

CHAPTER 4410
ENVIRONMENTAL QUALITY BOARD
ENVIRONMENTAL REVIEW

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4410.0200 DEFINITIONS AND ABBREVIATIONS.

[For text of subps 1 to 37, see MR]

Subp 38 **High voltage transmission line.** “High voltage transmission line” has the meaning given in part 4410 7015

[For text of subps 39 to 40a, see MR]

Subp 41 **Large electric power generating plant; LEPGP.** “Large electric power generating plant” or “LEPGP” has the meaning given in part 4410.7015

[For text of subps 42 to 96, see MR]

Statutory Authority: *MS s 116D 04*

History: *28 SR 951*

4410.3100 PROHIBITION ON FINAL GOVERNMENTAL DECISIONS.

Subpart 1. **Prohibitions.** If an EAW or EIS is required for a governmental action under parts 4410 0200 to 4410 6500, or if a petition for an EAW is filed under part 4410.1100, a project may not be started and a final governmental decision may not be made to grant a permit, approve a project, or begin a project, until

[For text of items A to D, see MR]

Subp 2 **Public projects, prohibitions.** If a project subject to review under parts 4410 0200 to 4410 6500 is proposed to be carried out or sponsored by a governmental unit, the governmental unit shall not take any action with respect to the project, including the acquisition of property, if the action will prejudice the ultimate decision on the project, 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 subpart 9 or a variance is granted under subparts 4 to 8. An action prejudices the ultimate decision on a project if it tends to determine subsequent development or to limit alternatives or mitigative measures.

[For text of subps 4 to 8, see MR]

Subp 9 **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 parts 4410 0200 to 4410 6500. The governmental unit or person must demonstrate to the EQB chair, either orally or in writing, that immediate action is essential and must receive authorization from the EQB chair 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 parts 4410 0200 to 4410 6500

Statutory Authority: *MS s 116D.04*

History: *28 SR 951*

4410.4300 MANDATORY EAW CATEGORIES.

[For text of subps 1 and 2, see MR]

Subp 3. **Electric generating facilities.** For construction of an electric power generating plant and associated facilities designed for or capable of operating at a capacity of between 25 megawatts and 50 megawatts, the EQB shall be the RGU. For electric power generating plants and associated facilities designed for and capable of operating at a capacity of 50 megawatts or more, environmental review shall be conducted according to parts 4410.7010 to 4410.7070 and chapter 4400.

[For text of subps 4 and 5, see MR]

Subp 6. **Transmission lines.** For construction of a transmission line at a new location with a nominal capacity of between 70 kilovolts and 100 kilovolts with 20 or more miles of its length in Minnesota, the EQB shall be the RGU. For transmission lines and associated facilities designed for and capable of operating at a nominal voltage of 100 kilovolts or more, environmental review shall be conducted according to parts 4410.7010 to 4410.7070 and chapter 4400.

[For text of subps 7 to 36, see M.R.]

Statutory Authority: *MS s 116D.04*

History: *28 SR 951*

4410.4400 MANDATORY EIS CATEGORIES.

Subpart 1 **Threshold test.** An EIS must be prepared for projects that meet or exceed the threshold of any of subparts 2 to 25. Multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when comparing the project or projects to the thresholds of this part.

[For text of subp 2, see MR]

Subp. 3. **Electric generating facilities.** For construction of a large electric power generating plant, environmental review shall be conducted according to parts 4410.7010 to 4410.7070 and chapter 4400.

[For text of subps 4 and 5, see MR]

Subp. 6 **Transmission lines.** For construction of a high voltage transmission line, environmental review shall be conducted according to parts 4410.7010 to 4410.7070 and chapter 4400.

[For text of subps 7 to 25, see MR]

Statutory Authority: *MS s 116D.04*

History: *28 SR 951*

4410.5200 EQB MONITOR PUBLICATION REQUIREMENTS.

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

[For text of items A to O, see MR]

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

Subp 2 **Optional notices.** Governmental units may publish notices of general interest or information in the EQB Monitor.

