



Paula Goodman Maccabee, Advocacy Director and Counsel

1961 Selby Ave., St. Paul, MN 55104 (651-646-8890)
paula@waterlegacy.org or pmaccabee@justchangelaw.com

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SENT VIA EMAIL

Executive Director Catherine Neuschler (catherine.neuschler@state.mn.us)
Kayla Walsh (kayla.walsh@state.mn.us)
Minnesota Environmental Quality Board
520 Lafayette Road
St. Paul, MN 55155

RE: Environmental Quality Board – Comments for Mandatory Environmental Assessment
Worksheet and Environmental Impact Statement Category Report

Dear Executive Director Neuschler, Ms. Walsh,

WaterLegacy appreciates the opportunity to comment on mandatory categories for Minnesota's environmental assessment worksheet (EAW) and environmental impact statement (EIS). We are aware that the Minnesota Environmental Quality Board (EQB) has provided an option to provide anonymous comments through an online survey. But we would prefer to make comments transparently in our own name. We would also appreciate the opportunity for a follow up conversation after you have had a chance to read our comments, along with those of others.

Our comments reflect the areas where most of WaterLegacy's work has focused. We seek to strengthen review of projects related to mining and water appropriations, ensure that obsolete review documents don't preclude analysis according to today's science, clarify the threshold at which an EIS is required, and include a Health Impact Assessment (HIA), a community-based process evaluating cumulative health impacts, when a proposed action requires an EIS. Our specific suggestions are described below: first with a brief explanation or their purpose and then with text showing specific language that should be changed in ~~strikeout~~ and underlined form.

**1. Threshold test for a Mandatory Environmental Assessment Worksheet (EAW)
Minn. R. 4410.4300.**

Purpose of proposed changes: This first proposed change to Minn. R. 4410.4300, subp. 1 would clarify and narrow EAW threshold exemptions if a proposed project is an expansion of an existing project. When a proposed project is an expansion or additional stage of an existing project, prior stages of the project should be considered to determine if the EQB rule threshold is met whether or not the prior project was constructed within the past three years. This change is more consistent with the policy in the first and last sentence of subpart 1, as well as more protective. In addition, any exemption from completing an EAW screening review where a project component was reviewed under a prior EAW or EIS should be time limited. Facts on the ground may have changed in the interim and new scientific information may be available.

Proposed modifications for text of Minn. R. 4410.4300, subp. 1:

Minn. R. 4410.4300, Subpart 1. **Threshold test.** An EAW must be prepared for projects that meet or exceed the threshold of any of subparts 2 to 37, unless the project meets or exceeds any thresholds of part 4410.4400, in which case an EIS must be prepared.

If the proposed project is an expansion or additional stage of an existing project, the cumulative total of the proposed project and any existing stages or components of the existing project must be included when determining if a threshold is met or exceeded ~~if construction was begun within three years before the date of application for a permit or approval from a governmental unit for the expansion or additional stage but after April 21, 1997~~, except that any existing stage or component that was reviewed under a previously completed EAW or EIS within the past 5 years need not be included. 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 and part 4410.4400.

2. Threshold test for a Mandatory Environmental Impact Statement (EIS) and Health Impact Assessment, Minn. R. 4410.4400 and Definitions in Minn. R. 4410.0200.

Purpose of proposed changes: The first proposed change summarizes applicable standards that require preparation of an EIS whether or not a specified threshold is exceeded. This language is important to ensure that all stakeholders recognize that an EIS is mandatory—not discretionary—when there is a potential for significant adverse environmental effects from the action, including all reasonably foreseeable effects.

The second proposed change ensures that an EIS conducted decades previously and based on a different environmental context and outdated science does not preclude environmental analysis of a phased or connected action, expansion, or change in the original project. This loophole has allowed major changes and expansions of dangerous facilities without current scientific analysis of environmental impacts.

The specification that any project requiring an EIS should include a health impact assessment addresses a very important gap in environmental review. Current analysis of impacts on public health in environmental review is inconsistent and often relies on quantitative risk assessment models developed to address current chemical releases from a single facility. Health impact assessment is needed to analyze reasonably foreseeable cumulative effects on communities, including both direct and indirect effects not just on morbidity and mortality, but on nutrition, and social, psychological, cultural, and economic factors that contribute to adverse and disparate health impacts.

