

**MINNESOTA ENVIRONMENTAL QUALITY BOARD**  
**MEETING MINUTES**  
**Thursday March 18, 2004**  
**Pollution Control Agency Board Room**

**EQB Members Present:** Robert A. Schroeder, Bruce Bomier, Jerome Deal, Art Dunn, Gene Hugoson, Brian Lamb, Susan MacCarville, Mary Mellen, Dianne Mandernach, Gene Merriam and Paige Winebarger

Also in attendance: Assistant Commissioner Wegwart for Commissioner Corrigan

**EQB Members Absent:** Matt Kramer, Lt. Governor Molnau, Jonathon Bloomberg, Glenn Wilson

**I. Adoption of Proposed Agenda for March 18, 2004 and Minutes from February 19, 2004 Environmental Quality Board Meeting**

Citizen Member Bomier made a motion that the Agenda and Minutes be adopted and Director Dunn seconded. That motion carried.

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

Michael Sullivan reported that members had several items at their places. The new material are a letter to Paul Ackland, President of the Hutchinson Utilities Commission and a letter to the State Auditor asking that they look into the Hutchinson pipeline matter, both of those letters written by Chair Schroeder. Two more letters including one dated March 10, 2004 from Larkin, Hoffman and a letter from Lindquist and Venum dated March 17, 2004 both in regard to the Hutchinson matter.

Status on the legislation that the Board authorized staff to move forward on, has had a hearing in the Senate and the bill has been amended to modify the penalty language and referred to the Judiciary Committee. In the House the bill has not been introduced but it does have an author and hopefully it will be introduced sometime next week.

Chair Schroeder said the dynamics of the legislative session are extraordinary and change very rapidly. He suggested that it would be impractical for the Board to meet on a routine basis in regard to the legislation but acknowledged that this legislation is supported by the Board. The Chair said he would welcome any thoughts members have on the legislation. Board members suggested that there was a website where you could follow bill status and that the Chair could send the bill out electronically before the Governor signed it thus giving members time to vote on the bill. In the end Members suggested that Chair Schroeder and Mr. Sullivan watch the bill and provide oversight.

**III. Committee Reports**

Citizen Member Mellen stated that the Water Resource Committee work will be updated later in the agenda.

**IV. Legal Counsel Report:**

Dwight Wagenius stated that the Court of Appeals did dismiss the Hutchinson appeal.

## **V. Agency and Citizen Update:**

Commissioner Lamb, Department of Administration introduced himself as a new member of the EQB Board and said he was delighted to be a member of the Board. The Commissioner said that the Department of Administration and the Environmental Quality Board was a good mesh on a variety of different levels.

## **VI. Hutchinson Pipeline Investigation**

Alan Mitchell, EQB staff introduced himself and summarized the past month's activities in regard to the Hutchinson matter. Staff has been gathering applications for a qualified person or organization to do an investigation into the route along the Hutchinson pipeline. EQB staff worked closely with the Department of Agriculture staff to develop a request for proposal which went out on public notice on March 8, 2004, with an application deadline of March 23, 2004. After March 23 staff will review the proposals, make a selection and a contract will be signed on the investigation work. We are hoping that work can begin early in April and that the field work be completed within a few weeks. The contract will total between \$25,000 and \$50,000 and we will know once we review the proposals how many parcels will be sampled. Hutchinson would prefer that they be the ones that hire the soil scientist and conduct the study. The Board has a copy of Mr. Dietzen's letter which states the City is not committing to pay the \$50,000. Staff has about two weeks to review the proposals and continue to talk with the City of Hutchinson and hopefully come to some understanding on how the investigation is going to proceed.

In the past month, staff has received a good number of documents from the City and we have also provided them with the documents they have specifically requested. Board Members have in front of you today a letter from the City saying that they don't have to comply with the Data Practices Act. There are still matters to resolve regarding the exchange of documents and inspecting the files.

With regard to the Fairfax line, you have a letter dated March 9, in which the City of Hutchinson says that the City of New Ulm is planning to build a tap from the Hutchinson pipeline to a pipeline running east and west between Fairfax and Winthrop. Hutchinson suggests that EQB jurisdiction doesn't apply here and the EQB review is not required. Staff has talked with the City of New Ulm and they are planning to go ahead with the tap. The City of New Ulm has indicated to us that they will provide us with plans and specs and will not go ahead with the tap until a determination is made whether there is any role for the EQB in this particular project.

Chair Schroeder asked Mr. Mitchell to update him in regard to the letter from Mr. Dietzen, dated March 10<sup>th</sup>, which asked for all documents relating to the Hutchinson pipeline.

