

# Minnesota Environmental Quality Board

## ORDER ADOPTING RULES AND STATEMENT OF SUPPORTING REASONS

**Adoption of Exempt Rules Relating to the Rules Governing Environmental Review,  
Minnesota Rules, Chapter 4410**

**OAH Docket Number 11-2901-23076-1**

**Governor Tracking Number: 1099**

**Office of the Revisor of Statutes Number: RD4111**

### Statement of Supporting Reasons

#### I. Background

The state rules governing environmental review are established in Minnesota Rules ch. 4410. These rules establish the conditions for the development and review of Environmental Assessment Worksheets (EAW) and Environmental Impact Statements (EIS). In the 2011 legislative session, and again in the 2012 legislative session, the Minnesota Legislature passed bills related to the implementation of the process for environmental review.

The legislative amendments can be grouped in three categories:

1. Amendments for which the legislature authorized the use of the good cause exempt rulemaking process to make the necessary amendments to the applicable rules.
2. Amendments that the Environmental Quality Board (EQB) was not specifically mandated to adopt but that are appropriate to change to eliminate confusion between statute and rule. These amendments do not require any interpretation of the statute to incorporate into the rules and fit criteria (3) for the use of the good cause rulemaking process. Minnesota Statute 14.388, subp. 1(3).
3. Amendments that the EQB is not specifically mandated to adopt and that are not amenable to use of the good cause exempt rulemaking process. These amendments either address an aspect of environmental review that is not currently addressed in rule or require some degree of interpretation to fit into the existing rule structure. These statutory provisions are identified in this Statement of Supporting Reasons (Statement) only for purposes of clarifying the EQB's intentions regarding those amendments and no rule amendments for the statutory provisions are being proposed at this time.

#### II. Legislatively Authorized Rule Amendments

The first category of statutory change includes those amendments for which the legislature specifically authorized the good cause exempt rulemaking process.

**Minn. Laws 2011, Ch. 4, section 11. RULE AMENDMENT.**

**The commissioner of the Pollution Control Agency, the commissioner of natural resources, and the Environmental Quality Board, must amend rules necessary to**

conform to this act. The commissioners and the board may use the good cause exemption under Minnesota Statutes, section 14.388, subdivision 1, clause (3), and Minnesota Statutes, section 14.386, does not apply, except as provided in Minnesota Statutes, section 14.388.

The changes identified in items a) to e) of this section are authorized under Minnesota Laws 2011, Chapter 4, section 11.

- a) Minn. Laws 2011, Chapter 4, Section 5 (House File #1)  
Sec. 5. Minnesota Statutes 2010, section 116D.04, subdivision 1a, is amended to read:  
*(e) "Governmental unit" means any state agency and any general or special purpose unit of government in the state including, but not limited to, watershed districts organized under chapter 103D, counties, towns, cities, port authorities, housing authorities, and economic development authorities established under sections 469.090 to 469.108, but not including courts, school districts, Iron Range resources and rehabilitation, and regional development commissions other than the Metropolitan Council.*

#### **Proposed Amendment**

To conform to the legislative directive, the EQB is amending Minnesota Rule 4410.0200 as follows:

#### **4410.0200 DEFINITIONS AND ABBREVIATIONS**

*Subp. 34. Governmental unit. "Governmental unit" means any state agency and any general or special purpose unit of government in the state, including watershed districts organized under Minnesota Statutes, chapter 103D, counties, towns, cities, port authorities, housing authorities, and the Metropolitan Council, but not including courts, school districts, the Iron Range Resources and Rehabilitation Board, and regional development commissions.*

#### **Discussion**

Minn. Laws 2011 ch. 4, sec. 11 specifically authorized the use of the exempt rule making process to make this change to Minnesota Rules. The Office of the Revisor of Statutes has slightly modified the legislative language to add "Board" and to capitalize the name in order to clearly identify it as a specific entity. This is not an interpretation of law; it is only to clarify the names to fit the established rule drafting convention.

