

Environmental Review Streamlining

A summary of past efforts, current ideas, and stakeholder input



Minnesota Pollution Control Agency

December 2009

Legislative Charge

Sec. 65. **ENVIRONMENTAL REVIEW STREAMLINING REPORT.** By February 15, 2010, the commissioner of the Pollution Control Agency, in consultation with staff from the Environmental Quality Board, shall submit a report to the environment and natural resources policy and finance committees of the house and senate on options to streamline the environmental review process under Minnesota Statutes, chapter 116D. In preparing the report, the commissioner shall consult with state agencies, local government units, and business, agriculture, and environmental advocacy organizations with an interest in the environmental review process. The report shall include options that will reduce the time required to complete environmental review and the cost of the process to responsible governmental units and project proposers while maintaining or improving air, land, and water quality standards.

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Attachments

Attachment 1: Technical Representatives' Report to the Environmental Quality Board on Environmental Review, April 11, 2007

Attachment 2: EQB Monitor public notice of the public information meeting held on September 29, 2009

Attachment 3: List of stakeholders that were sent email notification of the September 29, 2009 public information meeting

Attachment 4: Slide presentation handouts from the September 29, 2009 public information meeting

Attachment 5: Streamlining suggestion form handed out at the September 29, 2009 public information meeting

Attachment 6: Executive Summary from *Benchmarking Minnesota's Environmental Review and Permitting Process for Forestry and Mining Industries: A Comparative Assessment*, R. Aylesworth, D. Becker, and M. Kilgore, June 20, 2008, Department of Forest Resources, College of Food, Agriculture, and Natural Resource Sciences, University of Minnesota.

Attachment 7: E-mail addresses from interested stakeholders in the environmental review process

Attachment 8: Suggestions and comments received from stakeholders

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Executive Summary

The 2009 Minnesota Legislature required the Minnesota Pollution Control Agency (MPCA) to prepare an Environmental Review Streamlining Report.¹ The Legislature asked for options to streamline the environmental review process. According to the legislation, streamlining means to make the process faster and less expensive. These streamlining options must not only provide potential cost and time savings, but also maintain or improve air, land, and water quality standards.

Identifying options that could reduce the cost and time of environmental review while maintaining or improving the environment has proven to be a difficult task. The MPCA held a public information meeting and asked stakeholders to submit their ideas for streamlining the environmental review process while maintaining or improving the environment. The Agency received 13 letters that included ideas for changing the process, but did not address how these ideas would maintain or improve the environment. The MPCA also received 31 comment letters expressly opposed to streamlining. These commenters expressed concern that streamlining translates to “weakening” and would erode citizen participation in the process.

The MPCA has attached copies of all written comments regarding this effort and has summarized and grouped the streamlining ideas into 14 categories. As is evident in the comment letters, there is substantial debate on whether any of the ideas could be implemented while also “maintaining or improving air, land, and water quality standards.” The MPCA has attempted in this report to reference the specific comment letters related to each particular idea to demonstrate specific comments both for and against any streamlining idea.

The Environmental Quality Board (EQB) has implemented rule amendments, policy changes, and additional guidance over the last 32 years that have sought to make the environmental review process more efficient and easier to follow. Responsible Governmental Units (RGUs), the government entities responsible for carrying out and conducting environmental reviews, have also accomplished greater efficiency in their own internal processes. However, a number of previous efforts to make fundamental changes to Minnesota’s environmental review program have found streamlining to be an elusive goal. Historically, the sides in the debate have become polarized and common ground has been difficult to find. This is illustrated by the comment letters attached to this report (Attachment 8).

In the last two fiscal years (FY08-09), 99 different RGUs prepared Environmental Assessment Worksheets (EAWs) for the review of 208 different projects. Local governments such as cities and counties were the RGUs for about 64% of these projects while the MPCA accounted for about 23%. The median time it took to complete² the EAW process by state agencies was 228 days, or about 7-½ months. The MPCA’s median time was 180 days, or 6 months.

The time to complete the environmental review process can be highly variable depending on the type of project, its location, expertise of the proposer and RGU, and degree and nature of citizen involvement. In developing this report, the MPCA was unable to identify a “one size fits all” solution to making environmental review faster and less expensive while maintaining or improving the environment.

If the Minnesota Legislature pursues opening the Minnesota Environmental Policy Act (MEPA) as part of a streamlining strategy, there are many stakeholders who would be interested in attending any associated hearings. A list of their email addresses can be found in Attachment 7.

¹ It should be noted that the Environmental Quality Board (EQB) is the state agency that administers Minnesota’s Environmental Review Program. The MPCA, MDNR, and MnDOT along with numerous local governments implement the program. Any attempt or effort to make program changes to statutes, rules, format and policy would have to be worked through the EQB.

² “Complete” is typically from the time a proposer submits the initial data portions of the EAW to the date an EIS need decision was made.

Purpose and objective of environmental review

To provide context for this report, it is important to review the purpose and objectives of the environmental review program. The purpose of the program is to provide information to units of government on the environmental impacts of a project before approvals or necessary permits are issued. It is an information-gathering process designed to inform decision makers and the public. The environmental review program does not approve or disapprove a project.

The basic environmental review documents are the Environmental Assessment Worksheet (EAW) and Environmental Impact Statement (EIS). An EAW is prepared if a project is over the mandatory threshold in rule or if the RGU grants a petition asking for an EAW to be prepared. An EIS is prepared when the RGU, after completing an EAW, finds that the project has potential for significant environmental effect or if the project triggers the mandatory thresholds in the rules. The EIS is a thorough study of the project's environmental impacts and a comparative analysis of its economic and sociological effects. It considers reasonable alternatives, including a "no-build" alternative. The much more common level of review is the EAW.

The objectives of the environmental review program are laid out in Minn. Rules 4410.0300, subp. 4.

Subpart 4. Objectives

The process created by parts 4410.0200 to 4410.6500 is designed to:

- a. provide usable information to the project proposer, governmental decision makers and the public concerning the primary environmental effects of a proposed project;
- b. provide the public with systematic access to decision makers, which will help to maintain public awareness of environmental concerns and encourage accountability in public and private decision making;
- c. delegate authority and responsibility for environmental review to the governmental unit most closely involved in the project;
- d. reduce delay and uncertainty in the environmental review process; and
- e. eliminate duplication.

