

**MINNESOTA ENVIRONMENTAL QUALITY BOARD**  
**MEETING MINUTES**  
**Thursday, August 18, 2005**  
**State Office Building, Hearing Room 5**

**EQB Members Present:** Dana Badgerow, Jonathon Bloomberg, Sheryl Corrigan, Jerome Deal, Brenda Elmer, Gene Hugoson, Matt Kramer, Susan McCarville, Gene Merriam, Robert Roche, Robert A. Schroeder, Michael Sullivan and Paige Winebarger

**EQB Members Absent:** Dianne Mandernach, Lt. Governor Molnau and Glenn Wilson

**I. Adoption of the proposed Agenda for the August 18, 2005 meeting and Minutes from the June 16, 2005 Environmental Quality Board Meeting**

Member Bloomberg made a motion that the minutes and proposed agenda be adopted and Commissioner Deal seconded. The motion passed unanimously.

**II. Executive Director's Report**

Michael Sullivan stated that a report was prepared regarding the status of a high level radioactive waste siting process. An update from the legislature says there is a small appropriation piece that remains; they did not catch that when they made the change. Mr. Sullivan confirmed that in the intervening year until the legislature was back in session, a memorandum agreement should be worked out with the Department of Commerce. The agreement would allow them to continue to work on the report and then transfer the appropriate funds.

Mr. Sullivan introduced Augusta Paye and Kristy Johnson as the new support people for the Environmental Quality Board within the Office of Geographic and Demographic Analysis.

Chair Schroeder mentioned that until the position is filled that was formerly held by Bruce Bomier, the quorum will now have 8 members.

**III. Legal Counsel Report**

Robert Roche, from the Attorney General's Office stated that one of the last things that Dwight Wagenius did was to file an amicus brief on behalf of the EQB in the CARD matter, which is pending before the Minnesota Supreme Court. That brief has been filed, a date for an oral argument has not been set. Mr. Roche stated that it would not be customary for an amicus to participate in an oral argument, but he will monitor it and keep the Board apprised. He will let the Board know what is happening and when a decision might be made.

**IV. \*Amendment of Environmental Review Program Rules: adoption of mandatory Environmental Assessment Worksheet and exemption thresholds for recreational trail projects**

Gregg Downing, EQB staff, stated that this item had been up for final adoption at the June meeting, except Commissioner Merriam asked that a final modification be made to the amendments, withdrawing a modification which had been added to rules during the hearing process. The Board did not have any problem with withdrawing that modification; however, under the State's rulemaking procedures, the Board could not adopt that rule until the Chief Administrative Law Judge reviewed that final modification and had approved it. The Board directed the staff to have that review done and come back.

Mr. Downing stated that in the packet, there is the order from the Chief Administrative Law Judge approving that final modification. Therefore, the staff is back before the Board recommending the Board take final action to adopt these amendments to the Environmental Review Program Rules that add mandatory Environmental Assessment Worksheet categories and exemption categories pertaining to certain types of recreational trails. Mr. Downing indicated that the specifics of these amendments have been discussed with the Board several times before, and that he would not discuss the details of the amendments unless the Board had questions. Mr. Downing recommended that the Board approve the sample resolution which would adopt these rules and authorize the Chair to sign the order. If the Board does that, Mr. Downing said the staff will take the final administrative steps and, ultimately, the rules will be noticed in the State Register and probably go into effect around the beginning of October.

Chair Schroeder asked for discussion, there being none, that there is a resolution before the Board. Commissioner Corrigan moved the resolution and Commissioner Kramer seconded. Chair Schroeder called for a roll call vote which passed 11-0.

**V. \* Environmental Review Study: update and decision on whether to proceed with rulemaking with respect to the revision items contained in the Request for Comments Notice published in the February 2005 State Register**

Gregg Downing, EQB staff, directed the Board members attention to the two documents that were in the Board packets: the list of rule provisions that the Board had tentatively put forward for rulemaking with the Request for Comments notice and a second document entitled EQB Environmental Review Study: Summary of Comments and Staff Responses and Readiness of items for Rulemaking. Mr. Downing indicated there are two changes in the list from the earlier versions, adding two items to list which were inadvertently left off the earlier versions. Both of these are matters where the Legislature in the last several years has made a change in mandatory or exemption categories in the Environmental Review Rules, one concerning the mandatory EIS threshold for ethanol plants outside the Twin Cities metro area and the other concerning feedlot exemptions.