Proposed modifications for text of Minn. R. 4410.4400, subp. 1 and Minn. R. 4410.0200:

Minn. R. 4410.4400, Subpart 1. **Threshold test.**

A. An EIS must be prepared for projects that meet or exceed the threshold of any of subparts 2 to 25 and for any action where there is potential for significant environmental effects resulting from that action, and its effects including cumulative effects considering existing pollution and reasonably foreseeable cumulative potential effects. 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. No review conducted in an EIS completed 15 or more years ago shall determine whether a phased or connected action, or an expansion, enlargement, or change in the existing facility meets the threshold of this subpart.

B. For any action requiring an EIS under this part, the EIS shall include a health impact assessment conducted by a qualified independent contractor selected by the Department of Health for which the costs will be assessed under Section 116D.045.

Minn. R. 4410.0200 DEFINITIONS AND ABBREVIATIONS

Subp. 37a. **Health Impact Assessment.** “Health impact assessment” means an independent and systematic evidence-based process to assess how a program or project may cumulatively affect the health of people, including secondary effects, and considering physiological, nutritional, cultural, social, economic, psychological, and environmental factors that influence people’s health, which process and assessment incorporate public engagement, traditional knowledge, and qualitative as well as quantitative analysis.

3. Metallic Mineral Mining and Processing Mandatory EAW: Minn. R. 4410.4300, subp. 11.

Purpose of proposed changes: The change to Item A in Minn. R. 4410.4300, subp. 11 recognizes that the leasing of mineral rights determines not only the likely locations of prospecting and mining, but whether the Minnesota Department of Natural Resources (DNR) will have the ability to exclude surface occupancy or reject exploration in areas with sensitive features for the next 50 years. The current rule language has been interpreted to allow unlimited mineral leasing, exploratory drilling, and sump formation with the potential for contamination of groundwater with drilling foams and lubricants¹ as well as salts and metals and surface water without either an EAW screening for environmental impacts or notice to the public.

The changes to Items B and C recognize that there may be environmental impacts from expansion of mining facilities relative to the facility’s original permitted capacity as well as the total acreage or processing volume. The original permitted facility may have been relatively small due to the sensitive location, the high concentration or toxicity of the metals, or the level of sulfates and other salts and ions in the rock formation. If a mining facility increases by a certain percent of its original capacity, at a minimum, an environmental screening should be required.

¹ Drilling lubricants and foaming agents may contain PFAS, among other problematic chemicals.

Changes to Items B and C in Minn. R. 4410.4300, subp. 11 and to Minn. R. 4410.4400, subp. 8 discussed below also recognize that iron ore and taconite have had significant adverse impacts on Minnesota's environment for more than half a century, both due to thousands of acres of wetlands destruction and due to release of air emissions and contaminated wastewater affecting fish, wildlife, and human health. Environmental review of expansion of taconite mining and processing has been inadequate and has avoided consideration of alternative designs and technologies that could minimize and mitigate adverse environmental effects.

Proposed modifications for text of Minn. R. 4410.4300, subp. 11:

Subp. 11. **Metallic mineral mining and processing.** Items A to C designate the RGU for the type of project listed:

A. For mineral leasing, exploratory drilling, or other mineral deposit evaluation of metallic mineral deposits other than natural iron ore and taconite, the DNR is the RGU.

B. For expansion of a stockpile, tailings basin, or mine by ~~320~~ 220 or more acres or by 20 percent of its original permitted capacity, the DNR is the RGU.

C. For 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~~ or by more than 1,000,000 tons per year in the case of facilities for processing natural iron ore or taconite, the DNR is the RGU.

4. Metallic Mineral Mining and Processing Mandatory EIS: Minn. R. 4410.4400, subp. 8.

Purpose of proposed changes: The change to Item B of Minn. R. 4410.4400, subp. 8 is a clarification that new facilities for storage as well as disposal of mine wastes and for waste material other than tailings—for example a new waste rock stockpile—should also require a mandatory EIS.

The changes in Item C and Item D begin to close existing loopholes where a project proponent may initially propose a small-scale mine, processing, or waste storage facility insisting that any further expansions, stages, or connected facilities are merely speculative, and then substantially expand that facility without triggering a requirement for a mandatory EIS. These changes are also intended to ensure that expansions and enlargements of existing iron ore and taconite mining undergo a rigorous review that considers alternatives to avoid, minimize, and mitigate environmental harm.

Proposed modifications for text of Minn. R. 4410.4400, subp. 8:

Subp. 8. **Metallic mineral mining and processing.** Items A to C designate the RGU for the type of project listed:

A. For 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 is the RGU.

B. For construction of a new facility for mining metallic minerals or for the storage or disposal of tailings or other wastes from a metallic mineral mine, the DNR is the RGU.

