



January 8, 2018

Legislative Reference Library
645 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Rules of the Environmental Quality Board about Preliminary Draft Environmental Impact Statements (EIS); Revisor's ID Number R-04494

Dear Librarian:

The Environmental Quality Board intends to adopt rules about Preliminary Draft Environmental Impact Statements (EIS). EQB published a Notice of Intent to Adopt Rules without a Public Hearing in the January 8, 2018 State Register.

The Environmental Quality Board prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651-757-2364.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Erik Dahl'.

Erik Cedarleaf Dahl
Planning Director
Environmental Quality Board
Erik.Dahl@state.mn.us
651-757-2364

Enclosure: Statement of Need and Reasonableness

Equal Opportunity Employer

Environmental Quality Board

STATEMENT OF NEED AND REASONABLENESS

In the Matter of Proposed Revisions of Minnesota Rule Chapter
4410.2550

Revisor ID Number: R-04494

The *State Register* notice, this Statement of Need and Reasonableness (SONAR) and the proposed rule will be available during the public comment period at the Environmental Quality Board (EQB) website

<http://www.eqb.state.mn.us>

Alternative Format:

Upon request, this document can be made available in an alternative format. To make a request, contact Erik Cedarleaf Dahl at the Environmental Quality Board, 520 Lafayette Road North, St. Paul, MN 55155; telephone 651-757-2364; or e-mail erik.dahl@state.mn.us

Notice Regarding the Excerpted Language in this SONAR:

The EQB has excerpted language from the draft rules and included those excerpts in this SONAR at the point that the reasonableness of each provision of the rules is discussed. This was done to assist the reader in connecting the rule language with its justification. However, there may be slight discrepancies between the excerpted language and the rule amendments as they are proposed. The EQB intends that the rule language published in the *State Register* at the time the rules are formally proposed is the rule language that is justified in this SONAR.

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Acronyms or abbreviations

Administrative Procedures Act	APA
Administrative Law Judge	ALJ
Chapter	ch.
Code of Federal Regulations	CFR
Department of Agriculture	MDA
Department of Natural Resources	DNR
Department of Transportation	DOT
Environmental Assessment Worksheet	EAW
Environmental Impact Statement	EIS
Environmental Quality Board	EQB or Board
Local Unit of Government	LGU
Minnesota Environmental Policy Act	MEPA
Minnesota Rules	Minn. R.
Minnesota Statutes	Minn. Stat.
Minnesota Management and Budget	MMB
Minnesota	MN
Minnesota Association of Townships	MAT
National Environmental Policy Act	NEPA
Office of Administrative Hearings	OAH
Pollution Control Agency	PCA
Public Utilities Commission	PUC
Responsible Governmental Unit	RGU
Section	§
Statement of Need and Reasonableness	SONAR

Introduction and background

A. Introduction

In the 2017 Minnesota legislative session, (Laws of Minnesota 2017, Chapter 93, Article 2, Section 140) the Minnesota Legislature passed legislation directed the Environmental Quality Board (EQB) to adopt by rule, “procedures to: (2) authorize a responsible government unit to allow a proposer of a specific action to prepare a draft environmental impact statement according to section 116D.04, subdivision 2a, paragraph (i).”¹ Accordingly, the Environmental Quality Board proposes the following amendments to Minnesota Rules (Minn. R.) under Revisor ID R-04494.

This document explains the need for and reasonableness of proposed amendments to the environmental review rules specifically Minn. R. part 4410.2550. It summarizes the evidence and arguments that the Board is relying upon to justify the proposed amendments. It has been prepared to satisfy the requirements of Minnesota Statutes (Minn. Stat.) section (§) 14.131 and Minn. R. part 1400.2070.

B. Background

The Minnesota Environmental Review Program, established by the Minnesota Environmental Policy Act (Act) of 1973, has been in existence since 1974. The program operates under rules adopted by the EQB, which are binding upon all state agencies and political subdivisions of the state.

Draft EIS Rulemaking

This rulemaking amending Minn. R. part 4410.2550 is undertaken at the direction of the 2017 Legislature to adopt the specific language herein.

