

**MINNESOTA ENVIRONMENTAL QUALITY BOARD**  
**MEETING MINUTES**  
**Thursday, December 16, 2004**  
**State Office Building, Hearing Room 5**

**EQB Members Present:** Robert A. Schroeder, Dana Badgerow, Jonathon Bloomberg, Bruce Bomier, Sheryl Corrigan, Jerome Deal, Art Dunn, Gene Hugoson, Susan McCarville, Dianne Mandernach, Mary Mellen, Glenn Wilson and Paige Winebarger

**EQB Members Absent:** Matt Kramer, Gene Merriam, and Lt. Governor Molnau

**I. Adoption of the proposed Agenda for the December 16, 2004 meeting and Minutes from the November 18, 2004 Environmental Quality Board Meeting**

Commissioner Wilson made a motion to adopt the agenda and minutes. Chair Schroeder asked for a second and the motion carried.

**II. Executive Director's Report:**

There are two handout packets of materials, one for the Hutchinson issue and the second for the Environmental Review issue.

**III. Legal Counsel Report:**

Legal Counsel had nothing to report.

Commissioner Wilson made a motion to reorder Item VIII on the agenda to be the next item up on the agenda and that motion was seconded and passed.

**VIII. \*Public Utilities Commission Legislative Proposal To Transfer EQB Power Plant Siting/High Voltage Transmission Line Routing Decisions To The Public Utilities Commission**

Phyllis Reha, member of the Public Utilities Commission, outlined a proposal to transfer authority to issue site and route permits for electric generation facilities from the Environmental Quality Board to the Public Utilities Commission. There were three points the Commissioner wanted to emphasize for the proposal, they were: 1) this legislative proposal would enhance public notice and participation, 2) it would enhance accountability, and 3) it would enhance coordination between need and location of large energy facilities.

Ms. Reha stated that this proposal would take place in two stages. Stage #1 is to consolidate Need and Siting at PUC, and Stage #2 is to establish an interim process for a broad stakeholder group to take a detailed review of the two processes, and develop legislative/administrative recommendations for the integration of those processes.

Chair Schroeder asked for Board discussion. Member McCarville stated that there is a process for looking at the environment impacts on projects now. Can she compare the proposal with what there is now?

Commissioner Reha responded that the EQB does a fine job on the environmental report and that they were not here to criticize.

Member Mellen asked about regional coordination and whether EQB had a member on the Midwest Independent Systems Operator (MISO)?

Commissioner Reha responded that the Board is better able to answer that question but she said the EQB has probably participated in coordination and advisory issues. Executive Director Sullivan stated that the EQB is no longer represented on MISO.

Commissioner Hugoson asked how the health, wetlands and agricultural concerns that EQB has represented on the Board will be addressed under the PUC proposal?

Commissioner Reha responded that the PUC has a very open process and that there are stakeholders of every kind that participate in the process including state agencies. There are many chances for state agencies and stakeholders to participate in the broad environmental impact statements, the PUC proceedings or at the administrative hearing with social and economic impact because they are important also.

Commissioner Hugoson responded that having a Board Member representing issues is different than having agencies comment on proposals.

Member Winebarger asked if public confusion and frustration are driving this proposal?

Commissioner Reha responded that this proposal is not being driven by the public. She thinks the proposal is being driven by all the Commissioners on a public policy basis. The State of Minnesota is the only state that has a bifurcated process; all the other states in our region have a different process. Commissioner Reha stated that she believed that given the direction the country is going on issues of reliability, integration, and regional transmission organizations, that an integrated process is a necessity.

Member Winebarger asked if Commissioner Reha could give an example of why the process now is cumbersome.

Commissioner Reha responded the statute provides that if a power line crosses a political boundary, that the EQB work with the other state in terms of where the power line crosses and so forth. When you are looking at issues related to a bottle neck or transmission constraint, issues related to renewable energy, for example, a regional approach of where those crossings occur might enhance coordination.

Member Winebarger asked whether the certificate of need and route siting permit could be incorporated under EQB authority?

