

STATE OF MINNESOTA
COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL
QUALITY BOARD

In the Matter of the Proposed
Permanent Rules Relating to
Pipeline Routing

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The 1987 Minnesota Legislature passed legislation which specifically addressed pipelines and several safety related issues and topics. One component of this legislation, Minnesota Statute, section 116I.015, authorizes and directs the Environmental Quality Board (EQB) to adopt rules governing the routing of pipelines and provides direction as to what the rules must address. Further, Minnesota Statute, section 116I.015, subd. 3., requires that "The rules apply only to the routes of pipelines and may not set safety standards for the construction of pipelines."

The pipeline routing legislation, in part, was based upon selected portions of Minnesota Statutes, section 116C.51 to 116C.69, which is known as the Power Plant Siting Act. Similarly, the EQB's rules (chapter 4400) for routing high voltage transmission lines and siting electric power generating plants and (chapter 4410) environmental review program requirements for pipelines provided a foundation and procedural basis for development of the proposed pipeline routing rules. Other rules and statutes were also relied on and they are briefly discussed below.

Selected parts of the proposed pipeline routing rules also incorporate other elements and responsibilities the EQB has under its enabling legislation, Minnesota Statute, section 116C. Among these is the mandate to provide for broad public participation and notice of board actions.

Development of the rules also relied are the direction provided by Minn. Stat., section 116D.03, subd. 1, which states that "the legislature authorizes and directs that, to the fullest extent practicable the policies, regulations and public laws of the state shall be interpreted and administered in accordance with the policies set forth in sections 116D.01 to 116D.06", which is the State Environmental Policy Act.

The proposed pipeline routing rules also reflect the regulatory requirements which will allow the proposed rules to qualify as an alternative review process approvable by the EQB under part 4410.3600 of the environmental review rules. Under this approach, pipelines subject to the proposed rules would not actually be reviewed through environmental assessment worksheets (EAWs) or environmental impact statements (EISs), but would receive equivalent review under the routing and permitting process established in the proposed rules.

Selected parts of the proposed rules are consistent with notification and meeting requirements provided for in Minnesota Statute, section, 116I.02. Public hearings, when required, will be held pursuant to chapter 1405, which are the Office of Administrative Hearings rules for the siting of high voltage transmission lines and power plants. The proposed rules incorporate by reference several definitions from other state agency rules where there is regulatory authority for pipelines.

The proposed rules provide a review process that minimizes duplication, provides for timely review, meets the requirements of environmental review, and establishes an orderly method for the routing and permitting of pipeline projects.

Rulemaking began in November, 1987 with publication of Notice of Intent to Solicit Outside Opinion in the State Register. Three drafts of the proposed rules were prepared and sent out for review between April and August, 1988. As part of the rule development process, a meeting was held to discuss each draft of the proposed rules. The first draft of the proposed rules were sent in April, 1988 to approximately three hundred and fifty interested persons on the pipeline rule mailing list. The second (June 9, 1988) and third (July 22, 1988) draft of the proposed rules were sent to approximately one hundred and fifteen interested person who remained on the mailing list. The proposed rules were also sent to and reviewed by the Pipeline Safety Advisory Council.

During the drafting process numerous changes were made to the proposed rules based upon: 1) the written responses received as a result of the notice of intent to solicit outside information or opinions and the proposed draft rules governing pipeline routing; 2) the public meetings held to discuss the proposed draft rules; and 3) internal staff review.

II. STATEMENT OF BOARD'S AUTHORITY

The EQB's statutory authority to adopt rules relating to pipeline routing is set forth in Minnesota Statutes, section 116.015 (1987). Under this statute the Board has the necessary authority to adopt the proposed rules.

An amendment to section 116I.015 subdivision 3, was made in the 1988 legislative session (Laws of Minnesota 1988, chapter 624). This amendment allows the Board to hold public hearings pursuant to the requirements of Minnesota Rules, chapter 1405.

III. STATEMENT OF NEED AND REASONABLENESS

Minnesota Statutes, chapter 14 (1986) requires the Board to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed for adoption. In general terms, this means that the Board must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. To the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the proposed solution is appropriate. The need for and reasonableness of each proposed rule are presented in sequential order.

The statement of need and reasonableness and the proposed rules are two separate documents, which must be read together. The part and subpart identification numbers in the statement of need and reasonableness correspond to part and subpart identification numbers in the proposed rules.

4415.0010 Definitions.

Subp. 1. Scope.

The definitions in part 4415.0010 are provided to clarify references to specific terms used in the rules. Some are taken from the Pipeline Routing Act and other existing agency rules. Most of the technical definitions are incorporated by reference from the Public Utilities Commission certificate of need rules for pipelines. This provides consistency between the need and routing procedures.

Subp. 2. Act.

This definition was included by the office of the Revisor of Statutes as a matter of form.

Subp. 3. Affected landowner.

This definition is needed to distinguish between landowners and lessees directly affected by having the proposed route cross their land, and those not crossed by the route but which may experience some degree of indirect effect, whether real or perceived. The definition identifies the affected landowners which must receive notice under part 4415.0035 of these rules.

Because of the potentially large number of adjacent landowners and those even farther from the proposed route which may have indirect effects, it is not reasonable to require by definition that notice be provided to all of those landowner parties. Notice to that broad group of other persons is intended to be provided by the requirement

for publication of notice in local newspapers and the conduct of public information meetings.

Subp. 4. Authorized representative or agent.

This identifies the individual who has the authority to represent an applicant for a pipeline routing permit. This person is ultimately responsible for actions of the pipeline company seeking the permit and constructing the pipeline.

Subp. 5. Applicant.

This term is needed to reference a pipeline company which has made application to the board for a pipeline routing permit and is used until the board issues a permit.

Subp. 6. Application.

This refers to the document submitted by the applicant to the board.

Subp. 7. Associated facilities.

The facilities included in this definition are those that are necessary for the function and integrity of the proposed pipeline and which as a result of installation may cause an environmental impact. This applies only to facilities within a proposed right-of-way, thereby excluding facilities within existing pipeline company properties such as refineries and tank farms. It further excludes facilities within company properties, whether existing or not, which are the terminal points of a proposed pipeline. It is not the intent of these rules that the board will determine the location of terminal points.

Subp. 8. Barrel.

This is a volume measurement incorporated by reference from the Public Utilities Commission's rules for pipeline certificates of need.

Subp. 9. Board."

The board is used for convenience because the Minnesota Environmental Quality Board is referenced many times in the rules.

Subp. 10. Btu.

This is an energy measurement incorporated by reference from the Public Utilities Commission's rules for pipeline certificates of need.

Subp. 11. Chair.

It is necessary to clearly define who it is that is required to make various decisions and take specific actions in these rules. The

definition incorporates the board's operating rules which includes the board's vice chair within the definition of chair.

Subp. 12. Construction.

The definition of construction is needed to specify the activity which is covered by the pipeline routing permit issued by the board. The activities described in the definition which are not considered construction are taken from Minn. Stat., section 116I.015, subd. 3 (c), which excludes those activities from these rules because they do not generally cause significant environmental impact.

Subp. 13. Design day.

This definition is incorporated by reference from the Public Utilities Commission's rules for pipeline certificates of need.

Subp. 14. Environment.

