

CHAPTER 4401
ENVIRONMENTAL QUALITY BOARD
WIND SITING

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4401.0100 PURPOSE.

This chapter provides for the consideration of applications for site permits for large wind energy conversion systems by the Minnesota Environmental Quality Board. This chapter is intended to provide for the siting of large wind energy conversion systems in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources.

Statutory Authority: *MS s 116C.695*

History: *26 SR 1394*

4401.0200 DEFINITIONS.

Subpart 1. **Scope.** As used in this chapter, the following terms have the meanings given them.

Subp. 2. **Associated facilities.** "Associated facilities" means facilities, equipment, machinery, and other devices necessary to the operation and maintenance of a large wind energy conversion system, including access roads, collector and feeder lines, and substations.

Subp. 3. **Board.** "Board" means the Minnesota Environmental Quality Board.

Subp. 4. **Chair.** "Chair" means the individual who is the chair of the board.

Subp. 5. **Construction.** "Construction" means to begin or cause to begin as part of a continuous program the placement, assembly, or installation of facilities or equipment or to conduct significant site preparation work for installation of facilities or equipment. Entering into binding power purchase contracts or obtaining wind easements from property owners or gathering wind data is not construction.

Subp. 6. **Draft site permit.** "Draft site permit" means a document prepared by the chair that indicates a preliminary decision to issue a site permit with particular terms and conditions.

Subp. 7. **EQB.** "EQB" means the board and the board's staff.

Subp. 8. **EQB Monitor.** "EQB Monitor" means the biweekly bulletin published by the EQB.

Subp. 9. **Large wind energy conversion system or LWECs.** "Large wind energy conversion system" or "LWECs" means a combination of wind energy conversion systems with a combined nameplate capacity of 5,000 kilowatts or more.

Subp. 10. **Person.** "Person" means an 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.

Subp. 11. **Power purchase agreement.** "Power purchase agreement" means a legally enforceable agreement between two or more persons where one or more of the signatories agrees to provide electrical power and one or more of the signatories agrees to purchase the power.

Subp. 12. **Site permit.** "Site permit" means a document issued by the board authorizing a person or persons to construct a large wind energy conversion system under the terms and conditions specified in the document.

Subp. 13. **Small wind energy conversion system or SWECS.** "Small wind energy conversion system" or "SWECS" means a combination of wind energy conversion systems with a combined nameplate capacity of less than 5,000 kilowatts.

Subp. 14. **Wind energy conversion system or WECS.** "Wind energy conversion system" or "WECS" means a device such as a wind charger, windmill, or wind turbine and associated facilities that converts wind energy to electric energy.

Statutory Authority: *MS s 116C.695*

History: *26 SR 1394*

4401.0300 PERMIT REQUIREMENT.

Subpart 1. **LWECS.** No person may construct an LWECS without a site permit from the board. No person may commence construction of an LWECS until the board has issued a site permit for the LWECS.

Subp. 2. **SWECS.** A site permit from the board is not required to construct an SWECS. Nothing in this chapter precludes a local governmental unit from establishing requirements for the siting and construction of an SWECS.

Subp. 3. **Expansion of existing system.** No person may expand an existing LWECS by any amount or expand an SWECS to exceed 5,000 kilowatts without a site permit from the board. A new project is considered an expansion of an existing WECS if the new WECS is within five miles of any turbine in the existing WECS, both projects are under common ownership, and a permit application for the new WECS is submitted to the EQB less than three years after the existing WECS commenced operation. Two WECS are under common ownership if the proposer of the new project, or a principal of the proposer, has an ownership or other financial interest in the existing WECS, although two projects are not under common ownership solely because the same person provided equity financing for both projects. The requirements of this subpart do not apply to any proposed SWECS for which the necessary local approvals were obtained prior to October 1, 2002, and for which construction started prior to December 31, 2002.

Statutory Authority: *MS s 116C.695*

History: *26 SR 1394*

4401.0400 FILING OF APPLICATION FOR SITE PERMIT.

Subpart 1. **Number of copies.** A person seeking a site permit for an LWECS shall file three copies of the application for the site permit with the EQB for review prior to acceptance of the application.

Subp. 2. **Electronic copy.** A person filing an application for a site permit for an LWECS shall provide the EQB with an electronic version of the application suitable for posting on the EQB Web page. An applicant may request that the chair waive this requirement, completely or in part, if an electronic version of the application is difficult or expensive for the applicant to obtain.