Public participation and stakeholder involvement

The EQB took the following steps to develop the draft rules, notify interested parties about the draft rules, and to solicit public input on rule language:

- A. The EQB has provided the required notifications to the public and the entities identified in statute. Three Requests for Comments notices were published in the *State Register* on the following dates:
 - a. August 21, 2017
 - b. September 25, 2017

¹ Note: The Session Law reads: “section 116D.04, subdivision 2a, paragraph (i)” however, the cross reference in the law was corrected to read section 116D.04, subdivision 2a, paragraph (k) in the current text of the law and therefore the rest of this SONAR will refer to that paragraph.

- c. November 6, 2017
- B. The EQB has a self-subscribing rule-specific mailing list at: <https://www.eqb.state.mn.us/contact>, which EQB uses to disseminate rule-related information to interested and affected parties on the following dates:
 - a. August 23, 2017
 - b. November 6, 2017
- C. In addition, the EQB sent a GovDelivery notice and a notice the *EQB Monitor* encouraging interested and affected parties to register to receive rulemaking information via the self-subscribing rule-specific mailing list on the following dates:
 - a. August 28, 2017
 - b. November 6, 2017
- D. The EQB established a rule-specific webpage: <https://www.eqb.state.mn.us/content/draft-environmental-impact-statement-eis-rulemaking>, which was used to disseminate rule-related information to interested and affected parties.
- E. The notifications required under Minn. Stat. ch. 14 will be provided at the time the amendments are proposed. The EQB intends to publish a Notice of the Intent to Adopt for the proposed amendments in the *State Register* and to provide additional notice of its activities to all parties who have registered their interest in receiving such notice.

Statutory authority

The Board was authorized and directed by the Minnesota Legislature to undertake this rulemaking (Laws of Minnesota 2017, Chapter 93, Article 2, Section 140). Additional statutory authority for the Board to adopt the rule amendments is found in the Minnesota Environmental Policy Act, Minn. Stat. 116D.04, subdivision 5a(11) and 116D.045, subdivision 1. Under these provisions, the Board has the necessary statutory authority to adopt the proposed rule amendments.

Statement of general need

Minn. Stat. ch. 14 requires the EQB to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the EQB must not be arbitrary or capricious in proposing rules. However, to the extent that need and reasonableness are separate, “need” has come to mean that a problem exists that requires administrative attention, and “reasonableness” means that the solution proposed by the EQB is appropriate. The basis of the need for this rule is described here; reasonableness is addressed in the next Section.

The EQB is proposing amendments to Minn. R. ch. 4410.2550 to:

- A. Adopt (as directed by the 2017 Minnesota Legislature) procedures to authorize a RGU to allow a proposer of a specific action to prepare a preliminary draft EIS according to Minn. Stat. 116D.04, subdivision 2a, paragraph (k).

The desired outcome of this rulemaking is to meet the 2017 Legislative directive. The proposed rulemaking is designed to maximize flexibility for project proposers and responsible government units (RGUs) while maintaining the integrity and reliability of the environmental review process. The rulemaking proposes clarifying language that project proposers may, at their option, present information in the form of a preliminary draft EIS to the RGU for the RGU's use in developing the final EIS. The rulemaking provides for input by the project proposer but the RGU maintains the control over the final EIS contents. The proposed rulemaking is necessary and reasonable to achieve the legislature's goals specifically for this rulemaking.

The Minnesota Legislature determined there was a need to clarify that RGUs could allow project proposers to prepare a preliminary draft EIS according to Minn. Stat. 116D.04, subdivision 2a, paragraph (k). The session law states "draft environmental impact statement" but refers to paragraph "k" in Minn. Stat. 116D.04, subdivision 2a, which addresses the creation of a "preliminary draft EIS". Accordingly, the EQB focused on the need to update Minn. R. 4410.2550, the preliminary draft EIS section.

The Legislatures' focus on paragraph "k", which addresses preliminary draft EISs, signals that although the project proposer is welcome to submit a preliminary draft EIS, the actual, final EIS, lies in the hands of the RGU and that the RGU may accept or reject the preliminary draft EIS contents.

The 2017 Legislative language states, "The board must by rule adopt procedures to: (2) authorize a responsible government unit to allow..." The EQB did not interpret the Legislative language to mean that prescriptive preliminary draft EIS procedures should be developed in rule. Rather, as the Legislative language states, "adopt procedures to authorize," meaning the EQB must adopt a rule to authorize the RGU to allow the development of a preliminary draft EIS.