Mr. Downing stated that the other document in the packet goes through each of the 50 rule provisions under consideration for amendment and indicates for each:

1. Summary of the comments received if comments were received
2. Staff response which is usually a proposed modification to the possible rule amendment that was indicated before
3. Readiness status, meaning whether the staff can draft the language for the rule amendment and the materials for the statement of reasonableness without having to wait for some other event to occur.

Mr. Downing stated that staff believes that 38 of the items are ready and directed the Board's attention to a summary table at the end of the document that summarizes the status of all 50 items. Mr. Downing proposed only going through the items which are not ready, ones proposing to be dropped, and ones where there has been a substantial change to the proposal based on the comments or other considerations.

Commissioner Merriam asked about amending the rules to incorporate statute changes on the two new items, 49 and 50. Mr. Merriam stated that it is clear to him that it has to be changed, but what is unclear is why the statute is "regurgitated" in the rule. Mr. Downing stated that the Legislature made the threshold for a mandatory EIS for ethanol plants to 125 million gallons from 50 million gallons.

Commissioner Merriam asked why it is necessary to put that number in there at all. Mr. Merriam asked if it's covered by statute, why does it need to be in the rule? Mr. Downing stated that it would be for the convenience of anybody trying to establish whether or not a given project fits the mandatory category by reference to the EQB's rules.

Commissioner Merriam stated that one of the problems he has seen occur in the development of Administrative Procedures Act is the repetition of rules within the statutes and the statutes within the rules so that often one or the other is outdated. Mr. Merriam stated that the problem is avoided if we quit putting the statute in the rules rather than amending them. Mr. Downing stated that these two items are the only cases where the statute indicates what the mandatory thresholds are for any category for projects in environmental review.

Member Bloomberg stated that, as a practitioner, it is easier if all the categories are in the same place. Mr. Bloomberg stated that there is always a tendency for the Legislature to tinker and that the Legislature could change any of the other categories in the next session. When the Legislature does something that amends a mandatory threshold that is already in rule, we would have to amend the rule to catch up. However, once the catch up is done, Mr. Bloomberg stated he would rather look in one spot rather than have to worry about having information in the rule and there are others in statute that may not be in the rule.

Commissioner Merriam stated that the question becomes whether someone looking at the rules knows whether the rule has been updated. He stated that it just invites more problems to repeat the statutes in the rules.

Commissioner Hugoson stated that the solution might be, instead of stating threshold numbers, to cite the statutory reference. So, anybody looking at the rule knows where to go in statute to find the current amount. It means looking in two different spots, but there is no guarantee when someone is looking at the rule that they know it is current anyway, if there is lag time.

Member Bloomberg stated that it still does not solve the problem because next session the Legislature could decide to amend a different threshold and then it is back to amending our rule to incorporate a reference to the statute. There is always a possibility that the Legislature could “tinker” with the thresholds. Mr. Bloomberg stated he is in favor of having our rules be comprehensive and match what the current Legislation is. It makes for more consistent rules on our part.

Mr. Roche stated, as a practitioner, the courts will look to the rules to make specific the statutes. The statute trumps the rule and that is going to be the law regardless if the rules are updated or not. It will make it clearer if the rule book harmonizes with the statutes.

Mr. Downing proceeded to discuss item #2, revision of the definition of ‘construction’ to allow for site preparation work in advance of environmental review in some cases. He stated that this was a suggestion raised by a Board Member back in December or January. In the Request for Comments, the staff specifically asked for input on appropriate criteria to use to distinguish cases where site preparation should be allowed to proceed prior to completion of environmental review. Five comments were received about this proposed change; four were opposed, and one in favor. The one comment in favor and one who was opposed suggested a criterion. Unfortunately, in the view of the staff, neither would be very useful. Because no useful criteria have been identified, the staff recommends dropping this item.