Past efforts and challenges in examining the environmental review process

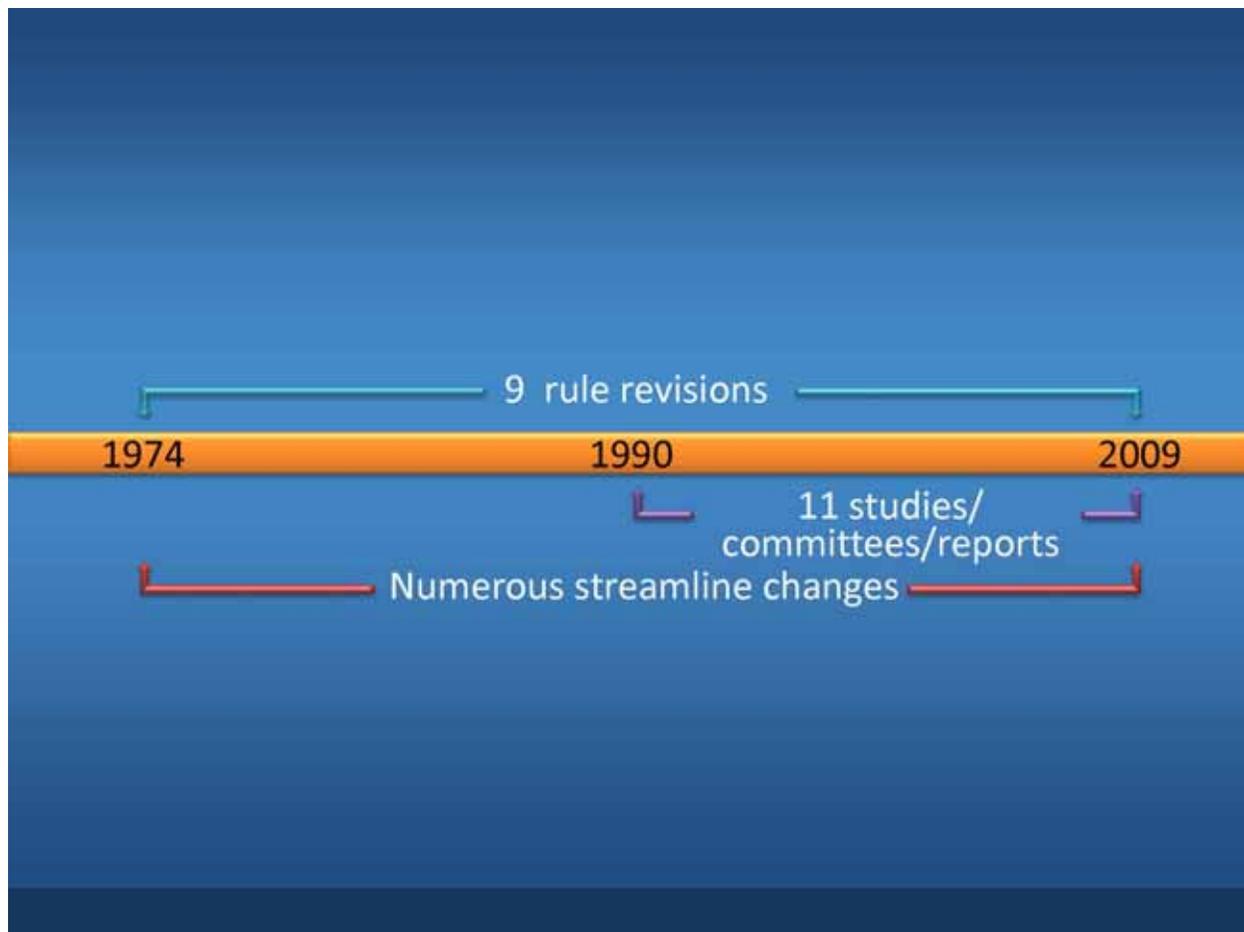
The Minnesota Legislature created the Environmental Quality Board in 1973 in conjunction with MEPA. In 1974, the environmental review rules became effective and implemented the provisions of MEPA. The rules were first revised in 1977. The rules have since been revised nine times to address stakeholder concerns, clarify parts of the rules, and change category thresholds for mandatory review. (For a brief history of environmental review rulemaking and reform, see Attachment 1, Appendix A.). A summary is provided in Figure 1 (page 3).

Since its inception, several initiatives have attempted to examine the environmental review process for potential reform. Various stakeholders have had complaints and concerns about the process. Some of these concerns have been addressed by rule changes, the publication of guidance documents, and internal process changes by RGUs. However, there continues to be passionate debate about the amount of time, cost, public participation, and degree of environmental protection achieved. Since 1990, more than 10 different organizations have prepared reports on how to make the environmental review program more effective from their point of view. There have been at least three major stakeholder efforts undertaken to study the environmental review program. No changes to MEPA statutes have occurred because of these reports and efforts.

One of these efforts was conducted in 2002. A diverse, multi-stakeholder special advisory committee was convened to tackle environmental review reform. After 13 meetings over seven months, consensus could not be reached. The committee's conclusions were:

“The current Minnesota environmental review program is not perfect, but as a group the committee was not able to come to agreement on a better system,” and “The current system balances competing interests.”

Figure 1: Summary of studies and revisions to the environmental review process



Further, in January 2007, EQB Board Members asked the EQB Technical Representatives³ to explore whether it might be time again to investigate MEPA reform. In response, the Technical Representatives reviewed past studies and attempts at MEPA reform. In April 2007, they issued a report (Attachment 1) which, in part, addresses why these past attempts have failed. The report states:

This is because major Environmental Review reform is controversial; factions become polarized and entrenched. Experience has shown that each side tends to see room for improvement, yet fears that change may lead to reversals of progress from their points of view. Consensus or “win-win” solutions have proven to be elusive.

The MPCA included this history to provide a picture of previous attempts and the challenges that may ensue with any future effort.

³ Each of the nine EQB Commissioners appoints a staff person from their state agency to serve as the main liaison between EQB staff and their agency. These staff are called the Technical Representatives.

Challenges faced with this report

This current effort to gather ideas for making the environmental review process faster and less expensive while maintaining and improving air, land, and water quality standards has produced similar results to previous efforts. The MPCA consulted with other state agencies and various stakeholders for their input. An opportunity was offered for any interested parties to submit suggestions and ideas. The MPCA received a number of streamlining ideas, but many failed to address how the ideas would maintain or improve air, land, and water quality standards. Conversely, many comment letters expressed opposition to any streamlining, voicing concerns that it would only weaken environmental review and citizen participation in the process.

Process used to prepare this report

To fulfill the Legislature's directive, the MPCA focused on seven areas:

1. Understanding streamlining procedures already implemented
2. Gathering data from recent environmental reviews by RGUs
3. Compiling a list of perceived delays in the process
4. Reviewing past studies and reform efforts for previously considered streamlining ideas
5. Consulting with stakeholders as outlined in the legislation
6. Gathering written stakeholder ideas
7. Writing the report from all compiled information.

Each of these areas is discussed in more detail below.

Streamlining procedures already implemented

Even though changing MEPA has proven elusive due to diverse stakeholder interests, there have been revisions to the rules and other processes that have had streamlining components. These revisions are briefly discussed below. There has been no determination as to whether these past streamlining efforts maintained or improved air, land, and water quality standards.

1977: Prior to this rule change, EQB staff wrote all environmental review documents and the final decision on whether to order an EIS came before the EQB Board. The workload became overwhelming. This rule change established state and local RGUs that were assigned to specific project categories.

1982: This rulemaking established mandatory EIS categories and thresholds, taking away the uncertainty of whether an EIS would be needed for some larger projects. It streamlined the EAW petition process by requiring only 25 signatures instead of 500 and transferring decisions on petitions to RGUs instead of EQB. This rulemaking also removed EQB as the appeal body for EIS need decisions.

1988: EQB added the Alternative Urban Areawide Review (AUAR) process. This alternative process allows a unit of government to look at potential development in a wider geographic area, thereby eliminating the need for project-specific environmental review at a later time.

1997: This rulemaking increased some of the mandatory thresholds, thereby eliminating the need for mandatory environmental review for projects that fall below the new thresholds.

1999: The mandatory threshold for animal feedlots was decreased to 1,000 animal units from 2,000 animal units, and the requirement to look at feedlot projects for connected actions was eliminated. These rulemaking changes resulted from legislation that required the EQB to fix connected actions for feedlots.

2003: The Legislature limited most discretionary review of feedlots under 1,000 animal units.

2004: The EIS mandatory threshold for fuel conversion facilities (mainly for ethanol plants) was increased by legislation from 50 million gallons per year to 125 million gallons per year for projects outside the seven-county metro area.

2006: This rulemaking increased mandatory thresholds in some other categories, thereby eliminating the need for mandatory environmental review for projects that fall below the new thresholds. These changes affected the categories of Air Pollution, Wastewater Systems, and Historic Places.

2009: This rulemaking overhauled confusing rule language about cumulative potential effects throughout the rules to prevent delays due to confusion over how to address these effects in review.

Changing the rules is not the only approach that the EQB and RGUs have used over the years to streamline the environmental review process. Other implemented measures include:

- Conducting joint state and federal environmental review;
- Public-noticing required permits at the same time as the EAW (which is now formally recognized in Minn. Rule 4410.3100, subp. 2a; this has been mandatory for feedlot projects through 116.07, subd. 7a.).
- Meetings between state and local governments in charge of permitting and environmental review and project proposers early in the process to facilitate complete data submittals;
- Encouraging project proposers to meet with interested citizens early and often to provide information about the project;
- Posting guidance documents on the EQB Web page;
- Providing technical assistance from EQB staff in applying the rules to projects in order to avoid errors and delays;
- Creating a separate EAW worksheet for the feedlot sector;
- Formal coordination between state (and often federal) agencies on specific projects; and
- Creating sectors within agencies that have developed expertise on specific industries and issues (e.g., ethanol and mining).

Gathering data: Who conducts environmental review

The MPCA collected data for this report regarding the timelines for EAW preparation. While some data does exist for EISs, there have been too few projects to make any conclusions. In addition, environmental review rules require a public scoping period for each individual EIS. The time it takes to complete an EIS is dependent on the issues covered in the scope developed for that specific project.