EQB was mindful to not to be too prescriptive with this rulemaking and it does not include deadlines which could lead to unintended negative effects on a project or the environmental review process itself (construction schedules, securing funding, the ability for people at the local level to best assess the timing and development of the project and the ability for the public to engage in the process).

It is necessary to codify the legislative language in rule to make it clear that proposers are allowed to develop preliminary draft EIS content according to Minn. Stat. section 116D.04, subdivision 2a, paragraph (k). The proposed rulemaking is necessary to achieve the legislature's aforementioned goals and directive specifically for this rulemaking.

Reasonableness of the amendments

A. General reasonableness

Minn. Stat. ch. 14 requires the EQB to explain the facts establishing the reasonableness of the proposed rule amendments. "Reasonableness" means that there is a rational basis for EQB's proposed action.

The EQB is proposing amendments to Minn. R. ch. 4410.2250 to:

- A. Adopt (as directed by the Minnesota Legislature in 2017) procedures to authorize a RGU to allow a proposer of a specific action to prepare a preliminary draft EIS according to section 116D.04, subdivision 2a, paragraph (k).

The desired outcome is to meet the 2017 Legislative directive. Rule updates keep the rules relevant and allow for clarifications to make the rule more easily understood by project proposers, RGUs and the general public.

B. Specific reasonableness

The specific reasonableness of each change is discussed below. Some of the amendments have resulted in the re-numbering or changes to the lettering of items and sub items. Those types of formatting changes are made through the authority of the Office of the Revisor of Statutes and the basis for those changes is not included in this SONAR.

CHAPTER AND PART 4410.2550 PREMINARY DRAFT EIS OPTION.

Proposed change - Part 4410.2550, Preliminary Draft EIS Option.

The proposer of a specific action may include in the information submitted to the RGU a preliminary draft EIS on that action for review, modification, and determination of completeness and adequacy by the RGU. The RGU may allow a proposer of a specific action to prepare a preliminary draft environmental impact statement according to Minnesota Statutes, section 116D.04, subdivision 2a, paragraph (k). A preliminary draft EIS prepared by the project proposer and submitted to the RGU shall identify or include as an appendix all studies and other sources of information used to substantiate the analysis contained in the preliminary draft EIS. The RGU shall require additional studies, if needed, and obtain from the project proposer all additional studies and information necessary for the RGU to perform its responsibility to review, modify, and determine the completeness and adequacy of the EIS.

Justification for Part 4410.2550, Preliminary Draft EIS Option.

The proposed rule language for Minn. R. 4410.2550 is necessary and reasonable because the 2017 Minnesota Legislature (Laws of Minnesota 2017, Chapter 93, Article 2, Section 140) directed the Environmental Quality Board to develop, in rule, procedures to authorize a RGU to allow a proposer of a specific action to prepare a preliminary draft EIS according to section 116D.04, subdivision 2a, paragraph (k).

The Minnesota Legislature determined there was a need to clarify that a RGU may allow a project proposer to prepare a preliminary draft EIS according to Minn. Stat. 116D.04, subdivision 2a, paragraph (k). It is reasonable to adopt a rule codifying this language to provide more clarity for RGUs and proposers. EQB is adding the legislative language to Minn. R. 4410.2550 for consistency between statutory language and rule language.

It is reasonable to develop rule language that creates greater clarity for the roles and responsibilities (of the project proposer and RGU), because the clarity is helpful for the parties involved in environmental review and may bring about greater efficiency in the EIS process. There could be potential cost savings if a RGU allows a proposer to provide input via a preliminary draft EIS while maintaining the integrity of the RGU's role as the environmental review authority and the final word

on the EIS and the adequacy of the environmental review. It is reasonable to codify the Legislative language in final rule to clarify roles and responsibilities of the proposer and RGU.

The proposed language change is also reasonable because it allows the proposer to proactively develop preliminary draft EIS content, increasing efficiency, flexibility, and opportunity in the process and potentially reducing the cost for the RGU, while maintaining the integrity of the environmental review process. Efficiency may be gained if the RGU is confident in the preliminary draft EIS content and can incorporate it into the final EIS.