Subp 3 **Required EQB notices.** The EQB is required to publish the following in the EQB Monitor:

[For text of items A to E, see MR]

F notice of application for a site permit for a large electric power generating plant or a route permit for a high voltage transmission line pursuant to Minnesota Statutes, sections 116C.51 to 116C.69,

G receipt of a consolidated permit application pursuant to part 4350.3030, subpart 1, and

H notice of the availability of an environmental report, pursuant to part 4410 7030, subpart 10

Statutory Authority: *MS s 116D 04*

History: 28 SR 951

4410.7000 [Repealed, 28 SR 951]

4410.7010 APPLICABILITY AND SCOPE.

Subpart 1 **Applicability.** Parts 4410 7010 to 4410 7070 apply to any high voltage transmission line project or large electric power generating plant project for which a certificate of need or other need determination is required by the Public Utilities Commission under Minnesota Statutes, section 216B.243 or 216B.2425, and applicable rules

Subp 2 **Scope.** Parts 4410 7010 to 4410 7070 establish the requirements for the conduct of environmental review of proposed projects before the Public Utilities Commission for consideration of need pursuant to Minnesota Statutes, section 216B 243 or 216B.2425, and applicable rules. Additional review at the EQB permitting stage is required under chapter 4400

Statutory Authority: *MS s 116D 04*

History: 28 SR 951

4410.7015 DEFINITIONS.

Subpart 1 **Scope.** For the purposes of parts 4410:7010 to 4410 7070, the following terms and abbreviations have the meanings given them

Subp 2 **Associated facilities.** "Associated facilities" means buildings, equipment, and other physical structures that are necessary to the operation of a large electric power generating plant or a high voltage transmission line

Subp 3 **Chair.** "Chair" means the person who is the chair of the Environmental Quality Board

Subp. 4 **EQB.** "EQB" means the Environmental Quality Board

Subp 5 **Environmental report.** "Environmental report" means a written document that describes the human and environmental impacts of a proposed large electric power generating plant or high voltage transmission line and alternatives to the project and methods to mitigate anticipated adverse impacts.

Subp 6 **High voltage transmission line or HVTL.** "High voltage transmission line" or "HVTL" means any high voltage transmission line with a capacity of 200 kilovolts or more and any high voltage transmission line with a capacity of 100 kilovolts or more with more than ten miles of its length in Minnesota or that crosses a state line

Subp 7. **Large electric power generating plant or LEPPG.** "Large electric power generating plant" or "LEPPG" means any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more and transmission lines directly associated with the plant that are necessary to interconnect the plant to the transmission system

Subp. 8 **Mail.** "Mail" means either the United States mail or electronic mail by e-mail.

Subp. 9. **Public Utilities Commission or PUC.** "Public Utilities Commission" or "PUC" means the Minnesota Public Utilities Commission.

Statutory Authority: *MS s 116D 04*

History: 28 SR 951

4410.7020 ENVIRONMENTAL REVIEW BEFORE PUBLIC UTILITIES COMMISSION.

The Environmental Quality Board shall prepare an environmental report on a proposed high voltage transmission line or a proposed large electric power generating

plant at the need stage. The environmental report must contain information on the human and environmental impacts of the proposed project associated with the size, type, and timing of the project, system configurations, and voltage. The environmental report must also contain information on alternatives to the proposed project and shall address mitigating measures for anticipated adverse impacts. The EQB shall be responsible for the completeness and accuracy of all information in the environmental report.

Statutory Authority: *MS s 116D 04*

History: *28 SR 951*

4410.7025 COMMENCEMENT OF ENVIRONMENTAL REVIEW.

Subpart 1. Certificate of need application. A person who submits an application to the Public Utilities Commission for a certificate of need for a LEPGP or a HVTL pursuant to Minnesota Statutes, section 216B.243, shall at the same time submit a copy of the application and all accompanying materials required by the PUC to the EQB. The person shall provide the EQB with an electronic version of the application suitable for posting on the EQB's Web page.

Subp 2. Transmission projects report. A person who submits a transmission projects report to the Public Utilities Commission with a request for certification of a high voltage transmission line pursuant to Minnesota Statutes, section 216B.2425, shall at the same time submit a copy of the report and all accompanying materials required by the PUC to the EQB. The person shall provide the EQB with an electronic version of the report suitable for posting on the EQB's Web page.

Statutory Authority: *MS s 116D 04*

History: *28 SR 951*

4410.7030 PROCESS FOR PREPARATION OF ENVIRONMENTAL REPORT.

Subpart 1. Notice to interested persons. Upon receipt of an application for a certificate of need or receipt of a transmission projects report seeking certification of a high voltage transmission line, the Environmental Quality Board shall provide notice to interested persons of the pending project. Notice must be mailed to the following persons:

- A those persons on the EQB list maintained pursuant to part 4400.1350,
- B those persons on the general service list maintained by the applicant pursuant to part 7829.0600,
- C those persons on any service list maintained by the Public Utilities Commission for the proceeding;
- D those persons who are required to be given notice of the certificate of need application or the transmission projects report under rules of the Public Utilities Commission,
- E local governmental officials in the area of the proposed project, and
- F those persons who own property adjacent to any site or within any route identified by the applicant as a preferred location for the project or as a site or route under serious consideration by the applicant if such sites or routes are known to the applicant.

