

MINNESOTA ENVIRONMENTAL QUALITY BOARD
MEETING MINUTES
Thursday November 20, 2003
State Office Building, Hearing Room 5

EQB Members Present: Robert A. Schroeder, Bruce Bomier, Sheryl Corrigan, Art Dunn, Marcia Farinacci, Gene Hugoson, Susan MacCarville, Mary Mellen, Gene Merriam, Lt. Governor Molnau, Jonathon Bloomberg and Glenn Wilson

Ron Harnack representing the Board of Water and Soil Resources.

EQB Members Absent: Jerome Deal, Matt Kramer, Dianne Mandernach

I. Adoption of Agenda and Minutes from October 16, 2003 Environmental Quality Board Meeting and October 28, 2003 Special Environmental Quality Board Meeting

Commissioner Hugoson made a motion that the Minutes be adopted and Commissioner Wilson seconded. That motion carried.

II. Chairs Report:

Chair summarized Board packets and contents. The Chair then stated that there have been two requests for Board intervention. A request from citizens in St. Paul that the Environmental Quality Board take legal action against the City of St. Paul in regard to Ayd Mill Road issue. That request has been denied because the EQB does not have direct authority in that matter. There was also a request from Scott County in regard to the Q Prime project. That request was for the EQB to assume the responsibility for the adequacy determination on the EIS. That request was also denied again under authority of the Chair, because the 60 day statute of limitations had passed on the ability of the Board to have assumed responsibility in that matter.

III. Executive Director's Report:

Mr. Sullivan summarized handouts for the Board members. The items included: "A Notice of Annual Hearing" and "Proposed Agenda" for the annual power plant sitting hearing; a letter dated November 19, 2003 directed to the Chair from a Mr. Spethman; a small revision in the findings of fact and conclusion in the Order for the NGPP Biomass Project; Retreat Notes from the retreat the Board attended in September; and finally John Wachtler will be starting as a new staff person for the Environmental Quality Board on December 17, 2003.

Mr. Sullivan then invited all Board Members to attend the Annual Power Plant Sitting Hearing stating that attendance and participation by most agencies involved with the energy issue has occurred and that the hearing historically has been interesting. This hearing gives the public a chance, once a year, to come and meet with technical staff and talk about specific projects or issues they have on their minds.

Director Dunn asked if staff had been following the federal energy legislation and analyzed what impact that may have on the EQB authorities?

Mr. Sullivan responded that staff has been following the legislation. The Board also has an energy committee, Chaired by Commissioner Wilson would be following the issue also.

IV. Legal Counsel Report:

Legal Counsel: Dwight Wegenius stated he has no report.

V: Agency and Citizen Update:

Commissioner Wilson reported that the energy legislation has not moved out of the Senate but that the Department of Commerce is following the legislation.

Citizen Member Mellen reported that the Water Resource Committee would soon be making recommendations to the EQB and the Governor's Clean Water Cabinet. Those recommendations will support the Governor's Clean Water Initiative.

VI. *Adoption of Rules Governing Environmental Review of Large Energy Facilities in Proceedings before the Public Utilities Commission, Minnesota Rules, Chapter 4410, and Technical Amendments to the Power Plant Siting Rules, Minnesota Rules, Chapter 4400

Mr. Mitchell, Environmental Quality Board Staff, summarized the rules that provide for environmental review of large energy facilities at the time the applicant is before the PUC for a determination of need. Staff has worked on these rules for the past year and a half and has had a lot of participation and involvement from interested parties, including utilities, state agencies, environmental groups and the general public. The Board authorized the formal rulemaking last March and because there was so much participation and general agreement to the rules they were noticed for adoption without a public hearing. On the 30th day of the comment period, we received 29 letters asking for a hearing. Staff re-noticed and announced that a hearing would be held on September 4, 2003. Judge Allan Klein, Office of Administrative Hearings, presided at the hearing. Staff responded to all the public comments and suggested a number of changes in the rules. After the changes were addressed, Judge Klein issued his report on October 31, 2003 recommending the adoption of the rules. The staff recommendation is for you to adopt the Law Judges report in its entirety and to adopt the rules with the changes developed by the staff during the rulemaking process.