The 2017 Legislative language states, “The board must by rule adopt procedures to: (2) authorize a responsible government unit to allow,” The EQB did not interpret the Legislative language to mean that prescriptive preliminary draft EIS procedures should be developed in rule beyond the detail currently included in Minn. R. 4410.2550. Rather, as the Legislative language states, “adopt procedures to authorize,” meaning the EQB must adopt a rule to authorize the RGU to allow the development of a preliminary draft EIS. It is reasonable to adopt the legislative language into Minn. R. 4410.2550 because this is where the concept of preliminary draft is referenced in EQB rules.

It is reasonable to codify the legislative language in rule to achieve the Legislative directive to make it clear that proposers are allowed to develop preliminary draft EIS content according to Minn. Stat. section 116D.04, subdivision 2a, paragraph (k).

Regulatory analysis

This part addresses the requirements of Minn. Stat. § 14.131 (a), which compels state agencies to address a number of questions in the SONAR. In some cases, the response will depend on the specific amendment being proposed and specific detail will be provided. However, for most of the questions, the EQB’s response can be general and will apply across all of the components of this rulemaking, regardless of the specific amendment being proposed.

A. Description of the classes of person who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

As with the existing rules, the proposed amendment to Minn. R. 4410.2550 will primarily affect persons who propose to develop projects in Minnesota that have, or may have, potential for significant environmental effects.

The proposed language change to Minn. R. 4410.2550 should have little to no effect on the cost to EQB, RGUs, the general public or proposers. Currently, proposers are already allowed to prepare preliminary draft EIS content at their own cost, and thus EQB anticipates no extra costs to proposers. A RGU cannot stop a project proposer from submitting a preliminary draft EIS for its review. The RGU does not have to use the preliminary draft EIS content, but they cannot tell a project proposer that they cannot submit the preliminary draft EIS content because it is allowed in statute.

There is no mandatory requirement that a project proposer submit a preliminary draft EIS. The proposed rule clarifies that they may submit a preliminary draft EIS—so any additional costs would be voluntarily incurred by the project proposers. This proposed rule change will provide more clarity to the EQB, RGUs, the general public, and proposers, that proposers of

a specific action are allowed to prepare a preliminary draft EIS. If the RGU has confidence in the preliminary draft EIS presented by the project proposer, the cost to the RGU and in turn, to the applicable taxpayers, might decrease.

The proposed language change 4410.2550 will benefit all Minnesotans by providing more clarity as to who can prepare a preliminary draft EIS.

B. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The proposed rule amendments clarify practices for preliminary draft EIS preparation already in place for the statewide environmental review program, therefore the proposed rule amendments are unlikely to result in an increase in costs to state agencies.

The proposed rule does not relate to enforcement.

The EQB anticipates no effect on state revenues.

C. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The proposed rulemaking and specific language changes to Minn. R. 4410.2550 were incorporated in the directive of the 2017 Minnesota Legislature (Laws of Minnesota 2017, Chapter 93, Article 2, Section 140) which specifically directed this rulemaking, thus no less costly methods or less intrusive methods were available to achieve the purpose of the proposed rule or to comply with the legislative directive.

D. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.

The proposed rulemaking and language changes to Minn. R. 4410.2550 were incorporated in the directive of the 2017 Minnesota Legislature (Laws of Minnesota 2017, Chapter 93, Article 2, Section 140) thus no alternative methods were available to achieve the purpose of the proposed rule or to comply with the legislative directive.

E. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

As with the existing rules, the proposed amendment to Minn. R. 4410.2550 will primarily affect persons who propose to develop projects in Minnesota that have, or may have, potential for significant environmental effects.

The proposed language change to Minn. R. 4410.2550 should have little to no effect on the costs assessed to EQB, RGUs, the general public or proposers. Currently, proposers already

have the authority to prepare a preliminary draft EIS, and thus EQB anticipates no extra or additional costs to proposers, which they themselves, do not authorize by choosing to voluntarily produce a preliminary draft EIS.

- F. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.**

The proposed rule language for Minn. R. 4410.2550 was directed to be completed by the 2017 Minnesota Legislature (Laws of Minnesota 2017, Chapter 93, Article 2, Section 140) thus; no other options were available to complete the legislative directive and not adopting the proposed rule language is not considered an option. No additional costs or consequences should be involved.