Chair Schroeder asked for discussion. Member Elmer asked if this would be something brought up again and revisited. Mr. Downing stated that the official request for comments period has ended, so the next time the staff would solicit additional opinions from people is when the rule gets noticed. Before that time, there can be an additional informal discussion if the Board wants this to continue and develop additional ideas. At this point, the staff does not see that any usable criteria will be brought up.

Commissioner Corrigan stated that she was the Board member that brought up this issue. She stated that there still is a conflict that continues to exist when an air permit is issued, people are allowed to conduct site grading and buying of certain equipment under the Federal rules and regulations, but the EQB rules do not allow it. Ms. Corrigan stated that this may be fine and what the Board wants, but her point of this evaluation was to determine if there is a way to harmonize our state and federal rules and regulations with

the environmental review rules and regulations. She suggests the staff still work on this matter to see if they can come up with some criteria that would make sense.

Commissioner Hugoson asked if Commissioner Corrigan could give them an idea about what kind of projects she is talking about. Commissioner Corrigan stated that the air permit allows the permittee to move forward on at least in the preparatory phases of the project, but does not allow actual construction of footings. Commissioner Hugoson wanted to confirm that in granting these permits, the PCA would be on site making the determination of whether an excavation would seriously alter the landscape. Commissioner Corrigan stated that air permit staff would not be inspecting the actual site preparation. That would be covered most likely under conditional use permits or grading permits or water construction permits that would either be granted under our authority or the local government.

Ms. Corrigan suggested the way to approach this rule amendment item is to drop it from this rule revision, but that the staff continue to seek out criteria that makes sense to bring this forward at a later date.

Mr. Downing next discussed item #9, EAW content requirements. He stated that this item has two parts: one about consistency with local plans and the other about specific guidance on addressing cumulative impacts in an EAW. With respect to the local plan consistency, Mr. Downing stated that the staff does not see any problem, so they are ready to proceed. With respect to the cumulative impacts, this is one of the seven items that the staff thinks are not ready to move forward having to do with cumulative impacts. Mr. Downing stated that there is a case in the Supreme Court that has to do with cumulative impacts issues. There is also a case in the Court the Appeals having to do with the treatment of cumulative impacts. Mr. Downing stated that cumulative impacts are very difficult because it is very hard to set boundaries on what the analysis is. Mr. Downing stated that it would not be prudent to move forward to draft a rule about how to treat cumulative impacts in an EAW at this time. It should be delayed until the staff can see what the court decisions are and to do additional work. There is no firm deadline on when that will be.

Chair Schroeder asked for discussion. Commissioner Merriam asked about the issues in the court cases. Mr. Downing stated that the issue in the Supreme Court is a challenge to the county's negative declaration on preparing an EIS. One issue is the relationship between the particular mines in question and other mines in the area and mines in the future. Another issue is about the meaning of the criterion in our rules for ordering an EIS that has to do with cumulative effects or cumulative impacts. A related issue is that in the Court of Appeals decision, the court included a sentence which seems to say that you can not have a cumulative impact from a series of impacts unless at least one of those individual impacts in itself is significant.

Mr. Downing proceeded to discuss item #14, the EIS need criterion #2, regarding cumulative effects. He stated that this item needs to wait until a decision is received from

the Supreme Court, since they will probably rule on what they think the meaning of our current criterion is.

The next items for discussion were items #20 to 25, all of which deal with the AUAR process. Mr. Downing stated that the AUAR is a substitute form of review that a unit of government with a comprehensive plan could use to review the impacts of all the development that would be projected to occur within a specific area without regard to specific development projects proposed within the area. When individual projects were later proposed, if they were consistent with the development assumptions in the AUAR and if the mitigation plan is carried out, those individual projects would not have to go through review on their own. He stated that the items here were mostly based on concerns expressed in a memorandum received from the Department of Natural Resources at the January meeting. Collectively, these AUAR items were among the most commented on by who responded to the Request for Comments. He indicated of these five items, two are considered ready to go, two may be ready depending on discussions with people who made comments and the Department of Natural Resources. Regarding the final one, the staff recommends that it be dropped