The three major parts to the rules are: (1)the type of environmental review document that will be prepared at the time a need determination is requested by the Public Utilities Commission; (2)the Environmental Quality Board will become the responsible governmental unit to prepare the environmental report and (3)what process should be followed in preparing the document. There is a chart in your packet that shows the process when an application for certificate of need or certification of a transmission line is submitted to the PUC. The material submitted to the PUC will also be sent to the Environmental Quality Board and we will give notice to the public, schedule a public meeting, solicit public comments, then prepare the environmental report and deliver it to the PUC as part of their process which includes a hearing before an Administrative Law Judge. EQB Staff will be available at the hearing to answer questions about the report and describe the work we have done. Any significant comments that are received will be addressed at the public hearing. By statute the PUC only has six months from the time the application is submitted to complete the process and to make a decision. That gives the EQB staff only four months to complete the environmental report so

that the hearing can be held so that the PUC can make a decision. Generally, the rules are acceptable to all the parties.

Most of the changes go to the notice requirements, especially notice to landowners who will be directly affected by the power plant or transmission line. So at the certificate of need stage we suggested that language be added to the rules to provide if the site has been identified by the applicant or a route for transmission line then the landowners who are adjacent to or along that route shall be given direct notice. The utilities are concerned that there is too much subjectivity in these rules. In addition, there is a requirement to give notice to the people who are required to be given notice under the PUC rules. The PUC is in the process of amending those rules to expand on the notice requirements and those rules should change early next year. The utilities would prefer to eliminate the language providing notice to persons living along the route. The judge said the language was fine and that the language could be deleted after the PUC completes its rulemaking and identifies the people who are going to get notice. The staff's position is let's wait and see what the PUC language says in a few months. Finally, there are a couple of projects that are under way that these rules apply to, one is 100 MW wind project and the other is 160 MW plant.

If the Board adopts the rules today, we will advise the Governor's Office of your action, get their approval, arrange with the Office of Administrative Hearings and get the rules published in the State Register. The rules will become effective five days after publication and it should be the middle to end of January when these rules are in force. Todd Guerrero who represents the Minnesota Transmission Owners is here and has indicated that he would like to be heard in regard to these rules.

Mr. Todd Guerrero introduced himself and said he represented Minnesota Transmission Owners which is an ad hoc coalition of eleven utilities that own and operate transmission facilities in the state. The EQB Staff has been inclusive, has done a very good job at rulemaking and allowed all parties including the utilities to make their concerns known. The Owners for the most part are satisfied with the rules but are unhappy with Subpart F of Rules 4410.7030, the process for preparation of environmental report. That rule will work as follows, staff will send notice to persons who are required to be given notice of the certificate of need application or the transmission projects report under rules of the PUC. In addition to those folks who are to be noticed under the PUC Rules you also have to notice those persons who own property adjacent to any site or within a route or under serious consideration by the applicant. The PUC Rules require direct mail notice, based on county tax assessment rolls, to landowners reasonably likely to be affected by the proposed transmission line and to persons in possession of or residing on any property reasonably likely to be affected by the proposed transmission line. Our concern is that the EQB Rules, Subpart 1, Section F "under serious consideration" rule will lead to confusion given what is required under the PUC Rules. Subpart F is duplicative and doesn't add anything of substantive value, in our opinion, but is likely to add confusion. The under serious consideration provision is highly subjective and it raises the question of whether or not at the time of application a utility had a project under serious consideration failed to disclose that at the time of application. Interested landowners, environmental groups, etc. could say the notice was defective because at the time of the application the utilities really did have a project under serious consideration. We disagree with Mr. Mitchell's assessment that the Administrative Law Judge agreed that Subpart F should be included, because he stated that once the PUC's rules are in place then the Board should delete Subpart F to avoid confusion and conflict with the PUC rules. Mr. Mitchell is saying that once the new EQB Rules and PUC Rules are in effect then clarify the rules. We don't believe any substantive changes will be made to the PUC

Rules and believe that the EQB Rules should be clarified at this point in time versus waiting for three months after the PUC Rule changes, especially when no significant changes are expected to the rules.

Mr. Mitchell then stated both EQB and PUC have been going through rulemaking recently as a response to the big Energy Bill in 2001 which expanded the notice requirement. What we are hearing from the public is they want more notice and the utilities have accepted and agreed. The problem is that we are trying to cover the interim situation where if the certificate of need is applied for under the present PUC Rules either for transmission line or for a power plant that the notice requirements are inclusive. Staff doesn't share the confusion and argument because it is the EQB that is giving the notice, not the utility. If the EQB fails to give proper notice the Board will have to decide whether that's a reason for delay or re-notice.