Commissioner Reha responded that would certainly be an option but that you would still lose the entire energy portfolio such as need, fuel options, reliability issues and our expertise at the Public Utilities Commission is the issue of energy, costs and rates which are all interconnected.

Dr. Haar added that the certificate of need filing is oftentimes interrelated to resource plans that electric utilities file with the PUC on an annual basis. PUC evaluates the resources available. There is a great deal of overlap between the rate process and the certificate of need process.

Member Bomier stated that he works in Minnesota and 12 other states and there is a transparency to getting things done here. His concern is the public health issues like radiation, electromagnetic fields and emissions from different sources, and at the EQB the health department is represented on the Board so that we know what the health issues are and how they affect us. Any efficiency is great for the taxpayer but let's not forget the represented members of this Board bring expertise to the issue.

Commissioner Corrigan asked if the proposal on the table is to revise the siting issue but to leave the environmental review piece?

Commissioner Reha responded that she didn't think who would retain the environmental review had been worked out. That question would be worked out in Stage 2 by working with stakeholders. Certainly the EQB could retain that portion or the PCA is set up to conduct the environmental review.

Commissioner Corrigan stated that this proposal is combining two steps into one but the environmental review is still very much in the forefront. This proposal makes sense from an efficiency standpoint.

Member Deal asked whether Stage 2 of the proposal should happen before Stage 1. Gather stakeholders together, make a detailed review of the process and get to a comfort level with the member agencies on what will happen.

Commissioner Wilson stated that they advocate in the department's utility area before the Commission and one of the things between the certificate of need and siting that is confusing to the public is that they are not certain where the site is so when the corridor is actually established, we thought that it would clarify the process to have one hearing.

Member Bloomberg asked if in the combined process there is still an environmental report that is prepared and part of that process.

The Chair called on Assistant Commissioner Garvey, Department of Commerce, who stated that he has served as an EQB Board Member and has served on the Public Utilities Commission and that he now works with Commissioner Wilson as a policy advocate. As a policy advocate it is important to think of why, how and where you take the process. There are two distinct processes with two distinct decision makers associated with this process. Both the decisions of need and route should rest with the same entity. The process is overlapping in many regards and Stage 2 will address those issues. The PUC is in a very good position with five independent staff who are experts on energy policy that decide the need and with that expertise and knowledge, why not decide the route. There would be no change in the state's regulatory or environmental review, no change in the process, no change in public

intervention and actually more procedural protections because the Attorney General's Office by statute routinely intervenes.

Chair Schroeder asked Mr. Garvey how the PUC would respond to issues of represented members such as agricultural or health related issues. How will this process deal with those considerations?

Assistant Commissioner Garvey responded that the Environmental Quality Board is an extraordinary institution because it has representatives from 10 agencies plus 5 citizen members. How do you get a record developed to bring to the decision makers? The PUC and Department of Commerce both have agency interveners and dramatic interpersonal consultations.

Member Bloomberg asked what is the extent to which this combined process of environmental issues is going to be considered.

Assistant Commissioner Garvey responded that the decision making would be unified at the PUC. Staffing and development of those resources would be augmented because we would be asking PCA to assume the lead and build on the extraordinary work of the EQB staff. The PCA will assume primary siting, routing and staffing responsibilities for these kinds of matters at the PUC.

Member Winebarger asked what happens next and if there were any additional comments to be made by the audience before she asked additional questions. Chair Schroeder asked if there was anyone else in the audience who wanted to comment on this topic.

Testimony:

Kristen Eide-Tollefson said that she has been involved in siting and routing for 10 years and is keenly interested in this proposal. Ms. Tollefson stated she had concerns for the public participation in this process and the upheaval changing the process would cause. She wondered if a period of testing needed to be completed before action is taken. She wanted to voice her concern about the process and whether the proposal should move forward before all the questions are answered.

Assistant Commissioner Garvey responded that the Board needs to realize that the Commission has an extensive public comment, review and input process. It has decades of providing those services and it has obligations and restrictions on members to only make decisions based upon the record. It works for the public good and has been modeled across the country.

