

MINNESOTA ENVIRONMENTAL QUALITY BOARD
MEETING MINUTES
Thursday March 20, 2003
PCA Board Room

EQB Members Present: Gene Merriam, Bob Winter representing Lt. Governor Molnau, Lee Coe, Paul Toren, Bruce Bomier, Carolyn Engebretson, Marcia Farinacci, Gene Hugoson, Sherry Enzler, Brian Kaden

EQB Members Absent: Sheryl Corrigan, Matt Kramer, Glenn Wilson and Dianne Mandernach

Vice Chair Bomier announced that the minutes should reflect that we don't have a quorum. We will go forward with the testimony, presentations and process, the items that don't need action.

II. Chairs Report: I have no report. Let's move on to the Executive Director's report.

III. Executive Director's Report: Executive Director stated that the handouts before the board include; Changes in Finding of Fact and Conclusion on the Pipeline Routing Permit, Hutchinson Utilities Commission and a memo from John Wells, Environmental Quality Board (EQB) to the Water Resources Committee this memo is accompanied by a map and a questionnaire titled Growth Water and Quality of Life.

Briefly, the Department of Administration issued a reorganization order last week that affects the staffing of the EQB. It transfers essentially all the powers, duties, responsibilities and, funding of the Office of Strategic and Long Range Planning (MN Planning) to the Department of Administration. The order takes affect on April 13. Commissioner Lamb, Department of Administration hopes to have the questions resolved by the end of June.

IV. Committee Reports:

Water Committee: Mr. John Wells stated that the Water Resources Committee met on March 12th to begin to discuss its next steps. (The Board will make decisions on its work program at future meetings.) Wells brought two candidate projects to the Board's attention to illustrate the role of the committee. First, the Department of Health's Environmental Health Division director has offered to make her field staff available for collection of raw water samples for use in water quality condition monitoring by the state (particularly the Pollution Control Agency). The Health Department samples treated water supplies for its programs, so the information it currently gathers is not useful for condition monitoring. The WRC would help PCA and Health evaluate how to take advantage of the offer. Second, the committee is considering a proposal to do a "state of the state" assessment of water and water management in Minnesota beginning in the growth corridor (Twin Cities to St. Cloud), following up on work begun in development of the biennial water priorities report. The need is illustrated by the fact that no one examines the implications of population projections for water or assesses the availability of supplies to meet future demands. When the board considers its work plan at future meetings, it will have the opportunity to decide whether to support these or other proposals.

VI. Legal Counsel:

Legal Counsel: Dwight Wegenius reports that Xcel has a transmission line through the southeast suburbs. It's a 115 kV line, which means in the law applicable at that time; that it did not require either a certificate of need from the Public Utilities Commission (PUC) nor a routing permit from the EQB. Being above 100 kV it needed only Environmental Review done by the staff at the EQB. After considering, the issue at three different meetings we decided to issue a negative declaration. A powerline taskforce was organized and challenged the negative declaration. We successfully defended that challenge in a Ramsey County District Court in August 2000. Nothing happened on that issue until a few weeks ago when we received a copy of the summons and complaint, Powerline Taskforce versus NSP/Xcel. They seek a judgment from the Hennepin County District Court that the law that was enacted by the 2001 Legislature, which lowered the threshold for the certificate of need from 200 kV to 100 kV, applies to this line. It names NSP/Xcel as the defendant and they will fully defend. We are not involved in this lawsuit but it is a matter of interest to us because it is a primary responsibility of this board. We will be following this lawsuit and will advise you from time.

V: Agency and Citizen Update:

The Department of Transportation: Bob Winter reports that the department is restructuring because of budget issues. Core missions are being focused on at this time of reduced resources.

The Department of Natural Resources: Commissioner Merriam stated that he has been appointed by the Governor to a task force that will look at issues involving the impediments to growth in the Forest Industry. That Task Force will be co-chaired by myself and Matt Kramer, Commissioner of Trade and Economic Development and is expected to last three-months. Commissioner Merriam noted that there is no sign of chronic wasting disease in the wild deer population in Minnesota. DNR will continue to monitor the situation, especially the farming situations. One other item of environmental note is the issue of off highway vehicles. DNR is closing a number of roads to minimize the damage from off highway vehicles. The ride groups and environmental groups appreciate how we are treating this problem this year.

Board of Water and Soil Resources: Chairman Coe stated that budget shortages have forced BWSR to complete just the mandated items in its work plan. Local water planning has been an important project but it had to be set aside.

