

**MINNESOTA ENVIRONMENTAL QUALITY BOARD
MEETING MINUTES**

**Thursday December 18, 2003
State Office Building, Hearing Room 5**

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

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

I. Adoption of Agenda and Minutes from November 20, 2003 Environmental Quality Board Meeting

Commissioner Corrigan made a motion that the Minutes be adopted and Commissioner Mandernach seconded. That motion carried.

II. Chairs Report:

Chair Schroeder welcomed a new Citizen Board Member Paige Winebarger, appointed by Governor Pawlenty.

III. Executive Director's Report:

IV. Legal Counsel Report:

Legal Counsel: Dwight Wegenius stated that no legal matters are pending.

V. Agency and Citizen Update:

VI. *Adoption of Report to the Legislature on Public Participation in Feedlot Permitting

VII. Retreat Follow-up

VIII. Consideration of Board Action on the Hutchinson Pipeline

Alan Mitchell, EQB Staff, summarized where the Board is on the Hutchinson matter. One of the obligations of building a pipeline is to restore the land to its natural condition. Hutchinson knows that and promised to do precisely that on their application for building the pipeline. John Webster who is the director, natural gas division, Hutchinson wrote a letter to every landowner along the proposed route and said "We wish to make certain that there is as little disruption as possible and that the land is returned, as nearly as practical, to its previous condition and contour after construction is completed." After Chair Schroeder's letter pointing out problems and complaints, Patrick Spethman, interim general manager of the Hutchinson Utilities Commission responded with "in conclusion Hutchinson Utilities Commission recognizes the importance of complying with the EQB permit and the Agricultural Mitigation Plan." Complaints started immediately after construction by landowners on how the topsoil was being stripped, lack of notice, drain tile problems and now about restoration, compaction and soil mixing. Last month EQB staff and Department of Agriculture staff started an investigation on these latest complaints and did find problems. The problems we found include: clay and topsoil mixed, rocks in the field, large mounds of clay in the right-of-way and the soil was compacted on the parcels that we investigated. Staff is not saying that they failed to comply with the Agricultural Mitigation Plan in every respect and on every parcel but information that would help us determine that is in the hands of Hutchinson and to this point they have refused to give it to us. We have asked for documents and questions on both November 7th and on December 1st and so far we have had no reply. So the question is what are we going to do about it now and the staff is here to recommend that you suspend the permit, tell Hutchinson to stop work on the pipeline until we can resolve these ongoing problems. Staff can not tell you the status of construction but it is nearly complete and they may even have gas in the lines. This is part of the information we have been asking Hutchinson for but they have not answered any questions. Once the pipeline is up and running it may be even harder time getting to the bottom of these complaints and allegations. It seems to staff that the only way to address problems with complying with the Agricultural Mitigation Plan is to address it through the payment of crop losses. We have tried to get Hutchinson to agree to crop losses but so far they have been unwilling to make that commitment. EQB Staff is recommending that you suspend the permit until (1)provide the information we request and have requested in the past, (2)they pay for the ongoing investigative expenses and (3)commit to crop loss expenses for the landowners. We are also recommending that the Chair authorize a law suit if we can't make progress in these three areas. There is a resolution in your packet that provides for the adoption of the findings of fact and conclusions and an order suspending the permit. In paragraphs five and six of the order, on page 16, which addresses what Hutchinson needs to do to reinstate the permit it provides that the Environmental Quality Board would make certain determinations and staff suggest that the EQB be changed to Chair to expedite those determinations. The second resolution in your packet has to do with Hutchinson's intention to connect this pipeline to an east - west pipeline that runs between Fairfax and Winthrop. EQB staff knew nothing about this tap until a few weeks ago, there was nothing in the permit or application about this tap and this is just another example of Hutchinson's poor communication with the Environmental Quality Board. Hutchinson may need a permit for the tap but again we don't have the information to know. The resolution would direct Hutchinson to get the approval of the EQB which could be a permit or a thank you letter.