Commissioner Hugoson asked whether pipeline legislation or authority for EQB might be a problem if the transfer happens.

Member McCarville asked how much time or inefficiency there is in the process.

Commissioner Reha suggested that Dr. Haar might be able to speak to that. Dr. Haar stated that there was no study to show how much time was lost or inefficiency in the process. The rationale for this proposal is that we have reached a point in time where this process needs to be streamlined, keeping in mind that public comment is critical and public policy issues that are the driving forces behind this proposal. The integration takes place at Stage 2 and believes that will be the streamlining of the process.

Member McCarville stated so there is not a backlog of complaints. The proposal is looking forward.

Commissioner Reha responded yes we are looking forward on this process but her opinion is that having a bifurcated process is a problem for the process and can cause delays. If the process was integrated, it would be an efficiency in the long run and she thinks it is better public policy to have decisions made in one regulatory agency.

Commissioner Corrigan said she has heard two things that make her feel comfortable about this proposal, the notion of certificate of need and siting relieves confusion and makes it easier for folks to comment and the other issue is that this proposal will enhance environmental review. Commissioner Corrigan moved to support the legislative proposal to consolidate the need determination in the two stages proposed by Commissioner Reha and the motion was seconded by Commissioner Wilson.

Chair Schroeder asked if there was any additional discussion. Member Bloomberg asked if under the new proposal, the environmental review would occur at the appropriate stage because that wasn't laid out explicitly.

Commissioner Reha said it was our intent that the environmental review process be left intact. Dr. Haar stated it certainly was the intent of this proposal that the environmental review would occur as it does now.

Member Dunn commented that another way members could think of this proposal could be that the PUC would now be the RGU for doing environmental impact statements if the proposal moves forward.

Assistant Commissioner Garvey said that was exactly how the proposal would work.

Member Bomier stated that the proposal makes sense but we need some time to study this action and all the ramifications.

Member Winebarger said that ever since she was appointed, a year ago, she had been looking forward to talking about policy issues at this Board regarding energy, clean water and other issues that the EQB is truly charged with but we have been dealing with on-the-ground matters. She is struggling with this decision on how the EQB and PUC work or don't work together. She wanted to state a couple of observations surrounding what she heard today: a.)efficiency is always a compelling word to use but in practice there has been little information presented today that gets at a tangible way at where the efficiencies are in this proposal, b.)another of the reasons given here is that the current process is bifurcated and she doesn't think there are many issues that the Board has dealt with that have not included one or more state agencies. The Board's bifurcated process is a collaboration and cooperation that seems to work well and has not seemed to be an impediment to the process. c.)what we are doing here is combining two decision making organizations into one. Typically legislative history and the reason more than one entity is involved are arrived at after complicated and thoughtful decision making and there is a reason that there is more than one entity. Member Winebarger would like to see substance on this proposal and she sees no reason to quickly change the process.

Member McCarville stated that there is no compelling reason to move forward on this proposal.

Member Bloomberg stated that a no vote would not necessarily mean that there is no support for the initiative.

Commissioner Wilson stated that he strongly supports the proposal but asked for a postponement until the next Board Meeting. Commissioner Corrigan then asked for her motion to be tabled until next month.

Chair asked for additional discussion, there was none so the initiative was tabled until next month.

#### **IV. \*Recommendations for Revision of Mandatory Categories and Housekeeping and Technical Procedural Changes to Environmental Review Rules.**

The three part presentation included: 1) an update on the technical and housekeeping changes, 2) an update on the review of mandatory categories, and 3) a resolution to proceed to the first stage of rulemaking.

Gregg Downing summarized technical and housekeeping changes, focusing on eight procedural revisions identified by EQB staff after discussions with the Board in October.

Tim Scherkenbach reviewed the six potential category changes to the Environmental Review rule. The changes are described in separate reports which are posted on the EQB website. The review provided an update from the proposals discussed at the November Board meeting.

##### *Testimony:*

Karen Harder, representing the Sierra Club, provided information on the animal feedlot category and recommended that the Board resolution be amended to exclude the feedlot category from the proposed rulemaking.