This is the same definition used in the board's environmental review program rules, with the addition of "archaeological" objects in the listing of inclusive subjects. Physical conditions which can be considered are not limited by the definition. It is reasonable to expect that land uses and population density would be considered also, in that the legislative intent appears in Minn. Stat., section 116I.015, subd. 3(b)4 and 7, and subd. 3(c).

Each of the following listed definitions have been incorporated by reference from the Public Utilities Commission rules for pipeline certificates of need:

- Subp. 15. Equivalent Mcf.
- Subp. 17. Gas.
- Subp. 18. Gas volume.
- Subp. 19. Hazardous liquid.
- Subp. 20. Liquified gas.
- Subp. 21. Liquified petroleum gas; LPG"
- Subp. 22. Mcf.

Subp. 16. File.

This definition is needed to identify the point in time when any process described in these rules actually begins. An application must be received at MEQB staff offices before it is considered filed.

Subp. 23. Permittee.

The permittee can be referred to as the pipeline company receiving the permit or the authorized representative or agent. It is needed for reference in post routing process communications.

Subp. 24. Person.

The term person is used in all rules and has a standard, all inclusive definition in rules that regulate utilities.

Subp. 25. Pipe.

A definition of pipe is needed to differentiate between the type of facilities regulated by these rules and those that are not, such as water and sewer pipes. Hazardous liquids and gas are defined in subparts 18 and 20.

Subp. 26. Pipeline.

Minn. Stat., section 116I.015 requires that all proposed facilities which meet the definition of a pipeline must be issued a permit by the board unless excluded. The statute specifically includes the two subparts A and B under this definition.

Subp. 27. Pipeline company.

This term is needed to distinguish between the entity proposing a project and other utilities or companies which may be affected by the project. It generally refers to an applicant.

Subp. 28. Pipeline project or project.

This term is used throughout these rules and is included in the definitions to clarify its meaning.

Subp. 29. Pipeline routing permit.

A pipeline routing permit is the final authorization issued by the board at the conclusion of the routing process. It is defined here to clarify the intent of Minn. Stat., section 116I.015, which requires the issuance of a routing permit for projects meeting the conditions stipulated in the statute. Intent of the above-mentioned statute is further iterated by the prohibition of the setting of safety standards in the pipeline routing permit.

Subp. 30. Public advisor.

The role of the public advisor can be an important function in large projects affecting many landowners. That function is described in these rules in part 4415.0065 but is included in the definitions to emphasize that the public advisor gives no legal advise and serves only to assist persons in understanding how they can participate in the routing process.

Subp. 31. Right-of-way.

This definition is needed to distinguish between a "route" and a right-of-way.

Subp. 32. Route.

Route is distinguished from right-of-way in these definitions and includes a linear zone up to 1.25 miles wide between the proposed end points of a pipeline project. The final right-of-way must be located

within the route designated by the board. The 1.25 mile figure is taken from the transmission line routing rules (4400.0200, subp. 16) and is considered a reasonable width that permits the permittee enough flexibility to locate a final right-of-way within the designated route. However, it is anticipated that the procedural record of the permit application and the permit contents may address specific areas within the designated route which must be avoided in final right-of-way alignment. Further, the wording "up to 1.25 miles" is intended to permit the proposer to apply for and the board to designate a route of less than 1.25 miles in width when doing so is necessary to avoid specific environmental impacts. Where the public hearing record contains information identifying a specific, narrower route, even the width of a right-of-way, which meets its minimum impact criteria, the board has established precedence in transmission line applications for making a more specific location stipulation. For example, the board may specify that a new pipeline right-of-way follow an existing right-of-way where possible. The option is necessary to clearly identify the board's intent of minimizing impacts and making a decision based on information in the hearing record.

The full permissible width of the route recognizes that conditions may arise after the permit is issued that constrain specific right-of-way alignments and could not be foreseen. It is intended that the final alignment of the right-of-way will not cause any adverse environmental impact which has not been addressed in the route selection process or that cannot be reasonably mitigated.

Subp. 33. Route segment.

Route segment refers to a specific sections of a proposed route which is considered in the routing process. Each route segment may be addressed individually in the review process, permitting various combinations of route segments to be combined to make up a complete route between two proposed end points.

Subp. 34. Shelterbelt.

This definition is needed to distinguish between shelterbelts, which are purposely established for erosion prevention and sound and sight barriers, and other vegetation such as overgrown fence rows.

Subp. 35. Synthetic gas.

This definition has been incorporated by reference from the Public Utilities Commission's rules for pipeline certificates of need.

4415.0015 Authority, Scope, Purpose and Objectives.

Part 4415.0015 provides reference and introductory statements that essentially summarize the rules and address the need for a routing process. Subparts 1 through 4 are comprised of statements which are treated in additional detail within the rules. One exception is the

solitary reference in the Scope, subpart 2, to the preemption of the board's permit over all other state or local authorities with regard to site approval. This authority is mandated in Minn. Stat., section 116I.015. It is intended to focus pipeline routing interests into one decision-making forum so that an orderly process is available to applicants and an open, public process is available to all governmental units and the general public. Other permitting authorities have equal opportunity to participate in the route selection process and make their individual interests known.

The question of whether federal preemption exists in the area of environmental review and routing of interstate pipelines is unclear. There is no question that federal design and safety standards preempt state and local laws. However, nonsafety matters may still be regulated under state police powers. In ANR Pipeline Company v. Iowa Commerce Commission, 828 F. 2d 465, 473 (8th Cir. 1987), the Court recognized the possibility of state environmental regulation of interstate natural gas pipelines.

This decision does not necessarily preclude Iowa from enacting environmental regulations applicable to interstate pipelines, or from providing remedies for its citizens whose property is damaged during pipeline construction. Although the question is not specifically preempted by the language of either the NGPSA or the NGA. Thus, Iowa may be able to enact legislation to protect its valuable topsoil and other aspects of the environment, and to provide private damage remedies, as long as the state regulations do not conflict with existing federal standards. See Pacific Gas, 461 U. S. at 216 n. 28.

The language in subp. 2 regarding the applicability of these rules, i.e., "unless preempted by federal law," is an express recognition of the uncertainty of federal preemption of nonsafety-related route selection and environmental issues. Until the board addresses a specific situation requiring its review, it is appropriate for it to not directly assert or assume state jurisdiction. There are good reasons for taking this position.

First, there is the apparent legislative intent to exercise state jurisdiction in the area of pipeline routing that minimizes environmental and human impacts. This legislative intent is primarily manifested by the legislature not amending Minn. Stat. section 116I.05 which provides as follows:

Any person that proposes to construct or operate an interstate natural gas pipeline by an action in eminent domain under the authority of the federal Natural Gas Act, United States Code, title 15, chapter 15B, shall not be required to comply with the provisions of sections 116I.02 to 116I.04 as a condition of acquiring the easement or right-of-way pursuant to that action.

The pipeline routing rules and statutory permit provisions do not fall within the exemption provided for interstate gas pipelines. In addition, the definition of pipelines does not exempt interstate

pipelines whether carrying natural gas or hazardous liquids.

Secondly, because the law is unclear there is the possibility of judicial, legislative or congressional changes to the law. The nature of the issue is such that it should be decided either by the judiciary, by Congress or by the Minnesota legislature, not the board. Therefore, it would be imprudent for the board to commit itself regarding this crucial jurisdictional question.