Commissioner Corrigan can you Mr. Mitchell or Mr. Patton explain the correspondence from Northern Natural Gas regarding actions that Hutchinson took without our knowledge?

Mr. Mitchell responded that it was late December 12th that we received the letter from the attorney for Northern Natural Gas advising Hutchinson that they had damaged the Northern Natural Gas Pipeline in the Hutchinson area and that they had been working near their pipeline without approval and without notifying Northern Natural Gas. On December 16 or 17 we received the other letter. EQB staff after the receipt of the letters contacted the Office of Pipeline Safety and they are investigating the matter and whether Hutchinson has complied with the one fault obligations to report whether they were digging near pipelines. There are people from Northern Natural Gas here today if you have more questions.

Chair Schroeder asked whether these activities were to be reported under permit requirements.

Mr. Mitchell responded that we knew that Hutchinson had to terminate this pipe at Hutchinson and eliminate the source of gas from the Northern Natural line but didn't know that work was occurring on December 1. Staff has not had a chance to examine the issue any further.

Commissioner Corrigan said she wanted to read the first couple sentences of the correspondence dated December 16, 2003. The letter states: This will follow up our telephone conversation last night concerning construction activities in and around Northern's high-pressure natural gas facilities at the Hutchinson #2 Town Boarder Station (TBS). The safety of Northern's employees and the safety of the public is Northern's paramount concern. Accordingly, we were alarmed and dismayed to learn that, notwithstanding our letter to you dated December 8, 2003 concerning activity at the Hutchinson #1 TBS site, the Hutchinson Utilities Commission (Hutchinson) performed substantial work and excavation in and around Northern's facilities at the Hutchinson #2 TBS site without notifying Northern and without allowing a Northern representative to be present. The issue here is that not only has Hutchinson Utilities not complied with normal business practices but also put folks in danger and that is unacceptable.

Citizen Member McCarville asked if the work on the Hutchinson pipeline is safe?

Mr. Mitchell responded that he has been in communication with the Office of Pipeline Safety personnel and they said the Hutchinson Pipeline has passed the required testing. The Office of Pipeline Safety also informs me that within the next twelve months they will do a very comprehensive evaluation of the pipeline.

Citizen Member Bloomberg asked Mr. Mitchell about the tap. Why would you not also want the authority to add that to the law suit if it turns out that was a violation as well.

Mr. Mitchell suggested that the resolution was written broadly enough so that if the Chair determines litigation is necessary Counsel Wagenius would file a complaint with the necessary allegations and those could include the tap, if that is a violation.

Testimony:

Mr. Hanson, Attorney for the City of Hutchinson, identified himself and addressed the Board. His understanding of the Northern Natural Gas incident was that the Office of Pipeline Safety in response to the Northern Natural Gas letters went out and reviewed the situation and found no substantive

problem. There has been a long history of litigation between Northern Natural Gas and the city over this pipeline. In all of the litigation the city has prevailed so don't put a lot of stock in the self serving statements in the letters.

Mr. Hanson then respectfully requested for the Board to defer any action on the Hutchinson Pipeline permit until in January. There are at least five reasons to wait until January. (1)Inadequate notice.

Chair Schroeder then asked Mr. Hanson if he was not notified in prior correspondence from me of concerns that the Board had about the pipeline. And is it your opinion that notice from me was inadequate?

Mr. Hanson stated that he was notified about concerns but was not notified that the permit would be suspended. The letter notice from Mr. Sullivan dated December 9 was inadequate both substantively and procedurally. My opinion is that your earlier letter can't serve as notice for a hearing on suspension or revocation of the permit. (2)circumstances do not exist for immediate board action. The pipeline is constructed and full of gas and the only work that needs to be done on the pipeline is work within the city property.

Chair Schroeder then asked if that work included the tap.

