MINNESOTA CODE OF AGENCY RULES

RULES OF THE ENVIRONMENTAL QUALITY BOARD

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ENVIRONMENTAL QUALITY BOARD

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Chapter Eleven: Authority, Purpose, Definitions, Responsibilities

6 MCAR S 3.021 Authority, purpose and objectives.

A. Authority. Rules 6 MCAR SS 3.021-3.056 are issued under authority granted in Minnesota Statutes, chapter 116D to implement the environmental review procedures established by the Minnesota Environmental Policy Act.

B. Application. Rules 6 MCAR SS 3.021-3.056 apply to all governmental actions. Rules 6 MCAR SS 3.021-3.056 shall apply to projects for which environmental review has not been initiated prior to the rule's effective date. For any project for which environmental review has been initiated by submission of a citizens petition, environmental assessment worksheet, environmental impact statement preparation notice, or environmental impact statement to the EQB prior to the effective date, all governmental decisions that may be required for that project shall be acted upon in accord with prior rules.

C. Purpose. The Minnesota Environmental Policy Act recognizes that the restoration and maintenance of environmental quality is critically important to our welfare. The act also recognizes that human activity has a profound and often adverse impact on the environment.

A first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of 6 MCAR SS 3.021-3.056 is to aid in providing that understanding through the preparation and public review of environmental documents.

Environmental documents shall contain information which addresses the significant environmental issues of a proposed action. This information shall be available to governmental units and citizens early in the decision making process.

Environmental documents shall not be used to justify a decision, nor shall indications of adverse environmental effects necessarily require that a project be disapproved. Environmental documents shall be used as guides in issuing, amending, and denying permits and carrying out other responsibilities of governmental units to avoid or minimize adverse environmental effects and to restore and enhance environmental quality.

D. Objectives. The process created by 6 MCAR SS 3.021-3.056 is designed to:

1. Provide useable information to the project proposer, governmental decision makers and the public concerning the

primary environmental effects of a proposed project;

2. Provide the public with systematic access to decision makers, which will help to maintain public awareness of environmental concerns and encourage accountability in public and private decision making;

3. Delegate authority and responsibility for environmental review to the governmental unit most closely involved in the project;

4. Reduce delay and uncertainty in the environmental review process; and

5. Eliminate duplication.

6 MCAR S 3.022 Abbreviations and definitions.

A. Abbreviations. For the purpose of 6 MCAR SS 3.021-3.056 the following abbreviations have the meanings given them.

1. "CFR" means Code of Federal Regulations.

2. "DEPD" means Department of Energy, Planning and Development.

3. "DNR" means Department of Natural Resources.

4. "DOT" means Department of Transportation.

5. "EAW" means environmental assessment worksheet.

6. "EIS" means environmental impact statement.

7. "EQB" means Environmental Quality Board.

8. "HVTL" means high voltage transmission line.

9. "LEPGP" means large electric power generating plant.

10. "MCAR" means Minnesota Code of Agency Rules.

11. "MDA" means Minnesota Department of Agriculture.

12. "MDH" means Minnesota Department of Health.

13. "PCA" means Pollution Control Agency.

14. "RGU" means responsible governmental unit.

15. "USC" means United States Code.

B. Definitions. For the purposes of 6 MCAR SS 3.021-3.056, unless otherwise provided, the following terms have the meanings given them.

1. "Agricultural land" means land which is or has, within the last five years, been devoted to the production of livestock, dairy animals, dairy products, poultry and poultry products, fur bearing animals, horticultural and nursery stock, fruit, vegetables, forage, grains, or bees and apiary products. Wetlands, naturally vegetated lands and woodlands contiguous to or surrounded by agricultural land shall be considered agricultural lands if under the same ownership or management as that of the agricultural land during the period of agricultural use.

2. "Animal units" has the meaning given in 6 MCAR S 4.8051 B.4.

3. "Approval" means a decision by a unit of government to issue a permit or to otherwise authorize the commencement of a proposed project.

4. "Attached units" means a group of four or more units each of which shares one or more common walls with another unit. Developments consisting of both attached and unattached units shall be considered as an unattached unit development.

5. "Biomass sources" means animal waste and all forms of vegetation, natural or cultivated.

6. "Class I dam" has the meaning given in 6 MCAR S 1.5031.

7. "Class II dam" has the meaning given in 6 MCAR S 1.5031.

8. "Collector roadway" means a road that provides access to minor arterial roadways from local streets and adjacent land uses.

9. "Construction" means any activity that directly alters the environment. It includes preparation of land or fabrication of facilities. It does not include surveying or mapping.

10. "Cumulative impact" means the impact on the environment that results from incremental effects of the project in addition to other past, present, and reasonably foreseeable future projects regardless of what person undertakes the other projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

11. "Day" in counting any period of time, shall not include the day of the event from which the designated period of time begins. The last day of the period counted shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is 15 days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the counting of days.

12. "Disposal facility" has the meaning given in Minnesota Statutes, section 115A.03, subdivision 10.

13. "EIS actual cost" means the total of all allowable expenditures incurred by the RGU and the proposer in preparing and distributing the EIS.

14. "EIS assessed cost" means that portion of the EIS estimated cost paid by the proposer in the form of a cash payment to the EQB or to the RGU for the collection and analysis of technical data incorporated in the EIS.

15. "EIS estimated cost" means the total of all expenditures of the RGU and the proposer anticipated to be necessary for the preparation and distribution of the EIS.

16. "Emergency" means a sudden, unexpected occurrence, natural or manmade, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. "Emergency" includes fire, flood, windstorm, riot, accident, or sabotage.

17. "Environment" means physical conditions existing in the area which may be affected by a proposed project. It includes land, air, water, minerals, flora, fauna, ambient noise, energy resources, and manmade objects or natural features of historic, geologic or aesthetic significance.

18. "Environmental assessment worksheet" or "EAW" means a brief document which is designed to set out the basic facts necessary to determine whether an EIS is required for a proposed project or to initiate the scoping process for an EIS.

19. "Environmental document" means EAW, draft EIS, final EIS, substitute review document, and other environmental analysis documents.

20. "Environmental impact statement" or "EIS" means a detailed written statement as required by Minn. Stat. S 116D.04, subd. 2a.

21. "Expansion" means an extension of the capability of a facility to produce or operate beyond its existing capacity. It excludes repairs or renovations which do not increase the capacity of the facility.

22. "First class city" has the meaning given in Minnesota Statutes, section 410.01.

23. "Flood plain" has the meaning given in rule NR 85 (c) of the Department of Natural Resources.

24. "Flood plain ordinance, state approved" means a local governmental unit flood plain management ordinance which meets the provisions of Minnesota Statutes, section 104.04 and has

been approved by the Commissioner of the DNR pursuant to rule NR 85 of the Department of Natural Resources.

25. "Fourth class city" has the meaning given in Minnesota Statutes, section 410.01.

26. "Governmental action" means activities, including projects wholly or partially conducted, permitted, assisted, financed, regulated or approved by governmental units, including the federal government.

27. "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 112, counties, towns, cities, port authorities, housing authorities, and the Metropolitan Council, but not including courts, school districts, and regional development commissions.

28. "Gross floor space" means the total square footage of all floors but does not include parking lots or approach areas.

29. "Ground area" means the total surface area of land that would be converted to an impervious surface by the proposed project. It includes structures, parking lots, approaches, service facilities, appurtenant structures, and recreational facilities.

30. "Hazardous waste" has the meaning given in Minnesota Statutes, section 116.06, subdivision 13.

31. "High voltage transmission line" or "HVTL" has the meaning given in 6 MCAR S 3.072 E.

32. "Highway safety improvement project" means a project designed to improve safety of highway locations which have been identified as hazardous or potentially hazardous. Projects in this category include the removal, relocation, remodeling, or shielding of roadside hazards; installation or replacement of traffic signals; and the geometric correction of identified high accident locations requiring the acquisition of minimal amounts of right-of-way.

33. "Large electric power generating plant" or "LEPGP" has the meaning given in 6 MCAR S 3.072 G.

34. "Local governmental unit" means any unit of government other than the state or a state agency or the federal government or a federal agency. It includes watershed districts established pursuant to Minnesota Statutes, chapter 112, counties, towns, cities, port authorities, housing authorities, and the Metropolitan Council. It does not include courts, school districts, and regional development commissions.

35. "Marina" has the meaning given in 6 MCAR S 1.5020 D.

36. "Mineral deposit evaluation" has the meaning given in Minnesota Statutes, section 156A.071, subdivision 9, clause (d).

37. "Minnesota River Project Riverbend area" means an area subject to the comprehensive land use plan of the Project Riverbend Board established pursuant to Laws of 1982, chapter 627.

38. "Mississippi headwaters area" means an area subject to the comprehensive land use plan of the Mississippi River Headwaters Board established pursuant to Laws of 1981, chapter 246; Minnesota Statutes, chapter 114B.

39. "Mississippi headwaters plan" means the comprehensive land use plan of the Mississippi River Headwaters Board established pursuant to Laws of 1981, chapter 246; Minnesota Statutes, chapter 114B.

40. "Mitigation" means:

a. Avoiding impacts altogether by not undertaking a certain project or parts of a project;

b. Minimizing impacts by limiting the degree of magnitude of a project;

c. Rectifying impacts by repairing, rehabilitating, or restoring the affected environment;

d. Reducing or eliminating impacts over time by preservation and maintenance operations during the life of the project; or

e. Compensating for impacts by replacing or providing substitute resources or environments.

41. "Mixed municipal solid waste" has the meaning given in Minnesota Statutes, section 115A.03, subdivision 21.

42. "Natural watercourse" has the meaning given in Minnesota Statutes, section 105.37, subdivision 10.

43. "Negative declaration" means a written statement by the RGU that a proposed project does not require the preparation of an EIS.

44. "Open space land use" means a use particularly oriented to and using the outdoor character of an area including agriculture, campgrounds, parks and recreation areas.

45. "Permanent conversion" means a change in use of agricultural, naturally vegetated, or forest lands that impairs the ability to convert the land back to its agricultural, natural, or forest capacity in the future. It does not include changes in management practices, such as conversion to parklands, open space, or natural areas.

46. "Permit" means a permit, lease, license, certificate, or other entitlement for use or permission to act that may be granted or issued by a governmental unit or the commitment to issue or the issuance of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, by a governmental unit.

47. "Person" means any natural person, state, municipality, or other governmental unit or political subdivision or other agency or instrumentality, public or private corporation, partnership, firm, association, or other organization, receiver, trustee, assignee, agent, or other legal representative of the foregoing, and any other entity.

48. "Phased action" means two or more projects to be undertaken by the same proposer which a RGU determines:

a. Will have environmental effects on the same geographic area;

b. Are substantially certain to be undertaken sequentially over a limited period of time; and

c. Collectively have the potential to have significant environmental effects.

49. "Positive declaration" means a written statement by the RGU that a proposed project requires the preparation of an EIS.

50. "Potentially permanent" means a dwelling for human habitation that is permanently affixed to the ground or commonly used as a place of residence. It includes houses, seasonal and year round cabins, and mobile homes.

51. "Preparation notice" means a written notice issued by the RGU stating that an EIS will be prepared for a proposed project.

52. "Processing", as used in 6 MCAR SS 3.038 O.2. and 3., and 3.039 K.3., has the meaning given in Minnesota Statutes, section 115A.03, subdivision 25.

53. "Project" means a governmental action, the results of which would cause physical manipulation of the environment, directly or indirectly. The determination of whether a project requires environmental documents shall be made by reference to the physical activity to be undertaken and not to the governmental process of approving the project.

54. "Project estimated cost" means the total of all allowable expenditures of the proposer anticipated to be necessary for the implementation of a proposed project.

55. "Project Riverbend plan" means the comprehensive land use plan of the Project Riverbend Board established pursuant to

Laws of 1982, chapter 627.

56. "Proposer" means the private person or governmental unit that proposes to undertake or to direct others to undertake a project.

57. "Protected waters" has the meaning given public waters in Minnesota Statutes, section 105.37, subdivision 14.

58. "Protected wetland" has the meaning given wetland in Minnesota Statutes, section 105.37, subdivision 15.

59. "Recreational development" means facilities for temporary residence while in pursuit of leisure activities. Recreational development includes, but is not limited to, recreational vehicle parks, rental or owned campgrounds, and condominium campgrounds.

60. "Related action" means two or more projects that will affect the same geographic area which a RGU determines:

a. Are planned to occur or will occur at the same time; or

b. Are of a nature that one of the projects will induce the other project.

61. "Resource recovery" has the meaning given in Minnesota Statutes, section 115A.03, subdivision 27.

62. "Resource recovery facility" has the meaning given in Minnesota Statutes, section 115A.03, subdivision 28.

63. "Responsible governmental unit" or RGU means the governmental unit which is responsible for preparation and review of environmental documents.

64. "Scientific and natural area" means an outdoor recreation system unit designated pursuant to Minnesota Statutes, section 86A.05, subdivision 5.

65. "Scram mining" has the meaning given in 6 MCAR S 1.0401 B.16.

66. "Second class city" has the meaning given in Minnesota Statutes, section 410.01.

67. "Sewer system" means a piping or conveyance system that conveys wastewater to a wastewater treatment plant.

68. "Sewered area" means an area:

a. That is serviced by a wastewater treatment facility or a publicly owned, operated, or supervised centralized septic system servicing the entire development; or

b. That is located within the boundaries of the Metropolitan Urban Service Area, as defined pursuant to the development framework of the Metropolitan Council.

69. "Shoreland" has the meaning given in rule Cons 70 of the Department of Natural Resources.

70. "Shoreland ordinance, state approved" means a local governmental unit shoreland management ordinance which satisfies Minnesota Statutes, section 105.485 and has been approved by the commissioner of the DNR pursuant to rule Cons 70 or NR 82 of the Department of Natural Resources.

71. "Solid waste" has the meaning given in Minnesota Statutes, section 116.06, subdivision 10.

72. "State trail corridor" means an outdoor recreation system unit designated pursuant to Minnesota Statutes, section 86A.05, subdivision 4.

73. "Storage", as used in 6 MCAR S 3.038 0.4., has the meaning given in Code of Federal Regultions, title 40, section 260.10 (a)(66) (1980).

74. "Third class city" has the meaning given in Minnesota Statutes, section 410.01.

75. "Tiering" means incorporating by reference the discussion of an issue from a broader or more general EIS. An example of tiering is the incorporation of a program or policy statement into a subsequent environmental document of a more narrow scope, such as a site-specific EIS.

76. "Transfer station" has the meaning given in Minnesota Statutes, section 115A.03, subdivision 33.

77. "Waste" has the meaning given in Minnesota Statutes, section 115A.03, subdivision 34.

78. "Waste facility" has the meaning given in Minnesota Statutes, section 115A.03, subdivision 35.

79. "Wastewater treatment facility" means a facility for the treatment of municipal or industrial waste water. It includes on-site treatment facilities.

80. "Wetland" has the meaning given in U.S. Fish and Wildlife Service Circular No. 39 (1971 edition).

81. "Wild and scenic rivers district" means a river, or a segment of the river, and its adjacent lands that possess outstanding scenic, recreational, natural, historical, scientific, or similar values and has been designated by the Commissioner of the DNR or by the legislature of the state of Minnesota for inclusion within the Minnesota Wild and Scenic Rivers system pursuant to Minnesota Statutes, sections 104.31 to

104.40 or by Congress for inclusion within the National Wild and Scenic Rivers System pursuant to United States Code, title 16, sections 1274 to 1286 (1976).

82. "Wild and scenic rivers district ordinances, state approved" means a local governmental unit ordinance implementing the state management plan for the district. The ordinance must be approved by the Commissioner of the DNR pursuant to rule NR 81 or NR 2202 of the Department of Natural Resources.

83. "Wilderness area" means an outdoor recreation system unit designated pursuant to Minnesota Statutes, section 86A.05, subdivision 6.

6 MCAR S 3.023 General responsibilities.

A. EQB. The EQB shall monitor the effectiveness of 6 MCAR SS 3.021-3.056 and shall take appropriate measures to modify and improve their effectiveness. The EQB shall assist governmental units and interested persons in understanding and implementing the rules.

B. RGUs. RGUs shall be responsible for verifying the accuracy of environmental documents and complying with environmental review processes in a timely manner.

C. Governmental units, private individuals, citizen groups, and business concerns. When environmental review documents are required on a project, the proposer of the project and any other person shall supply any data reasonably requested by the RGU which he has in his possession or to which he has reasonable access.

D. Appeal of final decisions. Decisions by a RGU on the need for an EAW, the need for an EIS and the adequacy of an EIS are final decisions and may be reviewed by a declaratory judgment action initiated within 30 days after publication of the RGU's decision in the EQB Monitor in the district court of the county where the proposed project, or any part thereof, would be undertaken.

6 MCAR S 3.024 RGU selection procedures.

A. RGU for mandatory categories. For any project listed in 6 MCAR S 3.038 or 3.039, the governmental unit specified in those rules shall be the RGU.

B. RGU for discretionary EAWs. If a governmental unit orders an EAW pursuant to 6 MCAR S 3.025 C.1., that governmental unit shall be designated as the RGU.

C. RGU for petition EAWs. If an EAW is ordered in response to a petition, the RGU that was designated by the EQB to act on

the petition shall be responsible for the preparation of the EAW.

D. RGU for EAW by order of EQB. If the EQB orders an EAW pursuant to 6 MCAR S 3.025 C.3., the EQB shall, at the same time, designate the RGU for that EAW.

E. RGU selection generally. For any project where the RGU is not listed in 6 MCAR S 3.038 or 3.039 or which falls into more than one category in 6 MCAR S 3.038 or 3.039, or for which the RGU is in question, the RGU shall be determined as follows:

1. When a single governmental unit proposes to carry out or has sole jurisdiction to approve a project, it shall be the RGU.

2. When two or more governmental units propose to carry out or have jurisdiction to approve the project, the RGU shall be the governmental unit with the greatest responsibility for supervising or approving the project as a whole. Where it is not clear which governmental unit has the greatest responsibility for supervising or approving the project or where there is a dispute about which governmental unit has the greatest responsibility for supervising or approving the project, the governmental units shall either:

a. By agreement, designate which unit shall be the RGU within five days of receipt of the completed data portion of the EAW; or

b. Submit the question to the EQB chairperson, who shall within five days of receipt of the completed data portions of the EAW designate the RGU based on a consideration of which governmental unit has the greatest responsibility for supervising or approving the project or has expertise that is relevant for the environmental review.

F. Exception. Notwithstanding A.-E., the EQB may designate, within five days of receipt of the completed data portions of the EAW, a different RGU for the preparation of an EAW if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.

Chapter Twelve: Environmental Assessment Worksheet

6 MCAR S 3.025 Projects requiring an EAW.

A. Purpose of an EAW. The EAW is a brief document prepared in worksheet format which is designed to rapidly assess the environmental effects which may be associated with a proposed project. The EAW serves primarily to:

1. Aid in the determination of whether an EIS is needed for a proposed project; and

2. Serve as a basis to begin the scoping process for an EIS.

B. Mandatory EAW categories. An EAW shall be prepared for any project that meets or exceeds the thresholds of any of the EAW categories listed in 6 MCAR S 3.038 or any of the EIS categories listed in 6 MCAR S 3.039.

C. Discretionary EAWs. An EAW shall be prepared:

1. When a project is not exempt under 6 MCAR S 3.041 and when a governmental unit with approval authority over the proposed project determines that, because of the nature or location of a proposed project, the project may have the potential for significant environmental effects;

2. When a project is not exempt under 6 MCAR S 3.041 and when a governmental unit with approval authority over a proposed project determines pursuant to the petition process set forth in 6 MCAR S 3.026 that, because of the nature or location of a proposed project, the project may have the potential for significant environmental effects;

3. Whenever the EQB determines that, because of the nature or location of a proposed project, the project may have the potential for significant environmental effects. This paragraph 3 shall not be applicable to a project exempt under 6 MCAR S 3.041 or to a project for which a governmental unit, with approval authority over the project, has made a prior negative or positive determination concerning the need for an EAW concerning the project; or

4. When the proposer wishes to initiate environmental review to determine if a project has the potential for significant environmental effects.

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6 MCAR S 3.026 Petition process.

A. 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 individuals.

B. Content. The petition shall also include:

1. A description of the proposed project;

2. The proposer of the project;

3. The name, address and telephone number of the representative of the petitioners;

4. A brief description of the potential environmental effects which may result from the project; and

5. Material evidence indicating that, because of the

nature or location of the proposed project, there may be potential for significant environmental effects.

C. Filing of petition. The petition shall be filed with the EQB for a determination of the RGU.

D. Notice to proposer. The petitioners shall notify the proposer in writing at the time they file a petition with the EQB.

E. Determination of RGU. The EQB's chairperson or designee shall determine whether the petition complies with the requirements of A. and B.1., 2., 3., 4., and 5. If the petition complies, the chairperson or designee shall designate an RGU pursuant to 6 MCAR S 3.024 and forward the petition to the RGU within five days of receipt of the petition.

F. EAW decision. The RGU shall order the preparation of an EAW if the evidence presented by the petitioners, proposers, and other persons or otherwise known to the RGU demonstrates that, because of the nature or location of the proposed project, the project may have the potential for significant environmental effects. The RGU shall deny the petition if the evidence presented fails to demonstrate the project may have the potential for significant environmental effects. The RGU shall maintain, either as a separate document or contained within the records of the RGU, a record, including specific findings of fact, of its decision on the need for an EAW.

G. Time limits. The RGU has 15 days from the date of the receipt of the petition to decide on the need for an EAW.

1. If the decision must be made by a board, council, or other body which meets only on a periodic basis, the time period may be extended by the RGU for an additional 15 days.

2. For all other RGUs, the EQB's chairperson shall extend the 15-day period by not more than 15 additional days upon request of the RGU.

H. Notice of decision. Within five days of its decision, the RGU shall notify, in writing, the proposer, the EQB staff, and the petitioner's representative of its decision. The EQB staff shall publish notice of the RGU's decision concerning the petition in the EQB Monitor.

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6 MCAR S 3.027 EAW content, preparation and distribution process.

A. EAW content. The EAW shall address at least the following major categories in the form provided on the worksheet:

1. Identification including project name, project proposer, and project location;

2. Procedural details including identification of the

RGU, EAW contact person, and instructions for interested persons wishing to submit comments;

3. Description of the project, methods of construction, quantification of physical characteristics and impacts, project site description, and land use and physical features of the surrounding area;

4. Resource protection measures that have been incorporated into the project design;

5. Major issues sections identifying potential environmental impacts and issues that may require further investigation before the project is commenced; and

6. Known governmental approvals, reviews, or financing required, applied for, or anticipated and the status of any applications made, including permit conditions that may have been ordered or are being considered.

B. EAW form.

1. The EQB shall develop an EAW form to be used by the RGU.

2. The EQB may approve the use of an alternative EAW form if an RGU demonstrates the alternative form will better accommodate the RGU's function or better address a particular type of project and the alternative form will provide more complete, more accurate, or more relevant information.

3. The EAW form shall be assessed by the EQB periodically and may be altered by the EQB to improve the effectiveness of the document.

C. Preparation of an EAW.

1. The EAW shall be prepared as early as practicable in the development of the proposed project. The EAW shall be prepared by the RGU or its agents.

2. If an RGU orders the preparation of an EAW pursuant to 6 MCAR S 3.026 F., the EAW must be prepared within 25 working days of the date of that decision, unless an extension of time is agreed upon by the proposer and the RGU.

3. When an EAW is to be prepared, except pursuant to 6 MCAR S 3.026 F., the proposer shall submit the completed data portions of the EAW to the RGU for its consideration and approval for distribution. The RGU shall have 30 days to add supplementary material, if necessary, and to approve the EAW for distribution. The RGU shall be responsible for the completeness and accuracy of all information .

D. Publication and distribution of an EAW.

1. The RGU shall provide one copy of the EAW to the EQB staff within five days after the RGU approves the EAW. This copy shall serve as notification to the EQB staff to publish the notice of availability of the EAW in the EQB Monitor. At the time of submission of the EAW to the EQB staff, the RGU shall also submit one copy of the EAW to:

a. Each member of the EQB;

b. The proposer of the project;

c. The U.S. Corps of Engineers;

d. The U.S. Environmental Protection Agency;

e. The U.S. Fish and Wildlife Service;

f. The State Historical Society;

g. The Environmental Conservation Library;

h. The Legislative Reference Library;

i. The Regional Development Commission and Regional Development Library for the region of the project site;

j. Any local governmental unit within which the project will take place;

k. The representative of any petitioners pursuant to 6 MCAR S 3.026; and

l. Any other person upon written request.

2. 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.

3. The EQB staff shall maintain an official EAW distribution list containing the names and addresses of agencies designated to receive EAWs.

E. Comment period.

1. A 30-day period for review and comment on the EAW shall begin the day the EAW availability notice is published in

the EQB Monitor.

2. Written comments shall be submitted to the RGU during the 30-day review period. The comments shall address the accuracy and completeness of the material contained in the EAW, potential impacts that may warrant further investigation before the project is commenced, and the need for an EIS on the proposed project.