As stated before, the proposed language change to Minn. R. 4410.2550 should have little to no effect on the costs or consequences for EQB, RGUs, other government units, businesses, the general public or proposers. Currently, proposers already have the authority to prepare a preliminary draft EIS, and thus EQB anticipates no extra or additional costs to proposers, which they themselves, do not authorize by choosing to voluntarily produce a preliminary draft EIS.

The consequence of not adopting the proposed rule would create more uncertainty for project proposers and RGUs in the environmental review process.

- G. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.**

The proposed rule language for Minn. R. 4410.2550 is specific to the preparation of a preliminary draft EIS for the State of Minnesota and EQB sees no differences or impacts to existing federal regulations.

- H. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.**

Minn. Stat. § 14.131 defines "cumulative effect" as "the impact that results from incremental impact of the proposed rule in addition to the other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time."

There is no cumulative effect of the rule changes with other federal and state regulations related to Environmental Review. The proposed 4410 rule change covers the process of preparing a preliminary draft EIS. The change is an attempt clarify that RGUs may allow proposers to prepare a preliminary draft EIS for the RGUs consideration.

Notice plan

Minn. Stat. § 14.131 requires that an Agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule, or explain why these efforts were not made.

The EQB utilizes a self-subscription service for interested and affected parties to register to receive rule related activities at the EQB. Each EQB rule project has a page on the EQB's website and rulemaking information include status, timelines and drafts can be found on the rulemaking webpage. In addition to the public legislative process, which mandated this rulemaking, three separate Request for Comments notices were published for notice and comment.

A. Notice:

The EQB published notice requesting comments on planned rule amendments to Minn. R. ch. 4410. The notice was placed on the EQB's rulemaking webpage. Three Requests for Comments notices were published in the *State Register* as follows:

- A. The EQB has provided the required notifications to the public and the entities identified in statute. Three separate Requests for Comments notices were published in the *State Register* on:
 - a. August 21, 2017
 - b. September 25, 2017
 - c. November 6, 2017
- B. The EQB has a self-subscribing rule-specific mailing list at: <https://www.eqb.state.mn.us/contact> which EQB uses to disseminate rule-related information to interested and affected parties. Please note: an electronic notice was inadvertently not sent for the September 25, 2017 notice and that is why EQB decided to republish the notice in the *State Register* and send a new electronic notice in November 2017.
 - a. August 23, 2017
 - b. November 6, 2017
- C. In addition, the EQB sent a GovDelivery notice and a notice the *EQB Monitor* encouraging interested and affected parties to register to receive rulemaking information via the self-subscribing rule-specific mailing list. Please note: an electronic notice was inadvertently not sent for the September 25, 2017 notice and that is why EQB decided to republish the notice in the *State Register* and send a new electronic notice in November 2017.
 - a. August 28, 2017
 - b. November 6, 2017
- D. The EQB established a rule-specific webpage: <https://www.eqb.state.mn.us/content/draft-environmental-impact-statement-eis-rulemaking>, which was used to disseminate rule-related information to interested and affected parties.
- E. The notifications required under Minn. Stat. ch. 14 will be provided at the time the amendments are proposed. The EQB intends to publish a Notice of the Intent to Adopt for the proposed amendments in the *State Register* and to provide additional notice of its activities to all parties who have registered their interest in receiving such notice.

Minn. Stat. § 14.22. On the date the Notice is published in the *State Register*, the EQB intends to send an electronic notice with a hyperlink to electronic copies of the Notice, SONAR, and proposed rule amendments to all parties who have self-subscribed to the EQB rulemaking distribution lists for the purpose of receiving notice of rule proceedings. The EQB will also distribute an electronic notice with a hyperlink to electronic copies of the Notice, SONAR, and proposed rule amendments in the next available *EQB Monitor*.