Subp 2. Content of notice. The notice required by subpart 1 must contain the following information:

- A a description of the proposed project, including possible sites or routes if known,
- B a statement that authorization from the Public Utilities Commission to construct the facility has been applied for and a description of the PUC process, including a statement that the PUC proceeding is the only proceeding in which the no-build alternative and the size, type, timing, system configuration, and voltage will be considered,

C a statement that the EQB will prepare an environmental report on the project and a description of the process for preparation of the report;

D a statement that a public meeting will be held by the EQB and the date and place of the meeting, a statement that the public will have an opportunity to ask questions about the project and to suggest alternatives and impacts to address in the environmental report, and a statement explaining the purpose of the public meeting;

E a statement informing the public of where copies of the pertinent information may be reviewed and copies obtained,

F a statement indicating whether the project proposer may exercise the power of eminent domain to acquire the land necessary for the project and the basis for such authority, and

G a statement describing the manner in which an interested person can add the person's name to the mailing list for future notices.

Subp 3 Public meeting. The Environmental Quality Board shall hold a public meeting within 40 days after receipt of an application for a certificate of need or receipt of a transmission projects report seeking certification of a high voltage transmission line. At least 15 days prior to the meeting, the EQB shall mail notice of the meeting to those persons listed in subpart 1. The EQB shall also publish notice of the meeting in a newspaper of local circulation in the area at least ten days before the meeting. The EQB shall also publish notice of the meeting in the EQB Monitor and shall post the notice on the EQB Web page. The public meeting must be held in a location that is convenient for persons who live near a proposed project.

Subp. 4. Conduct of public meeting. The EQB shall make available at the public meeting a copy of the certificate of need application or transmission projects report. The EQB staff shall explain the process for preparation of the environmental report. At the public meeting, the public must be afforded an opportunity to ask questions and present comments and to suggest alternatives and possible impacts to be evaluated in the environmental report. The EQB shall keep an audio recording of the meeting. The EQB shall provide at least 20 days from the day of the public meeting for the public to submit written comments regarding the proposed project.

Subp 5 Applicant role. The applicant shall provide representatives at the public meeting who can respond to questions about the proposed project.

Subp 6 Alternatives and impacts. A person desiring that a particular alternative to the proposed project or a possible adverse impact of the project be considered in the environmental report shall identify the alternative or impact to be included, provide an explanation of why the alternative or impact should be included in the environmental report, and submit all supporting information the person wants the chair to consider. The chair shall provide the applicant with an opportunity to respond to each request that is filed. The chair shall include in the environmental report any alternative or impact identified by the PUC for inclusion. The chair may exclude from analysis any alternative that does not meet the underlying need for or purpose of the project or that is not likely to have any significant environmental benefit compared to the project as proposed, or if another alternative that will be analyzed is likely to have similar environmental benefits with substantially less adverse economic, employment, or sociological impacts than the suggested alternative.

Subp 7 Chair decision. Within ten days after close of the public comment period, the chair shall issue an order determining the following.

A. the alternatives to be addressed in the environmental report, including the alternatives required by part 4410 7035, subpart 1, item B,

B the specific potential impacts to be addressed,

C. the schedule for completion of the environmental report; and

D other matters to be included in the environmental report

Once the chair has issued an order establishing the matters to be evaluated in the environmental report, the order must not be changed except upon a decision by the

chair that substantial changes have been made in the project or substantial new information has arisen significantly affecting the potential environmental effects of the project or the availability of reasonable alternatives. The chair may elect to bring to the EQB any decisions regarding what should be included in the environmental report. In that event, the chair shall bring the matter to the board at the next regularly scheduled meeting or at a special meeting.

Subp 8 Notice of decision. At the time of the chair decision, the EQB shall mail the order to those persons who have requested to be notified. Any person may request the chair to bring the matter of what alternatives or impacts to include in the environmental report to the board in accordance with part 4405.0600, subpart 5. Such request shall be filed in writing with the chair within ten days of the chair's decision. A request to bring the matter to the board shall not preclude the EQB from beginning preparation of the environmental report in accordance with the chair's decision.

Subp 9 Time frame for completion of environmental report. The EQB shall complete the environmental report in accordance with the schedule determined by the chair. In establishing the schedule for completion of the environmental report, the chair shall take into account any applicable statutory deadlines, the number and complexity of the alternatives and impacts to be addressed, and the interests of the public, the applicant, the PUC, the EQB, and other state agencies. The EQB shall complete the environmental report within four months of submission of the information required by part 4410.7025. If the PUC should determine that an initial certificate of need application or transmission projects report is incomplete, the EQB's schedule shall be extended accordingly.