Mr. Mitchell responded that EQB staff received two requests. The first laid out specific documents that were requested in certain categories and we have provided those documents. The second request was we just want to see your files. We suggested to Hutchinson that we come out to Hutchinson with

our complete files and then we could review Hutchinson's complete files. We have not reached an understanding on that yet but Mr. Wagenius has been talking with Mr. Dietzen and if we can work out an accommodation, we will just give them our files.

Legal Counsel Wagenius wanted to clarify to the Board that what Mr. Mitchell first said was that in his opinion the first paragraph of the letter is a mis-characterization of the request. The request sought access for purposes of review and selective copying of the documents. The request was not for all the documents as if we just had to copy and send them. We have had conversations since that request about access for purpose of review.

Chair Schroeder asked if Mr. Dietzen would like a chance to respond to the characterization.

**Testimony:**

Mr. Chris Dietzen replied that generally that was a correct characterization. We have been talking and he is sure that he will be able to access the documents. Mr. Dietzen then stated that in general, he has made contact with Mr. Wagenius suggesting that there be a meeting among the principals of the City and the EQB to try and address some of the issues. Mr. Dietzen said that he received the Chair's letter this morning which says the same thing so perhaps that might be a fertile area of inquiry.

Citizen Member McCarville asked how large the pool of soil scientists who could perform such an investigation is, are there many or just a few?

Mr. Mitchell responded that approximately 20 to 25 applicants had requested the RFP in response to the notice. He did not know how many actual proposals there would be to the RFP.

Mr. Kevin Johnson, Linquist and Venum representing Sib-Ren Fair landowners group, introduced himself. Mr. Johnson said he just wanted to briefly draw the Board's attention to the letter he drafted yesterday. Last month we informed the Board that there is a requirement in the Agricultural Mitigation Plan that the City within 45 days after completion of the pipeline, which we know to be around the 10th or 12th of December, must conduct an inspection with each landowner to assess the damages that occurred due to constructing the pipeline. Then, 30 days after the onsite assessment make an offer to each landowner to resolve the damages. There was discussion last month that those inspections would be occurring and he just wanted the Board to know that to their knowledge, there have been no such visits made by the City. We would encourage the EQB to continue to pursue enforcement of the provisions of the Agricultural Mitigation Plan.

Chair Schroeder asked Mr. Dietzen if he wanted to respond to Mr. Johnson's statement in regard to contacting landowners.

Mr. Dietzen responded that about two weeks ago he recommended to the Utilities Commission that the landowners be contacted. Initially, there was some concern that there were pending condemnation claims but he believes that the property owners will be contacted. He is unsure whether any property owners have been contacted at this particular time but that the process is underway. His understanding of the matter is that there are approximately 254 landowners and of that number 177 have signed agreements with the Utility Commission. The remaining 77 are almost all represented by legal counsel. We have compiled a list of persons that have not signed agreements and we are in the process

of individually contacting each of the property owners as required by the Agricultural Mitigation Plan. Mr. Dietzen said he didn't know in what order the landowners would be contacted and he didn't know the timetable for contacting the property owners.

Chair Schroeder asked about timing, when and how the property owners would be contacted. He wanted all parties to have good information and wanted to make sure that all parties make that effort. The Chair also offered the help of the Board in any way possible to provide information to the farmers.

Mr. Dietzen said he would provide the Board that information and that he could write a letter promptly with those details.

## **VII. Update and discussion on Environmental Review Mandatory Categories Reform Study**

Mr. Scherkenbach summarized what has happened in the Environmental Review Mandatory Categories Reform Study over the last month and the items Board members received in their packets. His first topic was the Stakeholders group meeting. At that meeting the stakeholders sent back three questions for the Board to respond regarding the scope and overall purpose of this study.

Commissioner Merriam asked who the stakeholders are, and who decides who the stakeholders are?

Mr. Scherkenbach stated that the Board was provided with an initial list of all the organizations and groups that were involved with environmental review back in December 2003 and that the stakeholders had their first meeting in January 2004. At that meeting part of the discussion was about what groups or organizations not at the meeting should be. Part of the work involved with this study is to put together a distribution list of stakeholders and a way to distribute and share information with those stakeholders. He said he was trying to make himself available to any group interested and making as many contacts in the environmental review area as he could.

One question brought back from the stakeholder meeting was about petition activity. Mr. Scherkenbach indicated the second item in the packet was a table on petition activities from 1999 through 2003. He explained that the table summarized the petition activity, what it might mean and the types of projects that might receive a petition. Mr. Scherkenbach concluded that basically 80% of the petition activity is in alignment with the majority of review activities.

Commissioner Lamb asked if there was a relationship between people who initiated petitions and whether they would perhaps be interested stakeholders.