- b) 2011, Chapter 4, Section 6 (House File #1)  
Sec. 6. Minnesota Statutes 2010, section 116D.04, subdivision 2a, is amended to read:  
*(i) The proposer of a specific action may include in the information submitted to the responsible governmental unit a preliminary draft environmental impact statement under this section on that action for review, modification, and*

determination of completeness and adequacy by the responsible governmental unit. A preliminary draft environmental impact statement prepared by the project proposer and submitted to the responsible governmental unit shall identify or include as an appendix all studies and other sources of information used to substantiate the analysis contained in the preliminary draft environmental impact statement. The responsible governmental unit shall require additional studies, if needed, and obtain from the project proposer all additional studies and information necessary for the responsible governmental unit to perform its responsibility to review, modify, and determine the completeness and adequacy of the environmental impact statement.

### **Proposed Amendment**

To conform to the legislative directive, the EQB is adding a new rule part, Minnesota Rule 4410.2550, as follows:

#### 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. 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.

### **Discussion**

Minn. Laws 2011 ch. 4, sec. 11 specifically authorized the use of the exempt rule making process to make this change to Minnesota Rules.

#### **c) 2011, Chapter 4, Section 7 (House File #1)**

*Sec. 7. Minnesota Statutes 2010, section 116D.04, subdivision 3a, is amended to read:*

*Subd. 3a. Final decisions. Within ~~90~~ 30 days after final approval of an environmental impact statement, final decisions shall be made by the appropriate governmental units on those permits which were identified as required and for which information was developed concurrently with the preparation of the environmental impact statement. Provided, however, that the ~~90-day~~ 30-day period may be extended where a longer period is permitted by section 15.99 or required by federal law or state statute or is consented to by the permit applicant. The permit decision shall include the reasons for the decision,*

*including any conditions under which the permit is issued, together with a final order granting or denying the permit.*

### **Proposed Amendment**

To conform to the legislative directive, the EQB is amending Minnesota Rule 4410.2900 as follows:

#### **4410.2900 PERMIT DECISIONS IN CASES REQUIRING EIS.**

*Within ~~90~~ 30 days after the determination of adequacy of a final EIS, final decisions shall be made by the appropriate governmental units on those permits which were identified as required in the scoping process and for which information was developed concurrently with the preparation of the EIS. The ~~90-day~~ 30-day period may be extended with the consent of the permit applicant or where a longer period is required by federal law or state statute or where a longer period is permitted by Minnesota Statutes 15.99.*

*At the time of its permit decision, for those permits that were identified during the scoping process as requiring a record of decision, each permitting unit of government shall prepare a concise public record of how it considered the EIS in its decision. That record shall be supplied to the EQB for the purpose of monitoring the effectiveness of the process created by parts 4410.0200 to 4410.6500 and to any other person requesting the information. The record may be integrated into any other record prepared by the permitting unit of government.*

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

### **Discussion**

Minn. Laws 2011 ch. 4, sec. 11 specifically authorized the use of the exempt rule making process to make this change to Minnesota Rules.

**d) 2011, Chapter 4, Section 9 (House File #1)**

Sec. 9. Minnesota Statutes 2010, section 116D.045, subdivision 1, is amended to read:

*Subdivision 1. **Assessment.** The board shall by rule adopt procedures to assess the proposer of a specific action for reasonable costs of preparing, reviewing, and distributing an the environmental impact statement ~~on that action required pursuant to section 116D.04.~~ ~~Such~~ The costs shall be determined by the responsible governmental unit pursuant to the rules promulgated by the board.*

### **Proposed Amendment**

To conform to the legislative directive, the EQB is amending Minnesota Rule 4410.6100 and

4410.6200 as follows:

**4410.6100 DETERMINING EIS ASSESSED COST.**

*Subpart 1. Proposer and RGU agreement. Within 30 days after the RGU's scoping decision has been issued, the RGU shall submit to the proposer a draft cost agreement. The agreement shall include the EIS estimated cost and a brief description of the tasks and the cost of each task to be performed by each party in preparing, reviewing, and distributing the EIS. Those items identified in part [4410.6200](#) may be used as a guideline in determining the EIS estimated cost. The proposer may request changes in the cost agreement. If, within 30 days after the proposer receives the draft cost agreement, the RGU and proposer have not signed a cost agreement, either party may refer the matter to the EQB according to part [4410.6410](#). If the RGU and proposer sign the cost agreement, the RGU shall submit a copy to the EQB.*

**4410.6200 DETERMINING EIS COST.**

*Subpart 1. EIS cost inclusions. In determining the reasonable cost of preparing, reviewing, and distributing ~~an~~ the EIS, the following items shall be included:  
Items A. to F. [unchanged]  
Subp. 2. [unchanged]  
Subp. 3. EIS scoping costs. The cost of any items specified in subpart 1 incurred by the RGU during the scoping of ~~an~~ the EIS are part of the reasonable costs of preparing, reviewing and distributing ~~an~~ the EIS and are to be assessed to the project proposer by the RGU.  
Subps. 4. and 5 [unchanged]*

**Discussion**

Minn. Laws 2011 ch. 4, sec. 11 specifically authorized the use of the exempt rule making process to make this change to Minnesota Rules.