Additionally, the EQB intends to send an electronic notice with a hyperlink to electronic copies of the Notice, SONAR, and the proposed rule amendments to the following organizations:

Name	Contact	Email
Association of MN Counties	Jennifer Berquam, Environment & Natural Resources Policy Analyst	jberquam@mncounties.org
League of MN Cities	Craig Johnson, Intergovernmental Relations Representative	cjohnson@lmc.org
MN Association of Townships (MAT)	Gary Pedersen, Executive Director	info@mntownships.org gpedersen@mntownships.org
MN Center for Environmental Advocacy	Kathryn Hoffman	khoffman@mncenter.org
MN Chamber of Commerce	Tony Kwilas	tkwilas@mncchamber.com
Metropolitan Council	Leisa Thompson, MCES General Manager	leisa.thompson@metc.state.mn.us
Minnesota Association of Planning and Zoning Administrators	Ben Baglio, AMC Policy Liaison	bbaglio@mncounties.org

A copy of the Notice, proposed rule amendments and SONAR will be posted on the EQB's rulemaking webpage: <https://www.eqb.state.mn.us/content/draft-environmental-impact-statement-eis-rulemaking>

Pursuant to Minn. Stat. § 14.22, the EQB believes its regular means of notice, including publication in the *State Register*, *EQB Monitor* and on the EQB's rulemaking webpage, will provide adequate notice of this rulemaking to persons interested in or regulated by these rules.

Minn. Stat. § 14.116. The EQB intends to send a cover letter with a hyperlink to electronic copies of the Notice, SONAR, and the proposed rule amendments to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule amendments, as required by Minn. Stat. § 14.116. The timing of this notice will occur at least 33 days before the end of the comment period because it will be delivered via U.S. Mail.

This statute also states that if the mailing of the notice is within two years of the effective date of the law granting the agency authority to adopt the proposed rules, the agency must make

reasonable efforts to send a copy of the notice and SONAR to all sitting House and Senate legislators who were chief authors of the bill granting the rulemaking.

Pursuant to Minn. Stat. §14.111, if the rule affects farming operations or agricultural land, Minn. Stat. §14.111 requires an agency to provide a copy of the proposed rule changes to the Commissioner of Agriculture no later than 30 days before publication of the proposed rule in the *State Register*. The rule changes will be submitted to the Commissioner of the Department of Agriculture with a cover letter notifying the MDA of the changes. This rule doesn't specifically address farming operations or agricultural land but EQB is providing notice to the Commissioner of the Department of Agriculture because there is a possibility that the environmental review program may, at times, involve farming operations.

Performance-based rules

Minn. Stat. §14.002 requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of an agency's regulatory objectives while allowing maximum flexibility to regulated parties and to an agency in meeting those objectives.

The goal of the environmental review program is to obtain useful information about potential environmental effects of proposed projects and how they can be avoided or mitigated. The structure of the rules promotes flexibility for units of government in obtaining this information. The rules specify the types of information that are needed, but the RGU chooses how it will obtain the information. Furthermore, Environmental Review is not a regulatory program, and hence the EQB has no "regulatory objectives" in this rulemaking.

The proposed rulemaking is designed to maximize flexibility for the project proposer and the RGUs while maintaining the integrity and reliability of the process. The rulemaking proposes clarifying language that project proposers may, at their option, present information in the form of a preliminary draft EIS to the RGU for the RGUs use in developing the final EIS. The rulemaking provides for input by the project proposer but the RGU maintains the control over the final EIS contents. The proposed rulemaking is necessary and reasonable to achieve the legislature's goals specifically for this rulemaking and generally by its compatibility with Minn. Stat. § 14.002.

Consult with MMB on local government impact

As required by Minn. Stat. § 14.131, the EQB will consult with Minnesota Management and Budget (MMB). The EQB will do this by sending MMB copies of the documents that are sent to the Governor's office for review and approval on the same day the EQB sends them to the Governor's office. The Agency will do this before publishing the Notice of Intent to Adopt/Dual Notice/Notice of Hearing. The documents will include - the Governor's Office Proposed Rule, and SONAR Form, the proposed rules, and the SONAR. The EQB will submit a copy of the cover correspondence and any response received from MMB to the Office of Administrative Hearing (OAH) at the hearing or with the documents, it submits for Administrative Law Judge (ALJ) review.

Impact on local government ordinances and rules

Minn. Stat. § 14.128, subdivision 1, requires an agency to determine whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule. The EQB has determined that the proposed amendments will not have any effect on local ordinances or regulations.

Costs of complying for small business or city

Minn. Stat. § 14.127, subs. 1 and 2 require an agency to “determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees.”

The EQB has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city. The EQB has made this determination based on the probable costs to a small business or city of complying with the proposed rule, which is expected to be voluntary to the project proposer, which could possibly be a small business, and minimal, if any to the RGUs, which may include some small cities, as described in the Regulatory Analysis section of this SONAR.