Mr. Hanson responded that there is no plan to immediately work on the tap in the City of Fairfax. Right now, the City has the authority to put in the valve. The City could put in a tap but would need a space about 100 x 100 feet and at the present time it has not purchased nor condemned that property.

Chair then asked if the City had worked in that area to construct a tap or made arrangements or preparations for the tap?

Mr. Hanson responded yes and no. At Fairfax there is a side valve already installed but there has been no additional work to connect that side valve to the pipeline that runs to Fairfax. The amount of work necessary to connect Hutchinson pipeline to the Fairfax line is that space but we have no property and the space needed is 300 feet. The connection of those two pipelines will stand or fall on the jurisdiction requirements of the EQB. In New Ulm it was necessary for us to prepare an information booklet and have it approved by the EQB staff and hold hearings.

The Chair then asked Mr. Hanson if a few minutes ago that there was no plan to install a valve until you had achieved property rights or condemnation or otherwise but then you said that there was a valve.

Mr. Hanson said there was no plan to connect the two pipelines until we achieve property rights and some other things. There is a valve already at that location. (3)We believe there is inadequate justification to suspend the pipeline permit. The principal justification of action which is the failure to promptly provide voluminous information requested by the staff, failure to promptly make a payment are not adequate grounds for suspension of a permit. Neither matter is a violation of the existing permit. (4)Fair hearing requirements. The city believes it is entitled to a full and fair evidentiary hearing before the permit is suspended. As you know the pipeline routing legislation is based in large part on the Power Plant Siting Act, Minnesota Statutes 116C.645 provides "a construction permit may

be revoked or suspended by the Board after adequate notice of the alleged grounds for revocation or suspension and a full and fair hearing in which the affected utility has an opportunity to confront any witness and respond to any evidence against it and to present any rebuttal or mitigating evidence.” The first four points are really procedural points. The efforts to suspend the pipeline routing permit at this point accomplishes nothing other than to make this matter increasingly and unnecessarily adversarial and contentious. The additional information requested by Mr. Mitchell consists of 88 questions, if you take out the subparts there are over 100 questions. He also requested 17 categories of documents. Now if we were in district court you are limited to asking 50 questions and you have 30 days to respond. In this particular situation we received over 100 questions and we have had roughly nine days to respond. Noone is refusing to respond to the information request. We believe that we owe it to the staff as well as to this Board to come back and do one of two things, either provide the information or alternatively state the principal why the information should not be required. Now there is some information requested clearly you are entitled to receive. One of the requests for example, is copies of all of the agreements with the landowners on the soil segregation sheet and clearly goes to the permit. We will get that to you promptly on the other hand one of the questions is about our contract to purchase natural gas after October 31, 2003. At least as this point the amounts that the city pays for the natural gas that it purchases on the market seems to have little relevance to the issue.

Citizen Member Bloomberg asked Mr. Hanson if it was the cities position that the Data Practices Act does not apply to this data?

Mr. Hanson responded that it is not the cities position at all and indeed some of the Data Practices Act some of the information requested properly falls within the category of investigative data. There was a recent decision in the Minnesota Court of Appeals in the Westrom Case that expanded somewhat and clarified what sorts of state data fall within the investigative data. We recognize that the Minnesota Data Practices Act applies to the city and it has to be turned over unless we provide a good reason why it doesn't need to be turned over.

Mr. Hanson asked to respond on the matter of gas contracts. Our friends from Northern Natural Gas will attest when we went through the PUC process Northern was very concerned about it's transportation contracts with Hutchinson and it offers to provide transportation being a matter of public record and they claimed trade secret status and proprietary secrets on those contracts and we respected that.

Commissioner Hugoson asked if the information is forthcoming.

Chair Schroeder also stated that it was his understanding that under the Data Practices Act that when a request comes in there has to be an acknowledgement and demonstration of willingness to comply or not and within a statutory timeline. We have not received any of that and you've responded to Member Bloomberg that you believe the city is required to comply with the Data Practices Act. It is my opinion that element at least is not in compliance.