Office of Environmental Assistance: Commissioner Enzler states she had the opportunity to tour a small manufacturing facility in Owatonna, Minnesota started with a state grant and loan. That company produces a plastic board that is considered a replacement for CCA treated wood. They take waste and create value added products rather than putting it in landfills. That company will be doubling in size in the next year and is in talks with major companies about partnership opportunities. It's a great success story.

Citizen Member Engebretson reported that counties are looking at budgets and waiting for the legislature to make final decisions so that counties can get on with their budget process. I also want to mention that counties are concerned about the environment and reasonable development. Counties are not anti development but are concerned about practices used by some developers.

VI. Environmental Quality Board Briefing on High Level Radioactive Waste

Mike Michaud, Environmental Quality Board staff on the Power Plant Siting Team presented the annual nuclear report entitled "Federal Program on the Management of High Level Radio Active Waste". This report is produced by the Minnesota Office of Strategic and Long Range Planning under Minnesota Statutes §116.C.712.

Three main activity areas that are focused on in the report are; (1) Yucca Mountain, High Level Radio Active Waste Storage Site, (2) the Nuclear Regulatory Commission (NRC) and (3) the waste storage at Prairie Island.

In February 2002, the President recommended the Yucca Mountain site. Congress also approved the Yucca Mountain repository site. The State of Nevada opposes this project and filed a notice of disapproval in April. The Congress then voted to override Nevada's veto. The Yucca Mountain site has moved out of the political arena and into the licensing phase.

Nevada has filed multiple lawsuits over the past year suing the Environmental Protection Agency, Department of Energy, National Regulatory Commission, President Bush and Energy Secretary Abraham. They also filed a lawsuit challenging the constitutionality of the Nuclear Waste Policy Act.

The NRC is expecting three new power plant siting permit applications this summer. These licenses will be good for a period of 10 to 20 years.

The NRC has seen a lot of activity with regard to the industry wanting approval of standard designs for plants. The NRC is also responding to multiple operating license renewal requests and transfers of ownership of nuclear facilities across the country.

Another area of activity has been Prairie Island spent fuel storage. Xcel was authorized by the 1994 Legislature to store waste fuel in 17 Dry Casks at Prairie Island. In December 2002, in a filing before the Public Utilities Commission, Xcel indicated its intention to take the issue of additional waste storage back to the Legislature.

The report examines two different scenarios on when and where the fuel would be shipped from Prairie Island. One scenario is that the waste would be sent to a Utah storage facility. Under this scenario waste remains at Prairie Island until 2026. The next scenario involved approval of additional casks for use at Prairie Island and extended plant operating licenses. In this scenario, the last waste leaves the Prairie Island location in 2062, but the Yucca Mountain facility would be full in 2036. This scenario assumes additional storage capacity is authorized by Congress for the Yucca Mountain facility, or that a second repository location is approved.

I. Consent Agenda: A motion to adopt the consent agenda was made by Commissioner Enzler and seconded by Chair Coe. The motion was passed on a voice vote.

VII. Request to Authorize Commencement of Rulemaking to Amend Chapter 4410 Relating to Environmental Review of Large Energy Projects at the Certificate of Need Stage before the Public Utilities Commission and to make Technical Corrections to Chapter 4400.

Mr. Alan Mitchell introduced the proposed amendments relating to the conduct of environmental review of large energy projects before the Public Utilities Commission (PUC) at the Certificate of Need stage. The legislature made significant changes in the way large power plants and high voltage transmission lines are reviewed in this state when it passed the Energy Security and Reliability Act in 2001. The EQB has spent the past year and one half amending its Power Plant Siting Rules in Chapter 4400 to accommodate these changes. The Board approved the proposed amendments in December 2002. EQB staff has been working to determine how environmental review should be conducted at the Certificate of Need Stage before the PUC since the summer of 2002.

EQB staff has met with the PUC, the Department of Commerce (DOC), the Pollution Control Agency (PCA), the utilities, environmental groups and other citizens to develop amendments to the rules that would provide for this environmental review. There is general agreement on the concepts that are set forth in the rules. The rules provide that the EQB will become the governmental unit responsible for preparing a document called an environmental report when a certificate of need application is submitted to the PUC. There is general agreement among interested parties that EQB has the experience and expertise to act as the responsible governmental unit.

The proposed rule calls for the EQB to complete this environmental report within four months from the time an application is received. Although this is a very tight schedule, staff believes that it will be possible to adhere to the proposed timeline. The applications will need to be complete, and staff believes that applicants will provide appropriate information for the certificate of need application. The rules provide for the delegation of some tasks to the Chair so the process can continue to move forward. There are provisions for bringing disagreements to the Board. The environmental report will go into the PUC record and there will be an opportunity for people to comment on the project and to ask questions. The PUC will have a complete record upon which they can base their decision.