The data presented in this report includes available information from all state or local RGUs that conduct environmental review. The MPCA, Department of Transportation (MnDOT), and Department of Natural Resources (DNR) are the three state agencies that prepare environmental review documents under section 116D⁴. Other environmental reviews under section 116D are conducted by local governments which could include any of the 87 counties or 850 cities and, occasionally, townships, watershed districts, and special-purpose units of government in Minnesota. The RGU is specified in rule and depends on the type of project and its location (see Table 1 on page 7).

In preparing this report, the MPCA worked with EQB staff to develop a list of EAW projects that were put on public notice in the EQB Monitor in fiscal years 2008 and 2009 (July 2007 through June 2009). During this time, 99 different RGUs prepared EAWs for 208 different projects.

Figure 2 illustrates that in this time period cities and counties accounted for 54% of environmental review, state agencies conducted 35% (with MPCA doing the most with 23%) and other local governmental units completing the remaining 10%.

⁴ EQB would conduct environmental review for genetically engineered organisms not agriculturally related, but has never done any to date. MDH is assigned expansion of low-level nuclear waste disposal sites, but has not done any to date. The Power Plant Siting Act is administered by the Department of Commerce. Those environmental review documents are not prepared under 116D.

Figure 2: Percent of EAWs public-noticed in FY08-09 categorized by RGU

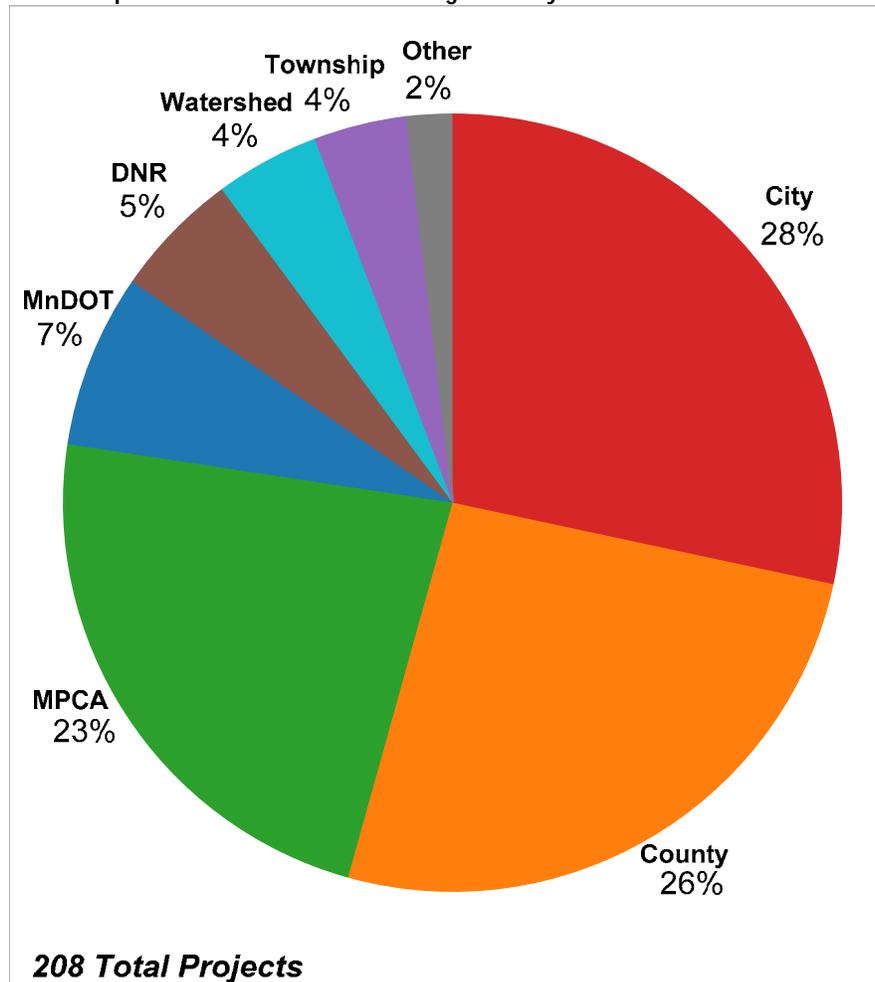


Figure 3 (page 7) shows this same information in a different way. The bar graph emphasizes the number of different governmental units involved in environmental review.

Minn. R. 4300.4300 describes the 35 mandatory EAW categories. An EAW must be prepared for projects that meet or exceed the thresholds specified in each subpart. For example, under subpart 20, for campgrounds and RV parks, the threshold is 50 or more sites. This means that if a proposed new or expanding campground or RV park is going to be less than 50 sites, that project does not have to go through mandatory environmental review. Each EAW category has its own threshold number as well as an assigned RGU. The mandatory categories and their assigned RGUs are listed in Table 1 (page 7).⁵

⁵ Subparts 2, 3, 6 and 7 of 4410.4300 are reviewed through special procedures assigned to the Department of Commerce and the Public Utilities Commission and not the EQB (Minn. Laws 2005, chapter 97, article 3). They are not considered for environmental review under Minn. Stat. 116D.

Figure 3: Number of EAW projects public-noticed in FY08-09 categorized by RGU and number of different RGUs involved in environmental review