Subp. 3. **Not public data.** An applicant for a site permit for an LWECS may certify, according to the Minnesota Government Data Practices Act or other applicable law, that certain information in the application is trade secret information or other protected data or information that is not available to the public. The chair shall determine if the certified data or information satisfies the requirements for the protected classification and shall advise the applicant of the chair's determination before releasing any certified data or information. An applicant may withdraw its application if the chair determines that the data or information is not entitled to the protected classification. Any person aggrieved by the decision of the chair regarding the status of certain data may request the board to reconsider the chair's decision. The

EQB shall ensure that data or information that is entitled to a protected classification is used and disclosed only according to applicable law.

Statutory Authority: *MS s 116C.695*

History: *26 SR 1394*

4401.0450 CONTENTS OF SITE PERMIT APPLICATION.

Subpart 1. **Applicant.** An applicant for a site permit must provide the following background information regarding the applicant:

A. a letter of transmittal signed by an authorized representative or agent of the applicant;

B. the complete name, address, and telephone number of the applicant and any authorized representative;

C. the signature of the preparer of the application if prepared by an agent or consultant of the applicant;

D. the role of the permit applicant in the construction and operation of the LWECS;

E. the identity of any other LWECS located in Minnesota in which the applicant, or a principal of the applicant, has an ownership or other financial interest;

F. the operator of the LWECS if different from the applicant; and

G. the name of the person or persons to be the permittees if a site permit is issued.

Subp. 2. **Certificate of need or other commitment.**

A. The applicant shall state in the application whether a certificate of need for the system is required from the Minnesota Public Utilities Commission and, if so, the anticipated schedule for obtaining the certificate of need. The board shall not issue a site permit for an LWECS for which a certificate of need is required until the applicant obtains the certificate, although the board may process the application while the certificate of need request is pending before the Public Utilities Commission.

B. The board may request the Public Utilities Commission to determine if a certificate of need is required for a particular LWECS for which the board has received a site permit application.

C. If a certificate of need is not required from the Public Utilities Commission, the applicant shall include with the application a discussion of what the applicant intends to do with the power that is generated. If the applicant has a power purchase agreement or some other enforceable mechanism for sale of the power to be generated by the LWECS, the applicant shall, upon the request of the chair, provide the EQB with a copy of the document.

Subp. 3. **State policy.** The applicant shall describe in the application how the proposed LWECS project furthers state policy to site such projects in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources.

Subp. 4. **Proposed site.** The applicant shall include the following information about the site proposed for the LWECS and any associated facilities:

A. the boundaries of the site proposed for the LWECS, which must be delineated on a United States Geological Survey Map or other map as appropriate;

B. the following characteristics of the wind at the proposed site:

(1) interannual variation;

(2) seasonal variation;

(3) diurnal conditions;

(4) atmospheric stability, to the extent available;

(5) turbulence, to the extent available;

(6) extreme conditions;

- (7) speed frequency distribution;
- (8) variation with height;
- (9) spatial variations; and
- (10) wind rose, in eight or more directions;

C. other meteorological conditions at the proposed site, including the temperature, rainfall, snowfall, and extreme weather conditions; and

D. the location of other wind turbines in the general area of the proposed LWECS.

Subp. 5. **Wind rights.** The applicant shall include in the application information describing the applicant's wind rights within the boundaries of the proposed site.

Subp. 6. **Design of project.** The applicant shall provide the following information regarding the design of the proposed project:

A. a project layout, including a map showing a proposed array spacing of the turbines;

B. a description of the turbines and towers and other equipment to be used in the project, including the name of the manufacturers of the equipment;

C. a description of the LWECS electrical system, including transformers at both low voltage and medium voltage; and

D. a description and location of associated facilities.

Subp. 7. **Environmental impacts.** An applicant for a site permit shall include with the application an analysis of the potential impacts of the project, proposed mitigative measures, and any adverse environmental effects that cannot be avoided, in the following areas:

A. demographics, including people, homes, and businesses;

B. noise;

C. visual impacts;

D. public services and infrastructure;

E. cultural and archaeological impacts;

F. recreational resources;

G. public health and safety, including air traffic, electromagnetic fields, and security and traffic;

H. hazardous materials;

I. land-based economics, including agriculture, forestry, and mining;

J. tourism and community benefits;

K. topography;

L. soils;

M. geologic and groundwater resources;

N. surface water and floodplain resources;

O. wetlands;

P. vegetation;

Q. wildlife; and

R. rare and unique natural resources.

The analysis of the environmental impacts required by this subpart satisfies the environmental review requirements of chapter 4410 and Minnesota Statutes, chapter 116D. No environmental assessment worksheet or environmental impact statement shall be required on a proposed LWECS project.