C. For construction of a new metallic mineral processing facility and for expansion of an existing metallic mineral processing facility by more than 5,000 tons per day or by more than 35 percent of its original permitted capacity, the DNR is the RGU.

D. For expansion of a facility for mining metallic minerals or for the storage or disposal of tailings or other wastes by more than 320 acres or more than 35 percent of its original permitted capacity, the DNR is the RGU.

5. Water Diversions Mandatory EIS, Minn. R. 4410.4400, subp. 23

Purpose of proposed change: Neither EAW nor EIS mandatory categories address Minnesota's legal requirement to comply with the terms of the Great Lakes Compact. A clear environmental review mandate could have prevented the DNR from approving the diversion of waters from the Lake Superior Basin to the Rainy River Basin by removing pillars of the Laurentian Divide contained within the Peter Mitchell Pit of the Northshore mine without public notice, comment, assessment of potential adverse environmental effects, or review of alternatives. The proposed change ensures that any future withdrawal or diversion of state waters with the potential to exceed Great Lakes Compact thresholds will trigger an EIS.

Proposed modifications for text of Minn. R. 4410.4400, subp. 23:

Subp. 23. Water diversions.

...

B. For a withdrawal of waters of the state, including either a diversion or a consumptive use with the potential to exceed thresholds the Great Lakes–St. Lawrence River Basin Water Resources Compact, as reflected in Section 103G.801, the DNR is the RGU.

6. Water Appropriations and Impoundments Mandatory EIS, Minn. R. 4410.4400, subp. 18.

Purpose of proposed changes: There are substantial gaps in the way Minnesota's environmental regulations address water appropriations and impoundments. In simple terms, Minnesota rules take the purity and abundance of groundwater and surface water for granted. Impacts of design change, and enlargement of dams and cumulative appropriations of groundwater and surface water on wetlands, watersheds, risks of downstream pollution, and the costs of wastewater contamination of ecosystems with salts and ions are only a few of the adverse environmental effects that should be evaluated in an EIS. The failure to analyze these costs has created new risks of catastrophic dam failure, depletion of aquifers, and a widespread degradation of surface water quality with salts drawn from groundwater.

Evaluation in an EAW is insufficient. The EAW, unlike an EIS, is prepared by the project proponent and fails to consider either cumulative potential effects or alternatives, including the no action alternative. Item A addresses dam construction, change and expansion, particularly in

the context of mining wastes. Items B and C are based on text currently mandating an EAW in Minn. R. 4410.4300, subp. 24 and request a mandatory EIS for both large appropriations and impoundments that substantially modify watersheds. Changes proposed below are likely only the beginning of what must be discussed, evaluated, and adopted to apply scientific analysis to protect Minnesota aquifers, watersheds, and ecosystems before they are irrevocably harmed. We welcome that discussion.

Proposed modifications for text of Minn. R. 4410.4400, subp. 18:

Subp. 18. Water appropriation and impoundments.

A. For construction of a Class I dam, construction of a Class II dam for storage of tailings or other mining wastes, expansion of a Class I dam by 320 acres, or changes in the design of a dam containing tailings or other mining wastes that have the potential to significantly increase risks or consequences of dam failure, the DNR is the RGU.

B. For a new or cumulative appropriation for commercial or industrial purposes of either surface water or ground water averaging 5,000,000 gallons per month; or a new or cumulative appropriation of either ground water or surface water for irrigation of a total of 540 acres or more from one connected source of water, the DNR is the RGU.

C. For a new or additional permanent impoundment of water creating water surface of 160 or more acres and for construction or enlargement of a dam with a total upstream drainage area of 25 square miles or more, the DNR is the RGU.

In addition to these proposals, WaterLegacy supports the proposed changes to EQB mandatory categories submitted by the Minnesota Center for Environmental Advocacy. In particular, we believe that the proposed changes in mandatory EAW categories for Animal Feedlots, Drainage Projects, Land Application of Biosolids, and PFAS Users Discharging to PFAS-Impaired Waters and in mandatory EIS categories for Pipelines, Large GHG Emitters, and Anaerobic Digesters are needed to address recent threats to environmental quality and sustainability.

Thank you again for providing a public process to consider changes to the mandatory EAW and EIS categories currently reflected in existing rules. WaterLegacy would appreciate the opportunity for a conversation addressing the above proposed rule changes and the way in which these and similar proposals will be communicated in reporting on EQB mandatory categories.

Sincerely yours,



Paula G. Maccabee
WaterLegacy Advocacy Director and Counsel