

STATE OF MINNESOTA
COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL
QUALITY BOARD

In the Matter of Proposed
Amendments to the Rules Governing
the Environmental Review Program

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

This document explains the need for and reasonableness of proposed amendments to the EQB rules governing the Minnesota environmental review program, sometimes referred to as the Environmental Impact Statement (EIS) program. The amendments affect only the section of the environmental review rules entitled "Special Rules For Certain Large Energy Facilities And High Voltage Transmission Lines", parts 4410.7000 through 4410.7800.

The proposed amendments would revise the rules in effect since 1989. The environmental review program dates to 1974, when the first edition of rules governing the program were adopted. The rules were also extensively amended in 1982.

The Board is directed by Minnesota Rules, part 4410.0400 to monitor the effectiveness of the environmental review program and to take appropriate action to improve the process. As part of its ongoing administrative and technical assistance function, the EQB staff keeps track of problem areas in the rules -- provisions which are inefficient, unwieldy or otherwise in need of revision.

Rulemaking began September 11, 1989 with publication of Notice of Intent to Solicit Outside Opinion in the State Register. No written responses were received as a result of the notice of intent to solicit outside information or opinions. The proposed amendments were made on the basis of internal staff review.

The proposed environmental review rule amendments are associated with a separate rulemaking process to amend the EQB's Power Plant Siting Rules, chapter 4400. The two rulemaking procedures are being undertaken concurrently and will be administered in the same time frame. The two should be considered together in all respects.

II. STATEMENT OF BOARD'S STATUTORY AUTHORITY

The EQB is given statutory authority under Minnesota Statutes, section 116D.04 and 116D.045 to adopt rules to implement this program. Under these statutes the Board has the necessary authority to adopt the proposed amendments.

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 rule amendments as proposed. In general terms, this means that the Board must set forth the reasons for its proposals, 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 statement of need and reasonableness and the proposed rule changes are two separate documents, which must be read together. Additionally, in this instance, it is helpful to refer to the associated proposed amendments to the power plant siting rules, chapter 4400. Much of what appears as deleted rule language in the environmental review rules has been reconstituted as alternative environmental review procedures in the power plant siting rules.

4410.7000 SPECIAL RULES FOR LEPPG

This part has two substantive amendments:

(1) The current rules exclude emergency LEPPG certification application procedures under the power plant siting act from the environmental review requirements of part 4410.7000. The amendment excludes LEPPG exemption procedures under the power plant siting act from the same requirements. This is necessary to reflect the creation of an exemption procedure for LEPPG's by the 1989 legislature. The emergency certification and exemption procedures of chapter 4400 have similar provisions for environmental review, which serve as alternative environmental procedures pursuant to this part. It is thus reasonable to include the exemption here to be consistent with the intent of Minnesota Statutes, section 116C.57. This proposed language currently exists in 4410.7400 for HVTL's, which is procedurally similar to LEPPG's.

An amendment in the last sentence of this part gives effect to the above discussion. It includes the exemption procedure of the power plant siting rules (4400.3910) as alternative environmental review, and is needed to be consistent. It is appropriate under the provisions of the environmental review rules permitting alternative review procedures (4410.3600) and Minnesota Statutes, section 116D.04, subd. 4a.

(2) The second amendment in this part is the key change in this rulemaking procedure. At present, an environmental impact statement (EIS) is prepared in conjunction with the process for siting large electric power facilities, but under a different chapter. This dual review is duplicative and inefficient because the issues are the same and the time lines for the two processes are not fully compatible. The intent of the amendment is to merge the environmental review process with the process for siting large electric power facilities to

achieve efficiencies in time and labor and to provide improved opportunities for public participation.

The blended environmental review procedure prescribed in part 4400.3210 is consistent with the intent of the Power Plant Siting Act and the Environmental Policy Act, perhaps more so than in the current dual rule process. The PPS Act states in Minnesota Statute, section 116C.53, subd. 1, that:

The legislature hereby declares it to be the policy of the state to locate large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy the board shall choose locations that minimize adverse human and environmental impact while insuring continuing electric power system reliability and integrity and insuring that electric energy needs are met and fulfilled in an orderly and timely fashion.

The Act further states that in locating large electric power facilities, the board shall decide in accordance with the considerations in Minnesota Statutes, section 116C.57, subd. 4 and the considerations in Minnesota Statutes, section 116D. These two mandated sources of considerations contain lists of 14 and 19 responsibilities, respectively, which embody a very wide range of both specific resource dictates and broad policy mandates, addressing natural and human environmental issues.

Though silent on specifically requiring that an EIS be prepared, it was clearly the intent of the legislature that a thorough environmental assessment was necessary to satisfy the wide ranging mandates relating to impacts and that the assessment was to be an integral part of the siting procedures. The Act does direct the board to develop rules to accomplish its mandated responsibilities.

The Environmental Policy Act (116D), containing provisions for developing a structured environmental review process (EIS's), was passed the same year as the PPS Act, 1973. Subsequent promulgation of rules placed rule language for environmental review of large electric power facilities in the board's environmental review rules (4410) and the rules for the siting processes required by the PPS Act in a separate set of rules (4400).

