

December 7, 2005

TO: EQB MEMBERS

FROM: Gregg Downing
Environmental review staff
651/201-2476

SUBJECT: Materials for Board Authorization of Rulemaking for “Phase 1”
Amendments to the Environmental Review Program Rules

Enclosed are the following materials relating to the Board item on authorization of formal rulemaking to adopt the “phase 1” amendments to the Environmental Review Program rules:

1. Proposed rule amendments text and associated Statement of Need and Reasonableness document;
2. Sample resolution to authorize formal rulemaking.

The proposed rule amendments are the same as have been discussed with the Board at the past several meetings. The possible revision of the mandatory EAW category threshold for the animal feedlot category – for which we were holding a place in the “phase 1” amendments – are not included in this rulemaking. The SONAR material is also the same as has been presented to the Board previously except that several previously incomplete sections have been filled in.

Without the feedlot EAW category among the proposed amendments, it may not be necessary to hold a hearing as part of the rulemaking process, because to date none of the other proposed amendments have been controversial with the public. Consequently, the staff is recommending that the Board authorize rulemaking via the “dual notice” procedure. This dual notice procedure is often used by agencies when they are unsure if a hearing will be needed. Under this procedure, the rulemaking notice announces a time, date and place for a rulemaking hearing before an Administrative Law Judge, but also announces that the hearing will be cancelled unless at least 25 people request in writing that the hearing be held. If no hearing is required, the time and expense of the hearing are avoided, but if enough people request the hearing, time is saved by planning and noticing the hearing up front. We have no specific reason to expect that anyone will request a hearing on these amendments, but past experience has taught us that sometimes hearings are requested on the Environmental Review program rules for no apparent reason.

The enclosed sample resolution specifically authorizes rulemaking following the dual notice process.