Authors, witnesses and SONAR exhibits

A. Authors

- Erik Cedarleaf Dahl

B. SONAR exhibits

Exhibits are located at the end of this document.

Conclusion

In this SONAR, the EQB has established the need for and the reasonableness of the proposed amendments to Minn. R. ch. 4410.2550. The EQB has provided the necessary notifications and in this SONAR documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules.

Based on the forgoing, the proposed amendments are both needed and reasonable.

12/17/2
Date



David Frederickson, Chair
Environmental Quality Board

SONAR Exhibits

1. Laws of Minnesota 2017, Chapter 93, Article 2, Section 140
2. Revisor Certified Rules

Sec. 138. Minnesota Statutes 2016, section 116D.04, subdivision 5b, is amended to read:

Subd. 5b. **Review of environmental assessment worksheets and environmental impact statements.** By December 1, ~~2012~~ 2018, and every ~~five~~ three years thereafter, the Environmental Quality Board, Pollution Control Agency, Department of Natural Resources, and Department of Transportation, after consultation with political subdivisions, shall submit to the governor and the chairs of the house of representatives and senate committees having jurisdiction over environment and natural resources a list of mandatory environmental assessment worksheet and mandatory environmental impact statement categories for which the agency or a political subdivision is designated as the responsible government unit, and for each worksheet or statement category, a document including:

(1) intended historical purposes of the category;

(2) whether projects that fall within the category are also subject to local, state, or federal permits; and

(3) an analysis of and recommendations for whether the mandatory category should be modified, eliminated, or unchanged based on its intended outcomes and relationship to existing permits or other federal, state, or local laws or ordinances.

Sec. 139. Minnesota Statutes 2016, section 116D.04, subdivision 10, is amended to read:

Subd. 10. **Review.** A person aggrieved by a final decision on the need for an environmental assessment worksheet, the need for an environmental impact statement, or the adequacy of an environmental impact statement is entitled to judicial review of the decision under sections 14.63 to 14.68. A petition for a writ of certiorari by an aggrieved person for judicial review under sections 14.63 to 14.68 must be filed with the Court of Appeals and served on the responsible governmental unit not more than 30 days after the ~~party receives the final decision and order of the~~ responsible governmental unit provides notice of the decision in the EQB Monitor. Proceedings for review under this section must be instituted by serving a petition for a writ of certiorari personally or by certified mail upon the responsible governmental unit and by promptly filing the proof of service in the Office of the Clerk of the Appellate Courts and the matter will proceed in the manner provided by the Rules of Civil Appellate Procedure. A copy of the petition must be provided to the attorney general at the time of service. Copies of the writ must be served, personally or by certified mail, upon the responsible governmental unit and the project proposer. The filing of the writ of certiorari does not stay the enforcement of any other governmental action, provided that the responsible governmental unit may stay enforcement or the Court of Appeals may order a stay upon terms it deems proper. A bond may be required under section 562.02 unless at the time of hearing on the application for the bond the petitioner-relator has shown that the claim is likely to succeed on the merits. The board may initiate judicial review of decisions referred to herein and the board or a project proposer may intervene as of right in any proceeding brought under this subdivision.

Sec. 140. Minnesota Statutes 2016, section 116D.045, subdivision 1, is amended to read:

Subdivision 1. **Assessment.** The board ~~shall~~ must by rule adopt procedures to:

(1) assess the proposer of a specific action for the responsible governmental unit's reasonable costs of preparing, reviewing, and distributing the environmental impact statement. The costs ~~shall~~ must be determined by the responsible governmental unit pursuant according to the rules ~~promulgated~~ adopted by the board; and

(2) authorize a responsible governmental unit to allow a proposer of a specific action to prepare a draft environmental impact statement according to section 116D.04, subdivision 2a, paragraph (i).