3. The RGU may hold one or more public meetings to gather comments on the EAW if it determines that a meeting is necessary or useful. Reasonable public notice of the meetings shall be given prior to the meetings. All meetings shall be open to the public.

AR000357

6 MCAR S 3.028 Decision on need for EIS.

A. Standard for decision on need for EIS. An EIS shall be ordered for projects which have the potential for significant environmental effects.

B. Decision making process.

1. The decision on the need for an EIS shall be made in compliance with one of the following time schedules:

a. If the decision is to be made by a board, council, or other body which meets only on a periodic basis, the decision shall be made at the body's first meeting more than ten days after the close of the review period or at a special meeting but, in either case, no later than 30 days after the close of the review period; or

b. For all other RGUs the decision shall be made no later than 15 days after the close of the 30-day review period. This 15-day period shall be extended by the EQB chairperson by no more than 15 additional days upon request of the RGU.

2. The RGU's decision shall be either a negative declaration or a positive declaration. If a positive declaration, the decision shall include the RGU's proposed scope for the EIS. The RGU shall base its decision regarding the need for an EIS and the proposed scope on the information gathered during the EAW process and the comments received on the EAW.

3. The RGU shall maintain a record, including specific findings of fact, supporting its decision. This record shall either be a separately prepared document or contained within the records of the governmental unit.

4. The RGU's decision shall be provided, within five days, to all persons on the EAW distribution list pursuant to 6 MCAR S 3.027 D., to all persons that commented in writing during the 30-day review period, and to any person upon written request. Upon notification, the EQB staff shall publish the

RGU's decision in the EQB Monitor. If the decision is a positive declaration the RGU shall also indicate in the decision the date, time and place of the scoping review meeting.

C. Standard. In deciding whether a project has the potential for significant environmental effects the RGU shall compare the impacts which may be reasonably expected to occur from the project with the criteria in this rule.

D. Criteria. In deciding whether a project has the potential for significant environmental effects, the following factors shall be considered:

1. Type, extent, and reversability of environmental effects;

2. Cumulative potential effects of related or anticipated future projects;

3. The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and

4. The extent to which environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, or of EIS's previously prepared on similar projects.

E. Related actions. When two or more projects are related actions, their cumulative potential effect on the environment shall be considered in determining whether an EIS is required.

F. Phased actions.

1. Phased actions shall be considered a single project for purposes of the determination of need for an EIS.

2. In phased actions where it is not possible to adequately address all the phases at the time of the initial EIS, a supplemental EIS shall be completed prior to approval and construction of each subsequent phase. The supplemental EIS shall address the impacts associated with the particular phase that were not addressed in the initial EIS.

3. For proposed projects such as highways, streets, pipelines, utility lines, or systems where the proposed project is related to a large existing or planned network, for which a governmental unit has determined environmental review is needed, the RGU shall treat the present proposal as the total proposal or select only some of the future elements for present consideration in the threshold determination and EIS. These selections shall be logical in relation to the design of the total system or network. They shall not be made merely to divide a large system into exempted segments.

Chapter Thirteen:

Environmental Impact Statement

AR000351

6 MCAR S 3.029 Projects requiring an EIS.

A. Purpose of an EIS. The purpose of an EIS is to provide information for governmental units, the proposer of the project, and other persons to evaluate proposed projects which have the potential for significant environmental effects, to consider alternatives to the proposed projects, and to explore methods for reducing adverse environmental effects.

B. Mandatory EIS categories. An EIS shall be prepared for any project that meets or exceeds the thresholds of any of the EIS categories listed in 6 MCAR S 3.039.

C. Discretionary EISs. An EIS shall be prepared:

1. When the RGU determines that, based on the EAW and any comments or additional information received during the EAW comment period, the proposed project has the potential for significant environmental effects; or

2. When the RGU and proposer of the project agree that an EIS should be prepared.

AR000351

6 MCAR S 3.030 EIS scoping process.

A. Purpose. The scoping process shall be used before the preparation of an EIS to reduce the scope and bulk of an EIS, identify only those issues relevant to the proposed project, define the form, level of detail, content, alternatives, time table for preparation, and preparers of the EIS, and to determine the permits for which information will be developed concurrently with the EIS.

B. EAW as scoping document. All projects requiring an EIS must have an EAW filed with the RGU. The EAW shall be the basis for the scoping process.

1. For projects which fall within a mandatory EIS category or if a voluntary EIS is planned, the EAW will be used solely as a scoping document.

2. If the need for an EIS has not been determined the EAW will have two functions:

a. To identify the need for preparing an EIS pursuant to 6 MCAR S 3.028; and

b. To initiate discussion concerning the scope of the EIS if an EIS is ordered pursuant to 6 MCAR S 3.028.

C. Scoping period.

1. If the EIS is being prepared pursuant to 6 MCAR S 3.029 B. or C.2., the following schedule applies:

a. The 30-day scoping period will begin when the notice of the availability of the EAW is published in accord with 6 MCAR S 3.027 D.1. and 2. This notice and press release shall include the time, place and date of the scoping meeting;

b. The RGU shall provide the opportunity for at least one scoping meeting during the scoping period. This meeting shall be held not less than 15 days after publication of the notice of availability of the EAW. All meetings shall be open to the public; and

c. A final scoping decision shall be issued within 15 days after the close of the 30-day scoping period.

2. If the EIS is being prepared pursuant to 6 MCAR S 3.029 C.1., the following schedule applies:

a. At least ten days but not more than 20 days after notice of a positive declaration is published in the EQB Monitor, a public meeting shall be held to review the scope of the EIS. Notice of the time, date and place of the scoping meeting shall be published in the EQB Monitor, and a press release shall be provided to a newspaper of general circulation in the area where the project is proposed. All meetings shall be open to the public; and

b. Within 30 days after the positive declaration is published in the EQB Monitor, the RGU shall issue its final decision regarding the scope of the EIS. If the decision of the RGU must be made by a board, council, or other similar body which meets only on a periodic basis, the decision may be made at the next regularly scheduled meeting of the body following the scoping meeting but not more than 45 days after the positive declaration is published in the EQB Monitor.

D. Procedure for scoping.

1. Written comments suggesting issues for scoping or commenting on the EAW must be filed with the RGU during the scoping period. Interested persons may attend the scoping meeting to exercise their right to comment.

2. Governmental units and other persons shall be responsible for participating in the scoping process within the time limits and in the manner prescribed in 6 MCAR SS 3.021-3.056.

E. Scoping decision.

1. The scoping decision at the least shall contain:

a. The issues to be addressed in the EIS;

b. Time limits for preparation, if they are shorter than those allowed by 6 MCAR SS 3.021-3.056;

c. Identification of the permits for which information will be gathered concurrently with EIS preparation;

d. Identification of the permits for which a record of decision will be required;

e. Alternatives which will be addressed in the EIS ;

f. Identification of potential impact areas resulting from the project itself and from related actions which shall be addressed in the EIS; and

g. Identification of necessary studies requiring compilation of existing information or the development of new data that can be generated within a reasonable amount of time and at a reasonable cost.

2. The form of an EIS may be changed during scoping if circumstances indicate the need or appropriateness of an alternative form.

3. After the scoping decision is made, the RGU shall not amend the decision without the agreement of the proposer unless substantial changes are made in the proposed project that affect the potential significant environmental effects of the project or substantial new information arises relating to the proposed project that significantly affects the potential environmental effects of the proposed project or the availability of prudent and feasible alternatives to the project. If the scoping decision is amended after publication of the EIS preparation notice, notice and a summary of the amendment shall be published in the EQB Monitor within 30 days of the amendment.

F. EIS preparation notice. An EIS preparation notice shall be published within 45 days after the scoping decision is issued. The notice shall be published in the EQB Monitor, and a press release shall be provided to at least one newspaper of general circulation in each county where the project will occur. The notice shall contain a summary of the scoping decision.

G. Consultant selection. The RGU shall be responsible for expediting the selection of consultants for the preparation of the EIS.

AR000357

6 MCAR S 3.031 EIS preparation and distribution process.

A. Interdisciplinary preparation. An EIS shall be prepared using an interdisciplinary approach which will insure the integrated use of the natural, environmental, and social

sciences. The RGU may request that another governmental unit help in the completion of the EIS. Governmental units shall provide any unprivileged data or information, to which it has reasonable access, concerning the subjects to be discussed and shall assist in the preparation of environmental documents on any project for which it has special expertise or access to information.

B. Content. An EIS shall be written in plain and objective language. An RGU shall use a format for an EIS that will encourage good analysis and clear presentation of the proposed action including alternatives to the project. The standard format shall be:

1. Cover sheet. The cover sheet shall include:

a. The RGU;

b. The title of the proposed project that is the subject of the statement and, if appropriate, the titles of related actions, together with each county or other jurisdictions, if applicable, where the project is located;

c. The name, address, and telephone number of the person at the RGU who can supply further information;

d. The name and address of the proposer and the name, address and telephone number of the proposer's representative who can supply further information.

e. A designation of the statement as a draft, final or supplement;

f. A one paragraph abstract of the EIS; and

g. If appropriate, the date of the public meeting on the draft EIS and the date following the meeting by which comments on the draft EIS must be received by the RGU.

2. Summary. The summary shall stress the major findings, areas of controversy, and the issues to be resolved including the choice among alternatives.

3. Table of contents. The table shall be used to assist readers to locate material.

4. List of preparers. This list shall include the names and qualifications of the persons who were primarily responsible for preparing the EIS or significant background papers.

5. Project description. The proposed project shall be described with no more detail than is absolutely necessary to allow the public to identify the purpose of the project, its size, scope, environmental setting, geographic location, and the anticipated phases of development.

6. Governmental approvals. This section shall list all known governmental permits and approvals required including indentification of the governmental unit which is responsible for each permit or approval. Those permits for which all necessary information has been gathered and presented in the EIS shall be identified.

7. Alternatives. The alternatives section shall compare the environmental impacts of the proposal with other reasonable alternatives to the proposed project. Reasonable alternatives may include locational considerations, design modifications including site layout, magnitude of the project, and consideration of alternative means by which the purpose of the project could be met. Alternatives that were considered but eliminated shall be discussed briefly and the reasons for their elimination shall be stated. The alternative of no action shall be addressed.

8. Environmental, economic, employment and sociological impacts. For the proposed project and each major alternative there shall be a thorough but succinct discussion of any direct or indirect, adverse or beneficial effect generated. The discussion shall concentrate on those issues considered to be significant as identified by the scoping process. Data and analyses shall be commensurate with the importance of the impact, with less important material summarized, consolidated or simply referenced. The EIS shall identify and briefly discuss any major differences of opinion concerning impacts of the proposed project and the effects the project may have on the environment.

9. Mitigation measures. This section shall identify those measures that could reasonably eliminate or minimize any adverse environmental, economic, employment or sociological effects of the proposed project.

10. Appendix. If a RGU prepares an appendix to an EIS the appendix shall include, when applicable:

a. Material prepared in connection with the EIS, as distinct from material which is not so prepared and which is incorporated by reference;

b. Material which substantiates any analysis fundamental to the EIS; and

c. Permit information that was developed and gathered concurrently with the preparation of the EIS. The information may be presented on the permitting agency's permit application forms. The appendix may reference information for the permit included in the EIS text or the information may be included within the appendix, as appropriate. If the permit information cannot conveniently be incorporated into the EIS, the EIS may simply indicate the location where the permit information may be reviewed.

C. Incorporation by reference. A RGU shall incorporate material into an EIS by reference when the effect will be to reduce bulk without impeding governmental and public review of the project. The incorporated material shall be cited in the EIS, and its content shall be briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by interested persons within the time allowed for comment.

D. Incomplete or unavailable information. When a RGU is evaluating significant effects on the environment in an EIS and there is scientific uncertainty or gaps in relevant information, the RGU shall make clear that the information is lacking. If the information relevant to the impacts is essential to a reasoned choice among alternatives and is not known and the cost of obtaining it is excessive or the information cannot be obtained within the time periods specified in G.4. or the information relevant to the impacts is important to the decision and the means to obtain it are beyond the state of the art, the RGU shall weigh the need for the project against the risk and severity of possible adverse impacts were the project to proceed in the face of uncertainty. The EIS shall, in these circumstances, include a worst case analysis and an indication of the probability or improbability of its occurrence.

E. Draft EIS.

1. A draft EIS shall be prepared consistent with 6 MCAR SS 3.021-3.056 and in accord with the scoping determination.

2. When the draft EIS is completed, the RGU shall make the draft EIS available for public review and comment and shall hold an informational meeting in the county where the project is proposed.

3. The entire draft EIS with appendices shall be provided to:

a. Any governmental unit which has authority to permit or approve the proposed project, to the extent known;

b. The proposer of the project;

c. The EQB and EQB staff;

d. The Environmental Conservation Library;

e. The Legislative Reference Library;

f. The Regional Development Commission and Regional Development Library;

g. A public library or public place where the draft will be available for public review in each county where the project will take place, to the extent known; and

h. To the extent possible, to any person requesting the entire EIS.

4. The summary of the draft EIS shall be provided to:

a. All members of the EAW distribution list that do not receive the entire draft EIS;

b. Any person that submitted substantive comments on the EAW that does not receive the entire draft EIS; and

c. Any person requesting the summary.

5. The copy provided to the EQB staff shall serve as notification to publish notice of availability of the draft EIS in the EQB Monitor.

6. The RGU shall supply a press release to at least one newspaper of general circulation within the area where the project is proposed.

7. The notice of availability in the EQB Monitor and the press release shall contain notice of the date, time, and place of the informational meeting, notice of the location of the copy of the draft EIS available for public review, and notice of the date of termination of the comment period.

8. The informational meeting must be held not less than 15 days after publication of the notice of availability in the EQB Monitor. A typewritten or audio-recorded transcript of the meeting shall be made.

9. The record shall remain open for public comment not less than ten days after the last date of the informational meeting. Written comments on the draft EIS may be submitted any time during the comment period.

10. The RGU shall respond to the timely substantive comments received on the draft EIS and prepare the final EIS.

F. Final EIS.

1. The final EIS shall respond to the timely substantive comments on the draft EIS consistent with the scoping decision. The RGU shall discuss at appropriate points in the final EIS any responsible opposing views relating to scoped issues which were not adequately discussed in the draft EIS and shall indicate the RGU's response to the views.

2. If only minor changes in the draft EIS are suggested in the comments on the draft, the written comments and the responses may be attached to the draft or bound as a separate volume and circulated as the final EIS. If other than minor changes are required, the draft text shall be rewritten so that necessary changes in the text are incorporated in the appropriate places.

3. The RGU shall provide copies of the final EIS to:

a. All persons receiving copies of the entire draft EIS pursuant to E.3.;

b. Any person who submitted substantive comments on the draft EIS; and

c. To the extent possible, to any person requesting the final EIS.

4. The copy provided to the EQB staff shall serve as notification to publish notice of availability of the final EIS in the EQB Monitor.

5. The RGU shall supply a press release to at least one newspaper of general circulation within the area where the project is proposed.

6. The notice of availability in the EQB Monitor and the press release shall contain notice of the location of the copy of the final EIS available for public review and notice of the opportunity for public comment on the adequacy of the final EIS.

G. Determination of adequacy.

1. The RGU shall determine the adequacy of the final EIS unless notified by the EQB, on its own initiative or at the request of the RGU, the proposer of the project or other interested persons, that the EQB will determine the adequacy. The EQB shall notify the RGU no later than 60 days following publication of the preparation notice in the EQB Monitor. The EQB shall intervene only if the EQB determines that:

a. The RGU is or will be unable to provide an objective appraisal of the potential impacts of the project;

b. The project involves complex issues which the RGU lacks the technical ability to assess; or

c. The project has multi-jurisdictional effects.

2. Interested persons may submit written comments on the adequacy of the final EIS to the RGU or the EQB, if applicable, at any time prior to the final determination of adequacy.

3. The determination of adequacy of the final EIS shall be made at least ten days after publication in the EQB Monitor of the notice of availability of the final EIS.

4. The determination of adequacy of the final EIS shall be made within 280 days after the preparation notice was published in the EQB Monitor unless the time is extended by consent of the proposer and the RGU or by the governor for good cause.

5. The final EIS shall be determined adequate if it:

a. Addresses the issues raised in scoping so that all issues for which information can be reasonably obtained have been analyzed;

b. Provides responses to the substantive comments received during the draft EIS review concerning issues raised in scoping; and

c. Was prepared in compliance with the procedures of the act and 6 MCAR SS 3.021-3.056.

6. If the RGU or the EQB determine that the EIS is inadequate, the RGU shall have 60 days in which to prepare an adequate EIS. The revised EIS shall be circulated in accord with F.3.

7. The RGU shall notify all persons receiving copies of the final EIS pursuant to F.3. of its adequacy decision within five days of the adequacy decision. Public notice of the decision shall be published in the EQB Monitor.

H. Permit decisions in cases requiring an EIS.

1. Within 90 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 period may be extended with the consent of the permit applicant or where a longer period is required by federal law or state statute.

2. At the time of its permit decision, for those permits which 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 6 MCAR SS 3.021-3.056 and to any other person requesting the information. The record may be integrated into any other record prepared by the permitting unit of government.

3. 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.

I. Supplemental EIS.

1. A RGU shall prepare a supplement to a final EIS whenever the RGU determines that:

a. Substantial changes have been made in the proposed

project that affect the potential significant environmental effects of the project; or

b. There is substantial new information or new circumstances that significantly affect the potential environmental effects from the proposed project which have not been considered in the final EIS or that significantly affect the availability of prudent and feasible alternatives with lesser environmental effects.

2. A supplement to an existing EIS shall be utilized in lieu of a new EIS for expansions of existing projects for which an EIS has been prepared if the RGU determines that a supplement can adequately address the environmental impacts of the project.

3. A RGU shall prepare, circulate, and file a supplemental EIS in the same manner as a draft and final EIS unless alternative procedures are approved by the EQB.

4. The determination of adequacy of the supplemental EIS shall be made within 120 days after the notice of preparation of the supplemental EIS was published in the EQB Monitor unless the time is extended by consent of the proposer and the RGU or by the Governor for good cause.

R0035T

6 MCAR S 3.032 Prohibition on final governmental decisions.

A. EAW filed or required. On any project for which a petition for an EAW is filed or an EAW is required or ordered under 6 MCAR SS 3.021-3.056, no final governmental decision to grant a permit or other approval required, or to commence the project shall be made until either a petition has been dismissed, a negative declaration has been issued, or a determination of adequacy of the EIS has been made.

B. EIS adequate or filed. Except for projects under D. or E., for any project for which an EIS is required, no final governmental decision to grant a permit or other approval required, or to commence the project shall be made until the RGU or the EQB has determined the final EIS is adequate. Where public hearings are required by law to precede issuance of a permit, public hearings shall not be held until after filing of a draft EIS.

C. Construction prohibited, exceptions. No physical construction of a project shall occur for any project subject to review under 6 MCAR SS 3.021-3.056 until a petition has been dismissed, a negative declaration has been issued, or until the final EIS has been determined adequate by the RGU or the EQB, unless the project is an emergency under E. or a variance is granted under D. The EQB's statutory authority to halt projects or impose other temporary relief is in no way limited by this paragraph.

D. Variance. Construction may begin on a project if the

proposer applies for and is granted a variance from C. A variance for certain governmental approvals to be granted prior to completion of the environmental review process may also be requested.

1. A variance may be requested at any time after the commencement of the 30-day review period following the filing of an EAW.

2. The proposer shall submit an application for a variance to the EQB together with:

a. A detailed explanation of the construction proposed to be undertaken or the governmental approvals to be granted;

b. The anticipated environmental effects of undertaking the proposed construction or granting the governmental approvals;

c. The reversibility of the anticipated environmental effects;

d. The reasons necessitating the variance; and

e. A statement describing how approval would affect subsequent approvals needed for the project and how approval would affect the purpose of environmental review.

3. The EQB chairperson shall publish a notice of the variance application in the EQB Monitor within 15 days after receipt of the application.

4. The EQB chairperson shall issue a press release to at least one newspaper of general circulation in the area where the project is proposed. The notice and press release shall summarize the reasons given for the variance application and specify that comments on whether a variance should be granted must be submitted to the EQB within 20 days after the date of publication in the EQB Monitor.

5. At its first meeting more than ten days after the comment period expires, the EQB shall grant or deny the variance. A variance shall be granted if:

a. The RGU consents to a variance; and

b. On the basis of the variance application and the comments, construction is necessary in order to avoid excessive and unusual economic hardship, or avoid a serious threat to public health or safety. Unusual economic hardship means that the hardship is caused by unique conditions and circumstances which are peculiar to the project and are not characteristic of other similar projects or general economic conditions of the area or state and that the hardship is not caused by the proposer's own action or inaction.

6. The EQB shall set forth in writing its reasons for granting or denying each request for a variance.

7. Only the construction or governmental approvals necessary to avoid the consequences listed in 5. shall be undertaken or granted.

E. Emergency action. In the rare situation when immediate action by a governmental unit or person is essential to avoid or eliminate an imminent threat to the public health or safety or a serious threat to natural resources, a proposed project may be undertaken without the environmental review which would otherwise be required by 6 MCAR SS 3.021-3.056. The governmental unit or person must demonstrate to the EQB chairperson, either orally or in writing, that immediate action is essential and must receive authorization from the EQB chairperson to proceed. Authorization to proceed shall be limited to those aspects of the project necessary to control the immediate impacts of the emergency. Other aspects of the project remain subject to review under 6 MCAR SS 3.021-3.056.

R00635T

6 MCAR S 3.033 Review of state projects.

A. Applicability. This rule applies to any project wholly or partially conducted by a state agency if an EIS or a generic EIS has been prepared for that project.

B. Prior notice required. At least seven working days prior to the final decision of any state agency concerning a project subject to this rule, that agency shall provide the EQB with notice of its intent to issue a decision. The notice shall include a brief description of the project, the date the final decision is expected to be issued, the title and date of EISs prepared on the project and the name, address and phone number of the project proposer and parties to any proceeding on the project. If the project is required by the existence of a public emergency advance notice shall not be required. If advance notice is precluded by public emergency or statute notice shall be given at the earliest possible time but not later than three calendar days after the final decision is rendered.

C. Decision to delay implementation. At any time prior to or within ten days after the issuance of the final decision on a project, the chairperson of the EQB may delay implementation of the project by notice to the agency, the project proposer and interested parties as identified by the governmental unit. Notice may be verbal, however, written notice shall be provided as soon as reasonably possible. The chairperson's decision to delay implementation shall be effective for no more than ten days by which time the EQB must affirm or overturn the decision.

D. Basis for decision to delay implementation. The EQB, or the chairperson of the EQB, shall delay implementation of a project where there is substantial reason to believe that the

project or its approval is inconsistent with the policies and standards of Minnesota Statutes, sections 116D.01 to 116D.06.

E. Notice and hearing. Promptly upon issuance of a decision to delay implementation of a project, the EQB shall order a hearing. When the hearing will determine the rights of any private individual, the hearing shall be conducted pursuant to Minnesota Statutes, section 15.0418. In all other cases, the hearing shall be conducted as follows:

1. Written notice of the hearing shall be given to the governmental unit, the proposer, and parties, as identified by the governmental unit, no less than seven days in advance. To the extent reasonably possible, notice shall be published in the EQB Monitor and a newspaper of general circulation in each county in which the project is to take place. The notice shall identify the time and place of the hearing, and provide a brief description of the project and final decision to be reviewed and a reference to the EQB's authority to conduct the hearing. The hearing shall be conducted by the EQB chairperson or a designee;

2. Any person may submit written or oral evidence tending to establish the consistency or inconsistency of the project with the policies and standards of Minnesota Statutes, sections 116D.01 to 116D.06. Evidence shall also be taken of the governmental unit's final decision; and

3. Upon completion of the hearing, the EQB shall determine whether to affirm, reverse, or modify the governmental unit's decision. If modification is required, the EQB shall specifically state those modifications. The EQB shall prepare specific findings of fact regarding its decision. If the EQB fails to act within 45 days of notice given pursuant to C. the agency's decision shall stand as originally issued.

Chapter Fourteen:

Substitute Forms of Environmental Review

AR00035T

6 MCAR S 3.034 Alternative review.

A. Implementation. Governmental units may request EQB approval of an alternative form of environmental review for categories of projects which undergo environmental review under other governmental processes. The governmental processes must address substantially the same issues as the EAW and EIS process and use procedures similar in effect to those of the EAW and EIS process. The EQB shall approve the governmental process as an alternative form of environmental review if the governmental unit demonstrates the process meets the following conditions:

1. The process identifies the potential environmental impacts of each proposed project;

2. The process addresses substantially the same issues as an EIS and uses procedures similar to those used in preparing an EIS but in a more timely or more efficient manner;

3. Alternatives to the proposed project are considered in light of their potential environmental impacts;

4. Measures to mitigate the potential environmental impacts are identified and discussed;

5. A description of the proposed project and analysis of potential impacts, alternatives and mitigating measures are provided to other affected or interested governmental units and the general public;

6. The governmental unit shall provide notice of the availability of environmental documents to the general public in at least the area affected by the project. A copy of environmental documents on projects reviewed under an alternative review procedure shall be submitted to the EQB. The EQB shall be responsible for publishing notice of the availability of the documents in the EQB Monitor;

7. Other governmental units and the public are provided with a reasonable opportunity to request environmental review and to review and comment on the information concerning the project. The process must provide for RGU response to timely substantive comments relating to issues discussed in environmental documents relating to the project; and

8. The process must routinely develop the information required in 1.-5. and provide the notification and review opportunities in 6. and 7. for each project that would be subject to environmental review.

