

Chapter 9: Environmental Review

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Chapter 9

Environmental Review

9.1 Overview

The purpose of the Minnesota Environmental Review Program is to avoid and minimize damage to the state's environmental resources caused by public and private actions. The program accomplishes this by requiring certain projects to undergo special review procedures prior to obtaining approvals and permits. It is important to recognize that, although the review may be triggered by one particular element of a project, it covers all the environmental aspects of the project. Projects subject to the National Environmental Review Act or NEPA (see 43 U.S.C. § 4321) have different triggers and follow different procedures. Projects subject to NEPA typically include only those projects which occur on federal lands, or funded by federal grants, or in some cases projects on tribal lands.

There are two types of environmental review that might be required for projects undergoing a major permit amendment: the Environmental Assessment Worksheet (EAW) and the Environmental Impact Statement (EIS). The EAW uses some 30 questions to guide applicants and agencies through a screening-level analysis of environmental impacts to determine whether or not an EIS is required. The EIS is a more thorough study of the project's environmental impacts than the EAW and also includes a comparative analysis of the economic and social impacts. In addition, it examines reasonable alternatives to the proposed project, including an analysis of the no-build alternative. The EIS incorporates multiple opportunities for public and governmental review.

The Minnesota environmental review rules assign responsibility for production and approval of an environmental review to a responsible government unit (RGU). Depending on the nature and location of the project, the RGU may be a state agency, city, county, township or special unit of government. For air permits and increases in air emissions, the RGU is most often the MPCA. The proposer provides data for the environmental review to the MPCA; however, the content of that review is the agency's responsibility.

This chapter discusses some of the actions that may trigger an environmental review and the level of environmental review which may be required. The chapter does not include guidance on how to complete an environmental review. Specific guidance on environmental review rules and environmental assessment worksheets can be found in *A Guide to Minnesota Environmental Review Rules* (<http://www.eqb.state.mn.us/pdf/rulguide3.pdg>) and *How to Prepare an EAW for the MPCA* (<http://www.pca.state.mn.us/publications/p-ear1-02.pdf>).

9.2 Mandatory Environmental Review Triggers

The Minnesota Environmental Review Rules (Minn. R. 4410) contain the mandatory review categories. This section summarizes the categories most likely to be encountered by a facility applying for a major permit amendment.

9.2.1. Air Emissions Thresholds

100 Ton/year Threshold

An EAW is mandatory when construction of a new stationary source will generate more than 100 tons per year (tpy) of any single air pollutant, or when modification of an existing source will increase the generation of any single air pollutant by more than 100 tpy after the installation of air pollution control equipment. The RGU for an EAW triggered by the 100 tpy threshold is the MPCA (Minn. R. 4410.4300, subp. 15).

To calculate whether an EAW is needed, follow a procedure similar to that for a state air permit or modification (Minn. R. 7007.1200 subp. 3). The permit calculation method compares the potential to emit (PTE) before and after the proposed change. Additional information on emissions calculations for EAW applicability can be found at <http://www.pca.state.mn.us/publications/p-ear1-03.pdf>. The trigger threshold may include emissions from other recent projects or projects planned for the near future. (Please see Phased Actions and Connected Actions later in this chapter.)

2,000-Vehicle Parking

Construction of a new parking facility for more than 2,000 vehicles will generally trigger an EAW (Minn. R. 4410.4300, subp. 15). The RGU for this would be the MPCA. If parking is an ancillary development to an industrial, residential, or sports facility development, it is reviewed as part of the overall facility, not as a separate development.

9.2.2. Water Appropriation and Water Discharge

Water Appropriation

Any new appropriation for commercial or industrial purposes of either surface or groundwater averaging 30 million gallons per month or appropriation of surface or groundwater to irrigate 540 acres or more in one continuous parcel will require preparation of an EAW. The RGU for this EAW will be the Minnesota Department of Natural Resources (Minn. R. 4410.4300, subp. 24). However, large new industrial users should discuss appropriation issues in their EAW.

Water Discharge

There are four cases where wastewater discharge will trigger an EAW. Only two cases are likely to occur in facilities that are also subject to a major permit amendment:

- The expansion or reconstruction of an existing industrial process wastewater treatment facility that increases its design flow capacity by 50 percent or more and by at least two million gallons.
- The construction of a new industrial process wastewater treatment facility with a design flow capacity of 200,000 gallons per day or more, five million gallons per month or more, or 20 million gallons per year or more.

These requirements do not apply to industrial-process waste-treatment facilities that discharge to publicly-owned treatment facilities or to a tailings basin.

The RGU for wastewater treatment facilities is the MPCA (Minn. R. 4410.4300, subp. 18).

9.2.3. Building-Size Thresholds

Environmental reviews are required for industrial, commercial, and institutional facilities that exceed certain building size thresholds. The thresholds depend on the size and type of project and the size and type of city in which the project is located. The rules (Minn. R. Chapter 4410) provide detail to use in determining when thresholds are crossed. For most building sizes, if there are no air emission increases, the local unit of government is the RGU.