Thirdly, there is the very strong recognition by the federal courts and Congress of state police power in the area of the environment. These proposed pipeline routing rules do not prohibit the construction of a pipeline but are intended to minimize adverse human and natural environmental impacts in Minnesota. Further, Minn. Stat. 116I.015 requires that a routing permit must be issued if applied for under these rules.

Lastly the board is not aware of any state that is proposing regulation of pipeline routing in the manner proposed by the Minnesota legislature. Consequently, these rules should be given an opportunity to be tested and applied to pipeline routing decisions. There is also the possibility of state cooperation with the appropriate federal agencies in exercising environmental review of interstate pipeline routing selection. Leaving the question of preemption open is a prudent policy decision under these circumstances.

Although the statute gives the board full authority to determine the location of the pipeline, it also requires the board to consider criteria which includes the existence of populated areas and local land use laws and ordinances in making its decision. This requirement is included in these rules in part 4415.0040 and 4415.0100, subparts 3,J.

4415.0020 Applicability of Rules.

Part 4415.0020 describes under what conditions a pipeline routing permit is required. It reflects the specific intent of the 1987 legislation known as the Pipeline Routing Act, Minn. Stat., section 116I.015.

Subp. 1. Exclusion. Subpart 1 provides a description of pipeline activities which are excluded from the board's permitting authority. The first four exclusion categories (A,B,C and D) are from Minn. Stat., section 116.015, subd. 3c, reflecting the legislature's intent to exclude activities with little potential for environmental impact. Categories E and F are excluded by the definition of pipeline in the Minn. Stat., section 116I.015, subd. 1, section (1).

Categories G and H have been included to clarify that activities related to existing facilities do not require a routing permit. Category I is needed to reflect the intent of Minn. Stat., section 216.36, which establishes franchise rights of natural gas companies

serving municipalities to locate their pipelines within municipal rights-of-way.

Subp. 2. Conditional exclusion. Subpart 2 addresses additional intent of the legislature to exclude certain pipeline activities when the board determines that there is no significant chance of adverse environmental impacts. The first paragraph is almost identical language to Minn. Stat., section 116I.015, subdivision 3 (c). It excludes certain pipeline proposals, but attaches a test which must be met before the exclusion is clearly established. The rules refer to this as a conditional exclusion.

The intent is to not require a routing permit for pipelines proposed for construction in an existing right-of-way where little environmental impact is likely. The board is given the responsibility for determining if there is a significant chance of an adverse effect on the environment or that there has been a significant change in land use or population density in or near the existing right-of-way since the first construction of the existing pipeline.

Subp. 3. Partial exemptions. Subpart 3 is taken from Minn. Stat. section 116.015, subd. 3 (b) (7). It allows the board to exempt proposed pipelines from all or part of the pipeline routing process if an emergency exists or if the board makes a determination that the proposed pipeline will not have a significant impact on humans or the environment. The intent is to permit streamlining of the process whenever possible for emergencies and minor projects while retaining the full process for major projects.

Subp. 4. Pipeline route selection. This section describes the option a pipeline company has if the board denies a partial exemption or the company elects to not apply for one. That option is to apply for a pipeline routing permit through the full nine-month process. This reflects the intent of Minn. Stat., section 116.015.

Subp. 5. Denial of request. This rule establishes that the applicant is responsible for the board's costs for reviewing any action brought before it. The board does not make a general assessment of the pipeline companies in the state, as it does the electric utilities under the Power Plant Siting Act (Minn. Stat., section 116C.69, subp. 3), and thus has no dedicated funding for its activities related to pipelines. It is reasonable to require the pipeline applicants to reimburse the board for its expenses, even if an application is denied.

EMERGENCY PROCEDURES

4415.0025 Pipeline Emergency Action and Procedure.

Part 4415.0025 is necessary to provide a procedure whereby pipelines can be constructed in emergencies with expedited board review. It would apply only to projects which would normally require review to determine if a pipeline routing permit is required.

Subp. 1. Pipeline emergency action. Subpart 1 lists the criteria which will be used to establish that an emergency exists. The board anticipates that emergency status will be recognized only for situations which could not have been reasonably foreseen and avoided.

Subp. 2. Pipeline emergency procedures. Subpart 2 allows the board chair to make the initial emergency determination. By definition in these rules, chair also means vice chair when the chair is unavailable. This permits the determination to be made in the course of a telephone call or meeting, or within a few days if a letter request is received. It would be unreasonable to require immediate full board review for an initial emergency determination. The rule does provide that the company receiving the temporary emergency determination appear at the next meeting of the board to receive authorization from the full board to continue work under emergency status. It is anticipated that the company inform the board at that meeting of its plans to mitigate any unavoidable environmental impacts caused by the emergency action. After the emergency situation has been remedied, further approvals may be required for additional pipeline activity.

The board's responsibility for environmental protection is not diminished by the granting of an emergency exemption. It is reasonable to expect a company who requests an emergency determination to provide the board with an assessment of the environmental impacts of the emergency action and what will be done to correct any reversible impacts. It is also reasonable to require compliance with the pipeline routing permit rules once an emergency ceases to exist.

Subpart 2, subsection B allows the pipeline company to request an immediate special meeting of the board if the initial request for an emergency authorization is denied. This is not required by statute but provides reasonable recourse if the request is denied. The procedures to be followed are identified in the board's operating rules, Chapter 4405.0100.

CONDITIONAL EXCLUSION PROCEDURES

4415.0030 Conditional Exclusion Procedures and Determination.

This part describes the procedure to be used by the board to determine that a project qualifies for a conditional exclusion.

Subp. 1. Procedures. Subpart 1 contains statutory language specific to pipelines. The notification requirement is from Minn. Stat., section 116I.02.

Subpart 1, subsection A requires the preparation of an Environmental Assessment Worksheet (EAW) before the board can grant a conditional exclusion. In the event that a conditional exclusion is granted, an EAW would be required anyway under the board's environmental review rules because the project would not require a pipeline routing permit (see 4410.4300, subp. 7). It would be unreasonable for the board to

have a separate process to make a conditional exclusion determination and then require an EAW to essentially make the same finding. The finding in both procedures would be the possibility of significant environmental impact. It is therefore appropriate for an EAW to be prepared and acted on by the board before the conditional exclusion is granted. This procedure would have the effect of saving from 90 to 120 days of duplicative review. Subsection B of subpart 1 is from Minn. Stat., section 116I.015, subd.3(c).

Subp. 2. Determination. This language describes the basis for the board's decision and reiterates the wording in Minn. Stat., section 116I.015, subd. 3(c).

Subp. 3. Granting of exclusion. This rule informs the applicant of other regulations which apply when a conditional exclusion is granted. It is informational but helpful in clarifying these procedures. It reflects the statutory requirement in Minn. Stat., section 116I.02 and section 117.49 that pipeline projects which do not require a pipeline routing permit must undertake certain other procedures. The intent is to assure that reasonable efforts are made to inform potentially affected landowners of the proposed project.

Subp. 4. Denial of exclusion. Subpart 4 describes the options a pipeline company has if the board does not grant a conditional exclusion. If the project is not excluded, then a pipeline routing permit is required by statute, either through the 90 day partial exemption process or the nine month route selection process. It is anticipated that pipeline companies will consult with board staff before it decides which procedure it will utilize under these rules.

