

2009 Environmental Quality Board Update: Environmental Review Program Rules

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Rule Amendments Status

- Notice of rule adoption appeared in Nov 16, 2009 *State Register*.
- Rules go into effect November 23
- Revisor will soon post amended rules; in meantime can refer to Notice of Adoption and Notice of Hearing (Jan 20, 2009 *State Register*) to see complete amended text.
- EQB will post links to Revisor's rules

4 major topics addressed:

- Mandatory EAW/EIS categories for projects in shorelands
- Revised treatment of “cumulative potential effects” throughout rules
- Revisions to Alternative Urban Areawide Review (AUAR) process
- Miscellaneous other revisions

Cumulative Potential Effects

- EQB’s response to *CARD* decision (*Citizens Advocating Responsible Development v. Kandiyohi County*, 713 N.W.2d 817 (Minn. 2006))
- *CARD* case involved legal challenge to County’s decision that EIS not needed for 2 gravel mines
- Case went all way to Supreme Court
- Amendments consistent with *CARD* but take some concepts a step further and address other issues re cumulative potential effects as well

CARD case

- Court distinguished between broad scope for “cumulative impact” as used in rules for Generic EISs and narrower scope for “cumulative potential effects” as used in rules associated with specific projects.
- Court stated geographic and temporal limits that apply in review of specific projects

Supreme Court interpretation

In review of specific projects, RGU’s examination of other projects is limited to:

- Geographic limits: “projects in the surrounding area that might reasonably be expected to affect same natural resources”
- Temporal limits: “specific projects actually planned or for which a basis of expectation has been laid”

EQB's CPE amendments

1. Retain defn of "cumulative impacts" & use re GEISs
2. Add defn for "cumulative potential effects"
CPE = combined effects of project plus those of other projects in environmentally-relevant area that may affect same environmental resources (note: changed from *CARD's* "surrounding area")

EQB's CPE amendments

3. Provide guidance on how to treat past projects in cumulative effects analysis—consider their current aggregate effects
4. List factors indicative of "basis of expectation" for future projects
 - Permit applications, detailed plans prepared
 - Comprehensive plan, zoning indications
 - Historic trend projections/forecasts

EQB's CPE amendments

5. List factors for RGU to consider re CPE when making discretionary EIS need decision:

- Significance of total cumulative effect
- Contribution of project in context of all other contributions
- Compliance with official plan addressing the cumulative effect
- Proposer's efforts to minimize contribution

EQB's CPE amendments

6. Add explicit reference to cumulative potential effects in contents of EAW, EIS & AUAR

7. Correct Appeals Court error in *MCEA vs. City of South St. Paul* (April 4, 2006) re CPE in AUAR reviews

AUAR process amendments

- Two major amendments:
 - If AUAR includes a large specific project add a required “scoping process” at beginning
 - Correct Court of Appeals “mistake” in *River’s Edge* case: declare that AUAR boundary is not the limit for analysis of impacts

AUAR process amendments

- Provide procedure by which small project that otherwise does not require review to be “dropped out” of an ongoing AUAR

Shoreland Amendments

New Mandatory EAW & EIS Categories for:

- Residential development in shorelands except in the 7 county Twin Cities metro area (leaving out metro area was only major revision due to comments)
- Resorts, campgrounds & RV parks in shorelands
- Land alterations in shoreland

New Shoreland Categories

- Will affect residential, resort, RV parks, campgrounds, commercial, & aggregate mining projects in shoreland
- Some residential thresholds as low as 15 lots/units (currently 50 is lowest)
- Likely cause substantially more EAWs & EISs – may cause shift to “greener” design

New Shoreland Categories

- Thresholds vary according to density of project and whether in a “sensitive” area
 - Density refers to % common open space and # lots compared to SL rule standards
 - “Sensitive SL area” = Natural Environment + designated trout, wildlife, migratory waterfowl & other special waters

New Residential Exemption in Shoreland

- Exempts residential developments in shoreland if less than 10 units/lots and all land within 300 feet of water preserved as common open space

Other amendments

- New mandatory EIS category with EQB as RGU for releases of genetically-engineered wild rice (2007 Legislative directive)
- Clarify that adoption/amendment of Comp Plans and zoning ordinances & rezoning (unless for benefit of specific project) are exempt governmental activities

Other developments

- Updated guidance – new *(2010 Edition) Guide to MN Environmental Review Rules*
- Revised EAW form and *EAW Guidelines*:
 - Include new questions relating to shoreland impacts and updated treatment of cumulative potential effects

Other developments

- MPCA ER Streamlining report for 2010
Legislature on options for streamlining ER
(without reducing effectiveness)
- may lead to Legislative consideration of changes
to ER
- MPCA has received many “angry” comments
from public