B. Exemption from rules. If the EQB accepts a governmental unit's process as an adequate alternative review procedure, projects reviewed under that alternative review procedure shall be exempt from environmental review under 6 MCAR SS 3.026, 3.027, 3.028, 3.030 and 3.031. On approval of the alternative review process, the EQB shall provide for periodic review of the alternative procedure to ensure continuing compliance with the requirements and intent of these environmental review procedures. The EQB shall withdraw its approval of an alternative review procedure if review of the procedure indicates that the procedure no longer fulfills the intent and requirements of the Minnesota Environmental Policy Act and 6 MCAR SS 3.021-3.056. A project in the process of undergoing review under an approved alternative process shall not be affected by the EQB's withdrawal of approval.

R0035T

6 MCAR S 3.035 Model ordinance.

A. Application. The model ordinance, set out in C. may be utilized by any local governmental unit which adopts the

ordinance in lieu of 6 MCAR SS 3.025-3.032 for projects which qualify for review under the ordinance.

B. Notice.

If a local governmental unit adopts the ordinance exactly as set out in C. it shall be effective without prior approval by the EQB. A copy of the adopted ordinance shall be forwarded to the EQB. Notice of adoption of the ordinance shall be made in the EQB Monitor.

C. Model ordinance.

AN ORDINANCE RELATING TO THE PREPARATION AND

REVIEW OF ENVIRONMENTAL ANALYSIS

The (county board) (town board) (city council) (watershed board) of ..... ordains:

Section 1. Application. This ordinance shall apply to all projects which:

a. Are consistent with any applicable comprehensive plan;

b. Do not require a state permit; and

c. The (board) (council) determines that, because of the nature or location of the project, the project may have the potential for significant environmental effects; or

d. Are listed in a mandatory EAW or EIS category of the state environmental review program, 6 MCAR SS 3.038 and 3.039, one copy of which is on file with the (county auditor) (town clerk) (city clerk) (watershed district board of managers).

This ordinance shall not apply to projects which are exempted from environmental review by 6 MCAR S 3.041 or to projects which the (board) (council) determines are so complex or have potential environmental effects which are so significant that review should be completed under the state environmental review program, 6 MCAR SS 3.021-3.056.

Section 2. Preparation. Prior to or together with any application for a permit or other form of approval for a project, the proposer of the project shall prepare an analysis of the project's environmental effects, reasonable alternatives to the project and measures for mitigating the adverse environmental effects. The analysis should not exceed 25 pages in length. The (board) (council) shall review the information in the analysis and determine the adequacy of the document. The (board) (council) shall use the standards of the state's environmental review program rules in its determination of adequacy. If the (board) (council) determines the document is inadequate, it shall return the document to the proposer to correct the inadequacies.

Section 3. Review. Upon filing the analysis with the (board) (council), the (board) (council) shall publish notice in a newspaper of general circulation in the (county) (city) (town) (district) that the analysis is available for review. A copy of the analysis shall be provided to any person upon request. A copy of the analysis shall also be provided to every local governmental unit within which the proposed project would be located and to the EQB. The EQB shall publish notice of the availability of the analysis in the EQB Monitor.

Comments on the analysis shall be submitted to the (board) (council) within 30 days following the publication of the notice of availability in the EQB Monitor. The (board) (council) may hold a public meeting to receive comments on the analysis if it determines that a meeeting is necessary or useful. The meeting may be combined with any other meeting or hearing for a permit or other approval for the project. Public notice of the meeting to receive comments on the analysis shall be provided at least ten days before the meeting.

Section 4. Decision. In issuing any permits or granting any other required approvals for a project subject to review under this ordinance, the (board) (council) shall consider the analysis and the comments received on it. The (board) (council) shall, whenever practicable and consistent with other laws, require that mitigation measures identified in the analysis be incorporated in the project's design and construction.

RCO035T

6 MCAR S 3.036 Generic EIS. A generic EIS may be ordered by the EQB to study types of projects that are not adequately reviewed on a case-by-case basis.

A. EQB as RGU. If the EQB orders a generic EIS, the EQB shall be the RGU for the generic EIS.

B. Public requests for generic EIS. A governmental unit or any other person may request the EQB to order a generic EIS.

C. Timing. Time deadlines for the preparation of a generic EIS shall be set at the scoping meeting.

D. Criteria. In determining the need for a generic EIS, the EQB shall consider:

1. If the review of a type of action can be better accomplished by a generic EIS than by project specific review;

2. If the possible effects on the human environment from a type of action are highly uncertain or involve unique or unknown risks;

3. If a generic EIS can be used for tiering in a subsequent project specific EIS;

4. The amount of basic research needed to understand the

impacts of such projects;

5. The degree to which decision makers or the public have a need to be informed of the potential impacts of such projects;

6. The degree to which information to be presented in the generic EIS is needed for governmental or public planning;

7. The potential for significant environmental effects as a result of the cumulative impacts of such projects;

8. The regional and statewide significance of the impacts and the degree to which they can be addressed on a project-by-project basis; and

9. The degree to which governmental policies affect the number or location of such projects or the potential for significant environmental effects.

E. Scoping. The generic EIS shall be scoped. Scoping shall be coordinated by the RGU and shall identify the issues and geographic areas to be addressed in the generic EIS. Scoping procedures shall follow the procedures in 6 MCAR S 3.030 except for the identification of permits for which information is to be gathered concurrently with the EIS preparation, the preparation and circulation of the EAW, and the time requirements.

F. Content. In addition to content requirements specified by the scoping process, the generic EIS shall contain the following:

1. Any new data that has been gathered or the results of any new research that has been undertaken as part of the generic EIS preparation;

2. A description of the possible impacts and likelihood of occurrence, the extent of current use, and the possibility of future development for the type of action; and

3. Alternatives including recommendations for geographic placement of the type of action to reduce environmental harm, different methods for construction and operation, and different types of actions that could produce the same or similar results as the subject type of action but in a less environmentally harmful manner.

G. Relationship to project specific review. Preparation of a generic EIS does not exempt specific activities from project specific environmental review. Project specific environmental review shall use information in the generic EIS by tiering and shall reflect the recommendations contained in the generic EIS if the EQB determines that the generic EIS remains adequate at the time the specific project is subject to review.

H. Relationship to projects. The fact that a generic EIS is being prepared shall not preclude the undertaking and completion

of a specific project whose impacts are considered in the generic EIS.

6 MCAR S 3.037 Joint federal and state environmental documents.

A. Cooperative processes. Governmental units shall cooperate with federal agencies to the fullest extent possible to reduce duplication between Minnesota Statutes, chapter 116D and the National Environmental Policy Act, United States Code, title 42, sections 4321 to 4361 (1976).

B. Joint responsibility. Where a joint federal and state environmental document is prepared, the RGU and one or more federal agencies shall be jointly responsible for its preparation. Where federal laws have environmental document requirements in addition to but not in conflict with those in Minnesota Statutes, section 116D.04, governmental units shall cooperate in fulfilling these requirements as well as those of state laws so that one document can comply with all applicable laws.

C. Federal EIS as draft EIS. If a federal EIS will be or has been prepared for a project, the RGU shall utilize the draft or final federal EIS as the draft state EIS for the project if the federal EIS addresses the scoped issues and satisfies the standards set forth in 6 MCAR S 3.028 B.

Chapter Fifteen:

Mandatory Categories

6 MCAR S 3.038 Mandatory EAW categories. An EAW must be prepared for projects that meet or exceed the threshold of any of A.-DD.

A. Nuclear fuels and nuclear waste.

1. Construction or expansion of a facility for the storage of high level nuclear waste. The EQB shall be the RGU.

2. Construction or expansion of a facility for the storage of low level nuclear waste for one year or longer. The MDH shall be the RGU.

3. Expansion of a high level nuclear waste disposal site. The EQB shall be the RGU.

4. Expansion of a low level nuclear waste disposal site. The MDH shall be the RGU.

5. Expansion of an away-from-reactor facility for temporary storage of spent nuclear fuel. The EQB shall be the

RGU.

6. Construction or expansion of an on-site pool for temporary storage of spent nuclear fuel. The EQB shall be the RGU.

B. Electric generating facilities. Construction of an electric power generating plant and associated facilities designed for or capable of operating at a capacity of 25 megawatts or more. The EQB shall be the RGU.

C. Petroleum refineries. Expansion of an existing petroleum refinery facility which increases its capacity by 10,000 or more barrels per day. The PCA shall be the RGU.

D. Fuel conversion facilities.

1. Construction of a facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 25,000 dry tons or more per year of input. The PCA shall be the RGU.

2. Construction or expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by 5,000,000 or more gallons per year of alcohol produced. The PCA shall be the RGU.

E. Transmission lines. Construction of a transmission line at a new location with a nominal capacity of 70 kilovolts or more with 20 or more miles of its length in Minnesota. The EQB shall be the RGU.

F. Pipelines.

1. Construction of a pipeline, greater than six inches in diameter and having more than 50 miles of its length in Minnesota, used for the transportation of coal, crude petroleum fuels, or oil or their derivates. The EQB shall be the RGU.

2. Construction of a pipeline for transportation of natural or synthetic gas at pressures in excess of 200 pounds per square inch with 50 miles or more of its length in Minnesota. The EQB shall be the RGU.

G. Transfer facilities.

1. Construction of a facility designed for or capable of transferring 300 tons or more of coal per hour or with an annual throughput of 500,000 tons of coal from one mode of transportation to a similar or different mode of transportation; or the expansion of an existing facility by these respective amounts. The PCA shall be the RGU.

2. Construction of a new facility or the expansion by 50 percent or more of an existing facility for the bulk transfer of hazardous materials with the capacity of 10,000 or more gallons

per transfer, if the facility is located in a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers district Minnesota River Project Riverbend area, or the Mississippi headwaters area. The PCA shall be the RGU.

H. Underground storage.

1. Expansion of an underground storage facility for gases or liquids that requires a permit, pursuant to Minnesota Statutes, section 84.57. The DNR shall be the RGU.

2. Expansion of an underground storage facility for gases or liquids, using naturally occurring rock materials, that requires a permit pursuant to Minnesota Statutes, section 84.621. The DNR shall be the RGU.

I. Storage facilities.

1. Construction of a facility designed for or capable of storing more than 7,500 tons of coal or with an annual throughput of more than 125,000 tons of coal; or the expansion of an existing facility by these respective amounts. The PCA shall be the RGU.

2. Construction of a facility on a single site designed for or capable of storing 1,000,000 gallons or more of hazardous materials. The PCA shall be the RGU.

3. Construction of a facility designed for or capable of storing on a single site 100,000 gallons or more of liquified natural gas or synthetic gas. The PCA shall be the RGU.

J. Metallic mineral mining and processing.

1. Mineral deposit evaluation of metallic mineral deposits other than natural iron ore and taconite. The DNR shall be the RGU.

2. Expansion of a stockpile, tailings basin, or mine by 320 or more acres. The DNR shall be the RGU.

3. Expansion of a metallic mineral plant processing facility that is capable of increasing production by 25 percent per year or more, provided that increase is in excess of 1,000,000 tons per year in the case of facilities for processing natural iron ore or taconite. The DNR shall be the RGU.

K. Nonmetallic mineral mining.

1. Development of a facility for the extraction or mining of peat which will result in the excavation of 160 or more acres of land during its existence. The DNR shall be the RGU.

2. Development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 40 or more acres of land to a

mean depth of ten feet or more during its existence. The local government unit shall be the RGU.

L. Paper or pulp processing mills. Expansion of an existing paper or pulp processing facility that will increase its production capacity by 50 percent or more. The PCA shall be the RGU.

M. Industrial, commercial and institutional facilities.

1. Construction of a new or expansion of an existing industrial, commercial, or institutional facility equal to or in excess of the following thresholds, expressed as gross floor space:

a. Unincorporated area - 100,000 square feet

b. Third or fourth class city - 200,000 square feet

c. Second class city - 300,000 square feet

d. First class city - 400,000 square feet

The local government unit shall be the RGU.

2. Construction of a new or expansion of an existing industrial, commercial, or institutional facility of 20,000 or more square feet of ground area, if the local governmental unit has not adopted approved shoreland, flood plain, or wild and scenic rivers land use district ordinances, the Mississippi headwaters plan or the Project Riverbend plan, as applicable, and either:

a. The project involves riparian frontage; or

b. Twenty thousand or more square feet of ground area to be developed is within a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, Minnesota River Project Riverbend area, or the Mississippi headwaters area. The local government unit shall be the RGU.

N. Air pollution.

1. Construction of a stationary source facility that generates 100 tons or more per year of any single air pollutant after installation of air pollution control equipment. The PCA shall be the RGU.

2. Construction of a new parking facility for 1,000 or more vehicles. The PCA shall be the RGU.

O. Hazardous waste.

1. Construction or expansion of a hazardous waste disposal facility. The PCA shall be the RGU.

2. Construction of a hazardous waste processing facility which sells processing services to generators, other than the owner and operator of the facility, of 1,000 or more kilograms per month capacity, or expansion of the facility by 1,000 or more kilograms per month capacity. The PCA shall be the RGU.

3. Construction of a hazardous waste processing facility of 1,000 or more kilograms per month capacity or expansion of a facility by 1,000 or more kilograms per month capacity if the facility is located in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or in an area characterized by soluble bedrock. The PCA shall be the RGU.

4. Construction or expansion of a facility which sells hazardous waste storage services to generators other than the owner and operator of the facility or construction of a facility at which a generator's own hazardous wastes will be stored for a time period in excess of 90 days, if the facility is located in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, Mississippi headwaters area, or in an area characterized by soluble bedrock. The PCA shall be the RGU.

P. Solid waste.

1. Construction of a mixed municipal solid waste disposal facility for up to 100,000 cubic yards of waste fill per year. The PCA or metropolitan council shall be the RGU.

2. Expansion by 25 percent or more of previous capacity of a mixed municipal solid waste disposal facility for up to 100,000 cubic yards of waste fill per year. The PCA or metropolitan council shall be the RGU.

3. Construction or expansion of a mixed municipal solid waste transfer station for 300,000 or more cubic yards per year. The PCA or metropolitan council shall be the RGU.

4. Construction or expansion of a mixed municipal solid waste resource recovery facility for 100 or more tons per day of input. The PCA or metropolitan council shall be the RGU.

5. Expansion by at least ten percent but less than 25 percent of previous capacity of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste per year. The PCA or metropolitan council shall be the RGU.

Q. Sewage systems.

1. Construction of a new municipal or domestic wastewater treatment facility or sewer system with a capacity of 30,000 gallons per day or more. The PCA shall be the RGU.

2. Expansion of an existing municipal or domestic

wastewater treatment facility or sewer system by an increase in capacity of 50 percent or more over existing capacity or by 50,000 gallons per day or more. The PCA shall be the RGU.

R. Residential development.

1. Construction of a permanent or potentially permanent residential development of:

a. Fifty or more unattached or 75 or more attached units in an unsewered area;

b. One hundred or more unattached or 150 or more attached units in a third or fourth class city or sewered unincorporated area;

c. One hundred and fifty or more unattached or 225 or more attached units in a second class city; or

d. Two hundred or more unattached or 300 or more attached units in a first class city.

The local government unit shall be the RGU.

2. Construction of a permanent or potentially permanent residential development of 20 or more unattached units or of 30 or more attached units, if the local governmental unit has not adopted state approved shoreland, flood plain, or wild and scenic rivers land use district ordinances, the Mississippi headwaters plan, or the Project Riverbend plan, as applicable, and either:

a. The project involves riparian frontage; or

b. Five or more acres of the development is within a shoreland, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

The local government unit shall be the RGU.

S. Recreational development. Construction of a seasonal or permanent recreational development, accessible by vehicle, consisting of 50 or more sites. The local government unit shall be the RGU.

T. Airport projects. Construction of a runway extension that would upgrade an existing airport runway to permit usage by aircraft over 12,500 pounds that are at least three decibels louder than aircraft currently using the runway. The DOT or local government unit shall be the RGU.

U. Highway projects.

1. Construction of a road on a new location over one mile in length that will function as a collector roadway. The DOT or

local government unit shall be the RGU.

2. Construction of additional travel lanes on an existing road for a length of one or more miles. The DOT or local government unit shall be the RGU.

3. The addition of one or more new interchanges to a completed limited access highway. The DOT or local government unit shall be the RGU.

V. Barge fleeting. Construction of a new or expansion of an existing barge fleeting facility. The DOT or port authority shall be the RGU.

W. Water appropriation and impoundments.

1. A new appropriation for commercial or industrial purposes of either surface water or ground water averaging 30,000,000 gallons per month, or exceeding 2,000,000 gallons in any day during the period of use; or a new appropriation of either ground water or surface water for irrigation of 540 acres or more in one continuous parcel from one source of water. The DNR shall be the RGU.

2. A new or additional permanent impoundment of water creating a water surface of 160 or more acres. The DNR shall be the RGU.

3. Construction of a Class II dam. The DNR shall be the RGU.

X. Marinas. Construction or cumulative expansion of a marina or harbor project which results in a total of 20,000 or more square feet of temporary or permanent water surface area used for docks, docking, or maneuvering of watercraft. The local government unit shall be the RGU.

Y. Stream diversion. The diversion or channelization of a designated trout stream or a natural watercourse with a total watershed of ten or more square miles, unless exempted by 6 MCAR S 3.041 P. or 6 MCAR S 3.041 M.5. The local government unit shall be the RGU.

Z. Wetlands and protected waters.

1. Projects that will change or diminish the course, current, or cross section of one acre or more of any protected water or protected wetland except for those to be drained without a permit pursuant to Minnesota Statutes, section 105.391, subdivision 3. The local government unit shall be the RGU.

2. Projects that will change or diminish the course, current, or cross section of 40 percent or more or five or more acres of a Type 3 through 8 wetland of 2.5 acres or more, excluding protected wetlands, if any part of the wetland is

within a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area. The local government unit shall be the RGU.

AA. Agriculture and forestry.

1. Harvesting of timber for commercial purposes on public lands within a state park, historical area, wilderness area, scientific and natural area, wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or critical area that does not have an approved plan under Minnesota Statutes, section 86A.09 or 116G.07. The DNR shall be the RGU.

2. A clearcutting of 80 or more contiguous acres of forest, any part of which is located within a shoreland area and within 100 feet of the ordinary high water mark of the lake or river. The DNR shall be the RGU.

3. Projects resulting in the conversion of 640 or more acres of forest or naturally vegetated land to a differing open space land use. The local government unit shall be the RGU.

4. Projects resulting in the permanent conversion of 80 or more acres of agricultural, forest, or naturally vegetated land to a more intensive, developed land use. The local government unit shall be the RGU.

BB. Animal feedlots. The construction of an animal feedlot facility with a capacity of 1,000 animal units or more or the expansion of an existing facility by 1,000 animal units or more. The PCA shall be the RGU if the feedlot is in a shoreland, delineated flood plain or Karst area; otherwise the local unit of government shall be the RGU.

CC. Natural areas. Projects resulting in the permanent physical encroachment on lands within a national park, state park, wilderness area, state lands and waters within the boundaries of the Boundary Waters Canoe Area, scientific and natural area, or state trail corridor when the encroachment is inconsistent with laws applicable to or the management plan prepared for the recreational unit. The DNR or local government unit shall be the RGU.

DD. Historical places. Destruction of a property that is listed on the national register of historic places. The permitting state agency or local unit of government shall be the RGU.

A-R000357

6 MCAR S 3.039 Mandatory EIS categories. An EIS must be prepared for projects that meet or exceed the threshold of any of A.-S.

A. Nuclear fuels and nuclear waste.

1. The construction or expansion of a nuclear fuel or nuclear waste processing facility, including fuel fabrication facilities, reprocessing plants, and uranium mills. The DNR for uranium mills, otherwise the PCA shall be the RGU.

2. Construction of a high level nuclear waste disposal site. The EQB shall be the RGU.

3. Construction of an away-from-reactor facility for temporary storage of spent nuclear fuel. The EQB shall be the RGU.

4. Construction of a low level nuclear waste disposal site. The MDH shall be the RGU.

B. Electric generating facilities. Construction of a large electric power generating plant pursuant to 6 MCAR S 3.035 3.055 The EQB shall be the RGU.

C. Petroleum refineries. Construction of a new petroleum refinery facility. The PCA shall be the RGU.

D. Fuel conversion facilities.

1. Construction of a facility for the conversion of coal, peat, or biomass sources to gaseous, liquid or solid fuels if that facility has the capacity to utilize 250,000 dry tons or more per year of input. The PCA shall be the RGU.

2. Construction or expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by 50,000,000 or more gallons per year of alcohol produced. The PCA shall be the RGU.

E. Transmission lines. Construction of a high voltage transmission line pursuant to 6 MCAR S 3.036 3.056 The EQB shall be the RGU.

F. Underground storage.

1. Construction of an underground storage facility for gases or liquids that requires a permit pursuant to Minnesota Statutes, section 84.57. The DNR shall be the RGU.

2. Construction of an underground storage facility for gases or liquids, using naturally occurring rock materials, that requires a permit pursuant to Minnesota Statutes, section 84.621. The DNR shall be the RGU.

G. Metallic mineral mining and processing.

1. Mineral deposit evaluation involving the extraction of 1,000 tons or more of material that is of interest to the proposer principally due to its radioactive characteristics. The DNR shall be the RGU.

2. Construction of a new facility for mining metallic minerals or for the disposal of tailings from a metallic mineral mine. The DNR shall be the RGU.

3. Construction of a new metallic mineral processing facility. The DNR shall be the RGU.

H. Nonmetallic mineral mining.

1. Development of a facility for the extraction or mining of peat which will utilize 320 acres of land or more during its existence. The DNR shall be the RGU.

2. Development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 160 acres of land or more to a mean depth of ten feet or more during its existence. The local government unit shall be the RGU.

I. Paper or pulp processing. Construction of a new paper or pulp processing mill. The PCA shall be the RGU.

J. Industrial, commercial and institutional facilities.

1. Construction of a new or expansion of an existing industrial, commercial, or institutional facility equal to or in excess of the following thresholds, expressed as gross floor space:

a. Unincorporated area - 250,000 square feet;

b. Third or fourth class city - 500,000 square feet;

c. Second class city - 750,000 square feet;

d. First class city - 1,000,000 square feet.

The local government unit shall be the RGU.

2. Construction of a new or expansion of an existing industrial, commercial, or institutional facility of 100,000 or more square feet of ground area, if the local governmental unit has not adopted state approved shoreland, flood plain, or wild and scenic rivers land use district ordinances, the Mississippi headwaters plan or the Project Riverbend plan, as applicable, and either:

a. The project involves riparian frontage, or

b. One hundred thousand or more square feet of ground area to be developed is within a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

The local government unit shall be the RGU.

K. Hazardous waste.

1. Construction or expansion of a hazardous waste disposal facility for 1,000 or more kilograms per month. The PCA shall be the RGU.

2. The construction or expansion of a hazardous waste disposal facility in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or in an area characterized by soluble bedrock. The PCA shall be the RGU.

3. Construction or expansion of a hazardous waste processing facility which sells processing services to generators other than the owner and operator of the facility, if the facility is located in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or in an area characterized by soluble bedrock. The PCA shall be the RGU.

L. Solid waste.

1. Construction of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste fill per year. The PCA or metropolitan council shall be the RGU.

2. Construction or expansion of a mixed municipal solid waste disposal facility in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or in an area characterized by soluble bedrock. The PCA or metropolitan council shall be the RGU.

3. Construction or expansion of a mixed municipal solid waste resource recovery facility for 500 or more tons per day of input. The PCA or metropolitan council shall be the RGU.

4. Expansion by 25 percent or more of previous capacity of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste fill per year. The PCA or metropolitan council shall be the RGU.

M. Residential development.

1. Construction of a permanent or potentially permanent residential development of:

a. One hundred or more unattached or 150 or more attached units in an unsewered area;

b. Four hundred or more unattached or 600 or more attached units in a third or fourth class city or sewered unincorporated area;

c. Six hundred or more unattached or 900 or more attached units in a second class city; or

d. Eight hundred or more unattached or 1,200 or more attached units in a first class city.

The local government unit shall be the RGU.

2. Construction of a permanent or potentially permanent residential development of 40 or more unattached units or of 60 or more attached units, if the local governmental unit has not adopted state approved shoreland, flood plain, or wild and scenic rivers land use district ordinances, the Mississippi headwaters plan, or the Project Riverbend plan as applicable, and either:

a. The project involves riparian frontage, or

b. Ten or more acres of the development is within a shoreland, delineated flood plain, or state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

The local government unit shall be the RGU.