EXEMPTION FROM ROUTE SELECTION PROCEDURE

4415.0035 Partial Exemption From Pipeline Route Selection Procedures.

Part 4415.0035 provides for a procedure to be followed in seeking a partial exemption from these rules, which is required by the Pipeline Routing Act. An orderly procedure is necessary to establish a record of the board's action and to provide a consistent basis of review.

Subp. 1. Partial exemption procedures. Subpart 1 references the procedure to be used and the contents of the application for a partial exemption. The procedure is identical to that for applications for a routing permit, which is found in 4415.0105 of these rules. It is reasonable to use the same procedure because it satisfies the board's operating rules and provides for the distribution of the application to affected agencies and interested persons. The board does not exempt a project from requiring a routing permit, but only from part of the full nine month process. Thus a project which is granted a partial exemption is also issued a routing permit.

The contents of the application are to be the same as a routing permit application, with the exclusion of 4415.0170, which requires a

description of alternative routes. To grant a partial exemption, the board must determine that the proposed pipeline and route will not have a significant impact on humans or the environment. In order for the board to make that decision, it must have the same types of information required for the full routing process. It is anticipated that an exemption application would be shorter, but cover the same information categories as a full process application, except for the one exclusion.

Subp. 2. Notice of partial exemption application. Subpart 2 addresses the noticing and distribution of an exemption application after the board has accepted it. This fulfills the intent of Minn. Stat., section 116I.015, subd. 3(b)(2), which mandates that notice be given to local governments and affected landowners and lessees. The noticing and distribution requirements reflect the board's policy of providing adequate information to ensure broad public participation. Noticing and distribution are of particular importance in the abbreviated, 90-day exemption process. This time period is the same as that required in the exemption process of the board's transmission line routing rules (4400,3900, subp. 2). The requirements are similar to those for projects which do not require routing permits, but must go through the Environmental Assessment Worksheet and Information Book procedures.

Subp. 3. Comments on partial exemption. Any person may submit comments to the board about the exemption application. The requirement that the comments be submitted within 30 days after noticing is reasonable in that the board must complete the remaining procedural requirements and make its determination within 90 days. This time period is the same as that required in the EAW process (4410.1600). The board has no reason to limit comments to only affected landowners and agencies, thus anyone is permitted to comment. Valid comments will be considered relative to the criteria listed in Part 4415.0040 regardless of the source.

The public information meetings required in subpart 4 are needed to both provide a forum for information exchange and to gather information to assist the board in its decision on the partial exemption application. Requiring a public information meeting is particularly important in the abbreviated, 90 day review period for exemption applications. Such meetings are presently required under Minn. Stat., section 116I.02 when no routing permit is required, so no additional burden is required by this rule. It assures adequate opportunity for the public to ask questions about the proposed project and about the application process.

Subp. 5. Determination of partial exemption. This subpart describes the basis for the board's partial exemption decision and the issuance of the pipeline routing permit. The information required for the board's decision is generated by other subparts of this rule and is a minimum level of information for the board to act upon. The board is required to issue a pipeline routing permit if it approves the exemption application. The assumption for this requirement is that the exemption application process adequately reviews the potential

impacts of a project and an exempted project will not have significant potential impacts on humans or the environment. The project may be a major construction action and should require a permit, but without the nine month process if the test of no significant impact can be met.

Further, it does not appear to be the intent of Minn. Stat. 116I.015 to permit large projects to be exempted from needing a permit, but only from portions of the process which results in a permit being issued. The statute has been interpreted to mean that applicants receiving board approval of a partial exemption must be issued a routing permit.

The special conditions which the board may attach to routing permits are needed to avoid or mitigate potential impacts which are identified in the application process. Without the conditions, the approval of an exemption could remain questionable and perhaps be denied. The conditions assure the board that the project will be constructed in the manner represented in the application process.

Subp. 6 Denial of partial exemption. Subpart 6 addresses the rights the applicant has if the board denies an exemption application. It gives the applicant reasonable opportunity to appear before the board and provide any additional information.

4415.0040 Criteria for Partial Exemption From Pipeline Route Selection Procedures.

Part 4415.0040 is similar to a subsequent part which contains the criteria for designating a pipeline route and issuing a permit under the full nine month process (4415.0100). This consistency is necessary because both decisions are establishing environmental compatibility.

Subp. 1. Scope and purpose of criteria. Minn. Stat., section 116I.015, subp. 3(B)(4) authorizes the board to promulgate criteria to guide the route selection and permitting process. Though not specifically stated, it is reasonable to apply this legislative intent to the partial exemption application process. Part 4415.0040 describes the criteria which the board will consider in making its partial exemption determination. Such criteria are necessary to guide the board in a consistent manner and to give notice of the basis for all of its decisions. The rule emphasizes that any effort by the applicant to obtain right-of-way easements along a proposed route not yet designated by the board is at their own risk, and will not be considered as a route selection factor by the board in their decision.

Subp. 2. Standard. Subpart 2 states the standard which the listed criteria must address. It is consistent with the board's statutory mandate (Minn. Stat., section 116C), and the state's environmental policy (Minn. Stat., section 116D), which is implemented by the board's environmental review rules (4410). The language in this rule is taken from Minn. Stat., section 116I.015, subp. 3(b)(4).

Subp. 3. Criteria. The ten criteria listed are comprised of topics drawn from the pipeline routing act (Minn. Stat., section 116I.015), the transmission line siting rules (4400), and the board's environmental review rules (4410). The pipeline routing act identified three criteria which must be included among those established by rule. Criteria A, B, and J of this subpart encompass the three required by Minn. Stat., section 116I.015, subp. 3, subsection 4 and broadly include both human and natural environments. These are representative of criteria for evaluation of environmental impacts, with the exception of reference to pipeline setback ordinances.

Criteria A through F are similar to those found in the transmission line siting rules (4400). The use of these criteria have proven to be an excellent test for environmental compatibility in past decisions before the board.

Criteria F through J are taken from the content requirements of environmental impact statements in the rules of the environmental review program (4410). Inclusion of these criteria, when taken with portions of the application contents part of these rules, provides for a level of environmental review consistent with the conditions qualifying for alternative review (4410.3600) under the board's environmental review program. This obviates the need for a separate EAW or EIS for pipeline routing applications. It will be the applicant's responsibility to provide a discussion of these criteria in its application, pursuant to part 4415.0145.

PIPELINE ROUTE SELECTION PROCEDURES

4415.0045 Application Procedures and Requirements.

Part 4415.0045 is needed to assist the applicant in identifying sections of the rules which must be followed to initiate the route selection process. It is included to clearly state what a person must do to begin the process.

This part requires that the Board issue a pipeline routing permit with any appropriate conditions within nine months of acceptance of an application. This is required by statute, and does not allow the Board to deny a routing permit after it has accepted an application. The routing process, however, is designed to insure that the designated route will have the least environmental impact, based on the criteria listed in 4415.0100.