The Board packet contains the proposed rules, a Statement of Need and Reasonableness (SONAR) explaining each provision in the proposed amendments and a resolution authorizing the Chair to sign the documents and allow the staff to go forward. Once the Board authorizes staff to go ahead with rule making, the staff will deliver the proposed rules and the SONAR to the Governor's Office for review. When approval is received from the Governor's office, staff will publish notice in the State Register. There will be a 30-day period for the public to comment on the proposed rule amendments.

Mr. Mitchell stated that the staff believes that it is important to get these rules adopted to clarify environmental review for projects and the Transmission Planning Report that is due on November 1st from the utilities in Minnesota.

Mr. Mitchell explained the need for some minor technical amendments in chapter 4400. With regard to chapter 4400, he explained that the issue of whether certain modifications of existing power plants should be exempt from EQB permitting was a matter raised in that rulemaking proceeding. The staff has drafted some language requiring environmental review of certain modifications, but that the staff has not had an opportunity to work with interested parties in

developing that language, and recommends that that issue be reserved for future consideration. It is not a part of this rulemaking.

The enclosed resolution will authorize the Chair to sign the documents and allow the staff to go forward with the rule making process. The rules will most likely be brought back to the Board for final adoption in July or August of this year.

Discussion was heard on this action. Commissioner Merriam asked about the new document called an environmental report. Mr. Mitchell responded that the document is called an environmental report under the PUC rules. Staff at one time had suggested calling it an environmental assessment but went with environmental report at the request of commentors and because it is the term that has been used in the past.

Director Enzler asked whether citizens will have an opportunity to challenge the adequacy of this document. Mr. Mitchell explained that because of the short time period for completing environmental review, there was not time to prepare both a draft and a final environmental report. However, the environmental report will become a part of the PUC administrative record and parties will have an opportunity as part of the creation of the record to comment on the report and ask questions. In addition, there are opportunities for citizens to come to the EQB Board to raise concerns about omissions or inadequacies in the environmental report.

Citizen Member Engebretson asked Mr. Mitchell if the process can take longer than the six months. Mr. Mitchell responded that everyone is acting in good faith and expects the report to be completed expeditiously, but there are important issues to examine and the issues have to be examined fully.

Testimony.

Mr. Todd Guerrero, from the law firm of Lindquist and Vennum in Minneapolis spoke representing the Minnesota Transmission Owners (MTO), a group of electric utilities that own and operate transmission companies in Minnesota.

Mr. Guerrero thanked Mr. Mitchell and staff at the EQB for their efforts to get a number of interested parties involved in process. In general, the Transmission Owners support the move to streamline Rule 4410.

Mr. Guerrero emphasized that the applicability and scope provision of the rules say there will be no other environmental review at the certificate of need stage. This is an important clarification because this is the intent of the rule. The EQB is the only organization that will conduct environmental review when the PUC is granting or reviewing a certificate of need application. The MTO believes that clarifying sentence is important to avoid uncertainty and potential litigation in the future and proposes that the EQB put that language back into the rules.

The Rules lay out what information is required to be supplied to the EQB and what information the Board will have to address. The MTO doesn't think that transmission providers should be obligated to provide information on energy sources. The proposed Rules part 4410.7055 require

that local and state governmental bodies with permit authority over the project shall consider the report in making any decision. The MTO does not think it is necessary that this governmental body mandate what other governmental bodies consider in regard to the report. The MTO believes that a better alternative is simply to make the information available to local governments. The proposed rules at part 4410.7065 designate the environmental report as an approved alternative environmental review. Mr. Guerrero stated that in a previous version of the rules, there was a sentence that said that this report is the only environmental review document required on high voltage transmission lines and large electric generating plants. In the process to date, that provision has been deleted. The MTO believes that that information added quite a bit of clarity to this process and would like to have that sentence be put back in for the reasons stated above.

Citizen member Engebretson moved that the Board adopt the sample resolution. Citizen member Toren seconded. Role was taken and the count was eight ayes to zero nays, the resolution was passed.

Resolution Authorizing Vice Chair To Proceed With Rulemaking on Proposed Amendments To Rules Relating To Environmental Review Of Large Energy Facilities in Proceedings Before the Public Utilities Commission In Chapter 4410 And Technical Amendments To Power Plant Siting Rules In Chapter 4400.