The substantive change to this section of the statute, which relates to the ability to assess costs for the review of environmental impact statements, affects provisions in both Minn. R. pts. 4410.6100 and 4410.6200. The EQB is proposing amendments to both of those rules to add “*reviewing*” to the list of EIS-related activities that can be considered in an assessment of reasonable costs.

Minn. Laws 2011, ch. 4, sec. 9 also changes the existing reference to “*an*” environmental impact statement to “*the*” environmental impact statement. Minn. R. pt. 4410.6100 already refers to “*the*” environmental impact statement and no changes are needed to reflect the statutory amendment. Minn. R. pt. 4410.6200 contains a number of references in several subparts to “EIS” and both “*an*” and “*the*” are used interchangeably in connection with that phrase. In order to consistently make the 2011 statutory change to “*the*”, amendments would

need to be made to subparts that would not otherwise be amended to reflect the addition of “reviewing” as directed by the legislature. The EQB is making the change to “the” in those parts of the rules that are being amended to incorporate “reviewing”, but not to subparts 2 or 4, which use “an” but that do not otherwise require amendment. The EQB considers that either “an” or “the” is acceptable and is not proposing any changes Minn. R. pt. 4410.6200, subparts 2 or 4 to reflect the statutory change to “the”. Minn. Laws 2011, ch. 4, section 11 requires the EQB to “amend rules necessary to conform to this act”. The EQB considers that the changes of “an” to “the” are not “necessary to conform to the act”.

An additional change to Minn. Laws 2011, ch. 4, sec. 9 deletes the phrase “~~on that action required pursuant to section 116D.04~~”. This phrase did not exist in the corresponding rules so that no change was needed.

e) 2011, Chapter 4, Section 10 (House File #1)

Sec. 10. Minnesota Statutes 2010, section 116D.045, subdivision 3, is amended to read:

*Subd. 3. Use of assessment. As necessary, the responsible governmental unit shall assess the project proposer for reasonable costs that the responsible governmental unit incurs in preparing, reviewing, and distributing the environmental impact statement and the proposer shall pay the assessed cost to the responsible governmental unit. Money received under this subdivision by a responsible governmental unit may be retained by the unit for the same purposes. Money received by a state agency must be credited to a special account and is appropriated to the agency to cover the assessed costs incurred.*

**Proposed Amendment**

To conform to the legislative directive, the EQB is amending Minnesota Rule 4410.6000 as follows:

**4410.6000 PROJECTS REQUIRING AN ASSESSMENT OF EIS PREPARATION COST.**

*The RGU shall assess the project proposer for ~~its~~ reasonable costs ~~of that the~~ RGU incurs in preparing, reviewing, and distributing ~~an~~ the EIS in accord with parts 4410.6100 to 4410.6500.*

**Discussion**

Minn. Laws 2011 ch. 4, sec. 11 specifically authorized the use of the exempt rule making process to make this change to Minnesota Rules. The legislation makes four changes to this part.

1. The legislation adds the phrase “As necessary”. The EQB is not proposing any change to Minn. R. pt. 4410.6000 to add this phrase. The EQB believes the addition of “as necessary” would require interpretation and including it in the rule without interpretation would create confusion regarding how the decision would be made regarding what is necessary and what is not. Because the good cause exempt

rulemaking process does not allow for interpretation of law, and because the legislation did not provide further discussion of the phrase “*as necessary*”, the EQB does not believe that it can be added as part of this good cause exempt rulemaking. In addition, execution of a cost agreement between the RGU and the project proposer is part of the EIS process, so the question of which RGU costs will be assessed is resolved in the agreement.