Subp. 8. **Construction of project.** The applicant shall describe the manner in which the project, including associated facilities, will be constructed.

Subp. 9. **Operation of project.** The applicant shall describe how the project will be operated and maintained after construction, including a maintenance schedule.

Subp. 10. **Costs.** The applicant shall describe the estimated costs of design and construction of the project and the expected operating costs.

Subp. 11. **Schedule.** The applicant shall include an anticipated schedule for completion of the project, including the time periods for land acquisition, obtaining a site permit, obtaining financing, procuring equipment, and completing construction. The applicant shall identify the expected date of commercial operation.

Subp. 12. **Energy projections.** The applicant shall identify the energy expected to be generated by the project.

Subp. 13. **Decommissioning and restoration.** The applicant shall include the following information regarding decommissioning of the project and restoring the site:

- A. the anticipated life of the project;
- B. the estimated decommissioning costs in current dollars;
- C. the method and schedule for updating the costs of decommissioning and restoration;
- D. the method of ensuring that funds will be available for decommissioning and restoration; and
- E. the anticipated manner in which the project will be decommissioned and the site restored.

Subp. 14. **Identification of other permits.** The applicant shall include in the application a list of all known federal, state, and local agencies or authorities, and titles of the permits they issue that are required for the proposed LWECS.

Statutory Authority: *MS s 116C.695*

History: *26 SR 1394*

4401.0460 ACCEPTANCE OF APPLICATION.

Subpart 1. **Action by chair.** Within 30 days after receipt of an application for a site permit, the chair shall accept, conditionally accept, or reject the application. If the chair conditionally accepts or rejects an application, the chair shall advise the applicant in writing of the deficiencies in the application and the manner in which the deficiencies can be addressed. Upon refiling of a revised application, the chair shall again act on the application within 30 days after receipt.

Subp. 2. **Notice of application acceptance.** Within 15 days after chair acceptance of an application, the applicant shall provide notice of the application to the county board, each city council, and each township board in each county where the LWECS is proposed to be located and shall publish notice of the application in a newspaper of general circulation in each county. Failure to give this notice or a delay in providing this notice constitutes cause to reject an application or delay a decision by the board. The chair may elect to give this notice in lieu of requiring the applicant to provide the notice.

Subp. 3. **Additional copies.** Upon acceptance of the application by the chair, the chair shall advise the applicant of how many additional copies of the application to submit to the EQB. The applicant shall also provide a copy of the accepted application to the Public Utilities Commission, the Minnesota Historical Society, and to each landowner within the boundaries of the proposed LWECS site. The applicant shall also provide a copy to the office of each regional development commission of a development region, the auditor of each county, and the clerk of each city and township in which the LWECS is to be located. Each county auditor, city clerk, and township clerk shall retain the application and make it available for public inspection upon request. The applicant shall maintain a list of all persons to whom copies of the application are provided.

Statutory Authority: *MS s 116C.695*

History: *26 SR 1394*

4401.0470 PUBLIC ADVISOR.

Upon acceptance of an application for a site permit, the chair shall designate a staff person to act as the public advisor on the project. The public advisor shall be available to answer questions from the public about the permitting process. The public advisor shall not give legal advice or other advice that may affect the legal rights of the person being advised, and the public advisor shall not act as an advocate on behalf of any person.

Statutory Authority: *MS s 116C.695*

History: *26 SR 1394*

4401.0500 PRELIMINARY DETERMINATION AND DRAFT SITE PERMIT.

Subpart 1. **Preliminary determination.** Within 45 days after acceptance of the application by the chair, the chair shall make a preliminary determination whether a permit may be issued or should be denied. If the preliminary determination is to issue a permit, the chair shall prepare a draft site permit for the project. The draft site permit must identify the person or persons who will be the permittee, describe the proposed LWECs, and include proposed permit conditions.

Subp. 2. **Effect of draft site permit.** A draft site permit does not authorize a person to construct an LWECs. The board may change the draft site permit in any respect before final issuance or may deny the site permit.

Statutory Authority: *MS s 116C.695*

History: *26 SR 1394*

4401.0550 PUBLIC PARTICIPATION.

Subpart 1. **Public notice.** Upon preparation of a draft site permit, the EQB shall provide public notice of the draft site permit. The public notice must include the following:

- A. the name and address of the applicant for the site permit;
- B. a concise description of the proposed LWECs project;
- C. the location where a copy of the site permit application may be reviewed and how a copy of the application may be obtained;
- D. a statement of the availability of the draft site permit;
- E. the name of the public advisor and how the public advisor may be contacted to obtain more information;
- F. the time and place of a public information meeting;
- G. a statement that during the comment period any person may submit comments to the board on the draft site permit, a statement of the dates on which the comment period commences and terminates, and a statement that any person may request a contested case hearing on the matter; and
- H. a brief description of the anticipated procedures for reaching a final decision on the permit application.