Gwen Meyers, a volunteer lobbyist for the League of Women Voters of Minnesota, stated that the League was committed to the protection and wise management of natural resources. The League of Women Voters opposes any attempt to change rules governing feedlots that would weaken environmental protection.

Bobby King, representing the Land Stewardship Project, stated the 2002 Legislature made a major change in the animal feedlot rule, the impacts of which are not yet known. The Land Stewardship Project opposes any recommendation that raises the thresholds on animal feedlots.

Karna Peters a lawyer practicing in environmental law, suggested that the feedlot issue was not ready for rulemaking. Ms. Peters asked the Board to exclude the feedlot issue from any action taken on mandatory categories.

Victor Ormsby, Winona County Supervisor, addressed the Board as a citizen and expressed his concern with the animal feedlot issue. He stated the precautions that Winona County has instituted

when a feedlot permit is requested. Mr. Ormsby requested that the Board not include feedlots as part of the rule changes proposed.

David Wallinga, physician, Institute for Agriculture and Trade Policy discussed the public health impacts of large scale feedlots. He referred to the following articles in his discussion of health impacts: *Concentrated Animal Feeding Operations: Public Health and Community Impacts*, published by the University of Iowa; *Community and Environmental Health Impacts of Concentrated Animal Feeding Operations*, published in Minnesota Medicine/October 2002; *Addressing Externalities from Swine Production to Reduce Public Health and Environmental Impacts*, published in the American Journal of Public Health/October 2004; and *Concentrated Animal Feeding Operations: Health Risks from Air Pollution*, published in the Institute for Agriculture and Trade Policy – Food and Health Program. Dr. Wallinga requested that the Board exclude the animal feedlot category from any board action.

Julie Janson, Clean Water Action Alliance, stated that the Alliance is concerned about the deterioration of environmental review particularly concerning feedlots. She made the point that more is known today than 10 years ago; but what will be known in 10 years about the impacts of large feedlots. Ms. Janson requested that the Board exclude animal feedlots from any board action.

Kristen Eide Tollefson, Florence Township Planning Commissioner, stated that EAWs and EISs are valuable tools for decision makers. She provided information on why she thought the Historical Places Category was important. Ms. Tollefson also supported and referred to the letter sent to Commissioner Merriam and Chair Schroeder on the possible new mandatory EAW categories for highly important natural resource areas.

Dick Olson, Pope County Mothers and Others Concerned for Health, stated that *Mothers and Others* opposes raising the limits of animal feedlots. He submitted into the record an article in the Des Moines Register dated December 10, 2004 titled “Kids’ asthma, hog farms linked.” He requested the Board take no action on the feedlot issue.

Mr. Scherkenbach noted the interest in the feedlot area. He requested that the Board authorize the initiation of rulemaking by moving the resolution. The two-tiered approach solicits comments and public participation at the first stage of rulemaking, during which the concerns citizens have raised can be addressed..

Member Winebarger noted testimony that the Animal Agriculture GEIS is dated or needs to be updated and asked staff to report back next month or whenever appropriate as to whether or not the Animal Agriculture GEIS ought to be updated.

Chair Schroeder agreed to add to the agenda.

Chair Schroeder asked for additional Board discussion and then asked for a motion. Member Bomier moved to adopt the resolution and the motion was seconded by Director Dunn. A roll call vote was taken which passed 11-0.

## **RESOLUTION OF THE MINNESOTA ENVIRONMENTAL QUALITY BOARD**

**Authorization to Publish a Request for Comments  
on Certain Potential Revisions to the Environmental Review Program Rules**

**WHEREAS**, pursuant to Minnesota Rules, part 4410.0400, subpart 1, the EQB has an ongoing responsibility to monitor the effectiveness of the environmental review program rules and to take appropriate measures to improve their effectiveness; and

**WHEREAS**, pursuant to Minnesota Statutes section 116D.04, subd. 2a (a) the EQB has authority to establish categories of projects for mandatory review and categories of projects that are exempt from review; and