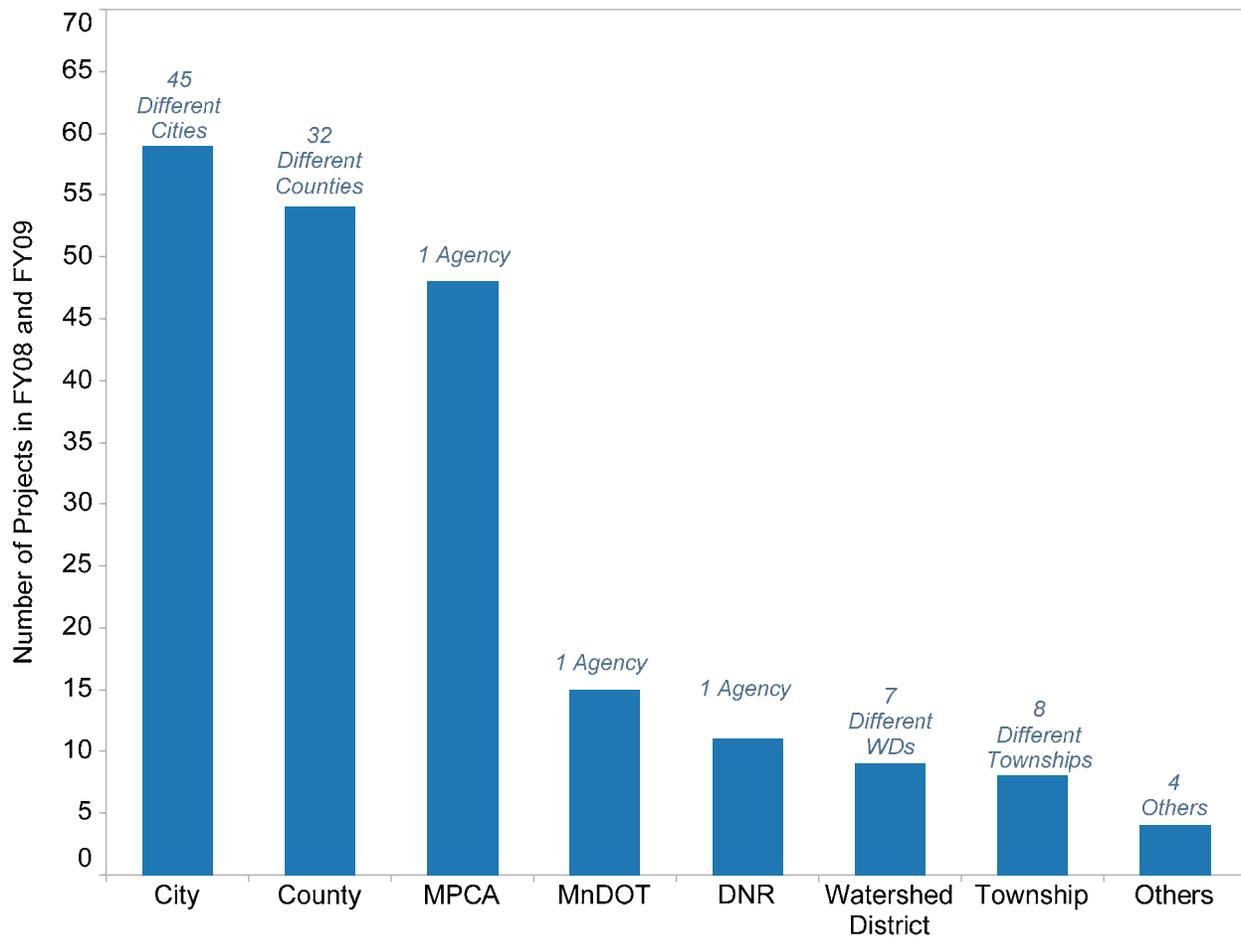


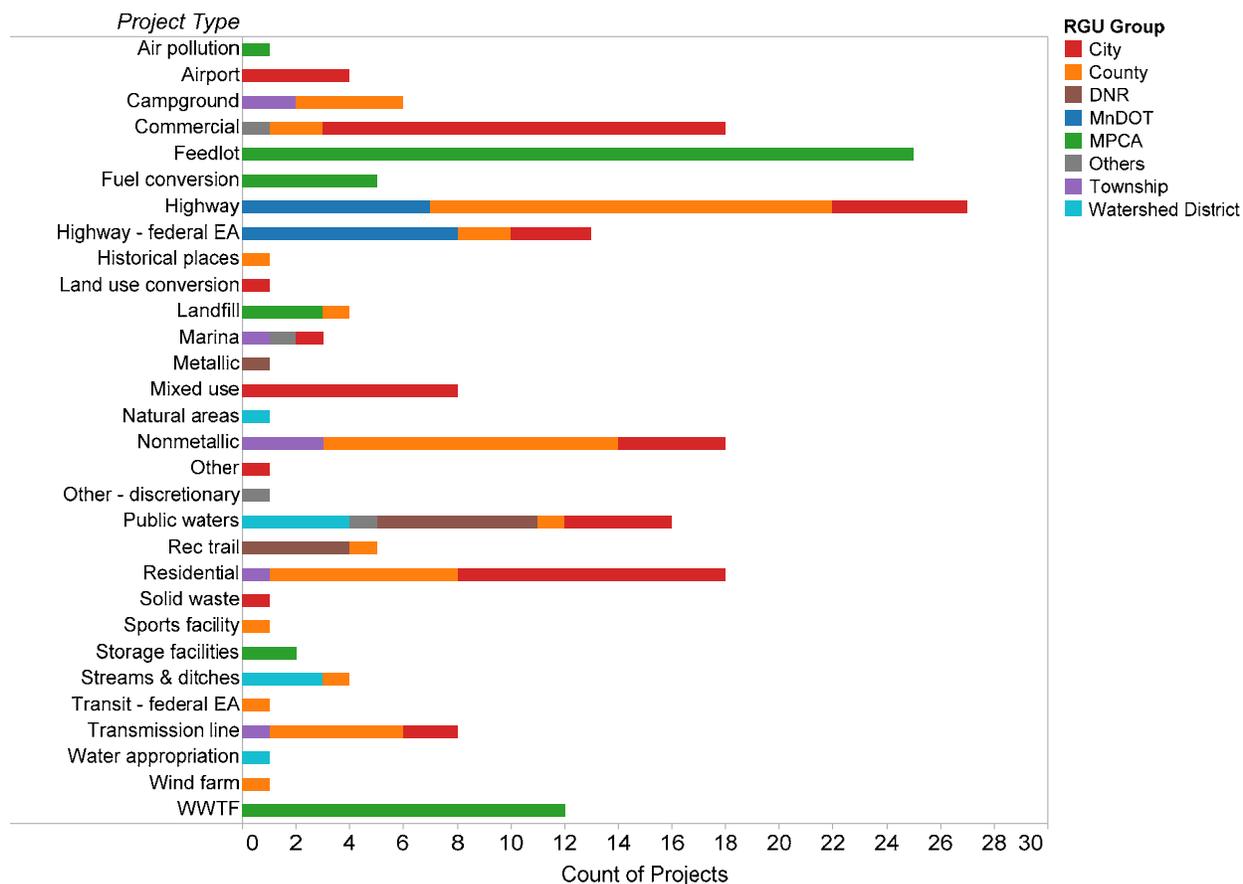
Table 1: Mandatory EAW Categories and Assigned RGUs

EAW Mandatory Category	RGU Assigned
Petroleum Refineries	MPCA
Fuel Conversion Facilities	MPCA
Transfer Facilities	MPCA
Underground Storage	DNR
Storage Facilities	MPCA
Metallic Mining and Processing	DNR
Nonmetallic Mineral Mining	DNR or Local Government
Paper or Pulp Processing Mills	MPCA
Industrial, Commercial, and Institutional Facilities	Local Government
Air Pollution	MPCA
Hazardous Waste	MPCA
Solid Waste	MPCA
Wastewater Systems	MPCA
Residential Development	Local Government
Campgrounds and RV Parks	Local Government
Airport Projects	Local Government, MnDOT, or Metropolitan Airports Commissions
Highways Projects	MnDOT or Local Government

Barge Fleeting	MnDOT or Port Authority
Water Appropriation and Impoundments	DNR
Marinas	Local Government
Stream Diversion	Local Government
Wetlands and Protected Waters	Local Government
Forestry	DNR
Animal Feedlots	MPCA or County (Local) Government
Natural Areas	DNR or Local Government
Historic Places	Local Government
Mixed and Industrial Commercial	Local Government
Communications Towers	Local Government
Sports or Entertainment Facilities	Local Government
Release of Genetically Engineered Organisms	EQB
Land Use Conversion, including Golf Courses	Local Government

Figure 4 illustrates the mandatory categories and number of EAWs in each category that were subject to environmental review in FY08-09. It also shows which RGU conducted the reviews.

Figure 4: EAW Projects Public-Noticed in FY08-09 by Category and RGU Conducting the Environmental Review



Gathering data: The time it takes to complete environmental review

In order to determine the length of time it typically takes to complete the EAW process, data was gathered from the EQB Monitor on when EAWs began the required 30-day public notice period and when a final EIS need decision was made. The MPCA also worked with DNR and MnDOT to obtain starting dates for each project for which they were the RGU. The “start date” is not defined in the Environmental Review Rules and each RGU may have a different interpretation of when to start the clock on a project. For the purpose of this report, start date is generally defined as the date that the proposer first submits the data portions of the EAW (see agency cycle time below).

Figure 5 illustrates the cycle time, in FY08-09, to complete the EAW process on projects, meaning the time it takes from start to decision on a project. The median is the halfway mark, which means half the projects were completed quicker than the median and half the projects took longer.

Between three state agencies, the shortest project took 44 days and the longest took 1,825 days; the former was a sewer-system expansion in the metro area and the latter was a MnDOT highway project that required state and federal review. Cycle time is also dependent on the variability of the environmental review process as a whole (see discussion on page 10).

Figure 5: Cycle time and median for MPCA, MDNR, and MnDOT for EAWs in FY08-09



MPCA cycle time

During the two-year reporting period of FY08-09, the start date for MPCA projects requiring an EAW is the date that a draft EAW was submitted by the project proposer. At that time, a project team is formed to ensure coordination of environmental review and permit-development activities. Ideally, the initial draft EAW

submittal is accompanied by complete permit applications, including supporting material; however, in most cases additional time is needed to obtain all the information needed to finalize the EAW for public notice. The end date is the date on which a final EIS need decision is made by either the MPCA Commissioner or Citizens' Board (if applicable).

DNR cycle time

The majority of EAW preparation for the DNR is associated with projects where the DNR is also the project proposer. Minn. Rules 4410.0500, subp. 1 identify that if a state agency is going to carry out a project, that agency shall be the RGU. DNR has a special environmental review unit that acts as the RGU. This unit works with the specific DNR program or division that is acting as project proposer (e.g., habitat enhancement or restoration projects are proposed by the Division of Fisheries). The start time in Figures 5 and 6 was the date of the first data submittal by the proposing program or division to the environmental review unit. In many cases, both with internal and external project proposers, the first data submittal is rarely determined complete, and additional time is spent by both the RGU and project proposer in completing and refining the data submittal so that a complete and accurate EAW can be prepared. The end date is the date when a final EIS need decision is made the DNR Commissioner.

