that once review has been completed, the project is not subject to review again (unless the conditions for an EIS supplement or a new EAW are met). Both of these problems could be resolved at the same time by rewording this item.	
41. 4410.4600, subp. 19. Exemptions: animal feedlots	The 2003 Legislature created exemptions by statute for some feedlots which are not reflected in the current rules	Amend this subpart to read consistently with the statutory changes.
42. 4410.5000, subp. 1. EQB Monitor publication	The rule requires the EQB to “publish” the Monitor. This term implies the production and distribution of paper copies. To be able to take advantage of more efficient modern electronic forms of notification, the rule should be amended to allow for electronic-only production and distribution.	Amend the rule to allow EQB to prepare and distribute the EQB Monitor in a paperless format.
43. 4410.5200, subp. 1. Monitor publication require-mints – state agency notices.	This list has not been revised for a number of years.	EQB member agencies should review this list and propose any deletions or additions
44. 4410.5200, subp. 3. Monitor publication requirements – EQB notices.	Rule does not now cover AUAR and revised energy facility process notices correctly	Amend this subpart to add notice requirements for draft AUAR documents and notices of adoption of AUARs, and update to correctly cover notices under revised ER procedures for energy facilities.
45. 4410.6200, subp. 1, item A. EIS cost inclusions- RGU staff costs.	This item requires the recovery of RGU staff costs, even if the staff involved are paid out of the general fund. State RGUs have found this requirement to be troublesome in those cases.	Amend by adding a qualifying phrase at end: “unless the RGU elects to waive these costs.”

<p>46. 4410.6500. Payment of EIS costs</p>	<p>The law does not now provide that delays caused by the proposer not paying required EIS costs “toll” the deadline for completion of the EIS.</p>	<p>Amend to state that the EIS completion deadline is extended if the proposer fails to pay assessed costs on time. Coordinate this with revisions at part 4410.2800, subp. 3, item #16.</p>
<p>47. 4410.6500, subp. 1, item A. EIS cost payment schedule.</p>	<p>The rule does not give a schedule for payment of EIS scoping costs for those cases where the EIS was ordered on the basis on an EAW.</p>	<p>Amend as follows: at the end of the 1st sentence add the phrase: “or within 5 days of issuance of the positive declaration.”</p>
<p>48. 4410.6500, subp. 6. Notice of EIS cost final payment.</p>	<p>Rule requires a roundabout method of notifying state agencies that EIS final payments have been made and the prohibition on permit issuance is over.</p>	<p>Amend as follows: in 2nd sentence, replace “EQB” with “RGU.”</p>