Subp. 10 Notification of availability of environmental report. Upon completion of the environmental report, the EQB shall publish notice in the EQB Monitor of the availability of the environmental report and mail notice of the availability of the document to those persons who have requested to be notified. The EQB shall provide a copy of the document to the PUC and to any other public agency with authority to permit or approve the proposed project. The EQB shall post the environmental report on the agency's Web page.

Statutory Authority: *MS s 116D 04*

History: *28 SR 951*

4410.7035 CONTENT OF ENVIRONMENTAL REPORT.

Subpart 1 Content of environmental report. The environmental report must include the items described in items A to H.

A. A general description of the proposed project and associated facilities.

B. A general description of the alternatives to the proposed project that are addressed. Alternatives shall include the no-build alternative, demand side management, purchased power, facilities of a different size or using a different energy source than the source proposed by the applicant, upgrading of existing facilities, generation rather than transmission if a high voltage transmission line is proposed, transmission rather than generation if a large electric power generating plant is proposed, use of renewable energy sources, and those alternatives identified by the chair.

C. An analysis of the human and environmental impacts of a project of the type proposed and of the alternatives identified.

D. An analysis of the potential impacts that are project specific.

E. An analysis of mitigative measures that could reasonably be implemented to eliminate or minimize any adverse impacts identified for the proposed project and each alternative analyzed.

F. An analysis of the feasibility and availability of each alternative considered.

G. A list of permits required for the project.

H. A discussion of other matters identified by the chair.

Subp. 2. **Impacts of power plants.** At a minimum, the EQB shall address in the environmental report the following impacts for any large electric power generating plant and associated facilities.

A the anticipated emissions of the following pollutants expressed as an annual amount at the maximum rated capacity of the project and as an amount produced per kilowatt hour and the calculations performed to determine the emissions sulfur dioxide, nitrogen oxides, carbon dioxide, mercury, and particulate matter, including particulate matter under 2.5 microns in diameter,

B the anticipated emissions of any hazardous air pollutants and volatile organic compounds,

C the anticipated contribution of the project to impairment of visibility within a 50-mile radius of the plant,

D. the anticipated contribution of the project to the formation of ozone expressed as reactive organic gases. Reactive organic gases are chemicals that are precursors necessary to the formation of ground-level ozone,

E. the availability of the source of fuel for the project, the amount required annually, and the method of transportation to get the fuel to the plant,

F associated facilities required to transmit the electricity to customers,

G the anticipated amount of water that will be appropriated to operate the plant and the source of the water if known;

H the potential wastewater streams and the types of discharges associated with such a project including potential impacts of a thermal discharge,

I the types and amounts of solid and hazardous wastes generated by such a project, including an analysis of what contaminants may be found in the ash and where the ash might be sent for disposal or reuse, and

J the anticipated noise impacts of a project, including the distance to the closest receptor where state noise standards can still be met.

Subp. 3 **Impacts of high voltage transmission lines.** At a minimum, the EQB shall address in the environmental report the following impacts for any high voltage transmission line and associated facilities.

A. the typical right-of-way required for construction of a transmission line,

B the anticipated size and type of structures required for a line,

C the electric and magnetic fields usually associated with a line,

D the anticipated noise impacts of the transmission line, and

E the anticipated visual impacts of the transmission line

Subp. 4 **Incorporation of information.** In preparing an environmental report, the EQB may incorporate information and data from other documents in accordance with part 4410.2400

Statutory Authority: *MS s 116D.04*

History: 28 SR 951

4410.7040 AGENCY ASSISTANCE.

The Environmental Quality Board may request another state agency to assist in the preparation of an environmental report. Upon request, another state agency shall provide in a timely manner any unprivileged data or information to which it has reasonable access concerning the matters to be addressed in the environmental report and shall assist in the preparation of the environmental report when the agency has special expertise or access to information.

Statutory Authority: *MS s 116D.04*

History: 28 SR 951

4410.7045 APPLICANT ASSISTANCE.

The Environmental Quality Board may request the applicant for a certificate of need or for certification of a HVTL to assist in the preparation of an environmental report. Upon request, the applicant shall provide in a timely manner any unprivileged data or information to which it has reasonable access and which will aid in the expeditious completion of the environmental report.