MnDOT cycle time

For MnDOT, as shown in Figures 5 and 6, the data collection can occur two or more years before the EAW Notice of Availability is published in the EQB Monitor. The start date, for project record-keeping, is the date when the project manager sends an early coordination memorandum to the various functional groups at MnDOT (including environmental staff) and to the DNR to initiate data collection and identification of potential environmental or design issues and constraints. This coordination happens very early in the design process, so that the information can be used in the development of design concepts to avoid or minimize impacts.

For MnDOT projects that have combined state and federal review, the decision publication date takes longer than the time required for state-only EAWs, since MnDOT does not publish the state notice until the federal EIS need determination notice is received from the Federal Highway Administration (FHA). The MnDOT (federal) graph in Figures 5 and 6 illustrates this longer duration. The end date for state-funded MnDOT projects is when the EIS need decision is made by MnDOT; the end date for joint state/federal projects is the date when the EIS need decision has been made by both MnDOT and the FHA.

Figure 6 (page 11) illustrates the time it takes from start to decision on a project and additionally shows the number of EAWs this figure represents. Information on the start date for local RGUs was not readily available.

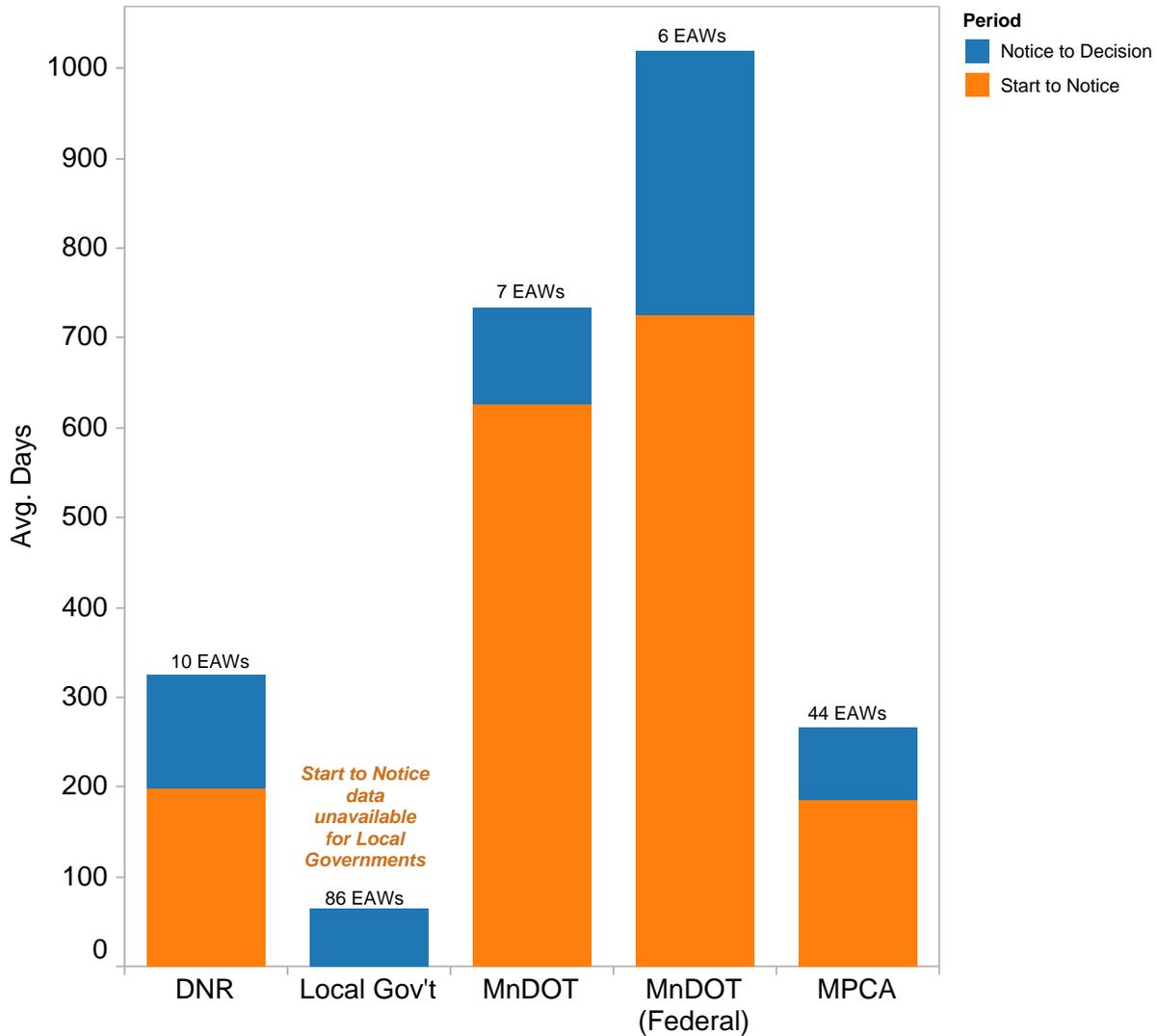
Variability in the environmental review process time

The amount of time it takes to complete environmental review depends on a number of factors. Each project is unique because of its location, public interest, chosen technology, and proposer and RGU expertise. In trying to identify environmental review streamlining opportunities, the MPCA met with EQB, DNR, and MnDOT to compile a list of circumstances that can make the process longer. There are various reasons why the EAW (and EIS) process can seem to move slowly or even be delayed. The list of variables below is based on EQB, MPCA, DNR, and MnDOT staff experience and input frequently heard from other stakeholders.

1. **Multiple RGUs:** Between FY2008 and FY2009 there were 99 different RGUs that processed one or more EAWs. While some routinely process EAWs, many do less than one per year or assign new staff working on their first review. Inherently this can lead to a slower process as less-experienced RGUs navigate their way through the EAW process.
2. **Competing priorities:** There are competing priorities at a state or local government agency. Local RGUs may not have staff dedicated to conducting environmental review. For example, in a local government the person responsible for environmental review might also be the solid waste officer or zoning official. Local government employees can wear many hats and manage more than one program. Environmental review might not be at the top of program priorities. At the state level, staff time on EAW and permitting projects must be prioritized and there will always be some projects that

get prioritized higher. Competing internal priorities can often be seen as RGU unresponsiveness from the proposer's point of view.

Figure 6: Average number of days from project start to public notice date and public notice date to decision date for each RGU in FY08-09



3. **Interpretation of rules and standards:** RGUs and proposers can disagree on interpretation of rules, standards, or the level of information that needs to be included in the EAW. This disagreement can suspend the process until an agreed-upon solution is reached.
4. **Limited project details:** Sometimes proposers have not thoroughly researched or defined their projects. For example, proposers may be new to the environmental review process and may submit data portions of the environmental assessment worksheet before they have even made decisions on which technologies their new facilities will use. Or, in the case of development projects such as roads, the project concept may not be well-defined. Until a project is defined, environmental effects cannot be assessed. Another example is when a proposer chooses a project location based on business needs, such as rail access and proximity to customers, but neglects to thoroughly research site-specific environmental conditions, such as water availability.
5. **Proposer responsiveness:** Down time due to unresponsiveness from the proposer is another variable in the time it takes to complete environmental review. Lack of project funding or other economic factors can delay a proposer in providing information needed for environmental review. For a project

to keep moving, both the RGU and proposer must ensure that they are responsive to questions and data needs. Multiple starts and stops can add weeks or months as proposers collect data, decide on options, or redesign the project entirely. RGUs do not “stop the review clock” when these delays occur. Therefore, it may look like the environmental review took longer than the actual time spent on it.

6. **Public engagement:** Project proposers’ engagement with an interested public is another variable. All projects are subject to a predetermined public input process; however, the level of public interest and participation varies greatly from project to project. Proposers that engage the public early and are transparent with information may experience a quicker overall environmental review time frame. Large numbers of comments submitted during the public comment period for an EAW results in increased time and effort for the RGU and project proposer to review, understand, and respond to comments.