Citizen Member Bomier asked whether there is a correlation of types of petitions to total numbers of actual projects.

Mr. Scherkenbach stated that he's done just a quick ballpark correlation with the data collected to this point. For example, in the residential petitions category, 70 petitions on 86 projects. Over the past 4 years about 17-20% of the projects that drew petitions actually lead to environmental assessment worksheets. Another example is the animal feedlot area, where you have 29 projects and 38 petitions. The number of feedlot petitions has dropped off lately and is changing.

Jon Larsen, EQB Staff added that it is probably one in five or six of the petitions which would attribute an environmental assessment worksheet being ordered in direct response to that petition but there are a variety of other outcomes for the petition. Actually on balance, probably about 50% of the petitions have an effect on the outcome of a particular project and whether an environmental assessment worksheet is ordered or not.

Another part of the initial study plan was to see what other states have been doing in the environmental review area. He then summarized the third item which was titled “Environmental Review Mandatory Category Reform Study Feasibility of Benchmarking” a study of other state environmental review processes. There were only 17 entities that had State Environmental Policy Act (SEPA) programs and of that number only 7 that used mandatory categories, only 5 states used mandatory categories for environmental assessment versus. Out of 5 states only 3 states (Massachusetts, New York and Wisconsin) had information readily available and there was such a difference in the categories that it didn’t make any sense right now to make a comparison.

Mr. Scherkenbach stated that we have to figure out how to focus down on the mandatory categories. There were two major charges of this study were to look at environmental impact statements and threshold levels and at environmental assessment worksheets. We want to talk to the Board about tabling the environmental impact statement study for now and move to analysis of the environmental assessment worksheets not only because there is a better study size but because there are a good number of projects in each category. If there is a reason to consider the environmental impact statements level along the way, we definitely will consider them. We are going to spend our time on EAWs by activity level by category and we will focus on the top categories first.

Commissioner Hugoson asked about the feedlot EAWs because the feedlot permit applications vary from time to time which will impact the number of petitions. The variance can be because of economic conditions of the livestock sector and what is going on in the livestock sector. Frankly there are cases where people have said this process is too difficult so why bother and they go elsewhere. Commissioner Hugoson said there may be a decline in petition activity which might signal something good but in fact it might be just the opposite.

Mr. Scherkenbach said that is why he thought he would setup a meeting and have a discussion of these factors with Bob Patton, Perry Aasness and Paul Burns and try to understand some of the factors.

Mr. Scherkenbach talked about the plans to survey categories and how they differed between types of stakeholders. We are attempting to focus local governments as RGUs on residential, commercial, industrial, and nonmetallic mineral mining categories with the possible addition of the AUAR review. The AUAR review is often taking the place of some of these other reviews so we figure we may have to include that in the focus group. State government as RGUs concentrates on air pollution, wastewater treatment, fuel conversion, feedlots and highway projects. The different types of information to be collected would be threshold related information, information on review process and opinions about the process. There would be different groups to survey also including RGUs, proposers, other government units, public citizens, and environmental groups. We would try to have the survey ready by mid to late April and then test the survey to see if it works in May. Mr. Scherkenbach said a good sample size for interviews would be 120-150 and that is a lot of work but we are hoping to get information we can use to cut through some of the perceived red tape of

environmental review. The stakeholder groups have asked to see the draft survey but he hoped to show the Board and stakeholders group the survey at the same time. We also need to decide what result is good enough so that we can go out and test those results. Citizen Member McCarville asked how the survey would be distributed and whether it would be available online.

Mr. Scherkenbach responded that there looking at all the possibilities and trying to decide which distribution method offers the best results

Citizen Member Bomier asked if bankers or the banking system would be in the proposer's category. If they are not in the proposer's category bank financing staff might be good contacts for this survey. Citizen Member Bomier also suggested that there are experts in counties and cities who know the environmental review laws and who need to be contacted by this study.

Commissioner Merriam asked how Mr. Scherkenbach would measure success in this study.

Mr. Scherkenbach responded that the Board will help him measure the success when we come back with the information. The results from the survey will let us know how the system is working but the Board will measure the success or failure once the results are known.

Citizen Member Bomier said what his idea of success is in this particular study is that the proposer will have a standard that will honor the environment yet they know what will happen and they can control their costs.

Mr. Sullivan added that predictability may not be a result of this threshold survey. Thresholds are predictable by their nature but the uncertainty that Citizen Member Bomier talks about is structural feature of environmental review in Minnesota. There is a process that states you may start with an EAW, the uncertainty there is that you may have to do an EIS based on the information that gets generated by the EAW. The real issues of uncertainty and what project proposers often come back and raise issues about is over the structural issues rather than where the line is drawn on the thresholds.