Item #21 involves an objection to use of AUAR to review individual projects. Mr. Downing stated that while the AUAR was intended originally for reviewing an area, in many AUAR's there are specific projects ready to go in that area and there is nothing in the rules that says that a specific project might not cover a whole AUAR area. There were several comments about eliminating the use of an AUAR to review specific projects that raised some significant issues. As a result, the staff is proposing an alternative to eliminating the use of an AUAR in this way. Instead, we could add an additional step to the AUAR process at the beginning. The staff's proposal is that a scoping process be required to look at alternative development scenarios if either there is a single project included in the area that would have otherwise required an EIS, or if a single project comprises at least 50% of the land area of the AUAR. The staff is proposing to move forward with this alternative proposal. Information about this alternative has been sent to the people that commented on this and to the DNR staff asking for their reactions by the end of this month. This is one of the items classified as 'maybe'. If the people with comments and the DNR staff think this alternative is a good way to go, this can move forward with rulemaking. If that is not the case, then this will not be ready and the staff will have to do additional work on it.

Chair Schroeder asked for discussion. Commissioner Corrigan asked if this would be similar to what the EIS scoping process is currently. Mr. Downing stated that it would be very similar. Commissioner Corrigan asked that in terms of the administrative procedures around it, if there would be public meetings held and comments on the document. Mr. Downing stated that something along those lines would occur. Commissioner Corrigan asked, in Mr. Downing's opinion, how much more time would it put on the timeline for an AUAR. Ms. Corrigan asked if 60 sixty days was accurate. Mr. Downing stated that the estimate would be 60 days. That is the typical length of time that the EIS scoping would last. There would have to be a provision specifying the length of time.

Item #22 relates to prohibiting the removal of a project from an AUAR once the AUAR has begun. Mr. Downing stated that there is nothing in the rules now that prevents removal of a project which is below the mandatory category thresholds and would not on its own require environmental review at all. The staff does not see any legal reason that somebody should automatically be prohibited from getting out of the AUAR. The staff is proposing alternative – namely, a notice process. Currently, if an RGU is going to leave a piece out of an AUAR after they started, they can just go ahead and do that. They do not have to give notice to anybody, nor do they have to get any comments about whether there might be some problem with that. The staff proposes to add a notice and comment process in the event there is a good reason to leave that piece in the AUAR.

Mr. Downing stated that item #23, requiring all AUAR scenarios to be consistent with the comprehensive plan, is one of the items that the staff recommend dropping. This item was strongly opposed by the people who made comments and the staff is persuaded by the points that were made. The most important one is the number of people who practice in this field pointed out that it is quite common for a unit of government to use the AUAR process to help them decide if they should amend their comprehensive plan. The staff believes that requiring all the scenarios to be consistent with the existing comprehensive plan would be detrimental. Another argument in the comments is that to get around this requirement, units of government will simply amend their comprehensive plans first and then they will do the AUAR afterwards.

Chair Schroeder asked for discussion. Commissioner Merriam asked if the people making these points are city staff people, developers or someone else. Mr. Downing stated that some of the people were local officials who had done AUAR's. There were also couple of people who worked for planning/consulting firms and also a professor from the Humphrey Institute at the University who happens to be doing a series of studies about the AUAR process. Commissioner Merriam stated that this issue is an indictment of the comprehensive planning process, which has been used to trump zoning laws.

Mr. Downing stated that the staff's view is that regardless of how well-done an existing comprehensive plan may be, if the unit of government is thinking of changing it, it would always be better for them to have more information about the environmental consequences of changing it before making the change. Commissioner Merriam stated that the suggestion seems to be that it does not matter what the comprehensive plan now is. Mr. Downing stated that it is very common for units of government to be considering amending the comprehensive plan. Mr. Downing stated that the issue comes down to whether or not they are going to analyze the environmental implications of making the changes before they are made or should they make the change and then worry about the change afterwards.