Ms. Janet Gonzalez, Public Utilities Commission, identified herself and stated that the certificate of need notice rulemaking was underway and that the commission has directed staff to go forward with the draft rule. The Reviser has given the PUC comments and the draft rule is at the Governor's Office right now. We would expect the draft to be back next week sometime, then the PUC would then notice it and publish. Our rules are going forward. The text of the rule on notice is pretty close to exact but there are minor changes in other parts of that rule. The rules that are moving through right now apply only to transmission lines and do not apply to power plants and we have no future plans for changes that do apply to power plants. The PUC are not taking a position on 4410 Rules changes but we are not objecting. The PUC has worked closely on this matter with EQB staff.

Mr. Mitchell responded that when a project comes to the EQB, we are picking a site or a route for a project that has been found by the PUC to be needed. When the applicant applies to the PUC, it is just saying that we think there is a need for a new power plant or transmission line, they may or may not have a route or site picked. The public has told EQB Staff during its latest rulemaking that they want more notice and the EQB has tried to be responsive and will give notice when a certificate of need has been applied for and when EQB is preparing an environmental report under our rules. EQB staff was not aware that the PUC amended rules would only apply to transmission lines and not power plants so there is the question of which notice is required for a certificate of need for a new power plant under the PUC rules. That is why we are saying let's decide whether to take Section F out of the 4410 Rules after we see the PUC rules and determine whether there are gaps.

Mr. Guerrero stated that the harm is when the environmental report has to also go to the people that live within a route or at a route or site under serious consideration by the applicant. This raises the specter that people could object to the notice on the basis that the utility really knew where they wanted to put this power line but they didn't disclose it at the time of the application, therefore, the notice is deficient and there is undo delay. The concern, of course, is that there isn't any remedy for this delay. This new rule will not necessarily change our behavior at the outset of the application process but our concern is that this will result in a delay to the process. When you look at PUC Rules 7848.1900 for direct mail, the notice has to be based on county tax assessment and if the utility doesn't have or know the route the concern is that the utility will provide notice based on their best guess for the people are that are reasonably likely to be affected. If the utility really did have a route under serious consideration and those issues surfaced in discussions, our particular concern is that the new rules will cause undue delay in the process.

Commissioner Merriam stated the lessons we've learned from these activities in the past is that you have to involve the people that are going to be affected at the front end, otherwise you will get serious

delay. We should not err on the side of less notice but err on side of more notice. If indeed the language provides if such sites or routes are known to the applicant but there are no routes or sites under serious consideration it imposes no greater standard. But if there are sites under serious consideration, it imposes a greater standard and that is appropriate.

Commissioner Hugoson moved for adoption of the resolution as prepared by staff.

Mr. Mitchell responded that there is a certificate authorizing resolution which is part of the rulemaking packet but not the actual resolution.

Mr. Sullivan stated that the actual resolution the staff is recommending the Board to sign is that portion of the document after **resolved** on the Certificate of Resolution Adopting Rules.

Legal Counsel Wagenius suggested that there not be a change to the resolution itself. The resolution is appropriate for action as it is but the certificate of resolution adopting rules that goes to the Board has an inappropriate statement about the vote that was necessary. Under the EQB's statute, actually authority "a majority of all the permanent members" of the Board must vote for the resolution. It is not just a majority of those present so I think the certificate of resolution should be changed by you ministerially after the resolution itself is adopted.

Mr. Mitchell added that the Certificate of Resolution Adopting Rules just follows the rulemaking format for other agencies but the actual resolution has been corrected and it will be that certificate that you sign.

Mr. Guerrero clarified the judge's order clearly stated that when the PUC Rules are in place, the Board should delete Subpart F to avoid confusion and conflict with the PUC rules. The resolution that is now in front of the Board adopts that order in its entirety. From a legal perspective, how is the Board interpreting its resolution if it effectively adopts the order in its entirety. Is the Board in effect saying that once the rules are in place then the PUC's item should be deleted.

Legal Counsel Wagenius stated that Mr. Guerrero made a valid point, however, it has to be read in the context of the discussion and we have now come to understand that the PUC rules only apply to transmission lines and not to power plant siting. We have to apply the order that we are adopting in the context of the EQB's authority and how it applies to our authority. At the appropriate time the Board should take an action to either delete, repeal or amend Subpart F so that it would only apply to power plant sites and when the PUC takes action on that point then it could repeal the rest of Subpart F. The ALJ has found that the Board has demonstrated the need and reasonableness of proposed item. We would adopt and apply it as appropriate in EQB circumstances and under its authority and limitations. Legal Counsel Wagenius further stated that adoption of the resolution would not automatically repeal paragraph F of 4410.7030 and that the Board would have to take action at an appropriate time. He had envisioned drafting an automatic repeal, like a sunset provision, but the Board can't appropriately do that here given the ambiguities as to what applies and that the PUC rules may change from what is proposed.