A recent look at variability in the environmental review process

In 2005, the Minnesota Legislature required the MPCA to prepare a benchmarking report on environmental review and permitting processes for the mining and forestry sector. This requirement was fulfilled by a contract with the University of Minnesota and the report was published in June 2008.⁶ The Executive Summary is Attachment 6 to this report. The report addressed variability in the environmental review process in the section titled, “Project Timelines and Delays” in the Executive Summary. The main points identified in the report are:

1. Delays are a result of several factors often outside of the administering agency (RGU) such as:
 - a. Inadequate information about the project submitted to the RGU;
 - b. Failure of proposer to provide adequate information in a timely manner;
 - c. Failure of sister agencies to provide information in a timely manner;
 - d. Lack of financing for the proposed project;
 - e. Lack of information for the EIS process.
2. When extensive public involvement is required, the process takes longer. The public’s involvement is fundamental and efforts to speed up timelines should not be at the expense of the public’s right to participate in the process.
3. Assessment of cumulative impacts in EISs, required in Minnesota, made the process longer. Other states may or may not have this requirement.
4. Efforts to reduce overall project review time could potentially have negative consequences. Agencies must weigh the consequences of reducing review time against other costs.
5. Environmental review and permitting should be as predictable as possible. This helps project proposers anticipate and plan for the process. However, projects are very diverse and a prescriptive process can limit staff and proposer flexibility.

Reviewing past studies, reports and recent ideas

In preparing this report, the MPCA reviewed past studies and reports to compile previous streamlining suggestions.⁷ In reviewing these efforts, staff wanted to understand the types of suggestions that have previously been discussed but were never implemented.⁸ MPCA staff also noted more recent ideas heard from stakeholders such as “green off-ramps” for existing facilities. Staff presented these suggestions at the public information meeting (see “Consulting with Stakeholders” on page 13)⁹ with the intent of using these previous ideas to serve as a starting point to get people thinking about submitting their own streamlining ideas.

⁶ Benchmarking Minnesota’s Environmental Review and Permitting Process for Forestry and Mining Industries: A Comparative Assessment, R. Aylesworth, D. Becker, and M. Kilgore, June 20, 2008, Department of Forest Resources, College of Food, Agriculture, and Natural Resource Sciences, University of Minnesota.

⁷ A list of these past studies and reports is contained in Attachment 1, page 2.

⁸ Some suggested that these old ideas were not implemented because they were bad ideas in the first place.

⁹ See presentation handout, Attachment 4.

Unfortunately, many attendees at the meetings, as well as later commenters, misunderstood the intention and thought the MPCA was recommending or endorsing these ideas.

Many commenters appropriately pointed out, when referring to the past ideas presented at the public information meeting, that the MPCA did not identify how these examples would maintain or improve air, land and water quality standards. As stated previously in this report, this has proven to be a difficult task. To demonstrate, consider the idea of sector-specific EAW forms. Sector-specific forms could pinpoint and provide more relevant details in the areas where environmental impacts are most likely to occur. The EAW could then do a better job at addressing these areas that need the most attention. By concentrating on the main impacts, this could result in better understanding of the impacts and measures to mitigate them, thereby providing even greater environmental protection. However, in using a sector-specific EAW form, an RGU could miss vital impacts of a project that are specific to its location because they are not listed on the sector-specific form. This could then result in possible harm to the environment.

Consulting with stakeholders

The 2009 session law called for the MPCA to consult with a variety of stakeholders. In addition to meeting with EQB, MnDOT, and DNR (other state agencies with RGU responsibilities), the MPCA, with assistance from EQB, held a public information meeting on September 29, 2009. Since the report was due seven months from the end of the 2009 legislative session, the MPCA thought that a public information meeting would be the most effective way to engage interested parties in a short period of time. The MPCA published the public information meeting notice in the EQB Monitor on September 7, 2009 (Attachment 2). The EQB Monitor is a biweekly email publication that contains any notices that affect the environmental review program, including environmental review documents for public comment, rule revisions, and public meetings. Staff also sent email notification of the meeting to a cross-section of stakeholders (Attachment 3). The notice also informed stakeholders of the opportunity to provide written ideas and suggestions. Approximately 40 people attended the meeting. They were given some background information to help them form their own ideas for streamlining environmental review while maintaining or improving air, land, and water quality standards. An open discussion segment was preceded by presentations of:

- Numerical data collected from MnDOT, DNR, MPCA, and local RGUs;
- Historical attempts to address concerns about the environmental review program;
- Streamlining procedures already implemented;
- Some streamlining ideas from past stakeholder input efforts; and
- Identified delays in the environmental review process from all sides of the issue.

All of these presentations are included as Attachment 4. After the formal presentation by MPCA and EQB staff, the participants were provided with the opportunity to share their own suggestions for streamlining the environmental review process that would also maintain or improve air, land, and water quality standards. The meeting was not recorded in order to encourage openness among the participants. The MPCA asked stakeholders to submit their ideas in writing in order to be able to attach their full ideas to this report and provided a comment sheet as a guide (Attachment 5). All ideas and other comments submitted are included in Attachment 8. The MPCA requested that suggestions be submitted by October 14, 2009. On October 13 and 14, the MPCA received a number of emails from citizens and citizen groups expressing anger that they had just heard from other sources about the public information meeting and the opportunity to submit ideas. Many requested additional time to submit comments, and the MPCA extended the time until the end of October. All submitted comments received were reviewed for this report.

On October 21, 2009, MPCA staff posted all comments submitted to date on its Web site. Also posted were the EQB Monitor Notice, public meeting materials, and the extension to receive ideas by the end of October. Any comments received after October 21, 2009 were also posted.

Suggestions and comments received

The MPCA received 70 letters or emails in response to its request for streamlining ideas from stakeholders (Attachment 8). Each comment letter has been assigned a number. These numbers are cited along with the corresponding idea or comment throughout this section.

The MPCA received many comment letters from individuals, citizen groups, and environmental organizations that opposed any further streamlining to the environmental review process.

[1,3,4,8,10,11,13,16,18,19,22,23,24,25,26,27,29,30,31,32,34,35,37,38,39,42,43,62,64,65,67] In addition, many of these letters specifically opposed one or more of the five streamlining ideas discussed by the MPCA at the public information meeting.

[1,2,5,6,9,10,11,13,14,17,18,22,24,25,26,28,31,33,36,38,39,40,48,49,50,52,57,60,61,62,66,70]

The comment letters expressed divergent points of view in many cases. For example, a number of stakeholders expressed frustration at the time it takes to complete environmental review. Some stated that delay is caused by project opponents which in turn drives up costs and stifles innovation.

[46,47,48,49,50,51,54]

However, other comments stated that speeding up the process often results in impacts to the environment [5,11,13], and that it is not project opponents, but the proposers themselves, that delay the process by not submitting quality data in a timely manner.

[2,3,9,10,11,13,14,15,16,18,22,31,40,41,60]

Many commenters expressed their opinions on the five ideas the MPCA presented from previous stakeholder input efforts. These ideas were presented to stimulate discussion and suggestions among meeting participants, but as mentioned above, a number of participants believed the MPCA was endorsing these ideas. The MPCA has attempted to summarize and group all of the streamlining ideas that were submitted into the 14 categories below. Since the MPCA received a number of comments on the ideas presented at the meeting, they are the first five ideas listed. Ideas 6 through 14 are additional ideas provided by stakeholders in comment letters and emails. Please refer to Attachment 8 for the full context of comments.

The MPCA does not specifically endorse any of the following ideas, but rather presents them as a summary of the information generated in this process.

Each idea has its own merit and drawbacks, depending on the implementation details as well as a person or group's individual perspective. This can also be said of whether a particular idea is perceived to have a positive or negative environmental benefit. For these reasons, the report attempts to define each idea as neutrally as possible, link any specific comment letters that identified or referred to it, and specify if implementing the idea would require statute, rule, and/or policy change.

1. Sector-specific EAWs/customized forms

This idea involves creating additional customized, sector-specific forms. All projects currently going through the environmental review process, with the exception of feedlots, use the same EAW form. This common EAW form attempts to cover all possible environmental scenarios. The customized form could be designed to ask sector-specific questions that focus on the key environmental issues for that sector. The feedlot sector-specific form is currently in place for feedlot EAWs and asks tailored questions such as the number of animals, neighboring land use, soil conditions, potential odor/air emission impacts, and manure management techniques. Other possible sectors that may benefit from this approach could include municipal wastewater treatment facilities, residential development, and sand and gravel operations.