9.2.4. Electrical Generating Facilities and Transmission Lines

If a new generating facility is 25 Mw or more, the Environmental Quality Board (EQB) is the RGU. There are special environmental review procedures for these electrical generating facilities and for transmission lines. The MPCA is the RGU for new or expanded electrical generating facilities with a potential to emit of 100 tpy or more that are less than 25 Mw.

9.2.5. Pipelines

New or expanded industrial facilities that need a new pipeline should mention it in their EAW. If the pipeline itself needs an EAW, that is often prepared separately. The EQB is the RGU for any environmental review required for pipelines solely within Minnesota. Please note that interstate and international pipelines may fall under federal environmental review rules. The Federal Energy Regulatory Commission (FERC) should be consulted about environmental review requirements for interstate and international pipelines.

Environmental Impact Statement

An EIS is required for the routing of any pipeline subject to the full route selection procedure under Minnesota statutes (Minn. R. 4410.4400 subp. 24).

9.2.6. Other Categories

There are numerous other project categories that may require environmental review for facilities with a major modification. These include petroleum refineries, fuel conversion facilities, metallic and non-metallic mining, and paper or pulp processing. The *Guide to Minnesota Environmental Review Rules* or Minnesota environmental review rules (Minn. R. 4410) should be consulted for specific thresholds for environmental review for any projects involving these categories.

9.3 Non-Threshold Environmental Reviews

9.3.1. Petitions for an EAW

The Minnesota environmental review statute and rules (Minn. R. 4410.1100) allow citizens to bring to the attention of the government any projects which may have the potential for significant environmental impacts. The projects do not have to meet any of the mandatory review thresholds. A more complete description of this is in the *Guide to Minnesota Environmental Review Rules* (<http://www.eqp.state.mn.us/pdf/rulguide3.pdf>).

A successful petition, regardless of the size and potential impact of the proposed project, will result in an EAW. If the EAW shows that there are unresolved issues, that further study is necessary or that there are significant environmental impacts associated with the project, then the RGU may order an EIS.

9.3.2. Discretionary Review

An RGU with approval authority for a project may determine that it has the potential for significant environmental effects, even though that project does not meet any of the criteria for a mandatory environmental review. In this case, the RGU may order an EAW to be completed for the project. Discretionary EAWs are most commonly used for public projects to identify potential impacts and forestall the potential delays that would result if a citizens' petition was filed. Discretionary EAWs are also commonly used to jointly review independent projects which, by themselves, do not meet any mandatory thresholds but which jointly may impact the same geographic area.

9.3.3. Voluntary Environmental Reviews

Under certain circumstances, the proposer may wish to initiate an environmental review to determine if a project will have significant environmental effects (Minn. R. 4410.1000 subp. 3). In such cases, the proposer would notify the RGU that it wishes to initiate an EAW, and the process would proceed in the same manner as for any other EAW.

9.4 Phased and Connected Actions

A complete project may not consist of a single clearly identifiable instance. For example, a complete project consisting of several smaller projects undertaken sequentially in the same geographic area would be considered a phased action. In other instances, projects may be inter-related:

- One project may induce another project
- One project may be a prerequisite for another project
- Neither project is justified by itself, but is parts of a larger interdependent whole.

These are known as connected actions. See also the discussion of project aggregation in Chapter 1, page 1-8.

9.4.1. Phased Actions

Phased actions must include the same proposer, same affected area, and same timing (Minn. R. 4410.0200 subp. 6). The same affected area means the same general area, but not necessarily adjacent properties. The same timing means the project components must be constructed within three years of each other (Minn. R. 4410.4300 subp. 1). In determining the magnitude of the project to determine whether a mandatory environmental review is needed, the total magnitude of each phase is considered rather than the magnitude of any single component.

Ideally, a single EAW or—if the total scope of the project is of sufficient magnitude—a single EIS should be prepared for the complete project including all phased project elements. In some cases, this may be possible. For example a light-industrial facility with a floor area of 100,000 square feet may be constructed in an unincorporated area. This is below the threshold for a mandatory EAW. Following construction, the proposer experiences a sudden and unpredicted increase in demand for their product and recognizes they must expand the facility. A year after the initial construction, a 100,000-square-foot addition to the facility is proposed. Although neither construction phase exceeds the 150,000-square-foot threshold, the combined projects do exceed the threshold. An EAW which considers the combined impact of both projects must be prepared prior to construction of the addition.

9.4.2. Connected Actions

Connected actions are, by their very nature, predictable. The key definition of connected actions is the inter-relation of the two (or more) actions. In the case of connected actions, the proposer for each individual action need not be the same and the relative timing of the actions is not critical. In most cases, the RGU will want to consider the total magnitude of the project and consider all aspects of the project under a single environmental review. If this is not possible due to lack of information on a subsequent portion of the action, the initial environmental review should consider the subsequent portions in a generic fashion. Once the subsequent portions are defined, the EAW should be amended and reconsidered by the RGU.