RESOLVED, that the Chair of the Environmental Quality Board, is hereby granted the authority and directed to sign the Notice of the Board's Intent to Adopt Proposed Amendments to Chapter 4410, Relating to Environmental Review of Large Energy Facilities In Proceedings Before the Public Utilities Commission, and Chapter 4400, Governing Power Plant Siting and High-Voltage Transmission Line Routing, and to provide notice to all persons who have registered their names with the EQB for the purpose of receiving notice of proposed rule adoption, to publish the notice and proposed rules in the State Register, to sign the State of Need and Reasonableness, and to perform any and all acts incidental thereto.

FURTHER RESOLVED, that, if there are fewer than 25 outstanding hearing requests at the close of the public comment period, the Chair of the environmental Quality Board is hereby directed to bring the matter to the Board for final action on the rules.

FURTHER RESOLVED, that, if there are 25 or more outstanding hearing requests, the Chair of the Environmental Quality Board is hereby granted the authority to sign a Notice of Public Hearing On Proposed Amendments to Chapter 4410, Relating to Environmental Review of Large Energy Facilities In Proceedings Before the Public Utilities Commission, and Chapter 4400, Governing Power Plant Siting and High-Voltage Transmission Line Routing, and to provide notice to all persons who have registered their names with the EQB for the purpose of receiving notice of proposed rule adoption, to publish the Notice and proposed rules in the State Register, to act as the Board's representative at the hearing and to perform any and all acts incidental thereto.

STATEMENT OF NEED AND REASONABLENESS

In the Matter of the Proposed Adoption of Amendments to Environmental Review Rules for Large Energy Facilities and High Voltage Transmission Lines, Repeal of Existing Rules and Technical Amendments to Power Plant Siting Rules

Minnesota Rules Chapter 4410
Minnesota Rules Chapter 4400

VIII: Amendment of Pipeline Routing Permit Issued to the City of Hutchinson in December 2003.

Mr. Mitchell states that at the December Board Meeting, the board issued a pipeline routing permit to the City of Hutchinson and the Hutchinson Utilities Commission for a 90-mile long natural gas pipeline that runs through five counties, Martin County in the south to McLeod County to the north. The permit designated a route that was proposed by the City of Hutchinson for over 60 miles but for approximately 25 miles in Sibley and McLeod Counties the route designated was called the Farmers Route, which followed more county roads and section lines than the Cities preferred route, which crossed a number of fields diagonally. The permit also requires the City to develop an Agricultural Impact Mitigation Plan, which would set forth some construction practices and some mitigation measures that the City would follow to minimize the impact on the landowners. Finally, the permit required the City to develop a Watershed Study Mitigation Plan that would avoid and minimize the impact of pipeline construction. The amended permit more specifically identifies the route and incorporates the specific Mitigation Plans that have been developed.

Watershed Study Mitigation Plan. The City has agreed to delay construction until at least July in the area of the Watershed Study Mitigation Plan and then take measures to control runoff. They have also agreed to reimburse the study participants if they have to do an additional year of monitoring.

Agricultural Impact Mitigation Plan. Agreement was reached on how deep to bury the pipe, how much top soil to set aside, different actions to minimize compaction from the construction equipment and how landowners would be compensated for crop, property and other damage. We have agreement on both the Watershed Plan and the Agricultural Impact Mitigation Plan.

The Route The route agreed upon is a highbred of the Farmers Route and the City's Preferred Route. The staff has proposed and supports "be no more than 100 feet from the centerline when following a road right-of-way." We are not convinced there is an impact on road construction and MN DOT has a policy that says putting utilities along trunk highway right-of-ways is acceptable public policy

The Watershed Study Mitigation Plan and Agricultural Impact Mitigation Plan The Plans provide a five year period to assess what damages the pipeline has had on field and crops.

Testimony:

Mr. Bruce Hanson, Attorney with the Oppenheimer Law Firm in Minneapolis, I represent the City of Hutchinson and Hutchinson Utilities Commission and want to address two issues. First, the City has accepted both the revised Agricultural Impact Mitigation Plan and the Watershed Study Impact Mitigation Plan as revised. The City would also prefer to continue on its preferred right-of-way in Sibley and McLeod counties. The second issue is as the route crosses Nicollet County into Sibley County the City would prefer to follow the existing route. We are concerned about damage to the pipeline from excavation and other activity near the roadways. The last two

reasons are the route is longer, more agricultural land is disturbed, and the project is more costly to the City. The reason the city has to build this pipeline is that Northern Natural Gas has cancelled their contract. Their preference is the original permit route, but the pipeline needs to be built and they are willing to accept the compromised permit route.

Commissioner Merriam states that he is confused after listening to Mr. Hanson. He is not sure whether the City of Hutchinson is willing to build on the amended route.