2. The phrase “*that the RGU incurs in*” is being made as directed by the legislature. This phrase clarifies that the costs relate to the RGU and not to another party who may also be incurring costs to review an EIS.
3. The change to allow the assessment of costs for “*reviewing*” an EIS is being made as directed by the legislature.
4. A change from “*an*” to “*the*” is being made to make the rule conform to the statutory language, although it does not result in any change to the application of the term.

The authority to use the good cause exempt rulemaking process for the amendments in f) of this section is established in Minnesota Laws, 2012, Ch. 272 section 90 (House File #2164).

**Minn. Laws 2012, Ch. 272 section 90. RULEMAKING; NOTICE OF ENVIRONMENTAL ASSESSMENT WORKSHEET.**

*The Environmental Quality Board may use the good cause exemption under Minnesota Statutes, section 14.388, subdivision 1, clause (3), to amend Minnesota Rules to conform with the amendments to Minnesota Statutes, section 116D.04, subdivision 2a, contained in this act. Minnesota Statutes, section 14.386, does not apply except as provided under Minnesota Statutes, section 14.388.*

Changes authorized under Minn. Laws 2011, Chapter 272, Section 90

- f) 2012 Chapter 272, section 76 (House File # 2164)  
Sec. 76. Minnesota Statutes 2011 Supplement, section 116D.04, subdivision 2a, as amended by Laws 2012, chapter 150, article 2, section 2, is amended to read:

*(b) The responsible governmental unit shall promptly publish notice of the completion of an environmental assessment worksheet ~~in a~~ by publishing the notice in at least one newspaper of general circulation in the geographic area where the project is proposed, by posting the notice on a Web site that has been designated as the official publication site for publication of proceedings, public notices, and summaries of a political subdivision in which the project is proposed or in any other manner to be determined by the board and shall provide copies of the environmental assessment worksheet to the board and its member agencies. Comments on the need for an environmental impact statement may be submitted to the responsible governmental unit during a 30-day period following publication of the notice that an environmental assessment worksheet has been*

*completed. The responsible governmental unit's decision on the need for an environmental impact statement shall be based on the environmental assessment worksheet and the comments received during the comment period, and shall be made within 15 days after the close of the comment period. The board's chair may extend the 15-day period by not more than 15 additional days upon the request of the responsible governmental unit.*

### **Proposed Amendment**

To conform to the legislative directive, the EQB is amending Minnesota Rule 4410.1500 as follows:

#### **4410.1500 PUBLICATION AND DISTRIBUTION OF AN EAW.**

*A. [unchanged]*

*B. The RGU shall promptly publish notice of the completion of an EAW by:*

- (1) publishing the notice in at least one newspaper of general circulation in the geographic area where the project is proposed; or*
- (2) posting the notice on a Web site that has been designated as the official publication site for publication of proceedings, public notices, and summaries of a political subdivision in which the project is proposed.*

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

*~~C.D.~~ The EQB staff shall maintain an official EAW distribution list containing the names and addresses of agencies designated to receive EAW's.*

### **Discussion**

Minn. Laws 2012 ch. 272, sec. 90 specifically authorized the use of the exempt rule making process to make this change to Minnesota Rules. The statutory language provides the option of “*or in any other manner determined by the board*”, which is not provided in the current rule or being added in these amendments. The EQB has, in adopting the rules, made a determination that the notification options established in the rules are reasonable and does not intend to create additional options for providing notification.

### **III. Rule amendments that are not legislatively mandated**



The second category of statutory changes are those amendments for which the EQB was not specifically mandated to conduct rulemaking to adopt but that are reasonable to change to eliminate confusion between the amended statutes and the existing rules. These amendments are appropriate to conduct through the good cause exempt rulemaking process because they do not require any interpretation of the statute to incorporate into the rules.