The mandated process for siting large energy facilities reflects the significant public interest in such facilities and the recognized potential for environmental impacts. The process is rigorous, requires a year to complete, requires a mandated contested case hearing, and involves broad spectrum public participation in the geographic areas affected. The evolution of the environmental review rules reflects the unique structure of this permitting process, resulting in current rules which have a special section of procedural rules applicable only to high voltage transmission lines and power plants (4410.7000 to 4410.7800; Special Rules For Certain Large Energy Facilities And High Voltage Transmission Lines). The special

rules provide numerous exemptions from the regular EIS process when an EIS is being prepared for a large energy facility permit. Even with the exemptions, the special EIS process does not track well with the permitting process.

Under the two sets of current rules, the timing of the public hearings in the siting process and adequacy decision in the EIS process is an unnecessary dichotomy of procedural review. It is appropriate to merge environmental review procedures because the information and issues in the hearing record and the final EIS are typically the same, the interested public citizens are the same in the two separate processes and the decision maker, the EQB, is the same.

The amended procedure deletes the special rules for EIS's for large electric power facilities from the Environmental Review rules (4100) and blends much of the same language with the siting rules (4400). To avoid confusion with the existing process (EIS), the environmental document is proposed to be termed an "environmental impact assessment". The process for scoping and preparation of an EIA, public notice and distribution, and opportunity for public comment have been retained in the siting rules in conformance with the alternative review provisions of 4410.3600.

4410.7100 ENVIRONMENTAL REPORT AT THE CERTIFICATE OF NEED STAGE

It is necessary in subp. 1 to amend the part number references to reflect deletions of other parts, and to clarify that the described procedure occurs during the certificate of need stage.

4410.7200 EIS FOR LEPGP AT CERTIFICATE OF SITE COMPATIBILITY STAGE

It is proposed to delete this part on the basis of the above discussion under 4400.7000. The procedure has been incorporated into the power plant siting rules (4400).

4410.7300 COOPERATIVE PROCESSES

This is also proposed to be deleted here and incorporated into part 4400.3210 as subp. 7. The amendment is needed to be consistent with the intent of the blended process. It is appropriate because cooperative processes are an integral part of efficient and complete environmental review.

4410.7400 through 4410.7800 SPECIAL RULES FOR HVTL

These parts comprise the HVTL portion of the special rules and are similar to the above LEPGP section. The proposed amendments are the similar and are needed and appropriate for the same reasons. The parts are:

4410.7400 SPECIAL RULES FOR HVTL

Proposed amendments are the same as for LEPGP discussed in 4410.7000,

except that the exemption provision was existing in rule and did not need to be added.

4410.7500 ENVIRONMENTAL REPORT AT CERTIFICATE OF NEED STAGE

Again, similar amendments are proposed as for LEPPG, consisting of clarification and renumbering as needed.

4410.7600 EIS AT ROUTE DESIGNATION AND CONSTRUCTION PERMIT STAGE

This part is deleted for the same reasons discussed in 4410.7200.

4410.7700 REVIEW OF HVTL REQUIRING NO CERTIFICATE OF NEED

This part is proposed to be deleted because no reason could be determined for this language being in rule. It is redundant with other rule requirements, convoluted, and unnecessary. It serves no purpose.

4410.7800 COOPERATIVE PROCESSES

This is also proposed to be deleted here and incorporated into part 4400.1210, subp. 7 for the same reasons discussed in 4410.7300 above.

IV. OTHER CONSIDERATIONS

The proposed rule amendments will not require the expenditure of public money by local public bodies, therefore the requirements of Minnesota Statutes, section 14.11, subd. 1, do not apply.

The proposed rule amendments are exempt from the requirements of Minnesota Statutes, sections 14.11, subd. 2, and 17.82 to 17.84, relating to agricultural land use, because power plant and transmission lines projects are reviewed in a manner that complies with the requirements of Minnesota Statutes, section 116D and the environmental review rules adopted under that chapter. These subject rules are special rules for high voltage transmission lines and power plants adopted under 116D. The proposed rule revisions adequately reflect the intent of the State Agricultural Land Preservation and Conservation Policy stated in Minnesota Statutes, section 17.80.

Pursuant to Minnesota Statutes, section 14.115, subp. 3, compliance with provisions of that section, relating to small businesses, will be contrary to the statutory objectives of Minnesota Statutes, section 116D.04, therefore the requirements of Minnesota Statutes, section 14.115 do not apply. This is based on an interpretation of statutory intent that all persons, including both electric energy facility proposers and those affected by projects, must comply with the Minnesota Environmental Policy Act (116D).

V. CONCLUSION

Based on the foregoing, the proposed permanent rule amendments relating to special rules for certain large energy facilities and high voltage transmission lines (parts 4410.0700 to 4410.7800) are both needed and reasonable.

Dated: June 15, 1990


Barbara L. Hughes, Acting Chair
Environmental Quality Board