**WHEREAS**, over the past year the EQB has conducted a study of the mandatory EAW categories to determine whether any should be revised, eliminated or added; and

**WHEREAS**, the EQB staff has also presented to the EQB a list of recommended revisions to various rule provisions dealing with procedural matters;

**NOW THEREFORE BE IT RESOLVED**, that the EQB hereby authorizes the Chair to publish a Request for Comments on the following potential revisions to chapter 4410:

(1) the procedural revisions as described in the document included in the Board packet titled "Environmental Review Rules: Housekeeping, Technical & Other Procedural Revisions Identified by EQB Staff; Summary of Recommendations to the Environmental Quality Board on October 21, 2004, with Revisions and Board Comments Noted" and dated December 7, 2004,

(2) the mandatory category revisions as described in each of the six reports on a mandatory category included in the Board packets dated on the topics: Nonmetallic Mineral Mining, Air Pollution, Wastewater and Sewage Systems, Animal Feedlots, Historical Places, and Lakeshore Development.

Chair Schroeder asked that the next agenda item taken up by the Board be number VI then asked if there were objections, there being none he proceeded to number VI.

**VI. \*Change Of RGU From The County To DNR For The Review Of A Sand & Gravel Mine On DNR Land**

Jon Larsen, EQB staff, stated the item before the Board is a request from the Department of Natural Resources to reassign the responsible governmental unit (RGU) duties to the DNR from the County of Beltrami for the purposes of preparing an environmental assessment worksheet for a project that is known as Wilkins Gravel Pit. The findings of fact and resolution are included in this request. Mr. Larsen summarized why this request is before the Board.

Chair Schroeder asked if there were any questions, hearing none, said there was a resolution before the Board. Member Winebarger made a motion to adopt the resolution and it was seconded by Member Deal.

Chair Schroeder asked for discussion, hearing none, asked for a roll call vote on the resolution. The resolution passed 11-0.

**REASSIGNMENT OF RGU RESOLUTION OF  
THE MINNESOTA ENVIRONMENTAL QUALITY BOARD  
Designation of a Different Responsible Governmental Unit (RGU) From Beltrami County to the  
Department of Natural Resources For the Preparation of an Environmental Assessment  
Worksheet For Wilton Gravel Pit Expansion project proposed by Northstar Materials, Inc.**

**BE IT RESOLVED**, that the Minnesota Environmental Quality Board approves and adopts the Findings of Fact, Conclusions and Order designating the Minnesota Department of Natural Resources as the Responsible Governmental Unit (RGU) for the environmental review of Wilton Gravel Pit project in Beltrami County.

**BE IT FURTHER RESOLVED**, that Robert A. Schroeder, chair of the Board, is authorized to sign the adopted Findings of Fact, Conclusions and Order.

Chair Schroeder asked that the next agenda item taken up by the Board be number VII then asked if there were objections, there being none he proceeded to number VII.

**VII. \*Hutchinson Pipeline Update**

Commissioner Hugoson stated over the past month there has been considerable effort expended in negotiation between EQB staff, counsel and the Hutchinson Utilities Commission in an effort to bring this issue to closure. We've reached an agreement that is satisfactory. The stipulation before the members today makes an effort to address as completely as possible some of the issues still outstanding. The HUC will make a new offer to nonsettled landowners, will pay damages for 3 years and set up an escrow account which will pay to alleviate compaction.

Testimony:

Gary Van Cleve, Larkin Hoffman, counsel for HUC stated that he, the General Manager, Michael Kumm, and President of the HUC, Craig Lenz will all be recommending the settlement to the commission. They believe that the settlement resolves all the disputed claims in this matter.

Michael Kumm, General Manager of the HUC, complimented the staff of the EQB for the progress made in this agreement.

Kevin Johnson, Sib-Ren Fair counsel stated he also wanted to thank all parties involved in the agreement. The problems he sees with the agreement is that Section B.5. limits the decompaction that is eligible for reimbursement, Section B.6. limits the eligibility to farmers who use qualified third parties to do the work, Section C language relating to who has jurisdiction over the pipeline and finally the escrow agreement.