Subp. 2. **Distribution of public notice.** The EQB shall publish the notice in a newspaper in each county in which the proposed LWECs is to be located. The EQB shall also mail the public notice to those persons known to the EQB to be interested in the proposed LWECs project, including governmental officials in each county in which the LWECs is proposed to be located. The EQB shall also publish notice in the EQB Monitor.

Subp. 3. **Public comments on draft site permit.** The EQB shall afford the public a minimum of 30 days after publication of the draft site permit notice in the EQB Monitor to submit written comments to the EQB. The chair may extend the public comment period if necessary to afford the public adequate time to review the application and other pertinent information in order to formulate complete comments on the draft site permit and the project.

Subp. 4. **Public information meeting.** The EQB shall hold at least one public information meeting in a convenient location in the vicinity of the proposed LWECS project. The EQB shall give the public at least ten days' notice of the public information meeting. The public information meeting must be held more than ten days prior to the end of the public comment period on the draft site permit. The chair shall extend the comment period if necessary to meet this requirement.

Subp. 5. **Contested case hearing.**

A. Any person may request in writing that a contested case hearing be held on an application for a site permit for a proposed LWECS project. The contested case hearing request must be filed within the time period established for submitting comments on the draft site permit. The person requesting the public hearing shall include, as part of the request, the issues to be addressed in the hearing and the reasons a hearing is required to resolve those issues.

B. The board shall order a contested case hearing if the board finds that the person requesting the contested case hearing has raised a material issue of fact and that holding a hearing would aid the EQB in making a final determination on the permit application.

C. The hearing must be conducted according to the rules of the Office of Administrative Hearings.

D. For a contested case hearing, the board shall identify the issues to be resolved and limit the scope and conduct of the hearing according to applicable law, due process, and fundamental fairness. Alternatively, the board may request the administrative law judge to identify the issues and determine the appropriate scope and conduct of the hearing according to applicable law, due process, and fundamental fairness.

Statutory Authority: *MS s 116C.695*

History: *26 SR 1394*

4401.0600 FINAL SITE PERMIT DECISION.

Subpart 1. **Board action.** Upon completion of the procedures and requirements of this chapter, the matter must be brought to the board for a final decision. If a contested case hearing has been held, the board shall act according to applicable requirements for action in a contested case proceeding. If no contested case hearing has been held, the board shall compile the record that has been created and make a decision on the basis of that record.

Subp. 2. **Time limit for decision.** The board shall take final action on the application for a site permit for an LWECS within 180 days after acceptance of an application by the chair, unless the applicant agrees to an extension or the board extends this deadline for cause.

Subp. 3. **Determination by board.** The board shall not issue a site permit for an LWECS unless the board determines that the project is compatible with environmental preservation, sustainable development, and the efficient use of resources, and the applicant has complied with this chapter.

Subp. 4. **Conditions.** The board may include in a site permit conditions for turbine type and designs, site layout and construction, and operation and maintenance of the LWECS, including the requirement to restore, to the extent possible, the area affected by construction of the LWECS to the natural conditions that existed immediately before construction of the LWECS and other conditions that the board determines are reasonable to protect the environment, enhance sustainable development, and promote the efficient use of resources.

Subp. 5. **Term.** The term of a site permit for an LWECS is 30 years. The board may renew the permit for an appropriate period of time upon request of the permit holder.

Statutory Authority: *MS s 116C.695*

History: *26 SR 1394*

4401.0610 EFFECT OF PERMIT.

Subpart 1. **Wind rights.** Nothing in a site permit for an LWECS shall be construed to convey the right to install a wind turbine in an area within the boundaries of the project for which the permittee does not hold the wind rights.

Subp. 2. **Other LWECS construction.** Nothing in a site permit for an LWECS shall be construed to preclude another person from seeking a site permit to construct an LWECS in an area within the boundaries of the project covered by the permit if the permittee does not hold exclusive wind rights for the areas.

Subp. 3. **Power purchase agreement.** A site permit does not authorize construction of the project until the permittee has obtained a power purchase agreement or some other enforceable mechanism for sale of the power to be generated by the project. If the permittee does not have a power purchase agreement or other enforceable mechanism at the time the permit is issued, the board shall provide in the permit that the permittee shall advise the board when it obtains a commitment for purchase of the power. The board may establish as a condition in the permit a date by which the permittee must obtain a power purchase agreement or other enforceable mechanism or the site permit is null and void.