Statutory Authority: *MS s 116D.04*

History: 28 SR 951

4410.7050 ENVIRONMENTAL REPORT TO ACCOMPANY PROJECT.

Subpart 1 PUC decision. The environmental report, or environmental assessment or EIS prepared pursuant to part 4410 7060, must be completed and copies provided to the Public Utilities Commission before the PUC can hold any public hearing or render a final decision on an application for a certificate of need or for certification of a HVTL. However, the PUC can commence the public hearing process by conducting prehearing matters. The EQB staff shall participate in the PUC proceeding and be available to answer questions about the environmental report or environmental assessment or EIS and to respond to comments about the document. The environmental report or environmental assessment or EIS must be considered by the PUC in making a final decision on a certificate of need or HVTL certification request.

Subp. 2. Completeness of environmental report. At the time the PUC makes a final decision on a certificate of need application or a request for certification of a HVTL, the PUC shall determine whether the environmental report and the record created in the matter address the issues identified by the chair in the decision made pursuant to part 4410 7030, subpart 7. The PUC may direct the EQB to prepare a supplement to the environmental report, or the environmental assessment or EIS if one is prepared pursuant to part 4410 7060, if the PUC determines that an additional alternative or impact should be addressed or supplemental information should be provided.

Statutory Authority: *MS s 116D 04*

History: 28 SR 951

4410.7055 REVIEW BY OTHER GOVERNMENTAL BODIES.

All local and state governmental bodies that were identified in the environmental report with permitting authority over the project shall consider the report in making any decision to authorize the project.

Statutory Authority: *MS s 116D 04*

History: 28 SR 951

4410.7060 JOINT PROCEEDING.

Subpart 1. Environmental assessment. In the event an applicant for a certificate of need for a LEPGP or a HVTL applies to the EQB for a site permit or route permit prior to the time the EQB completes the environmental report, and the project qualifies for alternative review by the EQB under part 4400 2000, the EQB may elect to prepare an environmental assessment in accordance with part 4400 2750 in lieu of the environmental report required under part 4410.7020. If combining the processes would delay completion of environmental review under parts 4410 7010 to 4410 7070, the EQB can combine the processes only if the applicant and the Public Utilities Commission agree to the combination. If the processes are combined, the EQB shall include in the environmental assessment the analysis of alternatives required by part 4410 7035, but is not required to prepare an environmental report under parts 4410 7010 to 4410 7070.

Subp. 2. Environmental impact statement. In the event an applicant for a certificate of need for a LEPGP or a HVTL applies to the EQB for a site permit or route permit prior to the time the EQB completes the environmental report, and the

project does not qualify for alternative review by the EQB under part 4400.2000, the EQB may elect to prepare an environmental impact statement in lieu of the environmental report required under part 4410.7020 if the applicant and the Public Utilities Commission agree to the additional time that will be required to prepare the environmental impact statement. In this event, the EQB shall include in the EIS the analysis of alternatives required by part 4410.7035, but is not required to prepare an environmental report under part 4410.7020.

Subp 3 Procedures. In the event the EQB combines the two processes pursuant to subpart 1 or 2, the procedures of chapter 4400 shall be followed in conducting the environmental review.

Subp 4 Joint hearing. If the EQB determines that a joint hearing with the Public Utilities Commission to consider both permitting and need issues is feasible, more efficient, and may further the public interest, the EQB may decide to hold a joint hearing with the approval of the commission.

Statutory Authority: *MS s 116D 04*

History: *28 SR 951*

4410.7065 ALTERNATIVE FORM OF REVIEW.

The requirements under parts 4410.7010 to 4410.7070 for preparation of an environmental report on a LEPGP or HVTL for which a determination of need by the Public Utilities Commission has been requested is approved as an alternative form of review.

Statutory Authority: *MS s 116D 04*

History: *28 SR 951*

4410.7070 COSTS OF PREPARATION OF ENVIRONMENTAL REPORT.

Subpart 1 Applicant required to pay costs. The applicant for a certificate of need for a large electric power generating plant or a high voltage transmission line or for a certification of a high voltage transmission line as part of a transmission projects report shall pay the Environmental Quality Board the reasonable costs incurred by the EQB in preparing the environmental report.

Subp 2. Payment schedule. The applicant shall submit a minimum payment of \$5,000 to the EQB at the time the application or request is filed with the Public Utilities Commission. Additional payments shall be made within 30 days of notification by the agency that additional fees are necessary for completion of the environmental review. After preparation of the environmental report, the EQB shall provide the applicant with a final accounting. The applicant shall make the final payment within 30 days of notification, or the agency shall refund any excess payments within 30 days of the final accounting.

Statutory Authority: *MS s 116D 04*

History: *28 SR 951*

4410.7100 [Repealed, 28 SR 951]

4410.7400 [Repealed, 28 SR 951]

4410.7500 [Repealed, 28 SR 951]