Comments included:

- Solid waste disposal or waste-to-energy facilities may benefit from this approach.^[55]
- Develop boilerplate templates so that basic background (for example, a discussion of the appropriate regulatory structure) is always the same.^[54]
- Focused attention on key issues and information for a sector this is a logical way to reduce time and expense and could re-establish a true “worksheet level” EAW process.^[48,14 51,52]
- Using the common form, versus a sector-specific form, assures the public that nothing is being left out and any attempt to omit information could be viewed with concern by the public, leading to delays throughout the process.^[6,31]

This idea requires approval by the EQB chair and could be implemented without legislation or rule amendment.

2. Duplication between environmental review and permitting

Currently there are a number of areas in the environmental review process where the information required to be provided in the EAW may overlap with information required in the permitting process. This may be true in areas such as air risk assessment, wastewater discharge limits, and stormwater management. One streamlining idea is to maintain many of the mandatory environmental review categories, but focus the EAW review only on items not already addressed in a state permit. Three possible implementation methods that could be considered:

- a. Specific EAW projects could be pre-screened to identify which issues are addressed by the state permitting process. If it is determined the issues are addressed in a permit, then these issues would not be included in an EAW. Under this scenario, project review and decisions on the need for an EIS would be limited to those items not covered in a permit. A process to insure the public has all the information, if not in the EAW, would need to be implemented.
- b. The EAW narrative sections could instead contain links to draft permit documents that contain the information on that particular issue. This idea would not require new language in the existing EAW worksheet, saving time in the drafting phase by simply referencing other existing documents. The items subject to a decision on significant environmental effect would remain the same. As mentioned above, providing public access to all of the information is a key element to the success of this idea.
- c. No decisions for significant environmental effects could be made on items covered in a permit. This third approach is similar to b) in that it could replace narratives with links to permits, but any items covered by a state permit would not be subject to a decision on potential for significant environmental effects. The information would be included in the existing EAW worksheet, but the decision point would not. This approach would limit the scope of the decisions and possibly result in fewer opportunities for public input on permit related issues. Permitting rules and regulations have been strengthened since MEPA was enacted; however, so has the complexity of environmental issues covered by the environmental review document.

Comments included:

- Reduction/elimination of duplication between the environmental review and permit processes seemed logical^[48,49,50] and is done at the federal level under the National Environmental Policy Act (NEPA) and case law.^[54]
- Do not require any environmental review of a project if the project meets state and/or federal standards.^[47,50,51,52,53,55,59]
- Only through environmental review can the public see the big picture, including cumulative impacts.^[5,39]
- Permitting and environmental review are distinct processes that have different but complementary functions.^[11] This idea could result in a lowering of permit standards.^[6]
- This idea is unacceptable as it would defeat the purpose of environmental review, to inform the permitting process.^[2,16,31]

Ideas a. and b. above would require statutory amendment. Idea c. would not require a statutory amendment, but may require guidance and/or rule updates.

3. Green off-ramps for existing facilities

Over the past few years, the ideas of a green economy and green jobs have gained momentum. While the environmental review rules exempt some facilities or activities from completing an EAW, there is no specific exemption for green improvement to existing facilities. The idea of green streamlining might be implemented through the following methods:

- a. Language could be added to the rule to provide an incentive for existing facilities to design projects that further environmental improvement goals without triggering environmental review. For example, an existing facility could be allowed to expand beyond current environmental review thresholds without conducting environmental review if the facility's owners/managers agree to accept specific limits or make other changes that are environmentally beneficial.
- b. Rather than an exemption, criteria could be developed at a state level to determine which types of projects hold the greatest potential for environmental improvement and thus deserve a prioritized and streamlined environmental review process. For example, criteria could be written to ensure that an expansion project is reducing overall environmental impact compared to current conditions at a facility. While these projects would undergo some environmental review, the review would only be designed for key issues that could result in an increase in pollution or are not already covered by permitting. This approach could require the proposer to accept limits to ensure all other environmental impacts remained the same or were reduced from the current levels.

Comments included:

- This idea could be a slippery slope.^[2]
- No definition has been established for a “green project.”^[5]
- These projects can still pollute.^[6,11,31]

As stated here, these ideas would require a rule amendment.

4. Unlinking EAWs and EISs

This idea focuses on the EAW as an informational tool that provides consolidated information to the public and informs the permitting process. In this idea, an EAW would investigate the potential impacts, regulatory framework, and possible mitigation; however, no determination would be made on whether there is a potential for significant environmental effect. Similar to an EIS, the only decision would be whether the EAW is adequate. Under this idea, an EAW could no longer lead to an EIS. An EIS would only be triggered by the mandatory thresholds. Public comments on the EAW could lead to collection of more information for the permitting process, but not to the preparation of an EIS. Implementation of this idea would require a reassessment of current EIS thresholds to capture all projects needing environmental review.

Comments included:

- This linkage has been used in the past to stall projects.^[29]
- This idea is unacceptable and would foster numerous appeals and prompt blanket EIS demands from the outset, rather than basing such requests on EAW analysis.^[1,2,4,5,6, 9,17,26,31,60]
- EAWs should lead to EISs when public review shows a need.^[11,24,28,31]
- Public review has often led to better projects, and that relying solely on categories such as EIS thresholds cuts this function out of the discussion.^[10,13,14,15,18,22,39,40,57]

Implementing this idea would require statutory amendments.

5. Early public engagement

One idea to streamline the process as a whole could be to spend more time on early public engagement. In the MPCA's experience, projects that receive the most public support ultimately have a more streamlined environmental review process. In some cases, the public may feel there has not been adequate information available for a long enough time, leading to additional time in the final stages of a project. Early public engagement could be implemented by requiring the RGU or the project proposer to hold early public meetings to provide information and answer questions about the project. It could also be accomplished by requiring the proposer to develop a public outreach plan as part of the project submittal. This idea could add time and resources to the process's front end, but could alleviate concerns and facilitate understanding early in the process. Concerns raised early in the process could lead to proposers adapting and modifying their projects early to meet citizens' needs.

Comments included:

- This is a good idea, but only if it was not a public relations campaign, and included full disclosure and opportunity for substantive public engagement.^[2,5,11,16,39]
- This is a short-circuiting of the public comment process, which should be based on prior public review of a project and its anticipated consequences.^[6,31]
- This will make proposers an easy target so suggest informal neighborhood meetings instead.^[48,49,50,52]

Implementation of this idea would require a statutory amendment.

6. Alternatives analysis in an EAW

Environmental review does not currently require a formal alternatives analysis in the EAW portion of the process. Alternatives to project siting, sizing, capacity, etc. are only formally considered for projects being reviewed in an EIS. While a project proposer most likely has considered multiple alternatives before proposing a project, the EAW only reviews the project as proposed.

Comments included:

- Incorporate consideration of alternatives in the EAW, allowing for the lowest-impact alternative to be reviewed early in the process.^[2,31]

This idea would require a statutory amendment.

7. Tiering of environmental review system

Expanding the concept of “tiered” review as a means of streamlining some reviews was another idea suggested during the comment period. The rules currently authorize only a sequence of tiered EISs.

Comments included:

- Tiering between EISs and EAWs, a sequence of EAWs and Generic EISs and EAWs, should be allowed as well. Federal NEPA review allows at least some of these other forms of tiered reviews.^[21]

Some tiering ideas would require rule amendments, but others would require a statutory amendment.

8. Different forms of environmental review

Using EAWs and EISs differently to streamline the process was another idea presented to the MPCA during this process.

Comments included:

- Implement a method of having different classes of EAWs; for example, minor projects that could be processed quickly and those that would need extensive input and review.^[60]
- Three levels of review may be appropriate, for example a basic EAW, a detailed EAW with cumulative impacts analysis, and an EIS.^[47]
- The EAW could truly be used as a screening worksheet and more EISs could be prepared.^[1,5,9,13,47,57]

The first two ideas would require statutory amendments. The third idea would not require statute or rule amendments.

9. Deadlines for project proposers

There are time limits in the rules for RGUs to complete certain tasks in the environmental review process. There are no such time limits for project proposers.

Comments included:

- Establish deadlines for project proposers to timely submit information to help project proposers push their consultants to gather information quicker, thus reducing the time it takes to complete an EAW.^[13]

This option could be implemented by a statutory or rule amendment.