N. Airport projects. Construction of a paved and lighted airport runway of 5,000 feet of length or greater. The DOT or local government unit shall be the RGU.

O. Highway projects. Construction of a road on a new location which is four or more lanes in width and two or more miles in length. The DOT or local government unit shall be the RGU.

P. Barge fleeting facilities. Construction of a barge fleeting facility at a new off-channel location that involves the dredging of 1,000 or more cubic yards. The DOT or port authority shall be the RGU.

Q. Water appropriation and impoundments. Construction of a Class I dam. The DNR shall be the RGU.

R. Marinas. Construction of a new or expansion of an existing marina, harbor, or mooring project on a state or federally designated wild and scenic river. The local government unit shall be the RGU.

S. Wetlands and protected waters. Projects that will eliminate a protected water or protected wetland except for those to be drained without a permit pursuant to Minnesota Statutes, section 105.391, subdivision 3. The local government unit shall be the RGU.

AR000361

6 MCAR S 3.040 Discretionary EAW. A governmental unit with jurisdiction may order the preparation of an EAW for any project

that does not exceed the mandatory thresholds designated in 6 MCAR S 3.038 or 3.039 if the governmental unit determines that because of the nature or location of the proposed project the project may have the potential for significant environmental effects, and the project is not exempted pursuant to 6 MCAR S 3.041.

R0003ST

6 MCAR S 3.041 Exemptions. Projects within A.-Y. are exempt from 6 MCAR SS 3.021-3.056.

A. Standard exemptions.

1. Projects for which no governmental decisions are required.

2. Projects for which all governmental decisions have been made.

3. Projects for which, and so long as, a governmental unit has denied a required governmental approval.

4. Projects for which a substantial portion of the project has been completed and an EIS would not influence remaining implementation or construction.

5. Projects for which environmental review has already been initiated under the prior rules or for which environmental review is being conducted pursuant to 6 MCAR S 3.034 or 3.035.

B. Electric generating facilities. Construction of an electric generating plant or combination of plants at a single site with a combined capacity of less than five megawatts.

C. Fuel conversion facilities. Expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by less than 500,000 gallons per year of alcohol produced.

D. Transmission lines. Construction of a transmission line with a nominal capacity of 69 kilovolts or less.

E. Transfer facilities. Construction of a facility designed for or capable of transferring less than 30 tons of coal per hour or with an annual throughput of less than 50,000 tons of coal from one mode of transportation to a similar or different mode of transportation; or the expansion of an existing facility by these respective amounts.

F. Storage facilities. Construction of a facility designed for or capable of storing less than 750 tons of coal or more, with an annual throughput of less than 12,500 tons of coal; or the expansion of an existing facility by these respective amounts.

G. Mining.

1. General mine site evaluation activities that do not result in a permanent alteration of the environment, including mapping, aerial surveying, visual inspection, geologic field reconnaissance, geophysical studies, and surveying, but excluding exploratory borings.

2. Expansion of metallic mineral plant processing facilities that are capable of increasing production by less than ten percent per year, provided the increase is less than 100,000 tons per year in the case of facilities for processing natural iron ore or taconite.

3. Scram mining operations.

H. Paper or pulp processing facilities. Expansion of an existing paper or pulp processing facility that will increase its production capacity by less than ten percent.

I. Industrial, commercial and institutional facilities.

1. Construction of a new or expansion of an existing industrial, commercial, or institutional facility of less than the following thresholds, expressed as gross floor space, if no part of the development is within a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area:

a. Third or fourth class city or unincorporated area - 50,000 square feet;

b. Second class city - 75,000 square feet; or

c. First class city - 100,000 square feet.

2. The construction of an industrial, commercial, or institutional facility with less than 4,000 square feet of gross floor space, and with associated parking facilities designed for 20 vehicles or less.

3. Construction of a new parking facility for less than 100 vehicles if the facility is not located in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

J. Sewage systems. Construction of a new wastewater treatment facility or sewer system with a capacity of less than 3,000 gallons per day or the expansion of an existing facility by less than that amount.

K. Residential development.

1. Construction of a sewered residential development, no part of which is within a shoreland area, delineated flood plain state or federally designated wild and scenic rivers district,

the Minnesota River Project Riverbend area, or the Mississippi headwaters area, of:

a. Less than ten units in an unincorporated area;

b. Less than 20 units in a third or fourth class city;

c. Less than 40 units in a second class city; or

d. Less than 80 units in a first class city.

2. Construction of a single residence or multiple residence with four dwelling units or less and accessory appurtenant structures and utilities.

L. Airport projects.

1. Runway, taxiway, apron, or loading ramp construction or repair work including reconstruction, resurfacing, marking, grooving, fillets and jet blast facilities, except where the project will create environmental impacts off airport property.

2. Installation or upgrading of airfield lighting systems, including beacons and electrical distribution systems.

3. Construction or expansion of passenger handling or parking facilities including pedestrian walkway facilities.

4. Grading or removal of obstructions and erosion control projects on airport property except where the projects will create environmental impacts off airport property.

M. Highway projects.

1. Highway safety improvement projects.

2. Installation of traffic control devices, individual noise barriers, bus shelters and bays, loading zones, and access and egress lanes for transit and paratransit vehicles.

3. Modernization of an existing roadway or bridge by resurfacing, restoration, or rehabilitation which may involve the acquisition of minimal amounts of right-of-way.

4. Roadway landscaping, construction of bicycle and pedestrian lanes, paths, and facilities within existing right-of-way.

5. Any stream diversion or channelization within the right-of-way of an existing public roadway associated with bridge or culvert replacement.

6. Reconstruction or modification of an existing bridge structure on essentially the same alignment or location which may involve the acquisition of minimal amounts of right-of-way.

N. Water impoundments. A new or additional permanent impoundment of water creating a water surface of less than ten acres.

O. Marinas. Construction of private residential docks for use by four or less boats and utilizing less than 1,500 square feet of water surface.

P. Stream diversion. Routine maintenance or repair of a drainage ditch within the limits of its original construction flow capacity, performed within 20 years of construction or major repair.

Q. Agriculture and forestry.

1. Harvesting of timber for maintenance purposes.

2. Public and private forest management practices, other than clearcutting or the application of pesticides, that involve less than 20 acres of land.

R. Animal feedlots. The construction of an animal feedlot facility of less than 100 animal units or the expansion of an existing facility by less than 100 animal units no part of either of which is located within a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

S. Utilities. Utility extensions as follows: Water service mains of 500 feet or less and one and a half inches diameter or less; sewer lines of 500 feet or less and eight inch diameter or less; local electrical service lines; gas service mains of 500 feet or less and one inch diameter or less; and telephone services lines.

T. Construction projects.

1. Construction of accessory appurtenant structures including garages, carports, patios, swimming pools, agricultural structures, excluding feedlots, or other similar buildings not changing land use or density.

2. Accessory signs appurtenant to any commercial, industrial, or institutional facility.

3. Operation, maintenance, or repair work having no substantial impact on existing structures, land use or natural resources.

4. Restoration or reconstruction of a structure provided that the structure is not of historical, cultural, architectural, archeological, or recreational value.

5. Demolition or removal of buildings and related structures except where they are of historical, archeological,

or architectural significance.

U. Land use.

1. Individual land use variances including minor lot line adjustments and side yard and setback variances, not resulting in the creation of a new subdivided parcel of land or any change in land use character or density.

2. Minor temporary uses of land having negligible or no permanent effect on the environment.

3. Maintenance of existing landscaping, native growth, and water supply reservoirs, excluding the use of pesticides.

V. Research and data collection. Basic data collection, training programs, research, experimental management, and resource evaluation projects which do not result in an extensive or permanent disturbance to an environmental resource, and do not constitute a substantial commitment to a further course of action having potential for significant environmental effects.

W. Financial transactions.

1. Acquisition or disposition of private interests in real property, including leaseholds, easements, right-of-way, or fee interests.

2. Purchase of operating equipment, maintenance equipment, or operating supplies.

X. Licenses.

1. Licensing or permitting decisions related to individual persons or activities directly connected with an individual's household, livelihood, transportation, recreation, health, safety, and welfare, such as motor vehicle licensing or individual park entrance permits.

2. All licenses required under electrical, fire, plumbing, heating, mechanical and safety codes and regulations, but not including building permits.

Y. Governmental activities.

1. Proposals and enactments of the legislature.

2. Rules or orders of governmental units.

3. Executive orders of the governor, or their implementation by governmental units.

4. Judicial orders.

5. Submissions of proposals to a vote of the people of the state.

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Chapter Sixteen: Early Notice Rules

6 MCAR S 3.042 Authority and purpose.

A. Bulletin. To provide early notice of impending projects which may have significant environmental effects, the EQB shall, pursuant to Minnesota Statutes, section 116D.04, subdivision 8, publish a bulletin with the name of "EQB Monitor" containing all notices as specified in 6 MCAR S 3.044. The EQB may prescribe the form and manner in which the governmental units submit any material for publication in the EQB Monitor, and the EQB chairperson may withhold publication of any material not submitted according to the form or procedures the EQB has prescribed.

B. Purpose. These rules are intended to provide a procedure for notice to the EQB and to the public of natural resource management and development permit applications, and impending governmental and private projects that may have significant environmental effects. The notice through the early notice procedures is in addition to public notices otherwise required by law or regulations.

6 MCAR S 3.043 Exemptions.

A. EPA permit exception. All National Pollutant Discharge Elimination System Permits granted by the PCA, under the authority given by the Environmental Protection Agency, shall be exempt from 6 MCAR SS 3.021-3.056 unless otherwise provided by resolution of the EQB. 3.042 -3.048

B. Non-strict observance. Where, in the opinion of any governmental unit, strict observance of 6 MCAR SS 3.042-3.046 would jeopardize the public health, safety, or welfare, or would otherwise generally compromise the public interest, the governmental unit shall comply with these rules as far as practicable. In such cases, the governmental unit shall carry out alternative means of public notification and shall communicate the same to the EQB chairperson.

C. Federal permits, exemption. Any federal permits for which review authority has been delegated to a non-federal governmental unit by the federal government may be exempted by resolution of the EQB.

6 MCAR S 3.044 EQB Monitor publication requirements.

A. Required notices. Governmental units are required to publish notice of the items listed in 1.-15. in the EQB Monitor except that this rule constitutes a request and not a requirement with respect to federal agencies.

1. When a project has been noticed pursuant to 6 MCAR S 3.044 A.3. separate notice of individual permits required by that project need not be made unless changes in the project are proposed which will involve new and potentially significant environmental effects not considered previously. No decision granting a permit application for which notice is required to be published by this rule shall be effective until 30 days following publication of the notice.

a. All public hearings conducted pursuant to water resources permit applications, Minnesot Statutes, chapter 105. The DNR is the permitting authority.

b. Notice of public sales of permits for or leases to mine iron ore, copper-nickel, or other minerals on state-owned or administered mineral rights, Minnesota Statutes, sections 93.16, 93.335, 93.351, and NR 94 e. The DNR is the permitting authority.

c. Section 401 certifications, United States Code, title 33, section 1341 (1976); Minnesota Statutes, section 115.03. The PCA is the permitting authority.

d. Construction of a public use airport, Minnesota Statutes, section 360.018, subdivision 6. The DOT is the permitting authority.

e. Special local need registration for pesticides, Minnesota Statutes, section 18A.23; 3 MCAR S 1.0338 B. The MDA is the permitting authority.

2. Impending projects proposed by state agencies when the proposed project may have the potential for significant environmental effects.

3. Notice of the decision on the need for an EAW pursuant to 6 MCAR S 3.026 F.

4. Notice of the availability of a completed EAW pursuant to 6 MCAR S 3.027 D.1.

5. RGU's decision on the need to prepare an EIS pursuant to 6 MCAR S 3.028 A.4.

6. Notice of the time, place and date of the EIS scoping meeting pursuant to 6 MCAR S 3.030 C.1.b. and C.2.a.

7. EIS Preparation Notices pursuant to 6 MCAR S 3.030 F.

8. Amendments to the EIS scoping decision pursuant to 6 MCAR S 3.030 E.5.

9. Availability of draft and final EIS pursuant to 6 MCAR S 3.031 E.5. and F.4.

10. Notice of draft EIS informational meetings to be held

pursuant to 6 MCAR S 3.031 E.7. 4410.2600

11. RGU's adequacy decision of the final EIS pursuant to 6 MCAR S 3.031 G.7. 4410.2800

12. Notice of activities undergoing environmental review under alternative review processes pursuant to 6 MCAR S 3.034 A.6.

13. Adoption of model ordinances pursuant to 6 MCAR S 3.035 B.1. and 2.

14. Environmental analyses prepared under adopted model ordinances pursuant to 6 MCAR S 3.035 C.

15. Notice of the application for a Certificate of Need for a large energy facility, pursuant to Minnesota Statutes, section 116H.03.

16. Notice of the availability of a draft environmental report, pursuant to 6 MCAR S 3.055 B.5. 4410.7100

17. Notice of the availability of a final environmental report, pursuant to 6 MCAR S 3.055 B.10. 4410.7100

18. Notice of other actions that the EQB may specify by resolution.

B. Optional notices. Governmental units may publish notices of general interest or information in the EQB Monitor.

C. Required EQB notices. The EQB is required to publish the following in the EQB Monitor:

1. Receipt of a valid petition and assignment of a RGU pursuant to 6 MCAR S 3.026 C. and E.;

2. Decision by the EQB that it will determine the adequacy of a final EIS pursuant to 6 MCAR S 3.031 G.1.;

3. EQB's adequacy decision of the final EIS pursuant to 6 MCAR S 3.031 G.7;

4. Receipt by the EQB of an application for a variance pursuant to 6 MCAR S 3.032 D.3;

5. Notice of any public hearing held pursuant to 6 MCAR S 3.033 E.1;

6. The EQB's decision to hold public hearings on a recommended Critical Area pursuant to Minnesota Statutes, section 116G.06, subdivision 1, clause (c);

7. Notice of application for a Certificate of Site Compatibility or a High Voltage Transmission Line Construction Permit pursuant to Minnesota Statutes, sections 116C.51 to

116C.69; and

8. Receipt of a consolidated permit application pursuant to 6 MCAR S 3.102 A.

6 MCAR S 3.045 Content of notice. The information to be included in the notice for natural resources management and development permit applications and other items in 6 MCAR S 3.044 A.1. and 2. shall be submitted by the governmental unit on a form approved by the EQB. This information shall include but not be limited to:

A. Identification of applicant. Identification of applicant, by name and mailing address.

B. Location of project. The location of the proposed project, or description of the area affected by the project by county, minor civil division, public land survey township number, range number, and section number.

C. Identification of permit or project. The name of the permit applied for, or a description of the proposed project or other action to be undertaken in sufficient detail to enable other state agencies to determine whether they have jurisdiction over the proposed project.

D. Public hearings. A statement of whether the agency intends to hold public hearings on the proposed project, along with the time and place of the hearings if they are to be held in less than 30 days from the date of this notice.

E. Identification of governmental unit. The identification of the governmental unit publishing the notice, including the manner and place at which comments on the project can be submitted and additional information can be obtained.

6 MCAR S 3.046 Statement of compliance. Each governmental permit or agency authorizing order subject to the requirements of 6 MCAR S 3.044 A.1. issued or granted by a governmental unit shall contain a statement by the unit concerning whether the provisions of 6 MCAR SS 3.042-3.046 have been complied with, and publication dates of the notices, if any, concerning that permit or authorization.

6 MCAR S 3.047 Publication. The EQB shall publish the EQB Monitor whenever it is necessary, except that material properly submitted to the EQB shall not remain unpublished for more than 13 working days.

6 MCAR S 3.048 Cost and distribution.

A. Costs of publication. When a governmental unit properly

submits material to the EQB for publication, the EQB shall then be accountable for the publication of the same in the EQB Monitor. The EQB shall require each governmental unit which is required to publish material or requests the publication of material in the EQB Monitor, including the EQB itself, to pay its proportionate cost of the EQB Monitor unless other funds are provided and are sufficient to cover the cost of the EQB Monitor.

B. Distribution. The EQB may further provide at least one copy to the Documents Division for the mailing of the EQB Monitor to any person, governmental unit, or organization if so requested. The EQB may assess reasonable costs to the requesting party. Ten copies of each issue of the EQB Monitor, however, shall be provided without cost to the legislative reference library and ten copies to the state law library, and at least one copy to designated EQB depositories.

Chapter Seventeen:

Assessing the Cost of Preparing Environmental Impact Statements

AR000351

6 MCAR S 3.049 Projects requiring an assessment of the EIS preparation cost.

When a private person proposes to undertake a project, and the final determination has been made that an EIS will be prepared by a governmental unit on that project, the proposer shall be assessed for the reasonable costs of preparing and distributing that EIS in accord with 6 MCAR SS 3.050-3.054.

6 MCAR S 3.050 Determining the EIS assessed cost.

A. Proposer and RGU agreement. Within 30 days after the EIS preparation notice has been issued, the RGU shall submit to the EQB a written agreement signed by the proposer and the RGU. The agreement shall include the EIS estimated cost, the EIS assessed cost, and a brief description of the tasks and the cost of each task to be performed by each party in preparing and distributing the EIS. Those items identified in 6 MCAR S 3.051 A. and B. may be used as a guideline in determining the EIS estimated cost. The EIS assessed cost shall identify the proposer's costs for the collection and analysis of technical data to be supplied to the RGU and the costs which will result in a cash payment by the proposer to the EQB if a state agency is the RGU or to a local governmental unit when it is the RGU. If an agreement cannot be reached, the RGU shall so notify the EQB within 30 days after the final determination has been made that an EIS will be prepared.

B. EIS assessed cost limits. The EIS assessed cost shall not exceed the following amounts unless the proposer agrees to

an additional amount.

1. There shall be no assessment for the preparation and distribution of an EIS for a project which has a project estimated cost of one million dollars or less.

2. For a project whose project estimated cost is more than one million dollars but is ten million dollars or less, the EIS assessed cost shall not exceed .3 percent of the project estimated cost except that the project estimated cost shall not include the first one million dollars of such cost.

3. For a project whose project estimated cost is more than ten million dollars but is 50 million dollars or less, the EIS assessed cost shall not exceed .2 percent of each dollar of such cost over ten million dollars in addition to the assessment in 2.

4. For a project whose project estimated cost is more than 50 million dollars, the EIS assessed cost shall not exceed .1 percent of each dollar of such cost over 50 million dollars in addition to the assessment in 3.

C. Data costs. The proposer and the RGU shall include in the EIS assessed cost the proposer's costs for the collection and analysis of technical data which the RGU incorporates into the EIS. The amount included shall not exceed one-third of the EIS assessed cost unless a greater amount is agreed to by the RGU. When practicable, the proposer shall consult with the RGU before incurring such costs.

D. Federal/state EIS. When a joint federal/state EIS is prepared pursuant to 6 MCAR S 3.037 and the EQB designates a non-federal agency as the RGU, only those costs of the state RGU may be assessed to the proposer. The RGU and the proposer shall determine the appropriate EIS assessed cost and shall forward that determination to the EQB in accord with 6 MCAR SS 3.021-3.056.

E. Related actions EIS. When specific projects are included in a related actions EIS, only the portion of the EIS estimated cost that is attributable to each specific project may be used in determining the EIS assessed cost for its proposer. The RGU and each proposer shall determine the appropriate EIS assessed cost and shall forward that determination to the EQB in accord with 6 MCAR SS 3.021-3.056.

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6 MCAR S 3.051 Determining the EIS estimated cost, the EIS actual cost and the project estimated cost.

A. EIS estimated or actual costs; inclusions. In determining the EIS estimated cost or the EIS actual cost, the following items shall be included:

1. The cost of the RGU's staff time including direct

salary and fringe benefit costs.

2. The cost of consultants hired by the RGU.

3. The proposer's costs for the collection and analysis of technical data expended for the purpose of preparing the EIS.

4. Other direct costs of the RGU for the collection and analysis of information or data necessary for the preparation of the EIS. These costs shall be specifically identified.

5. Indirect costs of the RGU not to exceed the RGU's normal operating overhead rate.

6. The cost of printing and distributing the draft EIS and the final EIS.

7. The cost of any public hearings or public meetings held in conjunction with the preparation of the final EIS.

B. EIS estimated or actual costs; exclusions. The following items shall not be included in determining the EIS estimated cost or the EIS actual cost:

1. The cost of collecting and analyzing information and data incurred before the final determination has been made that an EIS will be prepared unless the information and data were obtained for the purpose of being included in the EIS;

2. Costs incurred by a private person other than the proposer or a governmental unit other than the RGU, unless the costs are incurred at the direction of the RGU for the preparation of material to be included in the EIS; and

3. The capital costs of equipment purchased by the RGU or its consultants for the purpose of establishing a data collection program, unless the proposer agrees to include such costs.

C. Project estimated costs. The following items shall be included in determining the project estimated cost:

1. The current market value of all the land interests, owned or to be owned by the proposer, which are included in the boundaries of the project. The boundaries shall be those defined by the project which is the subject of the EIS preparation notice;

2. Costs of architectural and engineering studies for the design or construction of the project;

3. Expenditures necessary to begin the physical construction or operation of the project;

4. Construction costs required to implement the project including the costs of essential public service facilities where

such costs are directly attributable to the proposed project; and

5. The cost of permanent fixtures.

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6 MCAR S 3.052 Revising the EIS assessed cost.

A. Alteration of project scope. If the proposer substantially alters the scope of the project after the final determination has been made that an EIS will be prepared and the EIS assessed cost has been determined, the proposer shall immediately notify the RGU and the EQB.

1. If the change will likely result in a net change of greater than five percent in the EIS assessed cost, the proposer and the RGU shall make a new determination of the EIS assessed cost. The determination shall give consideration to costs previously expended or irrevocably obligated, additional information needed to complete the EIS and the adaptation of existing information to the revised project. The RGU shall submit either a revised agreement or a notice that an agreement cannot be reached following the procedures of 6 MCAR S 3.050 A. except that such agreement or notice shall be provided to the EQB within 20 days after the proposer notifies the RGU and the EQB of the change in the project. If the changed project results in a revised project estimated cost of one million dollars or less, the proposer shall not be liable for further cash payments to the EQB or to the local governmental unit beyond what has been expended or irrevocably obligated by the RGU at the time it was notified by the proposer of the change in the project.

2. If the proposer decides not to proceed with the proposed project, the proposer shall immediately notify the RGU and the EQB. The RGU shall immediately cease expending and obligating the proposer's funds for the preparation of the EIS.

a. If cash payments previously made by the proposer exceed the RGU's expenditures or irrevocable obligations at the time of notification, the proposer may apply to the EQB or to the local governmental unit for a refund of the overpayment. The refund shall be paid as expeditiously as possible.

b. If cash payments previously made by the proposer are less than the RGU's expenditures or irrevocable obligations at the time of notification, the RGU shall notify the proposer and the EQB within ten days after it was notified of the project's withdrawal. Such costs shall be paid by the proposer within 30 days after the RGU notifies the proposer and the EQB.

B. New significant environmental problem. If, after the EIS assessed cost has been determined, the RGU or the proposer uncovers a significant environmental problem that could not have been reasonably foreseen when determining the EIS assessed cost, the party making the discovery shall immediately notify the

other party and the EQB. If the discovery will likely result in a net change of greater than five percent in the EIS assessed cost, the proposer and the RGU shall make a new determination of the EIS assessed cost. The RGU shall submit either a revised agreement or a notice that an agreement cannot be reached following the procedures of 6 MCAR S 3.050 A. except that such agreement or notice shall be provided to the EQB within 20 days after both parties and the EQB were notified.

6 MCAR S 3.053 Disagreements regarding the EIS assessed cost.

A. Notice to EQB. If the proposer and the RGU disagree about the EIS assessed cost, the proposer and the RGU shall each submit a written statement to the EQB identifying the EIS estimated cost, and the project estimated cost within ten days after the RGU notifies the EQB that an agreement could not be reached. The statements shall include the EIS preparation costs identified in 6 MCAR S 3.051 A. and B. as they pertain to the information to be included in the EIS, a brief explanation of the costs, and a discussion of alternative methods of preparing the EIS and the costs of those alternatives.

B. Estimated cost disagreement. If the proposer and the RGU disagree about the project estimated cost, the proposer shall submit in writing a detailed project estimated cost in addition to the requirements of A. The RGU may submit a written detailed project estimated cost in addition to the requirements of A. The statements shall be submitted to the EQB within ten days after the RGU notifies the EQB that an agreement could not be reached. The project estimated cost shall include the costs as identified in 6 MCAR S 3.051 C. and a brief explanation of the costs. The estimates shall be prepared according to the categories in 6 MCAR S 3.051 so as to allow a reasonable examination as to their completeness.

C. EIS assessed cost disagreement. If the proposer and the RGU disagree about a revision of the EIS assessed cost prepared following the procedures in 6 MCAR S 3.052, the proposer and the RGU shall use the applicable procedures described in A. or B. in resolving their disagreement except that all written statements shall be provided to the EQB within ten days after the RGU notifies the EQB that an agreement cannot be reached.