Minn. Stat., section 116I.015, subp. 3(5) uses the language "after the permit application is received by the board" as the beginning of the nine month process period (116I.015, subd. 3, item 5). It is reasonable to not begin the process until the board has formally accepted the application under the provisions of rule 4415.0105 (application procedures). The nine months allocated to complete the routing process should be adequate for most pipeline projects. The

electric transmission line siting process requires a Board decision in 12 months, and this has been shown to be inadequate on a number of projects. Much of the time allotted is required to insure broad public participation and adequate data collection and analysis.

The rule reiterates the statutory allowance that the Board may extend the time for its decision beyond the nine months for cause. Cause has not been defined by rule, recognizing that reasons for a necessary extension can be varied and complex. In past transmission line project applications, some examples of situations in which extensions have been granted are: to permit coordination with other state or federal review procedures, to analyze new issues late in the hearing process, to accommodate protracted hearings on controversial projects, and at the request of the applicant to amend their application late in the process. The assurance of due process and the development of a complete record should always be the basis for extending the routing process beyond nine months.

4415.0050 Notice of Application Acceptance.

Part 4415.0050 describes the noticing requirements at the beginning of the nine month route selection process. Notice requirements are needed to clearly stipulate what the board must do to assure reasonable public awareness of the review process. In this situation the board is responsible for the noticing. The board's noticing will comply with Minn. Stat., section 645.11 and Minn. Stat., section 331A.

The twenty day period is needed to allow for publication requirements of weekly newspapers. The information requirements for the notice are simple and necessary to assure public awareness.

4415.0055 Appointment of Citizen Advisory Committees.

Part 4415.0055 permits the board to establish an advisory committee which would assist the board in evaluating pipeline routes and describes its membership. The proposed rule is permissive due to the absence of a statutory requirement and the possibility that proposed pipelines that require a routing permit may be routed with minimum impacts and controversy. An example of a routing decision that may not need the assistance of an advisory committee would be a pipeline that is proposed to be located within an existing right-of-way.

The discretion of the board in determining the need for an advisory committee will be influenced by its perception of adequate public participation and by the number of route alternatives available which may require the use of eminent domain for right-of-way acquisition.

Advisory committees are intended to be representative of the area proposed to be crossed by a pipeline project. They are to be independent of the board but supported by board staff as requested by the committee. Advisory committees are effective in providing broad spectrum public participation. The appointment of a citizen's

advisory committee is required in the transmission line routing rules (4400.0800). They have been used successfully on numerous transmission line routing and power plant siting projects. The use of a citizens advisory committee to study any issue is authorized in the EQB's enabling statute, Minn. Stat., section 116C.04, subd. 4.

The citizens committee is an optional element for any full route selection application and is only advisory in nature. The board is not required to accept a route for consideration or to base its route selection decision on the committee's recommendation.

4415.0060 Citizen Advisory Committee Membership.

A committee's membership is to be comprised of individuals from the affected area and any other citizens the board appoints. Ownership of land crossed by a proposed route does not exclude an individual from committee membership; however, individuals associated with a pipeline company making an application are excluded from membership.

A citizens advisory committee may conduct itself independently from the board, but must act on the charge issued by the board. It is anticipated that the applicant and board staff will attend meetings of the committee and provide information as requested.

4415.0065 Public Advisor.

Part 4414.0065 requires that a public advisor be available to any person wishing assistance in participating in the routing process. This is the same rule language found in the power plant and transmission line siting rules (4400.0090 & 4400.2900). The public advisor has proven very effective and useful in past transmission line routing projects.

A public advisor is needed to advise any person as necessary on how to participate in the routing process and particularly in the public hearings, where the formal procedures may intimidate individuals who are unfamiliar with the public hearing process. The public advisor would be an EQB staff person who is not directly involved in the management of project applications. No legal advice would be provided by this person. Provision of this advice and information is consistent with the mandate of the EQB to provide reasonable opportunity for public participation.

The Public Utilities Commission is required by Minn. Stat., 216B.243, subd. 4 to provide a similar service to the public in its certificate of need process for large energy facilities, including pipelines and transmission lines. It is reasonable and consistent to provide the service in the pipeline routing process as well.

4415.0070 Public Information Meetings.

Subp. 1. Requirements. Part 4415.0070 requires that public

information meetings be held at two different points during the routing process. Subpart 1.A requires a public information meeting to be held in each county crossed by the applicant's proposed route immediately following acceptance of the route permit application by the Board. Subpart 1.B requires that a second public information meeting be held in each county crossed by the applicant's proposed route, and any alternatives which have been accepted by the Board, before public hearings begin.

These informational meetings are intended to provide an awareness of the project proposal, insure that potentially affected parties are reasonably informed on the applicants preferred route and other route alternatives being considered and to identify when and where public hearings are being held. These information meetings are a practical means of addressing the public's questions and identifying issues which will be considered in the public hearings. The meetings will be conducted by MEQB project staff at times convenient to the public.

Subp. 2. Notice of public information meetings. Reasonable notice of such meeting shall be provided, at a minimum, by placement of published notice in newspapers at least 10 days before the scheduled public meetings.

4415.0075 Acceptance of Route Proposals.

Part 4415.0075 outlines how routes can be proposed and the requirements for consideration of routes in the public hearings. The language is very similar to the transmission line routing rules, with the major exception that pipeline route proposals must be presented to the Board within 70 days after acceptance of an application. This is necessary to allow the Board to make its decision and issue a permit within nine months.

Subd. 1. Acceptance for consideration. Rules which delimit the route alternatives before public hearings begin are needed to avoid delays in the process resulting from new routes being proposed near the end of the process. The broad public participation and noticing requirements, and the level of detail required for route evaluation will be adequate for identification of reasonable route alternatives before public hearings begin.

Subp. 2. Sources of route proposals. It is necessary that routes be proposed within 70 days to permit adequate review and preparation before public hearings commence. Past experience with transmission line routing applications suggests that ten weeks is adequate time for proposals to be made to the board.

Subp. 3. Requirements for other route sources. Subpart 3 specifies the form, content and timeliness of route proposals to the Board. The required content is that required of the project applicant and is necessary to assess the environmental impacts and compare them with other route alternatives. The requirement that a proposer of a route approved by Board must make an affirmative defense of that route is

reasonable because it limits the need for the Board to consider numerous routes which may have no merit. Any person also has the option of advocating route proposals to the citizens advisory committee, agencies or board staff and convincing them to recommend and defend the proposals.

Subp. 4. Preparation of route proposal. This rule provides a reasonable process to determine the adequacy of a route proposal, including an appeal provision. The 25 days allow for adjustments to the proposal documentation, recognizing that some individuals may not be experienced in organizing the information required. The 25 day review of adequacy process can occur anytime within the 70 day period allowed for route proposals. If the 25 day adequacy process begins for a route proposal submitted on the 70th day of the 70 day submittal period, this could extend the total submittal period to a maximum of 95 days.

4415.0080 Analysis of Alternatives.

Part 4415.0080 requires the applicant to prepare an environmental analysis of alternative routes and, if no certificate of need was required for the project, of non-routing alternatives, including size and design of proposed facilities, other energy sources, and no action. The non-routing alternatives would be considered in a certificate of need process prior to a route application, if required, and would be incorporated in the routing process.