- g) 2011, Chapter 107, section 87 (Senate File #1115)  
Sec. 87. Minnesota Statutes 2010, section 116D.04, subdivision 2a, as amended by Laws 2011, chapter 4, section 6, is amended to read:

*(c) An environmental assessment worksheet shall also be prepared for a proposed action whenever material evidence accompanying a petition by not less than ~~25~~ 100 individuals who reside or own property in the state, submitted before the proposed project has received final approval by the appropriate governmental units, demonstrates that, because of the nature or location of a proposed action, there may be potential for significant environmental effects. Petitions requesting the preparation of an environmental assessment worksheet shall be submitted to the board. The chair of the board shall determine the appropriate responsible governmental unit and forward the petition to it. A decision on the need for an environmental assessment worksheet shall be made by the responsible governmental unit within 15 days after the petition is received by the responsible governmental unit. The board's chair may extend the 15-day period by not more than 15 additional days upon request of the responsible governmental unit.*

#### **Proposed Amendment**

The EQB is amending Minnesota Rule 4410.1100 as follows:

**4410.1100 PETITION PROCESS.**

*Subpart 1. **Petition.** Any person may request the preparation of an EAW on a project by filing a petition that contains the signatures and mailing addresses of at least ~~25~~ 100 individuals who reside or own property in the state.*

#### **Discussion**

This amendment may be made using the exempt process because it is set forth in an applicable statute and no interpretation of law is required. Minn. Stat. § 14.388, subd 1(3).

#### **IV. Legislative amendments that are not being addressed in this rulemaking**

The third category of statutory changes are those amendments that the EQB is not specifically mandated to conduct rulemaking to adopt and that are not amenable to use of the good cause exempt rulemaking process. The following statutory changes are identified in this Statement to

acknowledge their existence. However, at this time the EQB is not proposing any rule changes to address them.

- h) 2011 Chapter 107, section 86 (Senate File #1115)  
Sec. 86. [116C.261] ENVIRONMENTAL PERMIT PLAN TIMELINE REQUIREMENT.  
(a) If environmental review under chapter 116D will be conducted for a project and a state agency is the responsible government unit, that state agency shall prepare:  
(1) a plan that will coordinate administrative decision-making practices, including monitoring, analysis and reporting, and public comments and hearings; and  
(2) a timeline for the issuance of all federal, state, and local permits required for the project.  
(b) The plan and timeline shall be delivered to the project proposer by the time the environmental assessment worksheet or draft environmental impact statement is published in the EQB Monitor.
- i) 2012 Chapter 150, Article 2, Section 1. (Senate File # 1567)  
Section 1. Minnesota Statutes 2010, section 41A.10, subdivision 1, is amended to read:  
*Subdivision 1. Definitions. For the purposes of this section and section 103F.518, the terms defined in this subdivision have the meanings given them.*  
*(a) "Cellulosic biofuel" means transportation fuel derived from cellulosic materials.*  
*(b) "Cellulosic material" means an agricultural or wood feedstock primarily comprised of cellulose, hemicellulose, or lignin or a combination of those ingredients grown on agricultural lands or harvested on timber lands.*
- j) 2012 Chapter 150, Article 2, Section 2. (Senate File # 1567)  
Sec. 2. Minnesota Statutes 2011 Supplement, section 116D.04, subdivision 2a, is amended to read:  
*(b), or the conversion of an ethanol plant to a biobutanol facility or the expansion of a biobutanol facility as defined in section 41A.105, subdivision 1a, based on the capacity of the expanded or converted facility to produce alcohol fuel, but must be required if the ethanol plant or biobutanol facility meets or exceeds thresholds of other categories of actions for which environmental assessment worksheets must be prepared. The responsible governmental unit for an ethanol plant or biobutanol facility project for which an environmental assessment worksheet is prepared shall be the state agency with the greatest responsibility for supervising or approving the project as a whole. A mandatory environmental impact statement shall not be required for a facility or plant located outside the seven-county metropolitan area that produces less than 125,000,000 gallons of ethanol, biobutanol, or*

cellulosic biofuel annually, if the facility or plant is: an ethanol plant, as defined in section 41A.09, subdivision 2a, paragraph (b); a biobutanol facility, as defined in section 41A.105, subdivision 1a, clause (1); or a cellulosic biofuel facility, as defined in section 41A.10, subdivision 1, paragraph (d).

k) 2012 Chapter 150, Article 2, Section 2. (Senate File #1567)

Sec. 2. Minnesota Statutes 2011 Supplement, section 116D.04, subdivision 2a, is amended to read:

*(g) The responsible governmental unit shall, to the extent practicable, avoid duplication and ensure coordination between state and federal environmental review and between environmental review and environmental permitting. Whenever practical, information needed by a governmental unit for making final decisions on permits or other actions required for a proposed project shall be developed in conjunction with the preparation of an environmental impact statement. When an environmental impact statement is prepared for a project requiring multiple permits for which two or more agencies' decision processes include either mandatory or discretionary hearings before a hearing officer prior to the agencies' decision on the permit, the agencies may, notwithstanding any law or rule to the contrary, conduct the hearings in a single consolidated hearing process if requested by the proposer. All agencies having jurisdiction over a permit that is included in the consolidated hearing shall participate. The responsible governmental unit shall establish appropriate procedures for the consolidated hearing process, including procedures to ensure that the consolidated hearing process is consistent with the applicable requirements for each permit regarding the rights and duties of parties to the hearing, and shall utilize the earliest applicable hearing procedure to initiate the hearing. The procedures of section 116C.28, subdivision 2, apply to the consolidated hearing.*

l) 2012 Chapter 150, Article 2, Section 3. (Senate File #1567)

Sec. 3. Minnesota Statutes 2010, section 116D.04, is amended by adding a subdivision to read:

*Subd. 5b. Review of environmental assessment worksheets and environmental impact statements. By December 1, 2012, and every five 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 whether the mandatory category should be modified, eliminated, or unchanged based on its relationship to existing permits or other federal, state, or local laws or ordinances.

m) 2012 Chapter 272, section 77 (House File # 2164)

Sec. 77. Minnesota Statutes 2010, section 116D.04, is amended by adding a subdivision to read:

Subd. 15. Duplicative permit information; environmental assessment worksheets. To the extent practicable and so as not to conflict with other requirements of this section, the board shall not require, unless necessary, information in an environmental assessment worksheet for a proposed action when the information is also required as part of any necessary permitting process for the proposed action.

n) 2012 Chapter 150, Article 2, Section 4. (Senate File #1567)

Sec. 4. PILOT PROGRAM FOR ALTERNATIVE FORM OF ENVIRONMENTAL REVIEW.

(a) The commissioner of the Pollution Control Agency and the commissioner of natural resources may jointly conduct a pilot program for an alternative form of environmental review as specified in this section. This pilot program is in addition to the alternate forms of environmental review that are authorized under Minnesota Statutes, section 116D.04, subdivision 4a. Minnesota Rules, part 4410.3600, does not apply to the pilot program authorized in this section.

(b) The commissioners may select up to three projects to be processed under the pilot program. The environmental review work for each project must commence before January 1, 2014, to remain eligible for proceeding under this program.

(c) The pilot program procedures are as follows:

(1) an environmental assessment worksheet is not required;

(2) a scoping document must be prepared that identifies the issues to be analyzed, the alternatives to be considered, and the studies to be undertaken. The scoping document results must be published at the same time as the notice of preparation of the pilot program impact statement;

(3) any person may submit written comments within 20 days of publication of the notice for preparation of the pilot program impact statement. The responsible governmental unit must consider modifying the scope of the project based on the comments;

(4) the pilot program impact statement must be an analytical, rather than an encyclopedic, document that describes the proposed action in detail, analyzes the action's significant environmental impacts, discusses appropriate alternatives to the proposed action and the alternatives' impacts, and explores methods by which

adverse environmental impacts of an action could be mitigated. The pilot program impact statement must also analyze those economic, employment, and sociological effects that cannot be avoided should the action be implemented;

(5) if an impact analysis is needed for permitting, the impact analysis may be summarized for inclusion in the draft pilot program impact statement rather than the full modeling and analysis being contained within the draft pilot program impact statement. An impact analysis must identify the regulatory requirements, types of impact, and mitigation methods; and

(6) the responsible governmental unit must follow the procedural notice requirements for a draft environmental impact statement, final environmental impact statement, and notice of determination of adequacy for an environmental impact statement.

(d) A project proposed to be processed under the pilot program must meet all of the following criteria:

(1) the project meets or exceeds the threshold of a project requiring a mandatory environmental impact statement, or the project proposer and the responsible governmental unit agree to prepare a pilot program impact statement;

(2) if a combustion source, other than an internal combustion engine, is part of the project, natural gas is the only fuel that may supply the burners;

(3) the project does not have any known projected drawdown effect on private wells;

(4) Class I air modeling demonstrates that the project will not cause adverse impacts; and

(5) the project is subject to Code of Federal Regulations, title 40, section 52.21, and the reviews required for a PSD (prevention of significant deterioration) permit, including control technology, ambient air, and Class I area impact analysis.