Chair Schroeder asked if it is a value we would want to support, that all AUAR scenarios be consistent with the comprehensive plan. Mr. Downing stated that the AUAR is not a process by which to choose which versions of the comprehensive plan should be adopted, but to review different types of resulting scenarios.

Commissioner Corrigan wanted to verify that the AUAR is about providing alternatives and information to local planners and to local units of government around what their options might be for a particular area from a development standpoint. Then by using that information, they can choose either to keep their existing comprehensive plan and zoning or alter it if they so choose depending on the information that is gleaned from the AUAR. Mr. Downing stated that this is correct and was a very good summary. Commissioner Corrigan stated that it would seem pretty reasonable that local units of governments be given the flexibility to gather information without being put through the requirement of having to change their comprehensive plan before they can even attempt that information gathering. It seems that flexibility is provided, yet the notion and integrity of the AUAR and comprehensive planning is also kept.

Regarding the last AUAR item, item #25, Mr. Downing stated that this item is not ready to go. This item deals with explicitly requiring cumulative impact analysis in an AUAR.

Moving on the items #27 and #28, Mr. Downing stated that both of these relate to the same subpart to the rules which is the provision about the relationship of the generic environmental impact statement to project specific review. This is the subpart under which the Board recently determined that the existing Forestry GEIS is no longer adequate. There are two sentences in the subpart. The second sentence has to do with item #28, under which the EQB is required to determine if an existing GEIS remains adequate any time it is about to be used.

Item #27 relates to the first sentence, which currently says that the existence of a generic EIS does not exempt specific projects. Previously, the staff suggested that we amend that sentence to provide that there are situations where GEIS would be a substitute for projects in specific review. Under that concept, at the time the Board ordered a GEIS, it could specify types of projects or impacts for which the GEIS was going to be a substitute. That proposal had come from a staff level task force that was working on implementing some recommendations that came out of a Governor's task force on the forest products industry.

Mr. Downing stated that since the original recommendations, the EQB dealt with the UPM/Blandin Thunderhawk project and the question of whether or not the Forestry GEIS remained adequate. In doing that analysis, the staff gained more experience with this rule. As a result, Mr. Downing indicated that the staff would now like to change what its' previous recommendation was. With respect to item #27, what the staff would like to do is forget about the additional language that was proposed before. With respect to item #28, the staff would like to simply delete the sentence. He stated that in both cases, the staff now thinks that there are enough provisions elsewhere in the environmental review rules to cover the issues. Mr. Downing then summarized the provisions elsewhere in the rules.

Mr. Downing then stated that the remainder of the items to be discussed all deal with mandatory categories. Of these seven items, he stated three are ready to go, one is probably ready to go and the other three are definitely not ready to go at this time. The

three that are ready are the air pollution source EAW change, the wastewater systems change and the historic places change.

Mr. Downing stated that there are several reasons why we are not ready to proceed with item #29, the nonmetallic mineral mining mandatory EAW category. One reason is the cumulative impact issue discussed earlier, specifically the case in the Supreme Court. In addition, the comments received indicated that there were more issues about lowering the threshold from 40 acres to 20 acres than previously thought. A number of people, especially smaller operators, indicated that they believe that will put them at a competitive disadvantage in terms of bidding for contracts. Also, commenters predicted that going from a 40 acres threshold to a 20 acre threshold would result in a proliferation of small mines, the effect of which would be spread to gravel mine impacts all over and also waste the gravel resources that are out there.

The next item was item #33, the animal feedlot mandatory EAW category. Mr. Downing stated this item was probably ready. He stated that this is one of the categories that the staff at the Pollution Control Agency and Department of Agriculture are taking the lead. They have created an advisory stakeholder process and they met with those stakeholders last month. They are now working on the results of that and plan on holding a second and final meeting with the stakeholders in September. The staff attended the July meeting as observers and it looks to be going pretty well. People are hopeful that they will be able to come up with a proposal in time for the first round of rulemaking.