D. EIS actual cost disagreement. If the proposer and the RGU disagree about the EIS actual cost as determined by 6 MCAR S 3.054 B., the proposer and the RGU shall prepare a written statement of their EIS actual cost and an estimate of the other party's EIS actual cost. The items included in 6 MCAR S 3.051 A. and B. shall be used in preparing the EIS actual cost statements. These statements shall be submitted to the EQB and the other party within 20 days after the final EIS has been accepted as adequate by the RGU or the EQB.

E. EQB determination. The EQB at its first meeting held more than 15 days after being notified of a disagreement shall

make any determination required by A.-D. The EQB shall consider the information provided by the proposer and the RGU and may consider other reasonable information in making its determination. This time limit shall be waived if a hearing is held pursuant to F.

F. Hearing. If either the proposer or the RGU so requests, the EQB shall hold a hearing to facilitate it in making its determination.

G. Half cash payment. Nothing in A.-F. shall prevent the proposer from making one half of the cash payment as recommended by the RGU's proposed EIS assessed cost for the purpose of commencing the EIS process. If the proposer makes the above cash payment, preparation of the EIS shall immediately begin. If the required cash payment is altered by the EQB's determination, the remaining cash payments shall be adjusted accordingly.

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6 MCAR S 3.054 Payment of the EIS assessed cost.

A. Schedule of payments. The proposer shall make all cash payments to the EQB or to the local governmental unit according to the following schedule:

1. At least one-half of the proposer's cash payment shall be paid within 30 days after the EIS assessed cost has been submitted to the EQB pursuant to 6 MCAR S 3.050 A. or has been determined by the EQB pursuant to 6 MCAR S 3.053 E. or F.

2. At least three-fourths of the proposer's cash payment shall be paid within 30 days after the draft EIS has been submitted to the EQB.

3. The final cash payment shall be paid within 30 days after the final EIS has been submitted to the EQB.

a. The proposer may withhold final cash payment of the EIS assessed cost until the RGU has submitted a detailed accounting of its EIS actual cost to the proposer and the EQB. If the proposer chooses to wait, the remaining portion of the EIS assessed cost shall be paid within 30 days after the EIS actual cost statement has been submitted to the proposer and the EQB.

b. If the proposer has withheld the final cash payment of the EIS assessed cost pending resolution of a disagreement over the EIS actual cost, such payment shall be made within 30 days after the EQB has determined the EIS actual cost.

B. Refund. The proposer and the RGU shall submit to each other and to the EQB a detailed accounting of the actual costs incurred by them in preparing and distributing the EIS within ten days after the final EIS has been submitted to the EQB. If the cash payments made by the proposer exceed the RGU's EIS

actual cost, the proposer may apply to the EQB or to the local governmental unit for a refund of the overpayment. The refund shall be paid as expeditiously as possible.

C. State agency as RGU. If the RGU is a state agency, the proposer shall make all cash payments of the EIS assessed cost to the EQB which shall deposit such payments in the state's general fund.

D. Local government unit as RGU. If the RGU is a local governmental unit, the proposer shall make all cash payments of the EIS assessed cost directly to the local governmental unit. The local governmental unit shall notify the EQB in writing of receipt of each payment within ten days following its receipt.

E. Payment prerequisite to EIS. No RGU shall commence with the preparation of an EIS until at least one-half of the proposer's required cash payment of the EIS assessed cost has been paid.

F. Notice of final payment. Upon receipt or notice of receipt of the final payment by the proposer, the EQB shall notify each state agency having a possible governmental permit interest in the project that the final payment has been received.

Other laws notwithstanding, a state agency shall not issue any governmental permits for the construction or operation of a project for which an EIS is prepared until the required cash payments of the EIS assessed cost for that project or that portion of a related actions EIS have been paid in full.

G. Time period extension. All time periods included in 6 MCAR SS 3.050-3.054 may be extended by the EQB chairperson only for good cause upon written request by the proposer or the RGU.

Chapter Eighteen:

Special Rules for Certain Large Energy Facilities

AR00035T

6 MCAR S 3.055 Special rules for LEPGP.

A. Applicability. Environmental review for LEPGP as defined in Minnesota Statutes, section 116C.52, subdivision 4 shall be conducted according to the procedures set forth in this rule unless a utility has filed an application for emergency certification pursuant to Minnesota Statutes, section 116C.57, subdivision 3. Environmental review shall consist of an environmental report at the certificate of need stage and an EIS at the site certificate stage. Energy facilities subject to Minnesota Statutes, section 116H.13, but excluded under Minnesota Statutes, section 116C.52, subdivision 4, shall not be subject to this rule. Except as expressly provided in this rule, 6 MCAR SS 3.024-3.036 shall not apply to LEPGPs subject to

this rule. No EAW shall be prepared for any LEPGPs subject to this rule. If a utility has filed an application for emergency certification pursuant to Minnesota Statutes, section 116C.57, subdivision 3, the procedures and standards specified in 6 MCAR S 3.077 shall constitute alternative environmental review and neither 6 MCAR SS 3.024-3.036 nor 6 MCAR S 3.055 shall apply.

B. Environmental report at certificate of need stage.

1. The DEPD shall be responsible for preparation of an environmental report on a LEPGP subject to this rule.

2. The environmental report shall be prepared for inclusion in the record of certificate of need hearings conducted under Minnesota Statutes, section 116H.13. The report and comments thereon shall be included in the record of the hearings.

3. The environmental report on the certificate of need application shall include:

a. A brief description of the proposed facility;

b. An identification of reasonable alternative facilities including, as appropriate, the alternatives of different sized facilities, facilities using different fuels, different facility types, and combinations of alternatives;

c. A general evaluation, including the availability, estimated reliability, and economic, employment and environmental impacts, of the proposal and reasonable alternative facilities identified in 3.b.; and

d. A general analysis of the alternatives of no facility, different levels of capacity, and delayed construction of the facility. The analysis shall include consideration of conservation and load management measures that could be used to reduce the need for the proposed facility.

4. The environmental report shall not be as exhaustive or detailed as an EIS and shall consider only those site-differentiating factors identifiable pursuant to the information requirements of 6 MCAR S 2.0633 A.5.

5. Upon completion of the draft environmental report, the report shall be circulated as provided in 6 MCAR S 3.031 E.3. In addition, one copy shall go to each regional development commission in the state. At least one copy shall be available for public review during the hearings conducted under Minnesota Statutes, section 116H.13.

6. The DEPD shall provide notice of the date and locations at which the draft environmental report shall be available for public review. Notice shall be provided in the manner used to provide notice of public hearings conducted under Minnesota Statutes, section 116H.13 and may be provided in the

notice of the hearings.

7. Comments on the draft environmental report shall be received during and entered into the record of hearing conducted under Minnesota Statutes, section 116H.13. The DEPD shall respond to the timely substantive comments on the draft environmental report.

8. The draft environmental report, any comments received during the hearings, and responses to the timely substantive comments shall constitute the final environmental report.

9. Preparation and review of the report, including submission and distribution of comments, shall be completed in sufficient time to enable the commissioner of the DEPD to take final action pursuant to Minnesota Statutes, section 116H.13 within the time limits set by that statute.

10. Upon completion of a final environmental report, notice thereof shall be published in the EQB Monitor. Copies of the final environmental report shall be distributed as provided in 5.

11. The DEPD shall not make a final determination of need for the project until the final environmental report has been completed.

12. A supplement to an environmental report shall be required if the tests described in 6 MCAR S 3.031 I. are met and a Minnesota Statutes, section 116H.13 determination is pending before the DEPD.

C. EIS at certificate of site compatibility stage.

1. The EQB shall be responsible for preparation of the EIS on a LEPGP subject to this rule.

2. The draft of the EIS shall be prepared for inclusion in the record of the hearings to designate a site for a LEPGP under Minnesota Statutes, section 116C.58. The draft EIS and final EIS shall be included in the record of the hearing.

3. The draft EIS shall conform to 6 MCAR S 3.031 B. It shall contain a brief summary of the environmental report and the certificate of need decision relating to the project, if available. Alternatives shall include those sites designated for public hearings pursuant to Minnesota Statutes, section 116C.57, subdivision 1 and rules promulgated thereunder. Significant issues to be considered in the EIS shall be identified by the EQB in light of the citizen evaluation process established in Minnesota Statutes, section 116C.59 rather than through a formal scoping process.

The EIS shall not consider need for the facility and other issues determined by the DEPD. Unless a specific site has already been designated, the EIS shall not contain detailed data

which are pertinent to the specific conditions of subsequent construction and operating permits and which may be reasonably obtained only after a specific site is designated.

4. Upon completion, the draft EIS shall be distributed as provided in 6 MCAR S 3.031 E.3. In addition, one copy shall go to each regional development commission representing a county in which a site under consideration is located. At least one copy shall be available for public review during the hearings conducted under Minnesota Statutes, section 116C.58.

5. The EQB shall provide notice of the date and location at which the draft EIS shall be available for public review. The notice shall be provided in the manner used to provide notice of the public hearings conducted under Minnesota Statutes, section 116C.58 and may be provided in the notice of the hearings.

6. The EQB or a designee shall conduct a meeting to receive comments on the draft EIS. The meeting may but need not be conducted in conjunction with hearings conducted under Minnesota Statutes, section 116C.58. Notice of the meeting shall be given at least ten days before the meeting in the manner provided in B.6. and may be given with the notice of hearing.

7. The EQB shall establish a final date for submission of written comments after the meeting. After that date comments need not be accepted.

8. Within 60 days after the last day for comments, the EQB shall prepare responses to the comments and shall make necessary revisions in the draft. The draft EIS as revised shall constitute the final EIS. The final EIS shall conform to 6 MCAR S 3.031 F.

9. Upon completion of a final EIS, notice thereof shall be published in the EQB Monitor. Copies of the final EIS shall be distributed as provided in 4.

10. Prior to submission of the final EIS into the record of a hearing under Minnesota Statutes, section 116C.58, the EQB shall determine the EIS to be adequate pursuant to 6 MCAR S 3.031 G.

11. If required pursuant to 6 MCAR S 3.031 I., a supplement to an EIS shall be prepared.

12. The EQB shall make no final decision designating a site until the final EIS has been found adequate. No governmental unit having authority to grant approvals subsequent to a site designation shall issue any final decision for the construction or operation of a facility subject to this rule until the final EIS has been found adequate.

D. Cooperative processes. 6 MCAR SS 3.028 D. and E., 3.032

D. and E., 3.036 and 3.037 shall apply to energy facilities subject to this rule. Variance applications may be submitted without preparation of an EAW.

6 MCAR S 3.056 Special rules for HVTL.

A. Applicability. Environmental review for a HVTL as defined in Minnesota Statutes, section 116C.52, subdivision 3, shall be conducted according to the procedures set forth in this rule unless a utility has filed an application for emergency certification pursuant to Minnesota Statutes, section 116C.57, subdivision 3, or for an exemption pursuant to Minnesota Statutes, section 116C.57, subdivision 5. Environmental review shall consist of an environmental report at the certificate of need stage and an EIS at the route designation and construction permit stage. Except as expressly provided in this rule, 6 MCAR SS 3.024-3.036 shall not apply to HVTLs subject to this rule. No EAW shall be prepared for any HVTLs subject to this rule. If a utility has filed an application for emergency certification pursuant to Minnesota Statutes, section 116C.57, subdivision 3, or for an exemption pursuant to Minnesota Statutes, section 116C.57, subdivision 5, the procedures and standards specified in 6 MCAR SS 3.077 and 3.078, respectively, shall constitute alternative environmental review and neither 6 MCAR SS 3.024-3.036 nor 6 MCAR S 3.056 shall apply.

B. Environmental report at certificate of need stage.

1. The DEPD shall be responsible for preparation of an environmental report on an HVTL subject to this rule.

2. The environmental report shall be prepared for inclusion in the record of the certificate of need hearings conducted under Minnesota Statutes, section 116H.13. The report and comments thereon shall be included in the record of the hearings.

3. The environmental report on the certificate of need application shall include:

a. A brief description of the proposed facility;

b. An identification of reasonable alternatives of a different sized facility, a transmission line with different endpoints, upgrading existing transmission lines, and additional generating facilities;

c. A general evaluation, including the availability, estimated reliability, and economic, employment and environmental impacts, of the proposal and alternatives;

d. A general analysis of the alternatives of no facility and delayed construction of the facility. The analysis shall include consideration of conservation and load management measures that could be used to reduce the need for the proposed

facility;

e. The environmental report shall not be as exhaustive or detailed as an EIS and shall consider only those route differentiating factors identifiable pursuant to the information requirements of 6 MCAR SS 3.0634 A. and B.; and

f. The report shall be reviewed in the manner provided in 6 MCAR S 3.055 B.5.-12.

C. EIS at route designation and construction permit stage.

1. The EQB shall be responsible for preparation of an EIS on a HVTL subject to this rule.

2. The draft of the EIS shall be prepared for inclusion in the record of the hearings to designate a route for a HVTL under Minnesota Statutes, section 116C.58. The draft EIS and final EIS shall be included in the record of the hearing.

3. The draft shall conform to 6 MCAR S 3.031 B. It shall contain a brief summary of the environmental report and the certificate of need decision relating to the project, if applicable. Alternatives shall include those routes designated for public hearing pursuant to Minnesota Statutes, section 116C.57, subdivision 2 and rules promulgated thereunder. Significant issues to be considered in the EIS shall be identified by the EQB in light of the citizen evaluation process established pursuant to Minnesota Statutes, section 116C.59 rather than through a formal scoping process. Need for the facility and other issues determined by the DEPD shall not be considered in the EIS.

4. The draft EIS shall be reviewed in the manner provided in 6 MCAR S 3.055 C.4.-11.

5. The EQB shall make no final decision designating a route until the final EIS has been found adequate. No governmental unit having authority to grant approvals subsequent to a route designation shall issue any final decision for the construction or operation of a facility subject to this rule until the final EIS has been found adequate.

D. Review of HVTL requiring no certificate of need. An EIS for a HVTL subject to Minnesota Statutes, sections 116C.51 to 116C.69 but not subject to Minnesota Statutes, section 116H.13 shall consist of an EIS to be prepared as provided in C.

E. Cooperative processes. 6 MCAR SS 3.028 D. and E., 3.012 D. and E., 3.036 and 3.037 shall apply to facilities subject to this rule. Variance applications may be submitted without preparation of an EAW.

CHAPTER TWENTY: MEQC 51-60

CRITICAL AREAS PLANNING PROCESS

MEQC 51 AUTHORITY, PURPOSE, DEFINITIONS

(a) **Authority.** The Regulations contained herein are prescribed by the Minnesota Environmental Quality Council, pursuant to Minn. Stat. Sect. 116G.04 (Supp. 1973) for the implementation of Minn. Stat. Sections 116G.01 to 116G.14 (Supp. 1973), herein referred to as the Critical Areas Act of 1973. This Act deals with the duties and responsibilities of the Environmental Quality Council, state agencies, Regional Development Commissions, and local units of government in the identification and designation of critical areas and the preparation and implementation of plans and regulations for Critical Areas.

(b) **Purpose.**

(1) The purpose of these Regulations is to provide public agencies and private persons with policy, definitions, procedures, criteria, standards and guidelines of statewide application to be used in the implementation of the Critical Areas Act.

(2) Because development in areas of the State that possess important historic, cultural, or esthetic values or natural systems that perform functions of greater than local significance may result in irreversible damage to these resources, decrease their value and utility for public purposes, or unreasonably endanger life and property, the State shall identify these critical areas and assist and cooperate with local units of government in the preparation of plans and regulations for the wise use of these areas.

(3) The critical areas planning process is intended to be neither a "court of last resort" to review purely local planning and zoning issues nor a substitute for an on-going land planning process involving the legislative, executive and judicial branches of state and local government. The critical areas planning process shall be limited to exceptional circumstances where other powers are unavailable, inapplicable or are not being used effectively to ensure adequate and coordinated local, regional and state planning and regulation to protect the public interest in the area.

(4) The critical areas planning process is intended to be applied to a limited number of areas in the State. Critical area designation based on criteria that may characterize large or common areas of the State or region shall be avoided.

(c) **Definitions.** The following terms as used in these Regulations, shall have the following meanings, unless otherwise defined:

(1) "Council" means the Minnesota Environmental Quality Council created pursuant to Minn. Stat. §116C.01 et. seq. (Supp. 1973).

(2) "Developer" means any person or governmental agency undertaking any development as defined in these Regulations.

(3) "Development" means the making of any material change in the use or appearance of any structure or land including but not limited to:

(aa) Reconstruction, alteration of the size, or material change in the external appearance of a structure on the land;

(bb) Change in the intensity of use of the land;

(cc) Alteration of a shore or bank of a river, stream, lake or pond;

(dd) Commencement of drilling (except to obtain soil samples), mining or excavation;

(ee) Demolition of a structure;

(ff) Clearing of land as an adjunct to construction;

(gg) Deposit of refuse, solid or liquid waste, or fill on a parcel of land;

(hh) Division of land into three or more parcels.

(4) "Development permit" means a building permit; zoning permit; water use permit; discharge permit; permit for dredging, filling or altering any portion of a watercourse; plat approval; re-zoning; certification; variance or other action having the effect of permitting any development as defined in the Act or these Regulations.

(5) "Government development" means any development financed in whole or in substantial part, directly or indirectly, by the United States, the State of Minnesota, or any agency or political subdivision thereof.

(aa) "Development financed in substantial part" means development with more than 50 percent of its financing or reimbursement from monies of the governments, or any agency, or political subdivision thereof.

(bb) "Development financed indirectly" means development underwritten or insured by monies of the governments, or any agency or political subdivision thereof.

(6) "Land" means the earth, water, and air, above, below or on the surface and includes any improvements or structures customarily regarded as land.

(7) "Local unit of government" means any political subdivision of the State, including but not limited to counties, municipalities, townships, and all agencies and boards thereof.

(8) "Order" means the Governor's Executive Order that formally designates a particular area as a critical area upon the recommendation of the Council.

(9) "Parcel" of land means any quantity of land capable of being described with such definiteness that its location and boundaries may be established, which is designated by its owner or developer as land to be used or developed as a unit, or which has been used or developed as a unit.

(10) "Powers" means the statutory or other legal authority of federal, state, or regional agencies and local units of government.

(11) "Recommendation" means a written document proposing a particular area as a critical area that is officially submitted for review and action by the appropriate bodies.

(12) "Regional Development Commission" means any Regional Development Commission created pursuant to Minn. Stat. Sections 462.381 to 462.396 (1971) and the Metropolitan Council created pursuant to Minn. Stat. Chapter 473B (1971).

(13) "Regulations" means the instruments by which state agencies and local units of government control the physical development of the critical area or any part or detail thereof. Regulations include, but are not limited to, ordinances establishing zoning, subdivision control, platting and the adoption of detailed maps.

(14) "State agency" means a State board, commission, institution, or any other unit of state government.

(15) "Structure" means anything constructed or installed or portable, the use of which requires a location on a parcel of land. It includes a movable structure which can, while it is located on land, be used for housing, business, commercial, agricultural, or office purposes either temporarily or permanently. Structure also includes fences, billboards, swimming pools, poles, pipelines, transmission lines, tracks and advertising signs.

MEQC 52 CHARACTERISTICS AND CRITERIA FOR THE IDENTIFICATION OF CRITICAL AREAS

(a) **Characteristics of Critical Areas.** A critical area shall have one of the following four characteristics:

(1) An area significantly affected by an existing or proposed major government development that is intended to serve substantial numbers of persons beyond the vicinity in which the development is located and that tends to generate substantial development or urbanization.

(2) An area having a significant effect upon an existing or proposed major government development that is intended to serve substantial numbers of persons beyond the vicinity in which the development is located and that tends to generate substantial development or urbanization.

(3) An area containing historical, natural, scientific, or cultural resources of regional or statewide importance.

(4) An area having a significant impact upon historical, natural, scientific, or cultural resources of regional or statewide importance.

(b) **Criteria.** In accordance with the characteristics of MEQC 52(a) and the purpose of these Regulations, a critical area shall meet all of the following criteria:

(1) The area shall be of significant regional or statewide public interest;

(2) Other powers are unavailable, inapplicable, or are not being used effectively to ensure adequate and coordinated local, regional, or state planning and regulation to protect the public interest in the area;

(3) The area shall be one of a limited number of such areas in the region or state; and

(4) The area shall be described specifically enough to permit delineation by legal description.

MEQC 53 RECOMMENDATIONS OF CRITICAL AREAS

(a) **Content.** A recommendation to designate a critical area shall include all of the following:

(1) The legal description of the boundaries of the area;

(2) A description of the characteristic(s) of the area pursuant to MEQC 52(a);

(3) A description of how the area meets all of the criteria of MEQC 52(b);

(4) The dangers to the regional or statewide interest that would result from unregulated development or development contrary to that interest;

(5) The advantages that would be achieved from the development of the area in a manner that coordinates state, regional, and local interests;

(6) The standards and guidelines to be followed in the preparation and adoption of plans and regulations, to the extent possible; and

(7) The development, if any, that would be permitted pending adoption of plans and regulations for a critical area.

(b) **Initiation.** A recommendation to designate a critical area may be initiated by the following:

(1) The Council;

(2) Regional Development Commissions; or

(3) Local units of government.

State agencies and private persons or organizations may submit suggestions for a recommendation to the Council, a Regional Development Commission or a local unit of government. The burden of proof to substantiate the recommendation shall rest with the Council, the Regional Development Commission or the local unit of government that initiates the recommendation.

(c) **Local Unit of Government Action on Recommendations.**

(1) In areas within the jurisdiction of an existing Regional Development Commission, a local unit of government initiating a recommendation shall submit it to the Regional Development Commission.

(2) In areas where no Regional Development Commission exists, a local unit of government initiating a recommendation:

(aa) Shall give legal notice of the recommendation and the public hearing or meeting on the recommendation in the official newspaper of each county in the area directly affected by the recommendation within 15 days of initiating the recommendation;

(bb) May mail notice of the recommendation to all persons owning real property within the boundaries of the area that is within the local unit of government's jurisdiction, as determined by tax records;

(cc) Shall submit the recommendation to every other local unit of government and any Regional Development Commission with jurisdiction within the area directly affected by the recommendation within 15 days of initiating the recommendation;

(dd) Shall hold a public hearing or public meeting within the 30 to 45 day period commencing with the legal notice of the recommendation, that shall be provided for property owners, interested persons, and local units of government to comment on the recommendation; and

(ee) Shall submit the original or modified recommendation with a statement of the local unit of government's acceptance or rejection of the

recommendation and all comments received on the recommendation to the Council within 15 days after the period for comment has expired.

(3) Local units of government who receive a recommendation from another local unit of government for comment may give notice as prescribed in MEQC 53(c)(2)(bb) and shall submit to the local unit of government initiating the recommendation any comments on the recommendation within the designated time period.

(d) **Regional Development Commission Act on Recommendations.**

(1) Each Regional Development Commission shall periodically solicit in writing recommendations of critical areas from local units of government within its jurisdiction.

(2) When a Regional Development Commission initiates a recommendation or receives a recommendation from a local unit of government or the Council, it:

(aa) Shall give legal notice of the recommendation and the public hearing or meeting on the recommendation in the official newspaper of each county in the area directly affected by the recommendation within 15 days of receiving or initiating the recommendation;

(bb) May mail notice of the recommendation to all persons owning real property within the recommended area, as determined by tax records;

(cc) Shall submit the recommendation to every other local unit of government and Regional Development Commission with jurisdiction within the areas directly affected by the recommendation within 15 days of receiving or initiating the recommendation;

(dd) Shall hold a public hearing or public meeting within the 30 to 45 day period commencing with the legal notice of the recommendation, that shall be provided for property owners, interested persons, and local units of government to comment on the recommendation; and

(ee) Shall submit the original or modified recommendation with a statement of the Regional Development Commission's acceptance or rejection of the recommendation and all comments received on the recommendation to the Council within 15 days after the period for comment has expired.

(3) When a Regional Development Commission receives a recommendation from the Council, it shall follow the procedures prescribed in MEQC 53(d)(2), unless the Council has determined that the time required for Regional Development Commission review and action must be shortened or eliminated.

(e) **Council Action on Recommendations.**

(1) When the Council initiates a recommendation it shall:

(aa) Submit the recommendation to the Regional Development Commission(s) with jurisdiction within the area directly affected for review and action, as prescribed in MEQC 53(d)(2); or

(bb) Follow the procedures prescribed in MEQC 53(e)(3), when it determines that the time required for Regional Development Commission review and action must be shortened or eliminated to avoid further endangerment to the regional or statewide interest in the recommended area.

(2) When the Council receives notice of action on a recommendation for a critical area from a Regional Development Commission or from a local unit of government, where no Regional Development Commission exists, it shall have 60 days to review the recommendation and either:

(aa) Give legal notice as prescribed in MEQC 53(e)(3) of its decision to conduct a public hearing pursuant to Chapter 15 on the recommendation; or

(bb) Notify the Regional Development Commission or local unit of government of its rejection of the recommendation and its reasons therefore and specify any authorized alternate action to protect the regional or statewide public interest.