Commissioner Hugoson stated that he again moved for adoption of the resolution as prepared by staff and Commissioner Wilson seconded.

Role was taken and the following resolution adopting rules passed 11-0.

RESOLUTION

RESOLVED, that the rules relating to environmental review of large energy facilities in proceedings before the Public Utilities Commission and technical amendments to chapter 4400 in the form set out in Reviser of Statutes draft, file number AR3410, dated November 12, 2003, identified as Minnesota Rules parts 4410.7010 to 4410.7070, 4410.0200, 4410.3100, 4410.4300, 4410.4400, 4410.5200, 4400.1700, and 4400.2750 are approved and adopted, pursuant to authority vested in the Environmental Quality Board by Minnesota Statutes sections 116C.04, subs. 2(b) and 2(c) and 116D.04, subs. 4a and 5a. The Chair of the Environmental Quality Board is authorized to sign the Order Adopting Rules and is further authorized to modify the rules if necessary to obtain the approval of the rules by the Reviser Of Statutes or the Administrative Law Judge and to perform the necessary acts to provide that the rules shall have the force and effect of law.

VII. **NGPP Minnesota Biomass, LLC EAW, Waseca Power Plant , EQB Docket #03-67-EAW-NGPP Biomass

Mr. William Storm, EQB Staff introduced himself and summarized the NGPP Biomass Plant in Waseca. The NGPP Biomass LLC proposes to own, construct and operate the 38 MW biomass power plant which will convert 40,000 tons of wood, wood waste and agricultural biomass per month into electricity. There are two sites being considered both just outside of Waseca, Minnesota. The construction of the power plant and subsequent startup of the plant is expected in 2006. The electricity produced by the power plant will be provided to the Loon Lake substation via a 115 kV transmission line for distribution to its customers. The Environmental Assessment Worksheet was submitted to EQB staff on August 26, 2003 and appeared in the EQB Monitor on September 15, 2003. The plant may use natural gas for startup and shutdown which will require a short tap from a Northern Natural Gas pipeline. Both pipeline and transmission line will undergo a separate permitting/review process. Comments were received from: the University of Minnesota, the City of Waseca, the Waseca County Planning and Zoning Department, the Department of Natural Resources, the Pollution Control Agency and the Department of Transportation. The comments are in your packets. The issue before the Board is whether an EIS is needed for the project. Staff believes that the proposed Waseca Power Plant does not have the potential for significant environmental effects and recommends that the Board approve the proposed resolution adopting the Findings of Fact, Conclusions, and Order for a negative declaration on an EIS for the project.

Mr. Russ Miller, NGPP Power identified himself and responded to a question about a “closed loop” biomass-fueled plant. Minnesota Statutes defined a closed-loop biomass plant as requiring the operator to plant specific agricultural material for the specific purpose of providing energy to the project. There are certain plants that satisfy the requirement and plants that don’t satisfy the requirement. Poplar trees where the whole product is the energy source would satisfy the requirement but corn where the corn is used for feed and the stalk is used for the energy source would not satisfy the requirement.

Commissioner Merriam moved that the resolution be adopted by the EQB and Lt. Governor Molnau seconded the motion.

Role was taken and the following resolution passed 10-0.

**RESOLUTION OF THE
MINNESOTA ENVIRONMENTAL QUALITY BOARD**

November 20, 2003

NGPP Minnesota Biomass, LLC, Waseca Power Plant

NOW THEREFORE BE IT RESOLVED, that the MEQB approves and adopts the proposed Findings of Fact and Conclusions and issues its Order determining that the NGPP Minnesota Biomass, LLC, Waseca Power Plant project does not require the preparation of an environmental impact statement; and

BE IT FURTHER RESOLVED that the Chair of the Board is authorized to sign the Findings of Fact, Conclusions, and Order.