The information required by this rule, coupled with the application content requirements, would be consistent with the level of detail and content required of an Environmental Impact Statement under the EQB's Environmental Review Program rules (4410.0200-4410.7800). It is the EQB's intent that the environmental review conducted during the route selection process satisfy the conditions of an alternative review procedure, outlined in 4100.3600. This is simply a means of avoiding the duplication of information in the routing process and a separate environmental review process. Under its environmental review rules, the Board may approve an alternative review process if it addresses substantially the same issues as the EAW and EIS processes, and meets other specific conditions.

This rule does not result in any diminished environmental review or opportunity for public comment. The pipeline route selection process is designed to fully satisfy the intent and content of a formal EIS process. The strategy is to develop the board's pipeline routing review process so that it will qualify as an alternative review process approvable by the board under part 4410.3600 of the environmental review rules.

4415.0085 Published Notice of Routes Accepted.

This part is necessary to satisfy the Board's policy of assuring full

public information and participation. It is intended that the route noticing may occur simultaneously with notice of the second public information meeting required prior to public hearings by 4415.0700. It is desirable to inform those persons who may be affected by a board routing decision.

4415.0090 Public Hearings.

Public hearings for pipeline routing permits are required by Minn. Stat., section 116I.015, subd. 3(b)(3). Formal public hearings will be conducted by the Office of Administrative Hearings so that a complete, certifiable record is available to assist in the Board's route selection decision. Hearings may be held pursuant to Minn. Rule, chapter 1405 (See Laws of Minnesota 1988, chapter 624).

4415.0095 Route Selection and Board Decision.

This rule simply requires that the board's decision be based on the hearing record and that findings of fact be prepared on every route selection decision.

4415.0100 Criteria for Pipeline Route Selection.

Subp. 1. Scope and purpose of criteria. Minn. Stat., section 116I.015 authorizes the board to promulgate criteria to guide the route selection and permitting process. Part 4415.0100 describes the criteria which the board will consider in making its route selection decision. Such criteria are necessary to guide the board in a consistent manner and to give notice of the basis for all of its decisions. It is again emphasized that efforts by the applicant to acquire right-of-way easements before the board's final route decision will not be considered a factor in its decision.

Subp. 2. Standard. Subpart 2 states the standard to which the listed criteria must contribute. It is consistent with the board's statutory mandate and the state's environmental policy.

Subp. 3. Criteria. The ten criteria listed are comprised of topics drawn from the pipeline routing act (Minn. Stat., section 116I.015), the transmission line siting rules (4400), and the board's environmental review rules (4410).

The pipeline routing act identified three criteria which must be included among those established by rule. Criteria A, B, and J of this subpart encompass the three criteria required by statute (Minn. Stat., section 116I.015, subp. 3 subsection 4) and broadly include both human and natural environments. These criteria are used to evaluate environmental impacts, with the exception of reference to pipeline setback ordinances.

Criteria A through F are similar to those found in the transmission

line siting rules (4400). The use of these criteria have proven to be an excellent test for environmental compatibility in past decisions before the board.

Criteria F through J are taken from the content requirements for environmental impact statements found in the rules of the environmental review program (4410). Inclusion of these criteria, when taken with portions of the application contents part of these rules, provides for a level of environmental review consistent with the conditions qualifying for alternative review under the board's environmental review program. This obviates the need for a separate EIS for pipeline routing applications. It will be the applicant's responsibility to provide a discussion of these criteria in its application, pursuant to part 4415.0145.

APPLICATION PROCEDURES

4415.0105 Procedural Requirements.

Subparts 1 through 5. These subparts describe the application procedures a pipeline proposer must follow to begin the route selection or exemption process. Subpart 4 provides that an application must be received at least 21 days before the board meeting at which the application is to be considered. This is the very minimum of time to permit adequate review and minor revisions or addendums before the board meeting agenda is set and properly noticed. The board's operating rules require in 4405.0600 that notice of agenda items be received 14 days before the regularly scheduled board meeting. The 21 days is thus a reasonable time period. Applicants will be encouraged to make their application submittal even earlier for larger projects to ensure adequate review. This would reduce any likelihood that delays would result from a conditional acceptance or rejection of the application due to deficiencies. It is intended that board staff will review the application prior to board consideration and work with the applicant to correct deficiencies before formal presentation to the board at its next meeting.

Subp. 6. Application distribution. Subpart 6 lists entities which must receive copies of the application. The applicant is responsible for the distribution specified and for maintaining a distribution list of those receiving the application. The required distribution is not unreasonable and ensures that adequate noticing is provided early in the review process. Presuming that large projects will require a lengthy routing permit application, distribution to adjacent landowners would be overly burdensome to the applicant and is not required. Notice to affected landowners is provided through media advertisements and information meetings in each county crossed, as required in 4415.0050 and 4415.0070. However, it is appropriate to require the applicant to provide a copy of the application to any interested person who requests one.

CONTENTS OF APPLICATION

4415.0115 General Information.

Subparts 1 through 4 identifies responsible parties and provides for a brief summary of the applicant's proposed project.

4415.0120 Description of Proposed Pipeline and Associated Facilities.

This part requires that the application contain descriptions of specific physical characteristics of the proposed pipeline. It provides basic information of interest to governmental units and affected landowners. It does not require disclosure of proprietary or exclusive information, or information that is not normally provided for other permits required from state and federal agencies. The emphasis is on all characteristics of the project which may have environmental impacts. The required information is reasonable and readily available to pipeline companies.

4415.0125 Land Requirements.

This part requires that the applicant provide a description of land needed to establish a permanent pipeline right-of-way and associated facilities. Estimates are permitted in several instances. There are no unusual or unreasonable data requirements in the list of descriptive items. The information is needed to assess the environmental impacts of the project.

4415.0130 Project Expansion.

Part 4415.0130 requires a description of the possibility that the proposed project may be expanded after it has been constructed as proposed. This information is necessary to assess the cumulative environmental impacts which may in the future be dependent on a route selection decision. For example, if a present route is selected between two sensitive natural areas or residences with no room to spare, a future expansion requiring additional right-of-way would certainly cause an impact. If future expansion can be anticipated, an attempt can be made in the routing process to avoid future impacts.

Additionally, this rule is needed to address criterion B. in subpart 7 of Environmental Review rule 4410.1700, which requires consideration of cumulative impacts in the determination of the need for an EIS.

4415.0135 Right-of-way Preparation Procedures and Construction Activity Sequence.

This part requires a description of the sequence of activities

necessary to prepare the right-of-way for construction and the actual construction. This information primarily benefits affected landowners by letting them know what will be happening on their property after the routing permit is issued. It also is essential in assessing the environmental impacts so that the route with the least potential for adverse impacts can be designated. It is recognized that much of the discussion must be drawn from standard procedures and that unexpected situations will require deviation from those procedures. The applicant is expected to address the reasonable conditions it anticipates and utilize procedures which cause the least adverse impacts. Special situations such as major water crossings are to be described in this section of the application.

4415.0140 Location of Preferred Route and Description of Environment.

Part 4415.0140 is needed in an application to identify the applicant's preferred and alternative routes and to describe the environment through which the route passes. This is representative information required for environmental impact assessment. The description of the environment is intended to be general in nature and include land uses, natural resources, soil and landscape characteristics, and any other appropriate information. It is a reasonable requirement that will provide the basis for assessing the adequacy of the impacts description which is to follow.