Sec. 141. Minnesota Statutes 2016, section 160.06, is amended to read:

160.06 TRAIL OR PORTAGE DEDICATION.

Any trail or portage between public or navigable bodies of water or from public or navigable water to a public highway in this state ~~which that~~ has been in continued and uninterrupted use by the general public for 15 years or more as a trail or portage for the purposes of travel, ~~shall be is~~ deemed to have been dedicated to the public as a trail or portage. This section ~~shall apply~~ applies only to forest trails on established ~~state water trails~~ canoe routes and the public ~~shall have~~ has the right to use the same for ~~the purposes of~~ travel to the same extent as public highways. The width of all trails and portages dedicated by user ~~shall be is~~ eight feet on each side of the centerline of the trail or portage.

Sec. 142. Minnesota Statutes 2016, section 168.1295, subdivision 1, is amended to read:

Subdivision 1. **General requirements and procedures.** (a) The commissioner shall issue state parks and trails plates to an applicant who:

(1) is a registered owner of a passenger automobile, recreational vehicle, one ton pickup truck, or motorcycle;

(2) pays a fee of \$10 to cover the costs of handling and manufacturing the plates;

(3) pays the registration tax required under section 168.013;

(4) pays the fees required under this chapter;

(5) contributes a minimum of ~~\$50~~ \$60 annually to the state parks and trails donation account established in section 85.056; and

(6) complies with this chapter and rules governing registration of motor vehicles and licensing of drivers.

(b) The state parks and trails plate application must indicate that the contribution specified under paragraph (a), clause (5), is a minimum contribution to receive the plate and that the applicant may make an additional contribution to the account.

(c) State parks and trails plates may be personalized according to section 168.12, subdivision 2a.

Sec. 143. Minnesota Statutes 2016, section 282.018, subdivision 1, is amended to read:

Subdivision 1. **Land on or adjacent to public waters.** (a) All land which is the property of the state as a result of forfeiture to the state for nonpayment of taxes, regardless of whether the land is held in trust for taxing districts, and which borders on or is adjacent to meandered lakes and other public waters and watercourses, and the live timber growing or being thereon, is hereby withdrawn from sale except as hereinafter provided. The authority having jurisdiction over the timber on any ~~such of these~~ lands may sell the timber as otherwise provided by law for cutting and removal under ~~such the~~ conditions as the authority may prescribe in accordance with approved, sustained yield forestry practices. The authority having jurisdiction over the timber shall reserve ~~such the~~ timber and impose ~~such the~~ conditions as the authority deems necessary for the protection of watersheds, wildlife habitat, shorelines, and scenic features. Within the area in Cook, Lake, and St. Louis counties described in the Act of Congress approved July 10, 1930 (46 Stat. 1020), the timber on tax-forfeited lands shall be subject to like restrictions as are now imposed by that act on federal lands.

(b) Of all tax-forfeited land bordering on or adjacent to meandered lakes and other public waters and watercourses and so withdrawn from sale, a strip two rods in width, the ordinary high-water mark being the waterside boundary thereof, and the land side boundary thereof being a line drawn parallel to the ordinary high-water mark and two rods distant landward therefrom, hereby is reserved for public travel thereon, and

Office of the Revisor of Statutes Administrative Rules



TITLE: Proposed Permanent Rule: Preliminary Draft Environmental Impact Statements

AGENCY: Environmental Quality Board

REVISOR ID: R-4494

MINNESOTA RULES: Chapter 4410

The attached rules are approved for
publication in the State Register

Cindy K. Maxwell

Cindy K. Maxwell
Assistant Deputy Revisor

1.1 **Environmental Quality Board**

1.2 **Proposed Permanent Rule: Preliminary Draft Environmental Impact Statements**

1.3 **4410.2550 PRELIMINARY DRAFT EIS OPTION.**

1.4 The proposer of a specific action may include in the information submitted to the RGU
1.5 a preliminary draft EIS on that action for review, modification, and determination of
1.6 completeness and adequacy by the RGU. The RGU may allow a proposer of a specific
1.7 action to prepare a preliminary draft environmental impact statement according to Minnesota
1.8 Statutes, section 116D.04, subdivision 2a, paragraph (k). A preliminary draft EIS prepared
1.9 by the project proposer and submitted to the RGU shall identify or include as an appendix
1.10 all studies and other sources of information used to substantiate the analysis contained in
1.11 the preliminary draft EIS. The RGU shall require additional studies, if needed, and obtain
1.12 from the project proposer all additional studies and information necessary for the RGU to
1.13 perform its responsibility to review, modify, and determine the completeness and adequacy
1.14 of the EIS.