VIII. Status Report on Hutchinson Pipeline

Mr. Alan Mitchell, EQB Staff, identified himself and introduced Bob Patton, Department of Agriculture Staff. Mr. Mitchell then updated the EQB Board on what has happened in regard to the Hutchinson Pipeline since the Special Board Meeting on October 28. The Board approved a Stipulation Agreement with the City of Hutchinson which addressed several issues regarding the manner in which the drain tile was being repaired along this pipeline. The Stipulation Agreement also recognized that the EQB would be conducting an investigation into Hutchinson's compliance with other practices under the permit and Agricultural Impact Mitigation Plan which is an enforceable part of the permit.

Shortly after the Board Meeting, staff drove to the area where the pipeline had been installed. We notified Hutchinson that we were coming and that we wanted to inspect a couple of sites and that we wanted to talk to their inspectors who had been working on the project. Staff interviewed a number of inspectors who had been hired to follow certain practices when the pipeline was being installed. Other staff went to a couple of sites in McLeod County. Phil McLean and John Webster from Hutchinson were present when we interviewed the inspectors. We were told by the inspectors that they were aware of the Agricultural Impact Mitigation Plan and they assured us they had complied with the Mitigation Plan. Each inspector had a log of their records but none of them had those records when they were interviewed.

In McLeod County, Hutchinson Utility Commission people were present including Steve Lawler their soil scientist. Bill Storm, EQB Staff has ten years of soil work experience and he found mixing of subsoil and topsoil at all levels and observed large chunks of clay and rocks in the right-of-way.

On November 7, staff wrote Patrick Spethman, the Interim General Manager of Hutchinson Utilities Commission, and requested a number of documents, including the reports and logs of the soil scientists and notes and logs the inspectors advised us they all kept when we interviewed them earlier. We asked

for compaction test results which we heard they had run. We also asked the City for \$25,000 to cover our expenses and explained that the staff is intending to do additional field work, interview additional people and review documents. The Board Members have the response from Hutchinson in front of them which states they will not pay because they want more information about the projected costs, timeline, scope of investigation and descriptive methodology that we expect to follow. We will provide additional information as we develop it but this is an investigation so we will not tell them every detail of what we plan to do. Bob Patton, Dept. of Ag. Staff will be meeting with the U.S. Department of Agriculture to discuss sampling protocol and to start addressing the cost. Right now we are running a deficit in the account and both Bob Patton and myself are spending just about full time on the project. Hutchinson has provided no response to the documents, logs, records, etc that we requested and their attorney told me that they didn't want to provide the documents because they will end up in the hands of the farmers. Hutchinson was told that their behavior doesn't comply with the Data Practices Act and that we were still waiting to receive the documents.

On November 12, Bob Patton, myself and George Johnson who is a soil scientist on the EQB Staff went to investigate eight or nine different sites from McLeod County on the north to Watonwan on the south. We visited with five or six of the farmers, took photos, heard complaints and tested the soil and what we found was a mixing of topsoil and subsoil, compaction at various depths and observed large chunks of clay on the surface and saw large rocks along the right of way. Mr. Mitchell went on to show a number of photos taken on November 12.

On November 18, we received a report from the Sib-Ren-Fair organization stating that some of the farmers were hiring their own soil scientists to take samples to look at mixing of topsoil and subsoil and compaction. Those reports are consistent with our investigation.

We intend to do more sampling and testing. We have heard about additional complaints like erosion control and creek bed spoil from the Department of Natural Resources so we will conduct additional investigations on those allegations.

The bottom line on this is that disruption to the land when you construct a pipeline is supposed to be minimized. The Statute 116 I., which is the statute requiring a permit from the EQB for a pipeline route, says that the EQB is to adopt rules to require the permittee to the extent possible to restore the area affected by the pipeline to the natural conditions that existed before construction. Based on what Staff has seen, the property has not been restored properly and we know today Hutchinson has violated the Agricultural Impact Mitigation Plan and permit. Future investigations may show that there are violations on other parcels as well but what we have been struggling with is what is the EQB going to do about this problem. When state permits are violated, usually there is a penalty imposed and compliance is required. Restoring the soil is difficult because the soils have been mixed and the pipeline construction is nearly done. The City was not willing to make a commitment to pay for crop damages at the time of the Stipulation Agreement. Permit violations are usually resolved through a settlement. But short of an acceptable resolution the only recourse may be to be prepared to seek a court order to force compliance or impose some kind of sanction. Meanwhile, construction is continuing and is almost completed.