Mr. Hanson responded that it was not in compliance but that it would be soon. The problem here in part is that the city is not like Center Point Energy at Minnegasco with a regulatory affairs department or our friends at Northern Natural Gas. It is a city that has many people wearing many hats and their primary concern has been to get the pipeline flowing gas to the city. We were here in connection with

the drain tile support issue you recall that time we estimated that gas would be flowing in the pipeline and would be operational in the middle of December. That time has come and gone and the pipeline is still not flowing gas to the city of Hutchinson and that is where the most of the focus has been.

Commissioner Hugoson asked again when the first request for information from Mr. Mitchell came to the City of Hutchinson.

Mr. Hanson responded to the best of his recollection, that he got a letter immediately after the drain tile issue at a Thursday evening meeting. It was followed up by staff meeting with the city on a Monday or Tuesday. A letter by Mr. Mitchell followed requesting information on four categories and my recollection about the date was that it probably around November 7th plus or minus a few days.

Commissioner Hugoson said we are beyond the thirty day that you referenced earlier that you thought you had to reply. You noticed a thirty day court situation earlier that you noted above and that you implied was such a short period of time. From my understanding you have not even responded with acknowledgement that you will be able to provide something.

Mr. Hanson said he believed that he did respond to the staff that they would provide the information unless there is an objection to it. The November 7th letter was three or four points in it the big 100 question and 14 categories letter came in December 1 and then the letter from Mr. Sullivan on December 9th that because we didn't reply to the request our permit would be suspended.

Commissioner Corrigan a question on compliance in your opinion Mr. Hanson was the pipeline constructed in compliance with the permit?

Mr. Hanson said he has been told as far as the soil segregation that they did comply with the pipeline permit save and except in the early stages in Martin county, soil scientists suggested that rather than staking each parcel he would have a course for people who were running the bulldozer to recognize various types of soils, that is the only miscue that he is aware of.

Commissioner Corrigan stated to Mr. Hanson that miscues are called noncompliance. You have a permit and when we issue a permit it is the duty of the permittee to follow through on all conditions of the permit and in this case one of the conditions was compliance with the Agricultural Mitigation Plan which to the best of our knowledge and from your own admission was not followed. And speaking to your points earlier about grounds for revocation, noncompliance in a permit situation is grounds for revocation of the permit. On the matter of the dates on the information request, Mr. Hanson how long would it have taken for you to write a two line letter acknowledging that you had received the information request from EQB and that you were working on it?

Mr. Hanson responded that it probably would have taken him 15 minutes to write the letter.

Commissioner Corrigan stated that at this point the discussion around the time it would have taken to complete the letter and the fact that the people at Hutchinson Utilities have other duties does not ring true.

Mr. Hanson responded that he went through the Agricultural Mitigation Plan just to see how many requirements there were and there are well over 100.

Commissioner Corrigan said the point of the matter is that the Agricultural Mitigation Plan was a condition of the permit.

Mr. Hanson responded that all we are asking today is that the two things that seem to be the justification for having us here are failure to provide the information and failure to provide an additional check. We are not asking for it to be excused or anything other than you defer action until the January, 2004 Board Meeting.

Citizen Member Bomier stated that at the October Meeting which I chaired I said to you that unless we receive the information that your client is following the appropriate engineering controls as per the specification we were prepared to suspend the permit. You are there agent, were sitting there and if the court doesn't find that sufficient notification I would be very surprised. The other matter is that you are not in district court we decide what happens here and no one is going to limit us to 100 questions. For us to have faith, that we should trust your client would be preposterous and for you to tell us that when an institution in Minnesota tells us that some people are in physical danger because of improper conduct, that is also preposterous. This is a bad situation and if we were to let this thing stand it would be terrible civics. If you think you can find some detail in Mike's letter where you can mess with the notification process, your client needs to understand that this situa
because