Statutory Authority: *MS s 116C.695*

History: *26 SR 1394*

4401.0620 DELAY IN CONSTRUCTION.

If the permittee has not commenced construction of the project within two years after issuance of the site permit, the permittee must advise the board of the reasons construction has not commenced. In such event, the board may determine whether the permit should be revoked. No revocation of a permit for failure to commence construction may be undertaken except in accordance with part 4401.0700, subpart 4.

Statutory Authority: *MS s 116C.695*

History: *26 SR 1394*

4401.0700 SITE PERMIT AMENDMENT OR REVOCATION.

Subpart 1. **New boundary.** Once construction of an LWECS is completed, the permittee shall advise the chair of the completion of the project and the chair shall amend the site permit to specifically define the area authorized for the LWECS. The boundary must be no larger than necessary to allow for efficient operation of the LWECS. If any person objects to the amendment of the permit to reflect the actual boundaries of the project, the chair shall bring the matter to the board for decision in accordance with applicable procedural requirements.

Subp. 2. **Permit amendment.** The board may amend a site permit for an LWECS at any time if the board has good cause to do so.

Subp. 3. **Permit revocation.** The board may revoke a site permit for an LWECS at any time if the board determines that any of the following has occurred:

A. the applicant knowingly made a false statement in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted a change in the board's findings;

B. the applicant has failed to comply with a material condition or term of the permit;

C. the permitted LWECS endangers human health or the environment and the danger cannot be resolved by modification of the permit or LWECS; or

D. the permittee has violated other laws that reflect an inability of the permittee to comply with the permit.

Subp. 4. **Procedure.** The board may initiate action to consider amendment or revocation of a site permit for an LWECS on its own initiative or upon the request of

any person. No site permit may be amended or revoked without first providing notice and affording due process to the permit holder.

Statutory Authority: *MS s 116C.695*

History: *26 SR 1394*

4401.0710 TRANSFER OF PERMIT.

Subpart 1. **Request for transfer.** A permittee of a site permit for an LWECS may apply to the EQB for the transfer of its permit. The permittee must provide the name of the existing permittee, the name and description of the person to whom the permit is to be transferred, the reasons for the transfer, a description of the facilities affected, and the requested date of the transfer. The person to whom the permit is to be transferred shall provide the EQB with information required by the EQB to determine whether the new permittee can comply with the conditions of the permit. The permittee shall provide notice of the request to those persons identified by the EQB as persons interested in the matter.

Subp. 2. **Approval of transfer.** The board shall approve the transfer if the board determines that the new permittee will comply with the conditions of the permit. The board, in approving the transfer of a permit, may impose reasonable additional conditions in the permit as part of the approval. The board may hold a public meeting to provide the public with an opportunity to comment on the request for the transfer prior to making a decision.

Statutory Authority: *MS s 116C.695*

History: *26 SR 1394*

4401.0800 FEES.

Subpart 1. **Fee requirement.** An applicant for a site permit under Minnesota Statutes, section 116C.694, shall pay an application fee to the EQB. The purpose of the application fee is to cover actual costs necessarily and reasonably incurred in processing an application for a site permit, including, but not limited to, staff time, expenses for public notice and meetings, environmental review, administrative overhead, and legal expenses.

Subp. 2. **Determination of EQB budget.** Upon receipt of an application for a site permit, the chair shall estimate the costs the EQB expects to incur in processing the application and establish an estimated budget. If the applicant disagrees with the amount of the estimated budget determined by the chair, the applicant may request that the board determine the appropriate estimated budget.

Subp. 3. **Initial payment.** Upon determination of the estimated budget, the applicant shall pay at least 50 percent of the estimated budget to the EQB. The chair shall not process a permit application until the first portion of the fee is submitted. The EQB shall deposit all money received from an applicant for permit fees in a special account.

Subp. 4. **Periodic payments.** The remaining costs incurred by the EQB must be paid in periodic payments upon receipt of an invoice from the EQB. The EQB shall not make a final decision on a site permit application if any assessed fees are unpaid.

Subp. 5. **Final accounting.** At the end of the permitting process, including any judicial review of the board's final decision, the EQB shall provide a final accounting to the applicant of the total cost of processing the permit application. The applicant may review all actual costs associated with processing an application and present objections to the board. The applicant shall make the final payment within 30 days of notification, or the EQB shall refund any excess payments within 30 days of the final accounting.

Statutory Authority: *MS s 116C.695*

History: *26 SR 1394*