Mr. Patton, Department of Agriculture Staff, added additional information on the soil problem. On some of the parcels the topsoil did show to the proper depth but others did not. The Agricultural Impact Mitigation Plan required the City to hire a soil scientist to test the depth of the topsoil so that amount can be put back after the construction. The idea here is after trenching, laying the pipeline,

repairing the drain tile, returning the subsoil that the topsoil would then be spread over the other soil. The significance of what is shown on the photos is yellow clay on top of the other soil material and the only reasonable explanation is that there was not enough topsoil stripped. The disposal of the extra subsoil displaced by the pipeline was supposed to be feathered over the subsoil and the topsoil was suppose to put back on top. The Agricultural Impact Mitigation Plan stated that in back filling the trench all stockpile of subsoil material must be placed back into the trench before replacing the topsoil or must be hauled off the landowner's premises or disposed of on the landowner's parcel in a mutually agreed to place at the City's expense.

Chair Schroeder asked if there was more than one crew or if there was assignment of concern to any one crew. Was replacement of soil being completed by a specific crew?

Mr. Mitchell stated that there was only one crew but that work was being done all along the pipeline. There was all stages of work going on at any one time along the entire route. There may be more than one bull dozer operator and maybe one did better than the other but we don't know that. Mr. Patton stated that there were problems staking the amount of topsoil, then problems with the drain tile, and now we are seeing problems with restoration.

Citizen Member Bloomberg asked if the Department of Agriculture had any independent regulatory authority or ability to take action independent of what the EQB could do?

Commissioner Hugoson responded no that the Department of Agriculture wanted to be involved with facilitating discussions between operators and the farmers. Pipelines are a traumatic experience for farmers. People who benefit are not the farmers and people who are inconvenienced are the farmers. Our goal is to minimize the trauma to everyone's satisfaction because pipelines are a necessity. This has been the most problematic pipeline in our history. There have been other pipelines that have had problems but the problems were generally resolved more efficiently, effectively and cooperatively than Hutchinson. Tile issues can be remedied but soil restoration issues can not. Soil restoration will have a direct impact on crop yield for years to come. To see the problems Staff has talked about and the uncooperative Hutchinson spirit has been very perplexing. Two observations, this project has changed the way pipelines will be done in Minnesota and we need to reexamine the provisions in statutes and rules and make significant changes. The provisions in statutes and rules are not adequate and it's my opinion that the EQB should have its own inspector on site with the authority to make sure that the permit is being followed to the letter. My next suggestion would be to have Members of the Board go on a field trip to these parcels so that they can examine some of these issues. My last suggestion is that the staff come back at the next meeting with recommendations that include litigation. My opinion is that some kind of action has to be taken to address this whole issue.

Commissioner Corrigan suggested that in regard to statute and rule changes that the EQB have administrative penalty order (APO) authority which would have helped us immensely in this case because we could have stopped work. The Board needs an enforcement tool that will allow us to stop a project until such time as they can get it together.

Chair Schroeder stated that Mr. Mitchell and Mr. Sullivan should put something together for the Board's consideration.

Director Dunn asked whether we have any way to make claims against the performance bond and if not we should include that in any future changes to EQB authorities. We should have access to financial documents in the future.

Mr. Mitchell responded in addition to the documents we have requested there are more documents that we will be requesting and we are putting together a series of questions that will get to issues like that along with construction practices.

Commissioner Merriam said that he understood that the Board's recourse is to hold the City of Hutchinson accountable and that their recourse is to hold their contractors accountable but does Staff have a sense that the problem is with the City of Hutchinson or with their contractors? And another concern is that you were not getting public information from the City that had been requested?

Mr. Mitchell responded that his irritation is as high as anyone's here. The City has been behind the eight ball since the time they came in here and applied for a partial exemption from the full sitting process because they terminated their contract with Northern Natural Gas. His opinion is that the City of Hutchinson has been rushing to get this pipeline in and operational. Mr. Mitchell also explained that he didn't know whether it was the City or the contractor or a combination of both that was at fault. And the City did respond that they were reluctant to turn over the notes of the soil scientists and inspectors because it would end up in the hands of the farmers.

Mr. Harneck, BWSR, asked if each parcel will be investigated so that a judgment of the reduction in productivity can be made and so that we can make a determination of the long term damage potential? Another question is do we need an agronomist to help with the problem of reduction in productivity?

Mr. Patton responded that the investigation is currently focused on what evidence is there regarding compliance with permit conditions. Obviously, the change in productivity is going to be of great concern and we will have to do whatever the Board decides.