(e) A project may not be processed under the pilot program if the project:

(1) requires a federal environmental impact statement;

(2) is for mining metallic minerals by open pit or underground methods or is a new facility for processing metallic minerals mined by open pit or underground methods;

(3) is for mining nonferrous metallic minerals or is a new facility for processing nonferrous metallic minerals;

(4) combusts solid waste or hazardous waste;

(5) is located in a karst area; or

(6) would result in a direct discharge of process water to surface water.

(f) For the selected projects, the responsible governmental unit must prepare the pilot program impact statement according to this section. Notwithstanding

Minnesota Statutes, section 116D.04, subdivision 2a, paragraph (i), the proposers of the specific project selected for the pilot program may not prepare or submit a preliminary draft pilot program impact statement.

(g) Minnesota Statutes, sections 116D.04, subdivisions 2b and 10, and 116D.045, apply to the pilot program under this section.

(h) By January 15, 2016, the commissioners shall report to the Environmental Quality Board on the outcomes of the pilot program and include any recommendations for statute or rule changes.

o) 2011 Chapter 4, Section 8 (House File #1)

Sec. 8. Minnesota Statutes 2010, section 116D.04, subdivision 10, is amended to read:  
*Subd. 10. Review. ~~Decisions~~ A person aggrieved by a final decision on the need for an environmental assessment worksheet, the need for an environmental impact statement and, or the adequacy of an environmental impact statement may be reviewed by a declaratory judgment action in the district court of the county wherein the proposed action, or any part thereof, would be undertaken 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. 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. Judicial review under this section shall be initiated within 30 days after the governmental unit makes the decision, and*  
*A bond may be required under section 562.02 unless at the time of hearing on the application for the bond the plaintiff petitioner-relator has shown that the claim has sufficient possibility of success is likely to succeed on the merits to sustain the burden required for the issuance of a temporary restraining order. Nothing in this section shall be construed to alter the requirements for a temporary restraining order or a preliminary injunction pursuant to the Minnesota Rules of Civil Procedure for district courts. 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*

## ORDER ADOPTING RULES

### Whereas:

1. The rulemaking provisions of Minnesota Statutes, chapter 14, are not required where the legislature specifically authorizes the exempt rulemaking process for specific changes.
2. The rulemaking provisions of Minnesota Statutes, chapter 14, are unnecessary when amending a rule to incorporate specific changes set forth in applicable statutes where no interpretation of law is required.
3. The Statement of Supporting Reasons justifies good cause for the Environmental Quality Board (EQB) to adopt permanent rules that are exempt from the rulemaking provisions of Minnesota Statutes, chapter 14, and Minnesota Rules, chapter 1400.
4. The EQB has complied with all notice and procedural requirements for exempt rules in Minnesota Statutes, chapter 14.388, Minnesota Rules, chapter 1400.2400, and other applicable laws.
5. As required by Minnesota Statutes § 14.388, subdivision 1, clause (3), and Minnesota Rules, part 1400.2400, the Revisor of Statutes has approved the form of the rule by certificate, a copy of which is attached to this Statement of Supporting Reasons.
6. The rules are needed and reasonable.
7. The EQB submitted the rulemaking on August 24, 2012, to the Office of Administrative Hearings (OAH) for review and approval. The EQB submitted a minor correction to the submitted rule language to OAH on August 28, 2012.
8. OAH approved the proposed rules, with the exception of the modification submitted on August 28, 2012, in an Order On Review of Rules Under Minn. Stat. § 14.388 and Minn. R. 1400.2400 dated September 7, 2012. OAH approved the modification submitted on August 28, 2012 in an Order on Review of Rules under Minn. Stat. § 14.388 and Minn. R. 1400.2400 dated September 18, 2012
9. The EQB adopts the OAH Orders on Review dated September 7, 2012, and September 18, 2012 from Judge Barbara Neilson.

IT IS ORDERED that the above-captioned rule, in the form certified by the Office of the Revisor, file number RD 4111, dated September 10, 2012, is adopted pursuant to the authority vested in me by Minnesota Statutes § § 116C and 14.388.

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Date

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Dave Fredrickson  
Chairman  
Environmental Quality Board