(3) When the Council's decision in MEQC 53(e)(1) or (2) is to hold a public hearing on the recommendation, the procedures to be followed are:

(aa) Legal notice of at least 30 days shall be given to the following:

(i) The Governor;

(ii) The appropriate state agencies;

(iii) The Regional Development Commissions and local units of government with jurisdiction over the area affected by the recommendation;

(iv) Persons who have filed with the Secretary of State pursuant to Chapter 15 to receive notice of public hearings;

(v) Requesting persons; and

(vi) Each person owning real property within the recommended area and within 350 feet of the recommended area when the recommended area is 1,000 acres or less.

(bb) One legal notice of the recommendation shall be placed in the official newspaper of each county in the area directly affected by the recommended area at least two weeks prior to the date of the public hearing.

(cc) The Council may mail notice of the recommendation to all persons owning real property within the recommended area as determined by tax records.

(dd) The legal notice shall include the following:

(i) The time and location of the hearing; and

(ii) The recommendation.

(ee) The public hearing shall be held in each county affected by the proposed critical area.

(ff) At the public hearing, the Council shall receive all testimony and exhibits relative to the designation of the proposed critical area, including the amount and source of funds and technical aid required to prepare and adopt plans and regulations for the proposed critical area. An official record of the hearing shall be prepared. When a transcript is requested, the Council may require the party requesting to pay the reasonable costs of preparing the transcript.

(gg) After the public hearing on the recommendation, the Council shall examine the record and prepare findings of fact that shall include the following:

(i) An explanation of any modification or rejection of action by a Regional Development Commission or local unit of government on the recommendation;

(ii) The amount and source of funds and technical aid required for the preparation and adoption of plans and regulations;

(iii) Whether the proposed critical area may be effectively protected by any other powers; and

(iv) The specific standards and guidelines to be followed in preparing and adopting plans and regulations for the critical area.

(hh) Within 30 days of the public hearing on the recommendation, the Council shall, based on the findings of fact:

(i) Submit the recommendation to designate a critical area to the Governor; or

(ii) Reject the recommendation.

MEQC 54 DESIGNATION OF CRITICAL AREAS

(a) **Authority.** Only the Governor may designate a critical area upon the recommendation of the Council.

(b) **Action by The Governor.**

(1) When the Council submits a recommendation to designate a critical area to the Governor, the Governor may designate by Executive Order all or part of the recommended area as a critical area.

(2) The Governor shall send a copy of the order of designation to the Legislature, Council, affected state and federal agencies, Regional Development Commision and local units of government with jurisdiction in any part of the designated critical area.

(c) **Content of Order of Designation.** The order of designation shall include the following:

(1) The legal description of the boundaries of the critical area;

(2) The reason that a particular area is a critical area;

(3) The specific standards and guidelines to be followed in preparing and adopting plans and regulations for the critical area; and

(4) The development, if any, that shall be permitted pending the adoption of plans and regulations, consistent with the policies of the Act and these Regulations.

(d) **Use of Order by Local Unit of Government.** Each local unit of government shall attach the order of designation to existing regulations.

(e) **Duration of Order.** The order of designation shall be effective for no longer than three years pending approval by the Legislature or by the Regional Development Commission, where one exists, of each development region in which a part of the critical area is located. After a Regional Development Commission has approved the critical area designation, it shall not revoke or rescind its approval, except as necessary to update and re-evaluate plans and regulations under MEQC 55(d) of these Regulations.

MEQC 55 PLANS AND REGULATIONS FOR CRITICAL AREAS

(a) **Content.**

(1) The initial critical area plan and any subsequent update and re-

evaluation shall explicitly record the following stages of the critical area planning process:

(aa) The evaluation of existing conditions and trends, including a description of any change in each of the elements of the plan and a comparison between the intended and actual results of any adopted local, regional or state programs and regulations;

(bb) The evaluation of alternative futures, including the major problems and opportunities associated with each alternative;

(cc) The formulation of objectives based on the evaluation of existing conditions and alternative futures. The objectives shall be measurable short-range steps toward goals expressed in state law, by the Regional Development Commission and in the standards and guidelines specified in the order of designation. When the objectives differ substantially from those previously adopted, the predicted consequences shall be compared; and

(dd) The formulation of programs and regulations designed to achieve the objectives. The programs shall specify the schedule and sequence of actions and development to be undertaken by individual public agencies. The regulations shall be sufficiently specific to provide public agencies with the basis for evaluating individual development permit applications.

(2) The critical areas planning process shall specifically address the following factors:

(aa) The elements of regional or statewide interest identified in the recommendation to designate the critical area;

(bb) The standards and guidelines to be followed in preparing and adopting plans and regulations as specified in the order of designation; and

(cc) Any other relevant physical, social, or economic element as permitted by state law.

(3) The portions of plans and regulations for the designated critical area that are implemented by local units of government shall conform to the powers and procedures authorized or required by appropriate state law.

(4) The portions of plans and regulations for the designated critical area that are implemented by state agencies shall conform to the powers and procedures authorized or required by appropriate state laws or regulations.

(b) **Preparation.**

(1) **Requirement.** When a critical area has been designated, plans and regulations to govern the use of the critical area shall be prepared, unless acceptable plans and regulations exist.

(2) **Responsibility for Preparation of Plans and Regulations.** When no plans or regulations for the critical area exist at the time of the order of designation, the plans and regulations shall be prepared by the following:

(aa) Each local unit of government with jurisdiction within the critical area and the existing authority to develop and enact plans and regulations;

(bb) The Regional Development Commission with jurisdiction within the critical area when requested within 30 days of notice of the order of designation by a local unit of government with jurisdiction within the critical area; or

(cc) The Council when requested within 30 days of notice of the order of designation by a local unit of government with jurisdiction within the critical area, when no Regional Development Commission exists.

(3) **Time for Preparation.**

(aa) A local unit of government shall prepare the plans and regulations within six months of notice of the order of designation.

(bb) A Regional Development Commission shall prepare the plans and regulations within six months of the request from the local unit of government.

(cc) When the local unit of government or Regional Development Commission requests a time extension for the preparation of plans and regulations, the Council may grant the time extension when it determines that the local unit of government or Regional Development Commission is making a conscientious attempt to develop the plans and regulations, and that the project is of a magnitude that precludes the completion, review and adoption of the plans and regulations within the time limits established in these Regulations.

(4) **Reimbursement of Costs.** When a Regional Development Commission prepares the plans and regulations for a critical area at the request of a local unit of government, it may seek reimbursement from the local unit of government for the actual costs of preparation.

(5) **State Agency Assistance.** When the Council determines that the local unit of government or the Regional Development Commission that is preparing the plans and regulations for the Critical area requires technical assistance, the Council shall direct the appropriate state agency or agencies to assist in the preparation of the plans and regulations in accordance with a time schedule established by the Council.

(6) **Public participation.** The preparation process shall include adequate opportunity for participation by the general public, property owners, non-owner users of land, and appropriate officials or representatives of local, regional, state and federal government agencies. The appropriate Regional Development Commission may appoint an advisory committee consisting of representatives of the above interests to guide the planning process. Public hearing with adequate notice shall be held.

(c) **Review and Approval of Plans and Regulations.**

(1) **Submission of Plans and Regulations for Review.**

(aa) A local unit of government that has existing plans and regulations for the critical area shall submit the plans and regulations to the appropriate Regional Development Commission, and when no Regional Development Commission exists, to the Council for review, within 30 days of the order of designation.

(bb) A local unit of government that prepares plans and regulations for the critical area after the order of designation shall submit the plans and regulations to the appropriate Regional Development Commission, and when no Regional Development Commission exists, to the Council for review within six months of notice of the order of designation.

(cc) A Regional Development Commission that prepares plans and regulations for the critical area at the request of a local unit of government

shall submit the plans and regulations to the Council for review within six months of the request from the local unit of government.

(2) **Regional Development Commission Review.** The Regional Development Commission shall review the plans and regulations prepared by the local unit of government for consistency with regional objectives and the order of designation. Within 45 days of receiving the plans and regulations, the Regional Development Commission shall submit its written evaluation, any relevant prepared development plans or land use plans, and the plans and regulations to the Council. Upon a request from the Regional Development Commission, the Council may grant a time extension of 30 days when the Council determines that the Regional Development Commission has satisfactorily demonstrated that it requires more time for review.

(3) **Council Review and Approval.** The Council shall review all plans and regulations prepared for designated critical areas. Within 45 days of receiving plans and regulations from the local unit of government or the Regional Development Commission, the Council shall review the plans and regulations to determine their consistency with the provisions of the order of designation, the evaluation of the Regional Development Commission, and comments of the affected state agencies. When the Council has completed the review, it shall either:

(aa) Approve the plans and regulations by a written decision and notify the local unit of government or Regional Development Commission;

or

(bb) Return them to the local unit of government or the Regional Development Commission for modification with a written explanation of the need for modification.

(d) **Modification of Plans and Regulations.**

(1) When the Council returns plans and regulations for modification, it shall request that any proposed or adopted development plans or land use plans of local units of government, Regional Development Commissions or state agencies that may exist for the critical area and that have not been included in the initial preparation, be considered in the modification of the plans and regulations.

(2) The plans and regulations that are returned to the local unit of government or the Regional Development Commission for modification shall be revised consistent with the direction of the Council and shall be resubmitted to the Council within 60 days of their return.

(3) Prior to the final revision, the local unit of government or Regional Development Commission may request a formal meeting with the Council to consider the plans and regulations. Within 15 days of the request, the Council shall send a 30 day written notice of the meeting to the appropriate local units of government, Regional Development Commission and interested parties. The meeting shall be held at a location convenient to the area affected by the designated critical area.

(e) **Council Preparation of Plans and Regulations.**

(1) When the local unit of government or the Regional Development Commission fails to prepare plans and regulations that are acceptable to the

Council within one year of the order of designation, the Council shall then prepare the plans and regulations within 90 days.

(2) When the Council has prepared the plans and regulations, it shall hold a public hearing pursuant to Chapter 15 in each county directly affected by the plans and regulations. The procedures to be followed are:

(aa) Legal notice of at least 30 days shall be given to the following:

(i) The Regional Development Commissions and local units of government with jurisdiction over the critical area;

(ii) The appropriate state agencies;

(iii) Persons who have filed with the Secretary of State pursuant to Chapter 15 to receive notice of public hearings;

(iv) Requesting persons;

(v) Each person owning real property within the area that would be directly affected by the proposed plans and regulations and within 350 feet of the area when the area directly affected is 5 acres or less.

(bb) One legal notice of the proposed plans and regulations shall be placed in the official newspaper of each county in the area directly affected by the recommended area at least two weeks prior to the date of the public hearing.

(cc) The Council may mail notice of the proposed plans and regulations to all persons owning real property within the boundaries of the area that is within the jurisdiction of the local unit of government for which the plans and regulations are being proposed.

(dd) The legal notice shall include the following:

(i) The time, location and purpose of the hearing; and

(ii) A summary of proposed plans and regulations.

(ee) At the public hearing, the Council shall receive all testimony and exhibits relative to the plans and regulations. An official record of the hearing shall be prepared. When a transcript is requested, the Council may require the party requesting to pay the reasonable costs of preparing the transcript.

(ff) After the public hearing on the plans and regulations, the Council shall examine the record and prepare findings of fact.

(gg) Within 60 days of the hearing, the Council shall adopt the plans and regulations for the local unit of government's portion of the critical area. Plans and regulations that have been adopted by the Council shall apply and have the effect of adoption by the local unit of government.

(3) At any time after the preparation and adoption of plans and regulations by the Council, a local unit of government may prepare plans and regulations according to procedures prescribed in these Regulations. When the plans and regulations are approved by the Council, they shall supersede the plans and regulations adopted by the Council.

(f) **Implementation of Plans and Regulations.**

(1) A local unit of government shall enact, according to existing authority, only the plans and regulations for a critical area that have the written approval of the Council.

(2) Plans or regulations prepared pursuant to these Regulations shall become effective when enacted by the local unit of government or, following legislative or Regional Development Commission approval of the Governor's order of designation, upon such date as the Council may provide in its approval of said plans and regulations.

(3) Plans and regulations adopted by the Council shall be administered by the local unit of government as part of the local regulations until the local unit of government prepares plans and regulations that are approved by the Council, at which time the local unit of government's plans shall supersede the Council's plans and regulations.

(g) **Update and Re-evaluation of Plans and Regulations.**

(1) **Optional Update.** When a local unit of government or a Regional Development Commission that prepared plans and regulations for a critical area finds it necessary or desirable to amend or rescind the plans and regulations that have been approved by the Council, the local unit of government or Regional Development Commission shall submit proposed modifications of its plans and regulations for approval by the appropriate Regional Development Commission and the Council pursuant to these Regulations.

(2) **Mandatory Review.** The Council shall review the plans and regulations for a critical area every two years after one of the following:

(aa) The date of the Council's initial approval of the plans and regulations; or

(bb) The Council's approval of an optional update of plans and regulations, pursuant to MEQC 55(g)(1).

The Council shall review the plans and regulations and any recommended changes for update and approval in the same manner as for approval of the original plans and regulations. When the Council determines that the plans and regulations for the critical area have been implemented to the extent of fulfilling the regional or statewide interest in such critical area, the Council may modify the two-year mandatory review requirement.

(3) Amendments or rescissions of plans and regulations shall become effective only upon the approval of the Council in the same manner as the aproval of the original plans and regulations.

(h) **Enforcement of Plans and Regulations.** When the Council determines that the administration of the local plans and regulations is inadequate to protect the state or regional interests, the Council may institute appropriate judicial proceedings to compel proper enforcement of the plans and regulations.

MEQC 56 DEVELOPMENT IN THE CRITICAL AREA

(a) **Limitation.**

(1) When a critical area has been designated, a local unit of government or state agency shall allow development affecting any portion of the area only as specified in the order of designation or as provided in these Regulations until plans and regulations have been adopted. This limitation shall be in effect as long as the designation is effective.

(2) Until plans and regulations for the critical area have been adopted

and approved, the local unit of government or state agency shall grant a development permit only when:

(aa) The development is specifically permitted by the order of designation; or the development is essential to protect the public health, safety, or welfare in an existing emergency; and

(bb) A local ordinance has been in effect immediately prior to the order of designation and a development permit would have been granted thereunder.

(3) When plans and regulations for a critical area have become effective, the local unit of government or state agency shall grant a development permit only in accordance with those plans and regulations.

(b) **Notice to Council.** At least 30 days before taking action on the application, the local unit of government shall notify the Council of:

(1) Any application for a development permit in any critical area for which plans or regulations have not become effective; or

(2) Any application for a development permit, for which a local unit of government is required to hold a public hearing, in any critical area for which plans and regulations have become effective.

MEQC 57 PROTECTION OF LANDOWNER'S RIGHTS

(a) In implementing these Regulations no governmental agency shall issue any order that is clearly in violation of the Constitution of this State or of the United States.

(b) Neither the designation of a critical area nor the adoption of any plans or regulations for such an area shall in any way limit or modify the rights of any person to complete any development that meets the following requirements:

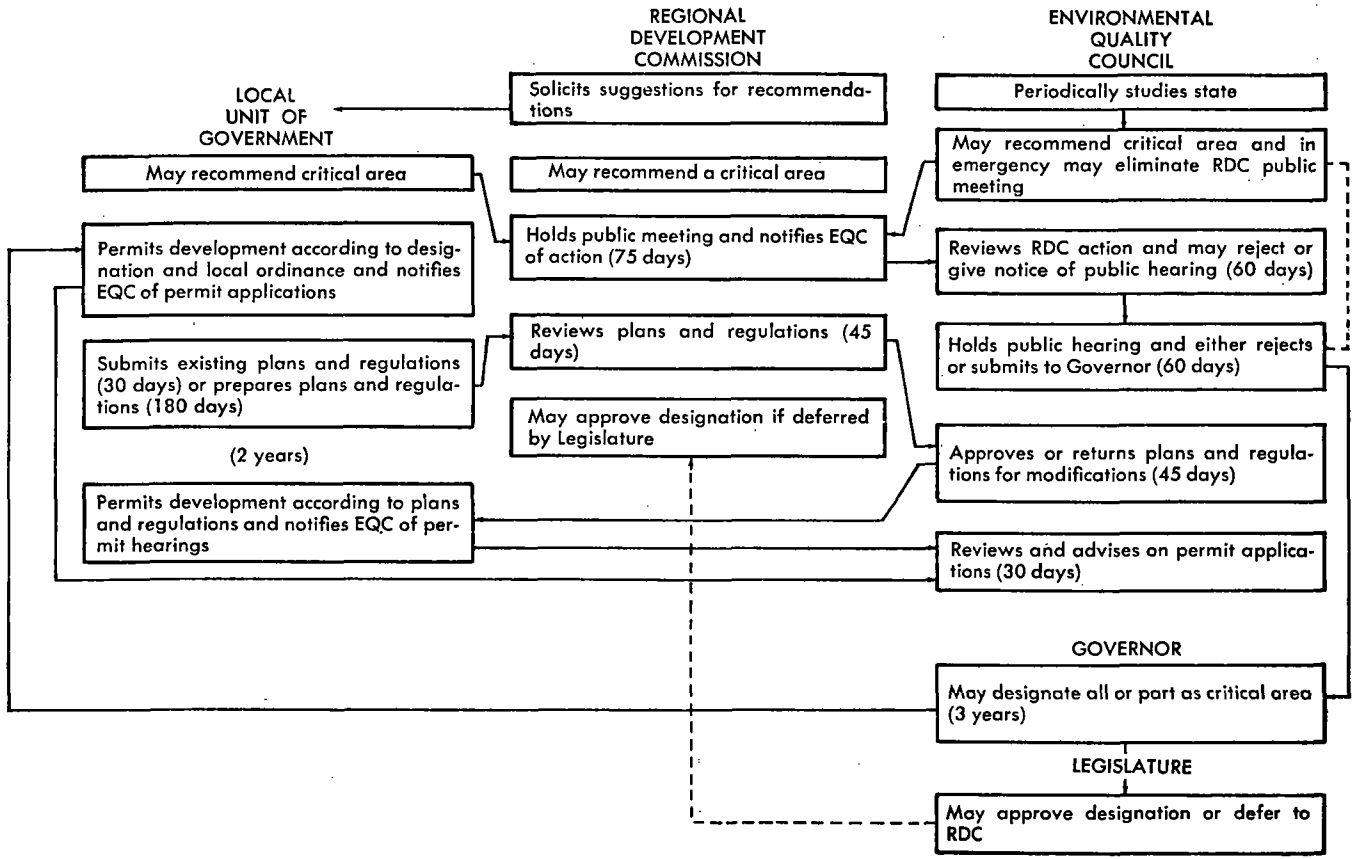
(1) A development that has been authorized by registration and recordation of a subdivision pursuant to state laws or by a building permit or other authorization to commence development on which there has been reliance and a change of position by the developer; and

(2) The registration, recordation, or the permit or authorization of the development was issued prior to the date of legal notice of the Council public hearing provided in MEQC 53(e) of these Regulations.

(c) When a developer has in reliance on prior regulations obtained vested or other legal rights, that would have prevented a local unit of government under the law from changing those regulations adverse to the developer's interests, these Regulations shall not authorize any local unit of government or governmental agency to abridge those rights.

Filed May 28, 1974.

CRITICAL AREAS PLANNING PROCESS



EQB replaces 3.071 thru 3.083

6 MCAR §§ 3.071-3.082: RULES FOR ROUTING HIGH VOLTAGE TRANSMISSION LINES AND SITING LARGE ELECTRIC POWER GENERATING PLANTS

§ 3.071 Authority, purpose and policy.

A. Authority. The rules contained herein are prescribed by the Minnesota Environmental Quality Board pursuant to the authority granted to the Board in the Power Plant Siting Act, Minn. Stat. § 116C.51 et seq. (1977), to give effect to the purposes of the Act.

B. Purpose and policy. It is the purpose of the Act and 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 ensuring continuing electric power system reliability and integrity and ensuring that electric energy needs are met and fulfilled in an orderly and timely fashion. The Board shall provide for broad spectrum citizen participation as a principle of operation.

§ 3.072 Definitions. As used in these rules, the following terms have the meanings given them.

A. "Act" means the Power Plant Siting Act of 1973, as amended, Minn. Stat. § 116C.51 et seq. (1977).

B. "Board" means the Minnesota Environmental Quality Board.

C. "Construction" means any clearing of land, excavation, or other action that would adversely affect the natural environment of a site or route but does not include changes needed for temporary use of sites or routes for non-utility purposes, or uses in securing survey or geological data, including necessary boring, to ascertain foundation conditions.

D. "File" means to deliver 40 copies to the office of the chairman of the Board.

E. "High voltage transmission line" (HVTL) means a conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 200 kilovolts or more. Associated facilities shall include, but not be limited to, insulators, towers, switching yards, substations and terminals.

F. "Large electric power facilities" means high voltage transmission lines and large electric power generating plants.

G. "Large electric power generating plant" (LEPGP) means electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more.

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H. "Large electric power generating plant study area" or "study area" means a geographic area that meets inventory criteria and standards for a LEPGP of a specified capacity, fuel type and design.

I. "Person" means any individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

J. "Public advisor" means a staff person designated by the Board for the sole purpose of assisting and advising affected or interested citizens on how to effectively participate in the site or route designation processes.

K. "Right-of-way" means the land interest used or proposed to be used within a route to accommodate a high voltage transmission line.

L. "Route" means the location of a high voltage transmission line between two end points. A route may have a variable width of up to 1.25 miles.

M. "Route segment" means a portion of a route.

N. "Site" means the location of a large electric power generating plant.

O. "Utility" means any entity engaged in this State in the generation, transmission or distribution of electric energy including, but not limited to, a private investor owned utility, a cooperatively owned utility, a public or municipally owned utility, or a private corporation.

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P. "Developed portion of plant site" means the portion of the LEPGP site, exclusive of make-up water storage reservoirs or cooling ponds, where structures or other facilities or land uses necessary for plant operation preclude crop production.

Q. "Technical assumptions" means the assumptions necessary to evaluate resource requirements of a LEPGP of a specified capacity, fuel type and design and to evaluate the availability of resources to meet those requirements.

R. "Prime farmland" means those soils that meet the specifications of 7 C.F.R. S 657.5 (a) (1980).

S. "Community benefits" means those benefits to the local community, other than economic development, that result from power plant design or location. Examples include use of community solid waste as a supplemental fuel, joint water supply, improving the economic viability of existing rail lines and increased tax base.

§ 3.073 Procedure for designation of a route and issuance of a construction permit.

A. Content of an application for a construction permit. An application shall be filed with the Board which includes an environmental report consistent in form with a draft environmental impact statement (Environmental Review Program Rules). The application shall contain any information necessary to make the evaluation required in 6 MCAR § 3.073 H. and the following:

1. The size and type of the proposed transmission line;

2. At least two proposed routes for the proposed transmission line;

3. An environmental analysis of each proposed route including a description of the environmental setting and the potential environmental impacts of each route;

4. The engineering and operational design concepts for the proposed transmission line;

5. A description of the construction, right-of-way preparation and maintenance procedures anticipated for the proposed transmission line;

6. The procedures and practices proposed for the ultimate abandonment and restoration of the right-of-way;

7. A listing of federal or state permits that may be required for the proposed transmission line;

8. A cost analysis of each route;

9. The certificate of need if available, or an acknowledgement of the acceptance of a substantially complete certificate of need application by the Minnesota Energy Agency, if a certificate of need is required by Minn. Stat. § 116H;

10. A statement of proposed ownership of the facility as of the day of filing and an affidavit authorizing the applicant to act on behalf of those planning to participate in the project.

B. Acceptance of a construction permit application. The Board shall either accept or reject an application for a construction permit at its first regularly scheduled meeting after the application is filed with the Board, provided the application is filed at least 30 days prior to that meeting. If the Board rejects the application, it shall at that time inform the applicant which deficiencies, if corrected, will allow the application to be accepted. If the deficient information is submitted to the Board 10 days in advance of a regularly scheduled meeting, the Board shall reconsider the application at that meeting. If the Board fails to act within the prescribed time limits the application shall be considered accepted. On acceptance of the application, the Board shall initiate the study, public participation and hearings required by these rules. After acceptance of the application, the applicant shall provide any additional relevant information which the Board deems necessary to process the application.

C. Route evaluation committee. On acceptance of an application for a construction permit the Board shall appoint a route evaluation committee consistent with the Act. The Board shall provide guidance to the committee in the form of a charge.

D. Public advisor. The public advisor shall be available to affected or interested citizens to advise them on how to effectively participate in the route designation process. The public advisor's duties shall include providing advice on appropriate methods and techniques of public involvement in the transmission line routing process. However, the public advisor is not authorized to give legal advice or advice which may affect the legal rights of the person being advised.

E. Information meetings. The Board shall hold at least two information meetings as follows:

1. After acceptance of an application for a construction permit the Board shall hold at least one information meeting in the area affected by the

applicant's proposal to explain the route designation process and to respond to questions raised by the public.