Citizen Member McCarville asked how the farmers' claims are going to get paid when the City has treated the State so arrogantly? My second question is did you say the restoration was complete on the parcels you showed us pictures of earlier? And finally how much extra effort by the farmer will it take to make the field productive?

Mr. Mitchell responded that according to the checklist kept by the City, yes the parcel restoration has been completed.

Commissioner Hugoson responded that the rocks and mixture of the clay and black dirt are more of a concern than the clay on top.

Director Dunn asked how many parcels were visited and did any of the parcels look problem free?

Mr. Mitchell responded that on November 3 three sites were visited and on November 13 eight sites were visited for a total of 11 sites. None of the sites looked to be properly restored and we observed rocks and clay on all parcels.

Mr. Hugoson asked if there was a discrepancy of opinion? We are probably going to have to examine each parcel and my hope is that the State will initiate action on behalf of these farmers.

Mr. Mitchell responded that yes, Mr. Lipke thought they had done a good job. Staff has a copy of Eric Lipke's notes but we have not gone through the notes to compare which sites he was on and at what times. Frankly, my opinion is that when the county inspectors were out there, things might have been done differently.

Citizen Member Bomier asked what the soil scientists reported and whether we could ask for the contract between who they have ordered to monitor this process and the utility. We should also ask for a copy of their contracts as well as their notes and reports and whether they are licensed. We could use their contract to see what they are paying someone to monitor the situation and they should tell us what they are doing with public money. Who are Steve Lawler and Terry Bovee?

Mr. Mitchell responded that he has asked for most of these documents but he will ask about the contract. Steve Lawler and Terry Bovee are the soil scientists. Terry Bovee was the person we met with in Watonwan County when we were hearing that they were not staking the amount of topsoil to be stripped like the Agricultural Mitigation Plan required. He had prepared a report with an alternative way of doing it where he colored maps for the dozer operators and he claimed that the EQB had approved his plan and we had never seen it.

Citizen Member Mellen asked if we had ever asked the contractor what sites to go look at?

Mr. Mitchell said that we had not asked the contractor that question. My main contacts have been with the City and Phil McLean the consultant.

Testimony:

Mr. Kevin Johnson, Attorney, Sib Ren Fair ; Arnold Koenig and Frank Johnson identified themselves. Mr. Kevin Johnson stated they will be brief but wanted to respond to a couple of questions raised. One had to do with reductions in future productivity. We have also submitted some soil analysis reports that were conducted recently by farmers who paid for the analysis themselves. Mr. Koenig is one of those farmers. Those analyzes show a permanent reduction of 50% or greater.

Mr. Koenig explained that he hired Curt Burns who grid sampled his whole farm by five acre parcels. There were four samples on the pipeline and four samples off the pipeline for perhaps a mile and assume the cost will be approximately \$200. It would have been better to have double the samples to be more accurate but cost factor was too much. The most important issue here is that when the pipeline came through my land they destroyed the organic matter and the microbes. The microbes break down the residue and turn it back into productive nutrients for crops. When you put only four inches of topsoil back where 20 or more inches of topsoil used to be, you can understand that this land will never be productive in my lifetime. Why was all the topsoil so badly disturbed, on my 240 acre farm there were two borings done. You bore through the soil and come up with about a 24 inch hole which they pull the pipe through. In order to bore, they get down into the subsoil which is absolutely worthless for production and then instead of refilling with the subsoil then topping it with the topsoil it was mixed. Mr. Koenig then asked if he could talk about the rocks. As late as yesterday, we told Hutchinson that the rocks were not picked and the subsoil was mixed and we wanted some action. Until yesterday we had no response. My son and I picked rock on about a half mile and picked up at least two ton of rock. They came the day before and said that they were only picking up the large

rocks and then we told them we don't want you back. He informed my son that we were in violation and we were not allowed to be out interfering with their work and he would call the sheriff if he had to.

Mr. Kevin Johnson said the other issue is the potential remedy for future crop loss. Alliance just built a pipeline that crosses Mr. Johnson's land and would like to ask him to speak about that issue.