Mr. Downing stated that items #35, #36, and #38, new EAW&EIS categories for lakeshore development and developments near highly-important natural resources are not ready. He stated that both of these categories were being developed from scratch by the DNR staff and that they have an advisory process for each. Mr. Downing stated that their best estimate is that they are not going to be able to come up with anything before the end of the year or maybe even later.

Mr. Downing stated that the staff is asking the Board to endorse or approve the idea of moving forward as quickly as they can with those items that have been indicated as ready. If the Board would like the staff to do that, staff can be back in October with a draft of language and the SONAR for discussion on all the items. Then, at a subsequent meeting, the Board would be able to authorize the staff to move into the formal rulemaking process. If the staff does that, the items indicated as not ready will be left behind. There would probably be a 3-4 month gap before any of those would be ready. Mr. Downing stated that an alternative would be that the staff wait on getting approval for rulemaking on any of these items until at least some of the other ones become ready.

Chair Schroeder asked for discussion. Member Winebarger asked Mr. Downing to clarify the difference is between 'maybe' and 'probably' on the chart on page 12. Mr. Downing stated that it was a difference of degree only. The staff rated one item as 'probably' in the sense that there is an established process for the development of the feedlot category, with a schedule and the process seems to be on the schedule. If they

stay on the schedule, this item would be ready. The ‘maybe’ items are things that were sent out for comments. The staff does not know what the reactions are going to be. If the reaction is adverse, the staff does not have a specific process or schedule on how to deal with that. Chair Schroeder stated that ‘probably’ is a little more in the staff’s own control and ‘maybe’ is a little less.

Member Winebarger asked what the nature of the report is that the Board is going to receive from the PCA and the Department of Agriculture. Mr. Downing stated the staff has asked the PCA, the Department of Agriculture and the DNR groups to supply them with actual proposed rules as close to the language as they can get it and the necessary materials the staff would need for the sSONAR, which is the background and rationale supporting whatever they come up with. The staff assumes the report will be of that nature. He noted that the staff of the Department of Agriculture has done preliminary work on drafting the SONAR for that category. Member Winebarger asked when the Board would have an opportunity to see the report under the staff’s proposed rulemaking timeline. Mr. Downing stated that if we are on schedule, the staff should be able to bring that as part of the material in October.

Chair Schroeder wanted to confirm that the nature of the report is really just the next step in taking the recommendations from the PCA & Department of Agriculture process and incorporating them into a draft for the Board to review. Then at that time, the Board would have the opportunity to hear what the nature of the recommendations were and then report on how those were considered and incorporated into the proposed language. Mr. Downing stated that was correct, and then elaborated on the nature of the PCA/Department of Agriculture process and how it intended to come to a recommendation. Commissioner Hugoson stated that the advisory group has met and after listening to that group, the staff from the Department of Agriculture and the PCA will put together the piece that will come back to this Board.

Member Winebarger asked for more information about the makeup of the advisory group. Commissioner Hugoson stated that the group is comprised of an equal number of opponents and proponents. Whenever the departments come back with a recommendation, they will have to include the justification behind it based on information coming from this stakeholders group. Mr. Hugoson stated that the members and staff should keep in mind that the plan is for a draft to be presented in October, with a vote coming at a later meeting. In connection with that, Mr. Hugoson stated that Commissioner’s Kramer, Corrigan, and he will be on the China trip with the Governor during the normal November meeting date.

Commissioner Badgerow asked about the time limits on the rulemaking being undertaken. Mr. Downing responded that for this particular rulemaking, the Board is not facing a time deadline as for the previous rulemaking because the Legislature did not direct the staff to do this rulemaking. If the Legislature had told us to do this, we would need to get the notice of hearing published within 18 months from the time the law went into effect. That does not apply here, so there is no specific end date to worry about. Mr. Downing indicated the once the rulemaking has completed the hearing process, a time

deadline would apply, being 180 days from issuance of the ALJ's report to get the final adoption notice published.

Commissioner Badgerow inquired if it was correct that rulemaking would not actually start until we have draft rules that the Board has agreed should go forward into the hearing process. Chair Schroeder stated that was correct and that the rulemaking process and time frame is under the control of the Board. The Board will decide if they want to proceed with rulemaking on any specific rule amendment idea.