Citizen Member Bomier added that this study is part of the process, first you figure out what the triggers are and then you build a fast fair process for review. The results of this study will be part of a continuum of work by this Board.

Mr. Scherkenbach responded that the environmental review study was charged with threshold levels but there are also questions that get to the process itself.

Citizen Member McCarville agreed that examination of the process is important because the thresholds might be fine but in a few cases a person or organization got frustrated. We need to find out what made the process difficult.

Chair Schroeder said that one thing we may find out is that there is no certainty and that in itself is a result.

## **VIII. Governor's Clean Water Initiative; EQB Duties**

Mr. Scherkenbach the Governor's Clean Water Cabinet director gave an overview of cabinet activities since August, 2003. The Clean Water initiative concerns governance, demonstration projects, funding and policy. The Cabinet developed five key principles 1)focus and alignment on priorities, 2)use a watershed approach, 3)apply individualized solutions, 4)cooperation is essential and 5)keep working lands working.

The first part of the initiative was to get all the different government organizations working together; the second part was to establish demonstration projects throughout the state that covered the range of different water issues. The four demonstration projects included: 1)Red River Valley, 2)Central Minnesota Lakes Area, 3)Metro Mississippi River and 4)Southeast Minnesota. The projects setup for the four demonstration areas included: 1)Grand Marais Flood Reduction and Mansion Slough Food Control, 2)North Central Lakes Pilot Project, 3)Lambert Lake Wetland Restoration and Twin Cities Sub-Regional Water Supply Plan and 4)South Branch Root River. The goals set up for the four demonstration projects included 1)reducing flood damage in the Red River Valley, 2)education, assistance and updating standards for shorelines to protect lakes in Central Minnesota, 3)safe drinking water for the Twin Cities area, and 4)impaired water projects included reducing harmful bacteria or other pathogens entering rivers and streams for Southeast Minnesota. The goals of these demonstration projects is to learn what concepts can be used elsewhere. In April, the Clean Water Cabinet will start receiving quarterly progress reports on how each of the projects is meeting it's long term goals.

The last element of the Cabinet is funding. The Governor is committed to examining long term funding opportunities for water programs. The Cabinet was charged with developing funding options and addressed funding gaps to provide an understanding of the different program areas and needs are for the next 10 years. It also was connected into the impaired waters group. There has been great coordination between agencies in the past, but some agencies have had agendas of their own with some confusion on how they aligned with the state water plan.

Chair Schroeder responded that it is encouraging to see the work happen on the pilot projects.

## **VIII. Continued-EQB Duties**

Mr. John Wells, EQB staff, gave a brief overview of the EQB role in the Governor's Clean Water Initiative. The Environmental Quality Board coordinates and represents all of the agencies with water responsibilities, and develops a biennial water priorities report for the Governor and legislature on water policy, priorities and funding needs . The EQB Water Resources Committee (WRC) includes key water people from all Board water agencies as well as the U.S. Geological Survey, MN Geological Survey, other aspects of the University of Minnesota, Metropolitan Council and other interested parties.

The WRC is proposing that the EQB policy report due by September 15 be structured along the line of the five vision elements of the Water Cabinet and that EQB build off the work accomplished last year in the Minnesota Water Priorities 2003-2005. That report identified priorities such as monitoring lakes, managing water for growth, and funding. The WRC needs a water program that is transparent and easily understood; that integrates among the various local, state and federal interests; that make the link to land use; that collects sufficient information; that involves and empowers local government and

citizens; that addresses current problems and prevents the emergence of new problems ; and that acts in a unified economical manner. The Water Committee thought that the state ought not to loose the sense of those principles and build on them as it comes up with ideas for the Board to consider in the next six months. The WRC will work closely with the Clean Water Cabinet, build off the last year's Priorities efforts, and identify what needs to happen in the short term but within a context for what needs to happen long term. The WRC is developing many ideas that track with the Governor's Clean Water Vision. Among the most exciting ideas that came out of the brainstorming session was the idea of securing opportunities for long-term funding and re-thinking governance across the board.

Mr. Wells also wanted the Board Members to have an idea of the timeline of the work plan elements of the Water Resources Committee. The timeline of **Phase 1** which is the initial identification of issues and process characteristics runs from March through April 2004, **Phase 2** which is outreach and public participation runs from May through June 2004, **Phase 3** which is final research and report development runs from June through August 2004, and finally **Phase 4** which is final Cabinet and EQB approval for distribution of the report finishes in September 2004. If Members have any questions or comments with the outline, they were asked to contact Mr. Wells.

Chair Schroeder asked for additional questions or comments, there being none adjourned the meeting.