4415.0145 Environmental Impact of Preferred Route.

Part 4415.0145 requires that the applicant include an analysis of the potential impacts which may result from the proposed project. It is an essential component of environmental review and it is appropriate for the applicant provide the analysis as justification for the preferred route. This part of the application will be compared to the discussion of alternative route impacts required by part 4415.0170.

4415.0150 Right-of-way Protection and Restoration Measures.

Again a necessary element of environmental assessment, part 4415.0150 requires a description of the measures which will be taken to avoid adverse impacts and to mitigate unavoidable adverse impacts. It is intended that the applicant will undertake measures that not only reduce necessary compensation for physical damages, but that also avoid damages to natural resources for which compensation cannot be determined and which are irreversible. The objective of the route selection and environmental review process is to identify a pipeline route within which a right-of-way can be located with minimum adverse change in the physical environment, either by avoidance or restoration.

4415.0160 Operation and Maintenance.

Part 4415.0160 requires an applicant to describe the procedures which will be used for operation and maintenance of the pipeline. The description should include both standard procedures used by the applicant and special practices that may be required for the project for which a permit is being sought. This information can influence the route selection decision and is needed to provide a complete record upon which the board can base its decision. For example, a section of pipeline which must be accessible for operational purposes throughout the year would not be routed through a wetland.

4415.0165 List of Government Agencies and Permits.

The application information required in part 4415.0165 is a standard requirement for environmental review. Permits required by other governmental agencies often regulate impacts on the environment and a knowledge of these controls is essential in developing a complete record of environmental assessment.

4415.0170 Evidence of Consideration of Alternative Routes.

The information required in part 4415.0170 is to be included in an application for a pipeline routing permit for a project which will be reviewed in the full nine month process, but not for the partial exemption process. The exclusion of this rule requirement from the partial exemption process can be cross-referenced to part 4415.0035, subpart 1 and to Minn. Stat., section 116I.015, subp. 3(b)(7).

Route alternatives must be considered before the board can determine that the final route decision causes the least environmental impact. The criteria to be considered by the board (part 4415.0100) in selecting a route with the least impact must be applied to each route which can reasonable be utilized. It is to the applicant's advantage to fully consider reasonable route alternatives and to describe its analysis and conclusions in the application for a preferred route.

The route selection process is designed to encourage thorough evaluation of all reasonable route alternatives. Reasonable route alternatives which are known to the applicant but not included in the application will surface during the process and possibly require additional costs and time to analyze. An applicant's credibility is enhanced if full disclosure is reflected at the time of application.

PIPELINE ROUTING PERMIT

4415.0175 Permit Issuance, Distribution and Eminent Domain.

Subp. 1. Permit issuance. Part 4415.0175 describes how the board issues the routing permit and distributes it. It provides that the board may stipulate specific conditions of permit issuance by including provisions containing the conditions in the permit. It provides that the board can specify the route to be used, which by

definition is up to 1.25 miles in width. Where the public hearing record contains information identifying a specific, narrower route, even the width of a right-of-way, which meets its minimum impact criteria, the board has established precedence in transmission line applications for designating a specific right-of-way location. For example, the board may specify that a new pipeline right-of-way follow an existing right-of-way where possible. The option is necessary to clearly identify the board's intent of minimizing impacts and making a decisions based on information in the record. It is important that the board reserve the right to attach conditions to the permit which address specific aspects of right-of-way preparation, construction, cleanup and restoration. The conditions are intended to mitigate or avoid adverse affects which are unique to specific locations and are not among the generic conditions listed in part 4415.0195.

Subp. 2. Permit distribution. The requirement that the permittee provide affected landowners with a copy of the pipeline routing permit assures a clear understanding of the board's decision on route designation and conditions attached to the permit. This action is necessary to facilitate permit compliance.

Subpart 3 is needed to clarify that the permittee has the right of eminent domain under a separate statute and that the board's route selection process under these rules in no way diminishes the permittee's rights under the eminent domain statute, Minn. Stat., section 117.48, which also specifies that necessary permits must be obtained before the exercise of condemnation rights.

4415.0180 Delay in Route Construction.

Part 4415.0180 provides the basis for delaying the construction of a pipeline in a route permitted by the board. The permit is valid for four years after being issued. This is the period used in the transmission line siting rules and appear to be reasonable for pipeline permits as well. It is appropriate that some period be established that recognizes that the environment within a designated route can change if the project is delayed.

After four years, the permit is suspended for an indefinite time. The permittee may at any time thereafter regain the permit if it can be shown that no significant changes have occurred along the proposed right-of-way. These provisions recognize that the cost and time required to complete the route selection process can be substantial and that reasonable delays should not require unwarranted additional costs.

4415.0185 Permit Amendments.

Part 4415.0185 provides a process for a permittee to apply for amendments to a routing permit which the board has issued.

Amendments can be requested either to the designated route or the conditions which have been included in the permit. The time periods allowed for board review are the minimum required for adequate analysis and field inspection.

An amendment provision is needed to respond to situations which were not foreseen in the routing process and become known during right-of-way acquisition or construction. Minor amendments will be granted without additional study by the board. If a minor amendment application is submitted at least three weeks before a regularly scheduled board meeting, the board will in most cases be able to approve it at that meeting. More involved considerations may warrant use of the 45 days for the initial determination and the 70 days for final approval.

4415.0190 Review of Plan and Profile and Right-of-way Construction Specifications.

A construction plan is essential in ascertaining that the pipeline will be constructed within the route approved by the Board. It is anticipated that, as appropriate, the plan will also reflect any special conditions stipulated by the Board in granting the construction permit.

The plan will simply be a copy of the working drawings prepared during the design phase, with special markings as appropriate. No special effort or documentation by the permittee is necessary to satisfy this provision.

4415.0195 Permit Conditions for Right-of-way Preparation, Construction, Cleanup, and Restoration.

This entire section is intended to provide a listing of general environmental concerns which would be reasonable on all pipeline projects. In many cases these permit requirements are often already standard operating practice with some pipeline companies, but it is helpful to include them in these rules and in a permit to provide potentially affected landowners with an understanding of the scope of impact mitigation intended by the MEQB. By inclusion in these rules, it is intended that parts A through O become minimum conditions of a pipeline routing and construction permit issued by the board.

Part A is included as information for affected landowners. Everyone in the state is already subject to the provisions of applicable state rules and regulations but it is reasonable to reference them here in the interest of compiling a complete listing of environmental controls which must be observed and are in the best interest of the public.

Part B recognizes that pipeline companies and contractors have some flexibility in how much clearing is necessary to install and safely operate a pipeline, which is required under the provisions of Minn. Stat., section 116I.015, subp. 3(b)(9). That flexibility is helpful

in negotiating right-of-way agreements with landowners where there is concern about some landscape feature, such as unique or functional vegetation. For example, it is reasonable to avoid the "tunnel effect" of a fully cleared right-of-way through a forested area which is considered scenic or has potential for residential development.

Part C deals with protection of streams within and adjacent to the right-of-way. Special attention is necessary when these areas are disturbed due to the potential for erosion. Although other federal, state and local regulations may cover these situations, it is necessary to point out the applicability of these regulations to the pipeline right-of-way.