Member Winebarger inquired about how the timing of the report on the proposed feedlot category revision relates to his absence and several other Commissioners' absences from the regularly scheduled November meeting. Chair Schroeder stated that the issue involves more than just the feedlot issue. For everything rule amendment that is considered ready, the staff would be prepared to bring the specific language to the Board in October for review. There would be a follow-up meeting in November where the Board would specifically authorize taking the next step. Mr. Schroeder then asked Mr. Downing what issues the Board should be aware of due to some Board members being absent in November. Mr. Downing replied that the later the Board authorizes the start of the rulemaking, the shorter the time gap until other rule items not now ready become ready. There is a possibility that if some of the other mandatory category revisions proceed at least as well as expected, or better, and if they are only a couple of months behind when the Board considers authorizing formal rulemaking, the Board might want to reconsider waiting until those items could be added.

Chair Schroeder stated that the plan is that a draft would be brought to the Board in October and final authorization sought in November. Mr. Downing stated that would be the preference. Mr. Sullivan stated that there are three alternatives. One is to proceed at a regularly scheduled meeting date in November for the final approval, without those three members. Some other alternatives to that would be to call a special board meeting during the first week of November or the first week of December. Chair Schroeder stated that his preference would be to have as many of the members present as possible. Mr. Schroeder stated that they have an obligation to represent the interest that the Board is tasked to represent. Mr. Schroeder left it to Mr. Sullivan to figure out another date to allow most people to be there. Mr. Sullivan stated that the members should check their calendars for the last week of November and the first week of December.

Commissioner Merriam questioned whether it makes sense to put all of the rule revisions in the same rulemaking since some are controversial items and some are not. Chair Schroeder stated that the staff should proceed with the ones that are ready right now, as they are probably less controversial. Mr. Sullivan stated that the sooner the staff gets them out there, the better. He stated that he is concerned that simply opening the door on any part of environmental review rules could trigger the 25 signatures needed to force a hearing as part of the rulemaking process. Some will be harder than others, but the staff should move forward.

Member Bloomberg asked that if everything is proposed as a single package, and something bogs down as controversial, can we proceed to finalize that portion of the rule that is non-controversial. Mr. Roche stated that he did not believe so. Mr. Roche stated that he has not researched the issue, but once it is publicly noticed as a package, if the rulemaking become controversial, the staff would have to start over and re-publish the notice as separate packages.

Mr. Schroeder wanted to confirm that the staff is not putting notice out yet of rulemaking. Mr. Downing stated that it is correct. The staff can not put notice out until there is language and a Statement of Need and Reasonableness, as well as the SONAR. Chair Schroeder suggested that the staff take the next step and develop the language.

Commissioner Hugoson noted that the Board will be seeing these issues two more times; once in draft form and once for final passage. Mr. Hugoson asked if there will be public testimony at either time. Mr. Sullivan stated that given the public interest in some of the items, people will want to talk about various items. All the staff is proposing now is to get the Board something in draft form, to give the Board a chance to mull over it and at that point give the staff feedback. Then after testimony and feedback from the people who have been following the process, the staff will go back to the drawing board based on the direction the Board provides, as well as the testimony that is heard.

Commissioner Hugoson suggested that, if it is feasible, the Board discuss a draft at more than one meeting. The Board would have a long meeting if there are several controversial items before the Board at one time.

Member Weinbarger asked to wrap up the conversation about where 'probably' and 'maybe' fit into 'ready' in reference to the readiness status of the various items in the summary table. Mr. Downing stated that when the staff comes back in October, the 'maybe' and 'probably' items would hopefully be in there. If they are not ready, the staff would give the Board a status report on those items and then the Board would have to make the choice whether to proceed with formal rulemaking without those items or the rulemaking until certain items are ready.

Chair Schroeder stated that the staff should go ahead with the items that are ready as discussed.

Chair Schroeder asked for additional questions and seeing none, asked for a motion to adjourn. Commissioner Kramer made the motion to adjourn and Commissioner Corrigan seconded the motion.