10. Expand the application of Alternative Urban Areawide Review (AUAR) to local comprehensive plans

This streamlining idea focuses on closer integration of environmental review with local comprehensive planning through expanded use of the AUAR process to cover future development across the entire community. AUARs are approved alternative reviews for certain residential, commercial, or light industrial projects that otherwise require the preparation of an EAW or a full EIS. This tool is well suited for the development of large geographic areas that are going to develop over an extended period of time and the RGU does not know exactly the form the project will take, or the specific timing of the development of areas within the project boundaries. Instead, the AUAR allows the RGU to identify and analyze scenarios, which is similar to the land-use alternatives analysis routinely conducted to prepare local comprehensive plans. The AUAR requires the preparation and adoption of a Mitigation Plan tied to every relevant aspect of each of the scenarios that are analyzed. This Mitigation Plan must be formally adopted and it then has the same level of authority as a local ordinance. Future projects must be consistent with the AUAR assumptions and the Mitigation Plan. If the project is consistent, then no further environmental review is required. If the project is not consistent, then a separate environmental review must be conducted for the individual project.

Comments included:

- AUARs have been successfully prepared for very large portions of several communities. However, only one has attempted to cover future growth over an entire community. Communities frequently prepare and adopt a comprehensive plan and then adopt official controls (zoning, subdivision regulations, building codes, etc.) to implement the plan. This process is mandatory within the seven-county Twin Cities metropolitan area under the Metropolitan Land Planning Act. Many of these comprehensive plans contain information, goals and policies related to desired environmental outcomes. Many also evaluate alternatives and contain environmental protection elements that tie to various environmental ordinances. The process and documents produced by communities through the standard comprehensive planning and AUAR process could be enhanced to achieve better environmental outcomes and satisfy the AUAR requirements for the entire corporate limits. This could be achieved by enhancing the data collection, alternatives analysis, and implementation plans contained in comprehensive plans.^[45,46]
- One initiative has already begun to promote this concept. The Regional Council of Mayors Environment Committee, a committee of the Minnesota Chapter of the Urban Land Institute, intends to identify one or two communities and assist them in preparing and implementing an AUAR for their entire corporate limits. As part of this effort the intention is to create model AUAR Mitigation Plans that apply to both urban/suburban areas and remaining rural/agricultural areas within or surrounding developing communities.^[45,46]

No statutory or rule amendments would be necessary to implement this idea. Units of government already have the authority to prepare an AUAR for their entire corporate boundary.

11. Consolidation of agency efforts and data

Another streamlining idea is the consolidation of the environmental review process by designating one entity to establish environmental review policy across the different regulatory agencies and varied RGUs. The original environmental review program did have one entity, the EQB, responsible for all environmental review, but that method soon proved overwhelming and decentralization was seen as more efficient.

Comments included:

- Have one entity responsible for all environmental review in the state; also support review of all energy projects by one entity to provide consistency in analysis.^[47]
- Develop and maintain a common database for use by all agencies, which could allow for better transfer of data and result in more efficient communication between the EQB and other agencies involved in various aspects of environmental compliance.^[49]

Consolidation of agency efforts would require statutory amendment to designate a single state agency for environmental review. Development of a central database would not require any state rule or statute changes; however it would likely require funding through legislation.

12. Financial/legal ideas

The public meeting and comment process also resulted in streamlining ideas focused on financial or legal changes.

The financial-related comments included:

- Requiring that anyone petitioning for environmental review be required to bear the increased project costs.^[48,50,51,52]
- Require anyone appealing a decision to post a bond unless they can show that the claim has sufficient possibility of success on the merits to sustain the burden required for issuance of a temporary restraining order.^[54, 59]
- Change the EAW petition requirement to limit the signatures to those within a specified geographical boundary, as compared to the current requirement allowing signatures from anywhere.^[50,51]

The legal-related comments included:

- Establishing the Court of Appeals as the venue for review of environmental review decisions rather than District Court. The Court of Appeals has more experience with environmental issues and has jurisdiction of environmental permit appeals. Because EIS decisions are already part of the record and the Court of Appeals could review an EIS *de novo* (from the beginning), the Appeals Court could limit the time spent on fact-finding and trial, and the time spent preparing appeals at the District Court level.^[54,59]
- Involve the Attorney General's Office early in processes conducted by state agencies so assigned attorneys have a solid background in the project.^[59]
- Require RGUs to set and follow more stringent policy on document management and not distribute drafts.^[59]
- Establish requested deadlines and automatic project approval if those deadlines are not met.^[59]
- Exempt the proposer from paying EIS costs incurred more than 280 days after EIS preparation begins.^[59]

The financial streamlining ideas would all require statutory amendments. Change to Court of Appeals would require statutory amendments and the Attorney General's Office idea would be implemented through internal RGU processes. The remaining legal-related ideas would require statutory amendments.

13. Change the thresholds

Another streamlining idea brought forward by commenters focuses on changing when an EAW is required for feedlot projects. For example, it is mandatory that an animal feedlot project with 1000 or more animal units complete an EAW. As stated previously, the mandatory threshold for animal feedlots was decreased in 1999 from 2000 animal units to 1,000 animal units and the requirement to look at feedlot projects for connected actions was eliminated.

Comments included:

- Raise this threshold to 2000 and only apply it to sites that exclude rain water from manure storage and animal holding areas due to low environmental risk.^[53]
- The current threshold was too high for animal feedlots and should be reduced based on environmental impacts.^[8,9,33]

Any threshold reduction or increase would require rule changes.

14. EIS-specific ideas

During this process, the MPCA received comments that specifically applied to the EIS process.

Comments included:

- Allow the project proposer to prepare the first draft of the EIS. With this approach, the RGU could still retain authority to determine adequacy and require changes, while the proposer could have greater control of the schedule and costs. The need to negotiate contracts could also be eliminated, greatly reducing the time and expense involved in environmental review. If this idea was not viable, the state could better scrutinize consultants hired to assist with EISs.^[54,59]
- Make changes in the EIS scoping process, including clear, up-front expectations on what studies would be needed and a requirement that the notice of preparation occur no later than the notice for public comment.^[54,59]
- “Sound science” should be the basis for MPCA decision-making, and could be accomplished by limiting the Citizens’ Board’s powers to rulemaking, and vesting all other decisions in the commissioner.^[59]

The first and third ideas would require statutory amendments. The second idea could be implemented through statutory or rule amendment.

Conclusions

Many modifications have been made to the environmental review processes over the last 32 years. Changes have typically been in response to stakeholder concerns, emerging issues, new technologies, experience with the program, or regulatory requirements. Some changes have been designed to streamline the process while others were simply to provide general clarification. Past efforts to explore broad streamlining of environmental review have often resulted in polarized views among stakeholders and these efforts have largely been unable to find a path toward further streamlining.

In preparing this report the MPCA reviewed the history of past streamlining efforts, analyzed data from the past two years, and sought stakeholder ideas and comments regarding environmental review streamlining. The report summarizes the history of past efforts and includes a copy of the January 2007 EQB Technical Representatives Report to the Environmental Quality Board, which provides a comprehensive accounting of all past efforts. In the course of this latest effort, it became clear that the state is lacking complete data for projects that are led by local-level RGUs. While data does exist for state agencies, the MPCA recommends that efforts be implemented to standardize data collection and reporting across all RGUs to help ensure that the Legislature has access to quality data that is representative of the entire system.

This effort has clearly demonstrated that there is still a significant divide among stakeholders on whether environmental review should be streamlined at all. While some stakeholders may agree that streamlining is warranted, there remains significant debate about the potential environmental effects of specific streamlining ideas as well as their potential to erode the public participation process. The MPCA has attached copies of all written comments regarding this effort and has summarized and grouped the streamlining ideas into 14 categories. As is evident in the comment letters, there is substantial debate on whether any of the ideas could be implemented while also maintaining or improving air, land, and water quality standards. The MPCA has attempted in this report to reference the specific comment letters related to each particular idea to provide the specific comments both for and against any streamlining idea.

If the Legislature chooses to further evaluate any of the streamlining ideas listed in this report, the MPCA recommends that Attachment 7 be used to identify stakeholders with diverse points of view to inform the discussion. With respect to any ideas that directly involve MPCA processes, the MPCA is available to provide additional analysis as needed.