Mr. Mitchell thanked Commissioner Merriam for the question and indicated he shares the confusion. Mr. Hanson has suggested that they would like to live with the December pipeline routing permit. The Board identified the Farmers Route in the December permit. The compromise is a negotiated route that has been identified in the amended permit. Mr. Mitchell indicated that he thought there was agreement on the amended permit. Commissioner Merriam asks if Mr. Hanson had a response.

Mr. Hanson stated that he didn't want to leave anyone confused. The Cities preference, and it is merely a preference, would be to live with our existing permit. We are on the Farmers Route and it is a question of right-of-way within the route. There are two issues with the permit, first there is the proximity with the roads, and the second is on the southerly side where we already have existing easements.

Commissioner Merriam asks Mr. Hanson if he is saying, if you have the votes that you want to go back to your original route but if you don't you are willing to accept the compromise.

Mr. Hanson replied yes and indicated that at least on the southerly side of the route the City had right-of-way agreements with 12 of the 16 landowners and never understood why the City couldn't stay on the existing route.

Mr. Kevin Johnson, Lindquist and Vennum law firm representing Sib-Ren Fair, which is an organization of about 75 farmers and landowners who live along the route noted that the group has two concerns: (1)that the City would revert to the original route proposed for the pipeline and (2)that the Mitigation Plan was inadequate. All these issues have now been addressed and a negotiated agreement was reached. He indicated his clients would like the Board to approve the findings and the resolution as written by staff.

Commissioner Hugoson stated that he assumed there was agreement. Commissioner Hugoson said he was very disappointed and proposed that Board action be postponed for a month. Commissioner Hugoson noted that it appears that some one's word is not good anymore. The routing of the pipeline has taken an inordinate amount of time already and if we don't have agreement, we should take more time to resolve this important issue.

Mr. Leo Bauer, Sibley Commissioner Chair noted concerned about the cost of building county roads with taxpayer's money. The cost will be more if there is a pipeline close to the right-of-way. He stated a preference that the pipeline be farther away from the road.

Mr. Nathan Richman, Sibley County Director of Public Services. Indicated that if the pipeline were placed within 100 feet of our road right-of-way, future construction would be hampered. It is a cost issue. He indicated that there are other placement options that could move those costs to zero. The first improvements to the roads are scheduled in seven years and would address safety issues like shoulders, slopes and strength issues.

Mr. Bob Ness a former State Representative and Chair of the House Ag Finance and Rural Development Committee, stated that he was asked by the City of Hutchinson to do some collaborative planning and to bring people together to resolve issues and differences. Mr. Ness noted that issues have been laid out in great detail by the participants and that it is critical that the Board take action today on this routing permit and on the mitigation plans.

The proposed resolution is moved by Commissioner Enzler and seconded by Citizen member Engebretson. The role was called and by a vote of 9 ayes to 0 nays, the resolution was passed.

The Proposed Resolution of the Minnesota Environmental Quality Board, March 20, 2003 of the Amendment of Pipeline Routing Permit Issued to the City of Hutchinson (Hutchinson Utilities Commission) for a 90 Mile Natural Gas Pipeline .

BE IT RESOLVED, that the Minnesota Environmental Quality Board adopts the EQB staff's proposed Finding of Fact, Conclusions and Order as Amended granting the City of Hutchinson an amended permit for its 90 mile long natural gas pipeline designating a modified route through Sibley and McLeod Counties and incorporating into the Permit the Watershed Study Impact Mitigation Plan and the Agricultural Impact Mitigation Plan.

BE IT FURTHER RESOLVED, that Bruce Bomier, Vice Chair of the Board, is authorized to sign the Findings of Fact, Conclusions and Order the Pipeline Routing Permit.

X. Overview and discussion of "Minnesota Water Priorities 2003-2005: A Biennial Report of the Environmental Quality Board

Mr. John Wells, EQB staff, reviewed the board's efforts to engage citizens and managers across the state in developing the draft report. This included work with local and state basin teams, a series of public meetings, presentations at conferences, and a Web survey of interested parties. The board adopted five priorities at its June 2002 meeting: 1) Improve water monitoring and assessment, 2) Help agriculture protect water, 3) Manage water for growth, 4) Take new steps to protect lakes, and 5) Secure stable financing. *Minnesota Water Priorities 2003-2005* provides information that highlights each of these issues, and meets the board's responsibility to report to the Legislature each biennium on the state's water priorities.

Vice Chair Bomier entertained a motion to adopt the report. Engebretson moved and Coe seconded a motion to adopt *Minnesota Water Priorities 2003-2005* for submission to the Legislature. The motion passed unanimously.

Vice Chair Bomier adjourned the meeting.