Legal Counsel Wagenius responded that Section B.5. limits the farmer to reimbursement for decompaction once per year, not only during the growing season. Section B.6. limits eligibility to qualified operators performing the decompaction moving forward in time. The October 2003

agreement regarding repair of drain tiles remains valid according to the terms of this Agreement. And when the construction is completed the permittee would file for termination because that is what we have here, a construction permit. The eligibility in the escrow agreement is only for farmers whose settlements with Hutchinson are not totally complete before both parties have approved and signed this agreement. They will then be eligible for the full two years.

Chair Schroeder said there is a resolution before the Board, Commissioner Badgerow moved to adopt the resolution and it was seconded by Commissioner Hugoson. The Chair asked for discussion.

Legal Counsel Wagenius advised the Board to amend the resolution to authorize the Chair to sign the stipulation and escrow agreement as discussed at the Board Meeting. He said that, assuming the Board adopts this today and authorizes the Chair to sign the stipulation and escrow agreements, the Chair will not sign until after the Hutchinson Utilities Commission takes their action. Then the signed copy would come back to the Chair for his signature. The resolution should be amended to state “as amended in accordance with the Board discussion on December 16” to reflect changes that were made today.

Chair Schroeder asked for any further discussion. A member asked if there would be any modification relative to people being reimbursed for work already completed. Legal Counsel Wagenius stated that HUC was firm during the negotiation about the agreement for reimbursement going forward only, not backward to pick up decompaction work already completed. The Chair asked for a roll call vote on adopting the resolution, which passed by 10-0.

**RESOLUTION OF THE MINNESOTA ENVIRONMENTAL QUALITY BOARD  
MEQB Docket No. 02-33-PRP-HUCAD**

**BE IT RESOLVED** that the Minnesota Environmental Quality Board adopts the MEQB staff recommendation to approve and enter into a Stipulation Agreement, as amended in accordance with the Board discussion on December 16, with the City of Hutchinson (Hutchinson Utilities Commission) to resolve alleged violations of the permit the Board issued to the City in March 2003 for the construction of a 90-mile natural gas pipeline in the State of Minnesota; and

**BE IT FURTHER RESOLVED** that the Minnesota Environmental Quality Board adopts the MEQB staff recommendation to approve and enter into an Escrow Agreement, as amended in accordance with the Board discussion on December 16, with the City that establishes an escrow fund to provide certain landowners along the pipeline route with reimbursement for expenses incurred to alleviate compaction of their land that appears to have resulted from pipeline construction; and

**BE IT FURTHER RESOLVED**, that Robert Schroeder, the chair of the Board, is authorized to sign the approved Stipulation Agreement and Escrow Agreement with the City, as amended in accordance with the Board discussion of December 16, as soon as the Agreements are approved by the City.

**V. Presentation By DNR & EQB Staff Regarding Timber Harvesting GEIS And Its Potential Use In The Blandin Expansion EIS**

Brad Moore, Assistant Commissioner at DNR stated that the EQB has had a long history of involvement with paper plants since July 1989 when a citizen petition was sent to EQB requesting preparation of a Generic Environmental Impact Statement on timber harvesting. In December 1989, the EQB ordered the preparation of a GEIS and formed a citizens committee to advise the Board on it. In April 1994, the GEIS was completed and found adequate by the EQB. Finally, in November 1994, a GEIS Implementation Roundtable report was completed.

Assistant Commissioner Moore indicated that Minnesota is at a competitive disadvantage in some ways due to new technologies, lower cost fiber and larger-scale operations elsewhere. Over the past decade, most capital investment has been in Europe and China. He stated that the forest industry is vital to Minnesota's economy and rural communities. The proposed Blandin expansion represents a welcome investment by Minnesota's forest products industry.

DNR released a scoping document on December 20, 2004 for the project-specific EIS for the Blandin expansion. While the DNR has not decided whether it will seek an EQB adequacy determination, a GEIS report card study will be completed in Spring 2005.

Chair Schroeder adjourned the meeting after a motion by Member Winebarger and a second.