2. Prior to the public hearings held to consider the routes approved for consideration by the Board, the Board shall hold an information meeting in each county through which a route is proposed to be located to explain the route designation process, present major issues and alternatives under consideration by the Board and respond to questions raised by the public.

F. Route proposals. The Board shall consider the routes and route segments proposed by the applicant and may consider any other route or route segment it deems necessary. No route shall be considered at the public hearing unless approved for consideration by the Board prior to notice of the hearing thereon. All approved routes shall be identified by the Board consistent with 6 MCAR § 3.076 D. Any proposer of a route or route segment which the Board has approved for consideration shall make an affirmative presentation of facts on the merits of the proposal at the public hearing which shall provide the Board with a basis for making a determination on that proposal.

1. The Board member agencies, power plant siting staff and the route evaluation committee may propose routes or route segments to the Board. Route proposals made by the route evaluation committee must be made no later than 105 days after acceptance of the application by the Board.

2. Any other person may propose a route or a route segment in the following manner:

a. The route or route segment must be set out specifically on the appropriate general county highway map available from the Minnesota Department of Transportation, or on the appropriate United States Geological Survey topographical maps.

b. The proposal must contain the data and analysis required in 6 MCAR § 3.073 A. and 6 MCAR § 3.073 H., except 6 MCAR § 3.073 A.2.; except where such information is the same as provided by the applicant.

c. The proposal must be presented to the chairman of the Board or his designee within 70 days of acceptance of the application by the Board.

Within 10 days of receipt of the proposal, the chairman of the Board or his designee shall determine if the proposal is adequately prepared. If the chairman of the Board or his designee determines that it is adequately prepared, he shall forward the proposal to the Board for its consideration. If the chairman of the Board or his designee determines that the proposal is not adequately prepared, he shall inform the proposer of any inadequacies in the proposal. The proposer shall have 15 days therefrom to provide additional information to the chairman of the Board or his designee. The chairman of the Board or his designee shall determine within 10 days whether the amended proposal is adequately prepared. If the chairman of the Board or his designee then deter-

mines that the proposal is not adequately prepared, the proposer may appeal to the Board at its next meeting to determine the adequacy of the proposal.

G. Public hearings. Public hearings held by the Board pursuant to this rule shall be held for the purposes of collecting and verifying data, and establishing a complete and accurate record upon which to base a decision. The hearings shall be conducted by an independent hearing examiner from the State Hearing Examiners Office. The conduct of these hearings shall be as prescribed by rule adopted by the Chief Hearing Examiner.

H. Criteria for the evaluation of routes. In selecting a route and issuing a construction permit, the Board shall seek to minimize adverse human and environmental impact, maximize the efficient use of resources, and ensure continuing electric power system reliability.

1. Considerations for the designation of a route and issuance of a construction permit. The Board shall make an evaluation of the following considerations prior to issuance of a construction permit. In its evaluation of route alternatives, the Board shall consider the characteristics of a given geographical area, identify the potential impacts, and apply methods to minimize adverse impacts so that it may select a route with the least adverse impact.

a. Identification of geographical characteristics and potential impacts. The Board shall identify the geographical characteristics and potential impacts in the following categories:

(1) Human settlement, including development patterns;

(2) Economic operations, including agricultural, forestry, recreational and mining operations;

(3) The natural environment and public land, including natural areas, wildlife habitat, waters, recreational lands and lands of historical and/or cultural significance;

(4) Reliability, cost and accessibility.

b. Methods of minimizing impacts. In selecting a route with the least adverse impact, the Board shall make an evaluation of each of the following categories:

(1) Existing land use or management plans, and established methods of resource management;

(2) Routes along or sharing existing rights-of-way;

(3) Routes along survey and natural division lines and field boundaries so as to minimize interference with agricultural operations;

(4) Structures capable of expansion in transmission capacity

through multiple circuiting or design modifications to accommodate future high voltage transmission lines; and

(5) Alternate structure types and technologies.

2. Designated lands. Certain lands within the state have been designated for preservation by action of the state or federal government for the benefit of the people and for future generations. No route shall be designated by the Board through State or National Wilderness Areas. No route shall be designated by the Board through State or National Parks and State Scientific and Natural Areas unless:

a. A route in a designated area would not materially damage or impair the purpose for which the land was designated; and

b. Circumstances exist in all alternate routes which would be more severely detrimental to humans or the environment if any alternate were selected.

In the event that such an area is approved, the Board may require the applicant to take measures to minimize impacts which adversely affect the unique character of designated lands. Economic considerations alone shall not justify approval of these designated lands. No route shall be designated by the Board in violation of federal or state statute or law, rule or regulation.

I. Board action. Within one year after the Board's acceptance of a utility's application for a construction permit, the Board shall act on that application. When the Board designates a route, it shall issue a permit for the construction of a high voltage transmission line specifying the type, design, routing, right-of-way preparation and maintenance, facility construction and abandonment procedures it deems necessary with any other appropriate conditions. The Board's decision shall be made in accordance with 6 MCAR § 3.073 H. The Board shall give the reasons for its decision in written findings of fact.

J. Construction plans. Following issuance of a construction permit, a utility shall provide the Board with a preliminary construction plan at least 60 days prior to construction which shall show that the right-of-way of the transmission line as proposed is within the route designated by the Board. The Board may suspend the 60-day time limitation if it can be shown that earlier construction will not preclude proper review of the plans. If the utility makes any changes in its preliminary construction plan, it shall notify the Board in writing of such changes.

§ 3.074 Procedures for designation of a site and issuance of a certificate of site compatibility.

A. Content of an application for a certificate of site compatibility. The application for a certificate of site compatibility filed with the Board shall be consistent in form with an environmental report as outlined in the Minnesota Environmental Quality Board's Environmental Review Program Rules and

shall contain any information necessary to make the evaluation required in 6 MCAR § 3.074 H. and the following:

1. The size and type of the proposed plant;

2. At least two proposed sites for the proposed plant;

3. The engineering and operational design concepts for the plant at each of the proposed sites;

4. An engineering analysis of each of the proposed sites;

5. The procedures and practices proposed for the ultimate abandonment and restoration of the site;

6. An environmental analysis of each proposed site, including a description of the environmental setting and the potential environmental impacts of each site;

7. A cost analysis of the plant at each proposed site;

8. A listing of federal or state permits that may be required for each proposed site;

9. The certificate of need if available, or an acknowledgement of the acceptance of a substantially complete certificate of need application by the Minnesota Energy Agency, if a certificate of need is required by Minn. Stat. 116H;

10. A statement of proposed ownership of the facility as of the day of filing and an affidavit authorizing the applicant to act on behalf of those planning to participate in the project.

After Board adoption and publication of its inventory of large electric power generating plant study areas, the utility shall in all new applications filed with the Board either apply for sites located within the inventory of study areas, or shall specify the reasons for any proposal located outside of the study areas and make an evaluation of the proposed site based upon the planning policies, criteria and standards specified in the inventory.

B. Acceptance of an application for a certificate of site compatibility. The Board shall either accept or reject an application for a certificate of site compatibility at its first regularly scheduled meeting after the application is filed with the Board, provided the application is filed at least 30 days prior to that meeting. If the Board rejects the application, it shall at that time inform the applicant which deficiencies, if corrected, will allow the application to be accepted. If the deficient information is submitted to the Board 10 days in advance of a regularly scheduled meeting, the Board shall reconsider the application at that meeting. If the Board fails to act within the prescribed time limits the application shall be considered accepted. On acceptance of the

application, the Board shall initiate the study, public participation and hearings required by these rules. After acceptance of the application, the applicant shall provide any additional relevant information which the Board deems necessary to process the application.

C. Site evaluation committee. Upon acceptance of an application for a certificate of site compatibility, the Board shall appoint a site evaluation committee consistent with the Act. The Board shall provide guidance to the committee in the form of a charge.

D. Public advisor. The public advisor shall be available to affected or interested citizens to advise them on how to effectively participate in the site designation process. The public advisor's duties shall include providing advice on appropriate methods and techniques of public involvement in the site designation process. However, the public advisor is not authorized to give legal advice or advice which may affect the legal rights of the person being advised.

E. Information meetings. The Board shall hold at least two information meetings as follows:

1. After acceptance of an application for a certificate of site compatibility, the Board shall hold at least one information meeting in the area affected by the applicant's proposal to explain the site designation process and to respond to questions raised by the public.

2. Prior to the public hearings held to consider the sites approved for consideration by the Board, the Board shall hold an information meeting in each county in which a site is proposed to be located to explain the site designation process, to present major issues and alternatives under consideration by the Board, and to respond to questions raised by the public.

F. Site proposals. The Board shall consider the sites proposed by the applicant and may consider any other site it deems necessary. No site shall be considered at the public hearing unless approved for consideration by the Board prior to notice of the hearing thereon. All approved sites shall be identified by the Board consistent with 6 MCAR § 3.076 D. Any proposer of a site which has been approved for consideration at the public hearing by the Board shall make an affirmative presentation of facts on the merits of the proposal at the public hearing which shall provide the Board with a basis for making a determination on that proposal. Any person may propose a site in the following manner:

1. The site must be set out specifically on United States Geological Survey topographical maps.

2. The proposal must contain the data and analysis required in 6 MCAR § 3.074 A. and 6 MCAR § 3.074 H. with the exception of 6 MCAR § 3.074 A.2. and 6 MCAR § 3.074 A.7., except where such information is the same as provided by the applicant.

3. The proposal must be presented to the chairman of the Board or his designee within 70 days of acceptance of the application by the Board. Within 10 days of receipt of the proposal, the chairman of the Board or his designee shall determine if the proposal is adequately prepared. If the chairman of the Board or his designee determines that it is adequately prepared, he shall forward the proposal to the Board for its consideration at its next meeting. If the chairman of the Board or his designee determines that the proposal is not adequately prepared, he shall inform the proposer of any inadequacies in the proposal. The proposer shall have 15 days therefrom to provide additional information to the chairman of the Board or his designee. The chairman of the Board or his designee shall determine within 10 days whether the amended proposal is adequately prepared. If the chairman of the Board or his designee then determines that the proposal is not adequately prepared, the proposer may appeal to the Board at its next meeting to determine the adequacy of the proposal.

G. Public hearings. Public hearings held by the Board pursuant to this rule shall be held for the purposes of collecting and verifying data and establishing a complete and accurate record upon which to base a decision. The hearing shall be conducted by an independent hearing examiner from the State Hearing Examiners Office. The conduct of these hearings shall be as prescribed by rule adopted by the Chief Hearing Examiner.

H. Criteria for the evaluation of sites. The following criteria and standards shall be used to guide the site suitability evaluation and selection process. Not all site selection criteria are applicable to all plants to the same degree.

1. Site selection criteria. The following criteria shall be applied in the selection of sites:

a. Preferred sites require the minimum population displacement.

b. Preferred sites minimize adverse impacts on local communities and institutions.

c. Preferred sites minimize adverse health effects on human population.

d. Preferred sites do not require the destruction or major alteration of land forms, vegetative types, or terrestrial or aquatic habitats which are rare, unique, or of unusual importance to the surrounding area.

e. Preferred sites minimize visual impingement on waterways, parks, or other existing public recreation areas.

f. Preferred sites minimize audible impingement on waterways, parks or other existing public recreation areas.

g. Preferred sites minimize the removal of valuable and productive agricultural, forestry, or mineral land from their uses.

h. Preferred sites minimize the removal of valuable and productive water from other necessary uses and minimize conflicts among water users.

i. Preferred sites minimize potential accident hazards and possible related adverse effects with respect to geology.

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j. Preferred sites maximize opportunities for significant conservation of energy, utilization of by-products or biomass, cogeneration and development of waste-to-energy systems.

k. Preferred sites minimize the distance to large load centers.

l. Preferred sites maximize the use of already existing operating sites if expansion can be demonstrated to have equal or less adverse impact than feasible alternative sites.

m. Preferred sites utilize existing transportation systems unless feasible alternative systems, including new or upgraded existing substandard systems, have less adverse impact.

n. Preferred sites minimize adverse impact of transmission lines.

o. Preferred sites minimize the costs of constructing and operating the facility.

p. Preferred sites maximize the opportunities for community benefits and economic development.

2. Exclusion criteria.

a. No large electric power generating plant shall be sited in violation of any federal or state statute or law, rule or regulation. No site shall be selected in which a large electric power generating plant is not licensable by all appropriate state and federal government agencies.

b. The following land areas shall not be certified as a site for a large electric power generating plant except for use for water intake structures or water pipelines: National Parks; National Historic Sites and Landmarks; National Historic Districts; National Wildlife Refuges; National Monuments; National Wild, Scenic and Recreational Riverways; State Wild, Scenic and Recreational Rivers and their land use districts; State Parks; Nature Conservancy Preserves; State Scientific and Natural Areas; and State and National Wilderness Areas. If the Board includes any of these lands within a site for use for water intake structures or water pipelines, it may impose appropriate conditions in the certificate of site compatibility which protect these lands for the purpose for which they were designated. The Board shall also consider the adverse effects of proposed sites on these areas which are located wholly outside of the boundaries of these areas.

c. No area shall be selected which does not have reasonable access to a proven water supply sufficient for plant operation. No use of ground water shall be permitted where mining of ground water resources will result. "Min-

ing" as used herein shall mean the removal of ground water that results in material adverse effects on ground water in and adjacent to the area, as determined in each case.

3. Large electric power generating plant avoidance areas.

a. In addition to exclusion areas, the following land use areas shall not be approved for large electric power generating plant sites when feasible and prudent alternatives with lesser adverse human and environmental effects exist. Economic considerations alone shall not justify approval of avoidance areas. Any approval of such areas shall include all possible planning to minimize harm to these areas. These avoidance areas are: state registered historic sites; State Historic Districts; State Wildlife Management Areas (except in cases where the plant cooling water is to be used for wildlife management purposes); county parks; metropolitan parks; designated state and federal recreational trails; designated trout streams; and the rivers identified in Minn. Stat. § 85.32, subd. 1 (1971).

b. Avoidance areas also apply to new transportation access routes and storage facilities associated with the plant in addition to the plant itself.

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c. The use of ground water for high consumption purposes, such as cooling, shall be avoided if feasible and prudent surface water alternatives less harmful to the environment exist. Ground water use to supplement available surface water shall be permitted if the cumulative impact minimizes environmental harm.

d. When there exists a feasible and prudent alternative with less adverse environmental and noncompensable human effects, no LEPGP site shall be selected where the developed portion of the plant site includes more than 0.5 acres of prime farmland per megawatt of net generating capacity, and no make-up water storage reservoir or cooling pond site shall be selected that includes more than 0.5 acres of prime farmland per megawatt of net generating capacity. These provisions shall not apply to areas located within home rule charter or statutory cities; areas located within two miles of home rule charter or statutory cities of the first, second and third class; or areas designated for orderly annexation under Minnesota Statutes, section 414.0325.

I. Board action. Within one year after the Board's acceptance of a utility's application for a certificate of site compatibility, the Board shall act on that application. When the Board designates a site it shall issue a certificate of site compatibility with any appropriate conditions. The Board's decision shall be made in accordance with 6 MCAR § 3.074 H. The Board shall give the reasons for its decision in written findings of fact. If the Board refuses to designate a site, it shall indicate the reasons for the refusal and indicate the necessary changes in size or type of facility to allow site designation.

J. Certificate administration. Following issuance of a certificate of site compatibility, the Board may require the applicant to supply such plans and information as it deems necessary to determine whether the plant, as proposed or operated, is in compliance with the conditions of the certificate of site compatibility.

§ 3.075 Advisory committees.

A. Route and site evaluation committees. Route and site evaluation committees appointed by the Board are advisory and are to assist the Board in evaluating applications for routes and sites.

B. Power plant siting advisory committee. The Board shall appoint a Power Plant Siting Advisory Committee which shall work closely with the

Board staff in reviewing, advising, and making recommendations to the Board concerning development, revision and enforcement of any rule, inventory, or program initiated under the Act or these Rules. The Board shall provide guidance to the committee in the form of a charge and through specific requests. The committee shall be composed of as many members as may be designated by the Board, and its membership shall be solicited on a statewide basis. The committee shall be appointed for a one-year term coincident with the fiscal year.

§ 3.076 Notice.

A. Applications. Within 20 days of acceptance of any application submitted to the Board pursuant to the Act, except an exemption application, the Board shall give notice of acceptance of the application by paid advertisement in a legal newspaper of general circulation in each county in which a route or site is proposed by the applicant to be located. The notice shall include the following information:

1. Identification of the application;

2. The date of the Board's acceptance of the application;

3. A brief description of the proposed facility;

4. A map showing the routes or sites proposed in that county;

5. The name and function of the public advisor and the place where that person can be reached;

6. Locations where the application is available to the public;

7. Procedures for proposing alternate routes or sites.

B. Information meetings. Notice and agenda of public information meetings of the Board shall be given by the Board consistent with the Act. For purposes of giving notice, a route or site proposal shall be any route or site proposed by the applicant or a route or site that is an accepted proposal under 6 MCAR § 3.073 F.2. or 6 MCAR §§ 3.074 F.1., 3.074 F.2., 3.074 F.3., or by resolution of the Board pursuant to 6 MCAR § 3.073 F. or 6 MCAR § 3.074 F., as of the time of notice.

C. Public hearings. Notice and agenda of public hearings shall be given by the Board consistent with the Act. For purposes of giving notice, a route or site proposal shall be any route or site proposed by the applicant or a route or site that is an accepted proposal under 6 MCAR § 3.073 F.2. or 6 MCAR §§ 3.074 F.1., 3.074 F.2., 3.074 F.3., or by resolution of the Board pursuant to 6 MCAR §§ 3.073 F. or 3.074 F.

D. Route and site proposals. Prior to public hearings held on routes and

sites which the Board has approved for consideration at the public hearings consistent with these rules, the Board shall identify the routes and sites with maps published in a newspaper of general circulation in each county in which a route or site is proposed to be located showing the routes or sites in that county.

§ 3.077 Emergency certification.

A. Application. Any utility whose electric power system requires the immediate construction of a large electric power generating plant or a high voltage transmission line may apply to the Board for an emergency certificate of site compatibility or an emergency construction permit. The application for an emergency construction permit shall contain the supporting information required in 6 MCAR §§ 3.073 A. and 3.077 B. The application for an emergency certificate of site compatibility shall contain the supporting information required in 6 MCAR §§ 3.074 A. and 3.077 B.

B. Determination of an emergency. The Board shall hold a public hearing within 90 days of acceptance of an application for emergency certification to consider the following to determine whether or not an emergency exists:

1. Any evidence offered by the Minnesota Energy Agency or any other person;

2. Whether adherence to the procedures and time schedules specified in 6 MCAR § 3.073 I. and 6 MCAR § 3.074 I. would jeopardize the utility's electric power system or would jeopardize the utility's ability to meet the electric needs of its customers in an orderly and timely manner;

3. Whether there remains any feasible or prudent alternative to the utility which can serve its immediate need;

4. Whether the utility is prepared to, and will upon authorization, carry out the acquisition and construction program at the maximum rate of progress.

The Board shall also establish whether the situation could have been reasonably anticipated by the utility in time to utilize the normal application procedures. If the Board finds that the utility could have reasonably anticipated the situation, the utility may be subject to the provisions of Minn. Stat. § 116C.68 (1977).

C. Board action. If the Board determines that an emergency exists, then the route or site designation procedures prescribed in 6 MCAR § 3.073 and 6 MCAR § 3.074, with the exception of 6 MCAR § 3.073 F.2. and 6 MCAR §§ 3.074 F.1., 3.074 F.2., and 3.074 F.3., shall be followed, except that the Board shall designate a route and issue an emergency construction permit or designate a site and issue an emergency certificate of site compatibility within 195 days of the application.

§ 3.078 Exemption of certain routes.

A. Application. A utility may apply to the Board to exempt the construction of a high voltage transmission line from the Act. A utility shall submit an application for exemption of a specific transmission line containing the following information:

1. The engineering design concepts;

2. The proposed location of the facility;

3. The environmental setting and impact of the proposed action;

4. A description of the plans for right-of-way preparation and construction.

B. Notice of exemption application. Within 15 days of filing with the Board an application for exemption of a certain route, the utility shall:

1. Publish a notice and description of the exemption application including, but not limited to, a map of the proposed route and the size and type of facility in a legal newspaper of general circulation in each county in which the route is proposed to be located;

2. Send a copy of the exemption application by certified mail to the chief executive of any regional development commission, county, incorporated municipality and organized town in which the route is proposed to be located; and

3. Send a notice and description of the exemption application to each owner over whose property the line may run, together with an understandable description of the procedures the owner must follow should he desire to object.

C. Objection to an exemption application. Any person who owns real property crossed by the proposed route, or any person owning property adjacent to the property crossed by the proposed route, or any affected political subdivision may file an objection with the Board within 60 days after the giving of notice under 6 MCAR § 3.078 B. stating reasons why the Board should deny the application.

D. Board action. The Board may conduct a public hearing to determine if the proposed high voltage transmission line will cause any significant human or environmental impact. If any objections are filed with the Board, the Board shall either deny the application or conduct such a public hearing. Whether or not an objection is filed or a hearing is held, the Board shall determine whether the proposed high voltage transmission line will cause any significant human or environmental impact. If the Board determines that significant human or environmental impact will occur, it shall deny the application. If not, it may exempt the proposed transmission line with any appropri-

ate conditions, but the utility shall comply with any applicable state rule and any applicable zoning, building and land use rules, regulations and ordinances of any regional, county, local and special-purpose government in which the route is proposed to be located.

§ 3.079 Improvement of acquired routes and sites.

A. Delay in construction. Utilities that have acquired a route or site may proceed to construct or improve the route or site in accordance with these rules. However, when construction and improvement have not commenced four years after the construction permit or site certificate has been issued by the Board, the Board shall suspend the certificate or permit. If at that time, or at a time subsequent, the utility decides to construct the proposed large electric power facility, it shall certify to the Board that there have been no significant changes in any material aspects of the conditions or circumstances existing when the permit or certificate was issued. If the Board determines that there are no significant changes, it shall reinstate the permit or certificate. If the Board determines that there is a significant change, it may order a new hearing and consider the matter further, or it may require a new application.

B. Minor alterations in a construction permit for a high voltage transmission line.

1. Application. Following issuance of a construction permit for a high voltage transmission line, a utility may apply to the Board for minor alterations on conditions specified in the permit. The utility shall submit an application for a minor alteration which contains sufficient information for the Board to determine within 45 days the following:

a. Whether or not the requested changes are significant enough to warrant Board study and approval;

b. Whether or not to order public hearings near the affected area;

c. Whether or not additional fees shall be assessed.

2. Board action. If the Board decides to study the application, the Board shall determine within 70 days whether granting the application would be consistent with 6 MCAR § 3.073 H. and shall grant or deny the utility's application accordingly.

§ 3.080 Revocation or suspension.

A. Initiation of Board action. The Board may initiate action to consider revocation or suspension of a construction permit or certificate of site compatibility on its own motion or upon the request of any person who has made a prima facie showing by affidavit and documentation that a violation of the Act has occurred as set forth in Minn. Stat. § 116C.645 or these rules.

B. Board action. If the Board initiates action to consider revocation or suspension of a construction permit or certificate of site compatibility, it will consider in a hearing under Minn. Stat. § 116C.645 the following matters:

1. Whether a violation of any of the conditions in Minn. Stat. § 116C.645 has occurred;

2. Whether the violation will result in any significant additional adverse environmental effects;

3. Whether the results of the violation can be corrected or ameliorated; and

4. Whether a suspension or revocation of a permit or certificate will impair the utility's electrical power system reliability.

If the Board finds that a violation of Minn. Stat. § 116C.645 or these rules has occurred, it may (1) revoke or suspend the permit or certificate, (2) require the utility to undertake corrective or ameliorative measures as a condition to avoid revocation or suspension, or (3) require corrective measures and suspend the permit or certificate.

§ 3.081 Annual hearing. The Board shall hold an annual public hearing on a Saturday in November in St. Paul in order to afford interested persons an opportunity to be heard regarding its inventory of study areas, route and site designation processes, other aspects of the Board's activities and duties performed pursuant to the Act, or policies set forth in these rules.

§ 3.082 Assessment, application fees.

A. Assessment. For purposes of determining the annual assessment on a utility pursuant to the Act, each utility shall, on or before July 1 of each year, submit to the Board a report of its retail kilowatt-hour sales in the State and its gross revenue from kilowatt-hour sales in the State for the preceding calendar or utility reporting year. Upon receipt of these reports, the Board shall bill each utility as specified in the Act.

B. Application fees. Every applicant for a route or site pursuant to Minn. Stat. § 116.57 shall pay to the Board a fee as prescribed by the Act.

1. For applications filed pursuant to Minn. Stat. § 116C.57, subds. 1 and 2, twenty-five percent of the total estimated fee shall accompany the application and the balance is payable in three equal installments at the end of 90, 180 and 270 days from the date of the Board's acceptance of the application.

2. For applications filed pursuant to Minn. Stat. § 116C.57, subd. 3, twenty-five percent of the total estimated fee shall accompany the applica-

tion and the balance is payable at the end of 90 days from the date of the Board's acceptance of the application.