Mr. Frank Johnson stated that the Miller Company built the Alliance Pipeline. That he had talked to them many times over the phone and got results in about an hour. The gas pipeline ran from Joliet Illinois to somewhere northwest of Edmonton, Alberta, Canada running 1900 miles but it was a little different project than this one. In anticipation of a private line near Trimont, Minnesota, we hired an environmental analysis crew called Baumgartner Environmental, Incorporated to go and take surveys on that line because we were familiar with it. The pipeline had been in the ground for 14 years in 1998 and they were still experiencing considerable crop loss. We took our concerns to Alliance and worked out an agreement with them where we could collect compensation on crop loss for as many years as we had crop loss until there were three consecutive years where there was no crop loss and they agreed. There were about 100 farmers along the Alliance route but 40 farmers decided to hire a local agronomist to monitor our crop loss and that has been done on my farm since 1999. Every year we get compensation. Our cost is about \$200 for this service but the compensation pays for it. My opinion is that if Hutchinson says they have done such a good job, that they should agree to the same kind of process. My opinion of the Hutchinson pipeline is that it is the most unusual pipeline construction that I have ever seen.

Mr. Kevin Johnson then stated that the Alliance process is an actual loss method based on an annual analysis of loss on the right-of-way and off the right-of way and comparison of yield and soil conditions based on existing market price. That would appear to be a fair remedy for this situation.

Mr. Sullivan stated that a number of Members have suggested the needed changes in statutes and rules. Maybe Counsel can look at whether we can come up with something the Board can initiate in statutes or rules on land productivity. What we don't have is a reasonable understandable system of calculating crop loss over a period of time.

Chair Schroeder added that he presumes the issue is strictly economic and not just environmental. Chair Schroeder asked Mr. Hanson if he wanted to address some of these issues.

Mr. Hanson said that he had a cold and that he would like to hold comments until later.

IX. Report to the Legislature on Public Participation in Feedlot Permitting

Mr. Downing, EQB Staff, introduced himself and indicated that the presentation today is purely informational. Staff expects to bring a finalized version of this document to the next Board Meeting for adoption. The report is required to be sent to the legislature by January 15, 2004. The report is on public participation in the permitting of smaller feedlots, especially through the Environmental Review Process. This report was mandated by the 2003 Legislature as part of the same bill that exempted most feedlots less than one thousand animal units from environmental review. In legislative debate over this exemption provision there was considerable concern expressed over whether exempting feedlots from environmental review might have a serious affect on citizen opportunities for input into feedlot permits. Consequently, several amendments were added to the bill. One of those was a provision requiring a public meeting for citizen input be held on the feedlot as a condition for the feedlot to

qualify for an exemption. The other amendment was a directive that the EQB produce this report. Mr. Downing stated that the legislation specifically indicates that the report will address four topics: (1) Significant issues that have been raised through the environmental review process; (2) whether mitigation resulted from consideration of those issues; (3) opportunities for public participation under the MPCA feedlot rules permitting process; and (4) the impact on public participation due to the new statutory exemption. He indicated that each one of these topics is addressed in a specific section of the report, and that the content of the report is based primarily on the documents in the EQB files on development projects initiated in the 2 ½ year period from January 2001 to June 2003. Staff found 20 cases to review, nineteen citizen petitions and one additional Environmental Assessment Worksheet (EAW). Mr. Downing indicated that the report describes and categorizes environmental and other issues that were expressed in citizen petitions and the mitigation measures that were identified by the Responsible Governmental Unit (RGU) to reduce the adverse effects of those impacts. The report also summarizes how the public has input into various types of feedlot permits issued by the PCA and counties. The report contains background information on the historical role of environmental review especially citizen petitions in the permitting of animal feedlots in Minnesota and a section describing the methodology by which the report was prepared. Mr. Downing stated that the report contains no major programmatic insights or policy implications because none were apparent from the data examined. In particular, the staff could reach no conclusions about whether the exemptions passed by the last legislative session may have affected citizen participation in feedlot permitting. Mr. Downing said that in preparing the report staff received input from staffs from the Department of Agriculture, the Pollution Control Agency and the Minnesota Association of Counties regarding the local government aspects of feedlot permitting, and also editorial advice from the staffs of the other member agencies. Mr. Downing stated that the draft report has been posted at the EQB website for anyone to review and comment upon, and that notice of availability of the report has been published in the *EQB Monitor*. Comments will be accepted through December 8 and staff will take comments into account in preparing the proposed finalized report.

Chair Schroeder asked for questions about the report and there were none.

Commissioner Hugoson suggested that the coordination of the field trip to see the pipeline be coordinated by Mike Sullivan.

Commissioner Corrigan moved to adjourn and Citizen Member McCarville seconded.

Chair Schroeder adjourned the meeting.