Part D emphasizes the importance of protecting topsoil on the right-of-way through cultivated areas. The intent is to preserve the capability of the soil to support vegetative growth similar to that existing before construction. The extent to which topsoil is preserved will depend on conditions and negotiations with landowners. Agricultural fields, steep slopes and golf courses are types of areas in which topsoil is of particular importance. Though separation of topsoil before trenching can incur additional cost to the permittee, it is reasonable to do so if the landowner wishes and conditions permit. Under the terms of a typical right-of-way agreement, the landowner retains most rights to surface use of the right-of-way after construction, and should be able to expect the soil productivity to remain as unchanged as possible.

Part E addresses soil compaction impacts. Numerous studies have shown that heavy construction equipment, such as that used in pipeline construction, can compact soils, which can in turn reduce crop productivity. As with topsoil mixing, soil compaction is an impact that remains after construction to the potential detriment of the landowner. These types of impacts are difficult to predict and may not be known for several years after construction, so that compensation may be inadequate. It is reasonable to expect the permittee to take precautions in cultivated areas to limit the conditions under which excessive soil compaction may occur.

Part F requires that precautions must be taken by the permittee to protect livestock and crops. Losses or damages are typically compensated for by the pipeline company when such can be proved. To avoid questionable claims, poor public relations and potentially irreplaceable damages to livestock or crops, it is reasonable to expect the permittee to use excellent judgement in avoiding impacts.

Part G informs the permittee that the board expects that precautions will be taken to protect against pollution of all kinds, both those specified in this section and any other type which can be reasonable avoided. It anticipates that the permittee will be a good steward of the land crossed by the route the board approves.

Parts H and I emphasize that the right-of-way is to be relatively free of waste materials both during and after construction. Construction crews are on the right-of-way only temporarily and

should continuously police the worksite as they move along the pipeline right-of-way.

Parts J, K, and L stipulates that the permittee will be responsible for the repair, replacement or compensation for the replacement costs of damages to drain tiles, lands crossed to gain access to the right-of-way, and fences and gates. As with any other types of damages resulting from pipeline construction, the permittee should be responsible for specific damages even if such damages are not included in provisions of the right-of-way easement agreement.

Part M makes the permittee responsible for crop or property damages resulting from the permittee's pipeline activity. It is included to assure landowners and remind the permittee.

Part N requires protection of shelterbelts, which includes vegetative plantings functioning to screen the effects of wind or noise, or to provide a visual or privacy screen. Such plantings take many years to become established and functional and should not be altered without compensation or replacement. Often the plantings are purposely comprised of species which provide wildlife habitat. Residences adjacent to existing rights-of-way, particularly transmission line, railroad and highway rights-of-way, often have a vegetative screen for privacy and noise reduction. As proposed pipelines often parallel existing rights-of-way where possible, these plantings will commonly be encountered. The permittee should consider the value of these plantings and take reasonable precautions to protect them during pipeline routing and construction.

Part O essentially summarizes the previous parts and generically provides for restoration of all lands crossed by the permitted right-of-way as required by Minn. Stat. 116I.015 Subd. 3(b) (9). It recognizes the discretion essential on the part of the permittee and landowners in negotiating a reasonable agreement on what will occur on the owner's land. The intent of this part is to establish the board's intent that the permittee keep construction impacts to a minimum and be responsible for damages which exceed normal construction disturbances.

4415.0200 Report of Complaints.

Part 4415.0200 requires the permittee to inform the board, through its staff, of complaints it receives that relate to permit conditions. This is necessary to ascertain that the permittee is proceeding with the project in a manner consistent with the permit. It is reasonable to handle permit compliance for pipelines in a manner similar to that used for transmission lines. Procedures have been established that encourage complainants and the company to resolve issues before board intervention is needed and that define complaints as significant disagreements reported in writing rather than minor oral complaints that can be resolved in the field. It is not intended that complaints which have nothing to do with the permit be reported to the board.

The major complaints the company must report are only those which involve specific conditions of the permit or involve an action by the company which are contrary to the company's representations in the routing process. Complaints about the adequacy of compensation for right-of-way easement purchase are not related to the permit and will not be considered by the board.

The permit will include reference to a contact at the EQB who will handle complaints made directly to the board. In all cases, the complainant will be requested to take their problem first to the company for resolution. If necessary, board staff will assist both parties in resolving the complaint. This procedure has worked successfully with the transmission line permit process.

4415.0205 Permit Modification or Suspension.

A procedure for board action to modify or suspend a pipeline routing permit is described in part 4415.0205. A permit is issued to an applicant on the basis of stated intent to construct and operate a pipeline according to specific standards and conditions identified in the hearing record and the permit itself. In the event the permittee or its agent/contractor violates or gives evidence that it may violate the terms of the permit, a process is needed for the board to consider all evidence and take action to cause the violation to cease. Any type of state-issued permit must have such a process if it is to be effective in regulating and mitigating environmental impacts.

Recognizing that the financial consequences of stopping a pipeline construction project can be very large, expedient board action is required to determine the seriousness of the violation and the appropriate action the board should take. The board cannot require the project to cease until the review process is complete. The same process is provided in the transmission line siting rules.

The process is fair and contains several elements which allow the permittee to correct violations prior to the suspension of its permit.

OTHER REQUIREMENTS

4415.0210 Application Fees.

Part 4415.0210 reflects the requirement of Minn. Stat. section 116I.015 Subd 3(b) (6) that the applicant pay a fee to the board to cover the costs of processing the application. The board's biennial budget does not provide funding for processing of applications and no assessment is made of the pipeline industry in Minnesota to cover such costs. It is necessary that the board's costs be borne by the applicant rather than by state taxpayers.

The fee is not standardized, but is based on anticipated costs of reasonable activities and materials associated with each individual project. The applicant participates in the estimating of costs and the board must approve the estimated fee at the time it accepts the application. Actual costs are intended to be recovered for all actions initiated by a pipeline and which come before the board. This will include all applications, emergency determinations, permit modifications and suspensions.

4415.0215 Responsibilities.

Part 4415.0125 is standard language in state agency rules requiring the board to make improvements in the rules as necessary and to assist anyone in understanding the rules.

IV. OTHER CONSIDERATIONS

The proposed rules will not require the expenditure of public money by local public bodies, therefore the requirements of Minnesota Statutes, section 14.11, subdivision do not apply.

The proposed rules will not have a direct and substantial impact on agricultural land in the state because pipeline projects will be reviewed in a manner that complies with the requirements of Minn. Stat. 116D and the environmental review rules, therefore the requirements of Minnesota Statutes, sections 14.11, subdivision 2, and 17.80 to 17.84 do not apply.

The proposed rules will not have an impact on small business, therefore the requirements of Minnesota Statutes, section 14.115 do not apply.

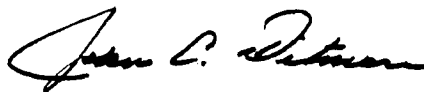
The fee proposed in the rules, part 4415.0210, which were not specified by statute, were approved by Department of Finance on September 13, 1988. Their approval is attached to the Statement of Need and Reasonableness.

The Board has complied with all of the rule requirements set forth in Minnesota Statutes, section 116I.015 (1987) and Laws of Minnesota 1988, chapter 624.

V. CONCLUSION

Based on the foregoing, the proposed permanent rules relating to pipeline line routing (parts 4415.0100 to 4415.0215) are both needed and reasonable.

Dated: September 30, 1988



John C. Ditmore, Chair
Environmental Quality Board