3. For applications filed pursuant to Minn. Stat. § 116C.57, subd. 5, ten percent of the total estimated fee shall accompany the application and the balance is payable as determined by the Board.

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6 MCAR S 3.083 Identification of large electric power generating plant study areas.

A. Inventory criteria and standards. The following criteria and standards shall be used by the board to prepare an inventory of large electric power generating plant study areas and by the utility and the board to evaluate any proposed site not located within the appropriate study area.

1. Exclusion areas.

a. Criterion. Study areas shall be compatible with board rules on exclusion criteria for LEPGP site selection.

b. Standard. Geographic areas identified in 6 MCAR S 3.074 H.2.b. shall not be part of any study area.

2. Air quality.

a. Criterion. Study areas for LEPGPs shall be compatible with existing federal and state air quality regulations and rules.

b. Standard. Study areas shall not include those areas in which operation of a LEPGP would likely result in violation of primary or secondary standards or exceedence of prevention of significant deterioration increments for sulfur dioxide or particulate matter as established under 42 U.S.C. SS 7401-7642 (1980), Minnesota Statutes, section 116.07 and Minn. Rule APC 1.

3. Transportation.

a. Criterion. Study areas for coal-fired LEPGPs shall have reasonable access to existing transportation systems which are or can be made capable of transporting the required quantities of coal.

b. Standard. In identifying study areas for

coal-fired LEPGPs, "reasonable access" shall mean no more than 12 miles distant from the existing transportation system.

4. Water.

a. Criterion. Study areas for LEPGPs using evaporative cooling systems shall have reasonable access to an adequate water source.

b. Standards.

(1) In identifying study areas for LEPGPs using evaporative cooling, rivers and lakes shall be considered potential water sources.

(2) In identifying study areas for LEPGPs using evaporative cooling, "reasonable access" shall mean no more than 25 miles distant from the water source.

(3) In identifying study areas for LEPGPs using evaporative cooling, a water source shall be considered adequate if it appears likely to allow LEPGP operation through periods of historic low flows or historic low elevations, either by direct withdrawal or by using supplemental stored water. This evaluation shall be based on historic stream flows, cooling water system technology and the environmental, economic and engineering constraints of reservoir design related to size.

B. Application of inventory criteria and standards. The board shall adopt an inventory of study areas for the LEPGP capacities, fuel types and designs reasonably anticipated to be subject to application for a certificate of site compatibility in the near future. The inventory shall consist of the maps of the study areas; discussion of specific inventory criteria and standards and technical assumptions used to develop the maps; and discussion of the LEPGP capacities, fuel types, and designs for which the maps are developed. The board shall consult with board member agencies, utilities and other agencies or persons with applicable information as it develops the technical assumptions necessary for application of inventory criteria and standards.

MINNESOTA ENVIRONMENTAL QUALITY BOARD

RULES FOR THE OPERATION OF ENVIRONMENTAL PERMIT COORDINATION

§ 3.101 Authority, purpose, exemptions, definitions.

A. Authority. These Rules are prescribed by the Minnesota Environmental Quality Board under:

1. Minn. Stat. § 116C.23, establishing an environmental permits coordination unit. This unit will implement the provisions of Minn. Stat. §§ 116C.22 through 116C.34, herein titled the Environmental Coordination Procedures Act;

2. Minn. Stat. § 116C.32, to adopt rules, not inconsistent with rules of procedure established by the office of hearing examiner, implementing the Environmental Coordination Procedures Act.

B. Purpose. These Rules provide an optional procedure to assist a person who, before undertaking a project which would use the state's air, land, or water resources, must obtain more than one state permit as defined by these Rules when that person voluntarily decides to use this procedure. The assistance involves: identifying all such required permits before the project is implemented; providing a single hearing on appropriate permit applications; providing time frames for the making of agency decisions; and providing to the applicant statements of the reasons that agencies approve or deny the permit applications.

C. Exemptions. These Rules shall not apply to projects that:

1. Require permits issued under Minn. Stat., ch. 93 pertaining to reservations, permits and leases of state owned mineral lands; Minn. Stat. §§ 116C.51 to 116C.69, the Minnesota Power Plant Siting Act; or Minn. Stat. § 116H.13, pertaining to certificates of need for large energy facilities; or

2. Are initiated for taconite tailings disposal or mining, or producing or beneficiating copper, nickel or copper-nickel.

D. Definitions. The terms specified below shall have the following meanings for the purpose of these Rules:

1. "Agency" means a state department, commission, board or other instrumentality of the state, however titled, or a local government unit or instrumentality if that local unit is acting within existing legal authority to grant or deny a permit that otherwise would be granted or denied by a state agency.

2. "Board" means the Minnesota Environmental Quality Board established pursuant to Minn. Stat. § 116C.03, formerly called the Minnesota Environmental Quality Council.

3. "Coordination Unit" means the Environmental Permits Coordination Unit established pursuant to Minn. Stat. § 116C.25, to assist persons using the master application process.

4. "Days": In computing any period of time prescribed or allowed in these Rules, the day the designated period of time begins shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which case the period will extend until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.

5. "Environmental review process" means any procedure for review established by the Board pursuant to Minn. Stat. § 116D.04, subd. 2.

6. "Hearing examiner" means a hearing examiner regularly appointed by the chief hearing examiner as provided for in Minn. Stat. § 15.052.

7. "Joint hearing" means the optional hearing at which one or more agencies participate as herein described as a replacement for individual state agency hearings that may be held following each agency's separate permit review procedures.

8. "Local government unit" means a county, city, town, or special district with legal authority to issue a permit.

9. "Master application" means an application requesting the issuance of all state permits necessary for construction or operation of a project requiring more than one permit.

10. "Participating agency" means an agency with one or more permit programs under its jurisdiction that are pertinent to a project for which a completed master application has been submitted to the coordination unit and which orders a hearing to be held pursuant to these Rules.

11. "Permit" means a license, permit, certificate, certification, approval, compliance schedule, or other similar document pertaining to a regulatory or management program related to the protection, conservation, or use of or interference with, the natural resources of land, air or water, which is required to be obtained from a state agency prior to constructing or operating a project in this state. Nothing in these Rules shall relate to the granting of a proprietary interest in publicly owned property through a sale, lease, easement, use permit, license or other conveyance.

12. "Permit Information Center" means an office established to provide information to the public about the requirements of state and local government regulations concerning the use of natural resources and protection of the environment.

13. "Person" means an individual, an association, partnership, or cooperative, or a municipal, public, or private corporation, including but not limited to a state agency and a county.

14. "Project" means a new activity or an expansion of or addition to an existing activity, which is fixed in location and which requires permits from an agency(ies) prior to construction or operation, including but not limited to industrial and commercial operations and development.

15. "Regional Development Commission" means any Regional Development Commission created pursuant to Minn. Stat. §§ 462.381 to 462.396, and the Metropolitan Council created pursuant to Minn. Stat. ch. 473B.

§ 3.102 Master application.

A. Scope. A person proposing a project that might require more than one permit may, before the initial construction of the project or the initial operation of the project if construction of the project requires no permits, submit to the Coordination Unit a master application requesting the issuance of all permits necessary for construction and (or) operation of the project.

1. Other permits, in addition to those defined by these Rules, may be included in these permit coordination procedures if the applicant and state regulatory agency so agree and if such procedure is permissible under the statutes and regulations that apply to such non-included permits. A written agreement to such an arrangement shall be provided by the agency to the Coordination Unit within 30 days of receipt by the agency of the master application. If such other permit applications are included within the master application process, they shall remain with the process until final disposition of the master application and for purposes of the master application process shall be included as a permit as defined by these Rules.

2. If a permit is required for the operation of a project or if a state agency must approve the engineering design plans of a project, and if the information needed by the agency to reach a decision could not be made available through the master application process, because post-construction or operation data are required to be collected or evaluated or because the issuance of the permit depends upon a post-construction facilities inspection or performance demonstration, then that permit or approval may be processed independently from the master application process provided both the applicant and the agency agree.

B. Master application form. The Coordination Unit shall provide a master application form which requests information necessary for agencies to determine permit applicability. Information required shall include but not be limited to:

1. The name and address of the applicant.

2. The location of the project.

3. A description of the project, including but not limited to possible discharges of waste; use of or interference with natural resources; the time for project completion; and, if the project is to be phased, the timing of such phases.

C. Signatories. Permit forms of agencies shall be signed as required by the rules of the respective agencies. Any form, exclusive of the agencies' permit forms, submitted to the Coordination Unit shall be signed as follows:

1. In the case of a corporation, by a principal executive officer or his duly authorized representative or agent, if such representative or agent is responsible for the project for which the permit is requested.

2. In the case of a partnership, by a general partner.

3. In the case of a sole proprietorship, by the proprietor.

4. In the case of a municipal, state or other public signatory, by either a principal executive officer, ranking elected official, or other duly authorized employee.

D. Certification. The Coordination Unit shall provide certification application forms which shall be submitted respectively by all applicants as follows:

1. Certification must be obtained from the local government unit(s) in which the proposed project will be located that the project complies with all local zoning ordinances, subdivision regulations, and environmental regulations administered by the local government unit. Certification under this paragraph must be issued not more than 120 days before the submission date of the master application. The local government unit(s) shall either issue a certification or deny that certification in accord with the following procedures.

a. Within 45 days after the applicant has submitted a certification application form to the local government unit, the unit shall return the completed form to the applicant or notify the applicant in writing that the certification is denied, including the reasons for the denial.

b. No local government unit shall rescind such a certification for a master application, even though the local government may have changed its zoning ordinances, subdivision regulations, or environmental regulations. A change of zoning ordinances, subdivision regulations, or environmental regulations shall not invalidate a previously given certification for the purpose of securing a state permit under 6 MCAR §§ 3.101 - 3.110. After certification, the local government may change such zoning ordinances, subdivision regulations, or environmental regulations, but not so as to affect the proposed project until the procedures of 6 MCAR §§ 3.101 - 3.110, including any administrative or judicial reviews, are completed.

c. A local government unit denial of certification shall not be appealable under these Rules. Such denial shall not preclude the applicant from filing a permit application under any other available statute or procedure.

2. Certification must be obtained from the Board, that an environmental impact statement on the project either has been completed or is not required. Within five days after the first Board meeting following submission of a certification application form to the Board, the Board shall return the completed form or notify the applicant in writing that the proposed project is undergoing review under the environmental review process. If the project is undergoing review under the environmental review process, the Board shall return a completed form to the applicant within ten days after such process is completed. If an environmental impact statement was required on the project, a copy of the final environmental impact statement shall be attached to the Board's certification.

E. Acceptance for processing. Upon receipt of a completed master application, including certifications required in 6 MCAR § 3.102D., the Coordination Unit shall immediately notify the applicant that the application has been accepted and is ready for processing.

1. Upon acceptance, the Coordination Unit shall immediately notify in writing each agency having a possible permit interest in the project. The notice shall be accompanied by a copy of the master application.

2. Each notified agency shall respond in writing to the Coordination Unit within 20 days of receipt by the agency of the master application, advising whether the agency will or will not require a permit for the described project. If the agency responds affirmatively, it shall include application forms and information concerning the specific permit program(s) applicable to the project as described and state whether a public hearing is required or appropriate relating to permit requirements for the project; provided, that a statement whether a public hearing is required or appropriate relating to National Pollutant Discharge Elimination System (NPDES) permit requirements for the project shall not be required at this time. If an agency affirms that a public hearing is required or appropriate, it shall provide a brief statement identifying the reasons.

3. If after all agency responses are received, only one permit is required, the master application procedure shall no longer be available to the applicant for that project. The applicant may then proceed to process the permit application using the normal procedures established by the agency requiring the permit. However, an agency(ies) shall not require an additional permit(s) of the applicant unless one of the conditions described in 6 MCAR § 3.102E.4. arises.

4. A notified agency that makes a timely response indicating that a permit(s) is not required, or that fails to make a timely response concerning a permit program or programs, shall not require such a permit of the applicant for the described project unless:

a. The master application provided to the agency lacked information or contained false, misleading, or deceptive information that would reasonably lead the agency to misjudge the applicability of its permit(s) to the project; or

b. Subsequent laws or rules require additional permits; or

c. Unusual circumstances prevented the agency from notifying the Coordination Unit, and the agency can establish that failure to require a permit would result in substantial harm to the public health and welfare.

5. If one of the conditions listed in 6 MCAR § 3.102E.4.a. through c. arise, the affected agency(ies) shall so notify the applicant, the Coordination Unit and the Board, and shall request a determination by the Board whether an order should be issued to require the relevant permit(s). Included with the agency's request shall be a statement justifying the need to require the additional permit(s). The Board at its first meeting held more than 15 days after being notified by the agency shall determine whether the permit(s) shall be required. If additional permit(s) are required because one of the conditions of 6 MCAR § 3.102E.4.a. occurs necessitating a change in the notice required by 6 MCAR § 3.105A., the applicant shall pay the additional cost, if any, resulting from the requirement for the additional permit(s). Any other costs resulting from the conditions in 6 MCAR § 3.102E.4.a., through c. will be borne by the agency(ies) requiring additional permits.

F. Alteration of project. If the applicant without being required by a public agency alters the proposed project in a way that may affect the validity of the certifications required in 6 MCAR § 3.102D. or an agency response required in 6 MCAR § 3.102E.2., the applicant shall immediately notify the Coordination Unit of the proposed alteration. The Coordination Unit shall then immediately notify the Board, the local government units involved, and all agencies which may have a permit interest in the proposed project. Within 15 days after notification by the Coordination Unit, the Board, the local government unit(s), and the agencies shall respond to the Coordination Unit and the applicant whether the previous certification is still valid or additional permits are required. If a new certification is needed or additional permits are required, the master application process shall be suspended. The period of suspension shall not exceed the time periods provided in 6 MCAR §§ 3.102 D.1.a., 3.102D.2. and 3.102E.2.

§ 3.103 Permit applications. Within five days after the deadline for agency responses, the Coordination Unit shall submit to the applicant all necessary application forms for the permits identified in the affirmative agency responses described in 6 MCAR § 3.102E.2. The applicant shall complete and return these forms to the Coordination Unit, with any required individual permit fees, within 90 days.

A. Transmittal to agencies. Within ten days of receipt of the full set of completed forms the Coordination Unit shall send each application to the appropriate agency for its permit review in accord with the procedures of these

Rules, provided, that a completed NPDES form shall be forwarded to the Minnesota Pollution Control Agency (MPCA) immediately upon receipt by the Coordination Unit.

B. Priorities. If an agency has a procedure for setting priorities in permit issuance according to the application date, the date used shall be the day the master application is received by the Coordination Unit.

§ 3.104 NPDES permit review. Whenever the MPCA responds under 6 MCAR § 3.102E. that a NPDES permit is required for a master application, within 110 days after it has received a completed NPDES application under 6 MCAR § 3.103A. the MPCA shall complete all permit review procedures necessary to determine the necessity or appropriateness of a hearing on the NPDES requirements for the project, and shall within the 110 days notify the Coordination Unit whether a hearing is required or necessary. When conditions prevail that do not require the full 110 day processing period, the MPCA will notify the Coordination Unit as soon as possible as to whether a hearing is required.

§ 3.105 Notice.

A. Publication. Immediately after transmittal of the completed permit applications and any required permit fees to the appropriate agency, the Coordination Unit shall publish notice at the applicant's expense once each week on the same day of the week for three consecutive weeks, in a newspaper of general circulation in each county in which the project is proposed to be constructed or operated.

B. Content. The notice shall contain:

1. A description of the proposed project.

2. The name and address of the applicant.

3. The location of the project.

4. The permits applied for and the agencies with permit jurisdiction.

5. The Coordination Unit telephone number to contact for more information about the project.

6. A statement that a copy of the master application and a copy of all permit applications for the project are available for public inspection during normal business hours in the office of the county auditor of each county in which the project is proposed to be constructed or operated, and in other locations the Coordination Unit may designate.

7. Except as provided in 6 MCAR §§ 3.104 or 3.105C., the time and place of the joint hearing and other contents of the order for hearing, to commence not less than 20 days or more than 45 days after publication of the last newspaper notice.

8. Additional information concerning the permit application or hearing, upon notification by an agency that such specified information is required to be provided in the notice.

C. If joint hearing of no value. If agency responses to the master application unanimously affirm that a public hearing concerning the master application is not required or is not in the public interest, the newspaper notice shall not refer to a joint hearing. The notice shall state that members of the public may present relevant views and supporting material concerning specified permits in writing to the Coordination Unit within 30 days after the last notice has been published.

D. Additional notice. Persons wishing to receive notice by mail of master applications may do so upon written request. The request shall give the name and address of the person to receive notice and the counties for which master application notice is requested. The request shall be valid for one year and may be renewed upon notice of expiration by the Coordination Unit. Upon notification by an agency, the Coordination Unit shall also mail notices to any additional persons entitled to receive notice according to the requirements of individual permit programs.

E. Confidentiality. If the applicant requests that information contained on the application or in supplement to the application be certified as confidential, the information shall not be released unless the appropriate agency responds in writing that the information is not to be certified as confidential. If the agency so responds, the Coordination Unit shall immediately notify the applicant that the agency has failed to certify the information as confidential. Within ten days after such notification, the applicant may withdraw the subject information by giving written notice to the Coordination Unit. The information shall not be subsequently released if it is withdrawn by the applicant within the ten day period.

§ 3.106 Joint hearing.

A. Joint hearing procedure. When one or more agencies affirm that a hearing is required or appropriate relating to its permit requirements for the project, the agency(ies) shall issue an order for a hearing. In preparing the order for hearing, the agency(ies) shall consult with the Coordination Unit in setting the time and place for the joint hearing. The Coordination Unit shall issue a notice that a joint hearing will be held pursuant to the contested case provisions of Minn. Stat. ch. 15, the Rules and Regulations of the Office of Hearing Examiners, and these Rules. Copies of the notice and order(s) shall be immediately forwarded to all agencies having a permit interest in the project and to the applicant by the Coordination Unit.

B. State agency participation. Each participating state agency shall be represented at the joint hearing by its chief administrative officer or his designee. The representative shall participate in the portion of the joint hearing pertaining to submission of information, views, and supporting materials that are relevant to the specific permit application(s) under the jurisdiction

of that agency. The manner of agency participation shall be consistent with the contested case provisions of the Rules and Regulations of the Office of Hearing Examiners. The hearing examiner may, when appropriate, continue a joint hearing from time to time and place to place. The joint hearing shall be recorded in any manner suitable for transcription pursuant to Minn. Stat. ch. 15. The record of the joint hearing shall be made available for public inspection by the Coordination Unit.

C. Hearing examiner report. Upon termination of the joint hearing, the hearing examiner's report, containing recommendations on each permit, shall be forwarded to the Coordination Unit. The Coordination Unit shall forward copies of the report to the participating agencies and to the applicant.

D. Costs. Costs of the joint hearing shall be apportioned by the Coordination Unit to each participating agency. The hearing costs shall be apportioned based on the percentage of the hearing record that is pertinent to each participating agency.

E. Final agency decision. Within 60 days of receipt of the hearing examiner's report or notification by the Coordination Unit of its availability to those agencies not participating in the hearing, each agency shall notify the Coordination Unit of its final decision on the permit applications within its jurisdiction, provided that this date may be extended by the Chairman of the Board for reasonable cause. A request for such extension, setting forth specific reasons, shall be filed with the Coordination Unit, which shall immediately notify the Chairman of the Board and the applicant. Such extension shall be the minimum time needed by the agency to reach a final decision and shall be considered an exception to normal operating procedure. Each final decision shall set forth the reasons for the decision together with a final order denying or granting the permit, including any conditions under which the permit is issued.

§ 3.107 Non-hearing procedure. If no joint hearing is conducted, pursuant to 6 MCAR § 3.105C., the Coordination Unit shall, not less than 30 days after publication of the last newspaper notice, submit a copy of all views and supporting material it has received to the agencies. The agencies shall consider such information during review of permit applications. Concurrently, therewith, the Coordination Unit shall notify each agency, in writing of the date, 60 days after agency receipt of such notice, by which final decisions on applications shall be forwarded to the Coordination Unit, provided that this date may be extended by the Chairman of the Board for reasonable cause. A request for such extension, setting forth specific reasons, shall be filed with the Coordination Unit, which shall immediately notify the Chairman of the Board and the applicant. Such extension shall be the minimum time needed by the agency to reach a final decision and shall be considered an exception to normal operating procedure. Every final decision shall set forth the information required by 6 MCAR § 3.106E.

§ 3.108 Agency decisions. Upon receipt by the Coordination Unit of all final decisions of the agencies, the Coordination Unit shall immediately incor-

porate them, without modification, into one document and transmit the document to the applicant either personally or by registered mail.
by registered mail.

1. A person aggrieved by a final decision of an agency in granting or denying a permit shall seek redress directly and individually from that agency in the manner provided by Minn. Stat. ch. 15, or any other statute authorizing either judicial or administrative review of an agency decision.

§ 3.109 Withdrawal from the master application process.

A. Agency withdrawal. An agency which has responded affirmatively under 6 MCAR § 3.102E.2. may withdraw from the process at any time if it has subsequently determined that it has no permit programs applicable to the project. The withdrawal becomes effective when the agency submits written notice of this determination to the Coordination Unit and to the applicant. The cost of a change or withdrawal of any notice required under these Rules, resulting from agency withdrawal shall be paid by the applicant if such withdrawal is due to an alteration the applicant has made in the project that is not required by a public agency or if the agency's initial affirmative determination was based on incorrect information supplied by the applicant; in all other cases, the withdrawing agency shall pay for the change or withdrawal of notice.

B. Applicant withdrawal. If an applicant has initiated the master application process, the applicant may at any later time withdraw from further participation in the process by submitting written notification to the Coordination Unit. If such withdrawal necessitates a change or withdrawal of any notice required under these Rules, the applicant shall pay the cost, if any, of such change or withdrawal of notice.

§ 3.110 Application.

A. Agency jurisdiction. Each agency having jurisdiction to issue or reject a permit shall retain this authority as vested in it before the effective date of these Rules. Nothing in these Rules shall lessen or reduce such authority and these Rules shall modify only the procedures followed in carrying out such authority.

1. A state agency may, in performing its responsibilities under these Rules, request or receive additional information from an applicant. A copy of that request or receipt shall be immediately forwarded to the Coordination Unit, which shall immediately notify all other agencies having permit interest in the project.

2. Fee schedules authorized by statute or rules for an application or permit shall continue to be applicable even though the application or permit is processed according to these Rules. The Coordination Unit shall not charge the applicant or participating agencies a fee for services.

B. Post-decision proceedings. These Rules shall have no applicability to an application for a permit renewal, amendment, extension, or other similar document required subsequent to the completion of decisions and proceedings under 6 MCAR §§ 3.101 - 3.110, or to a replacement thereof or to a quasi-judicial or judicial proceeding held pursuant to an order of remand or similar order by a court in relation to a final decision of an agency.

C. Nothing in these Rules shall modify in any manner whatsoever the applicability or inapplicability to the lands of any agency of any land use regulation, statute, or local government zoning ordinance.

D. The Board, to the limited extent necessary to comply with procedural requirements of federal statutes relating to permit systems operated by the state, may modify the notice, timing, hearing and related procedural matters provided in these Rules.

§ 3.111 - § 3.114 Reserved for future use.

§ 3.115 Permit information center grant program.

A. Applicability. Funds appropriated for grants for the establishment of regional permit information centers by Minn. Stat. § 116C.34 (1976) and any future funding for such centers appropriated to the State Planning Agency shall be distributed to those public bodies authorized by laws pursuant to the recommendation of the Director of the State Planning Agency and these Rules.

B. Eligibility. A Regional Development Commission may apply for a grant from the Director of the State Planning Agency for the establishment of a regional permit information center provided that the following conditions are met:

1. The grant application is submitted before May 1 of the fiscal year for which the legislative appropriation was made.

2. The amount of the grant application does not exceed the legislative appropriation.

3. The Regional Development Commission agrees to perform the following functions for at least one year following approval of the grant application.

a. Designate one person to act as liaison between the regional permit information center and the Environmental Permit Coordination Unit.

b. Provide an information and referral system to assist the public in understanding and complying with the requirements of state and local government regulations concerning the use of natural resources and protection of the environment.

c. Provide for the dissemination of printed materials concerning the requirements of state and local government regulations.

d. Publicize the availability and location of the permit information center.

e. Provide information to the public on the regulatory functions relating to the environment of the local government units in its region.

f. Establish and maintain a file for applicable state resource agency permits, including pertinent rules and regulations, criteria for permit issuance and use, and compliance with relevant statute requirements.

g. Maintain information on state environmental programs.

h. Maintain a list or directory of pertinent state agency contacts in each region and in St. Paul as well as a list of local government unit contacts for its region.

C. Grants. Within 30 days after receipt of a completed grant application, the Director of the State Planning Agency shall approve the grant or notify the Regional Development Commission in writing of the reasons why the grant application was denied.

MASTER APPLICATION PROCEDURE