

Summary of Input from May 1, 2019 Environmental Quality Board Meeting

During the May 1, 2019 Environmental Quality Board (EQB or Board) meeting, Board members heard a variety of perspectives on how the State Environmental Review Program (ER Program) was designed, how it is currently implemented, and the perceived effectiveness by those who participate in the process. This first panel provided an historical perspective on the Minnesota Environmental Policy Act (MEPA), the creation of the Board and the ER Program. They observed that, the way the current program is implemented is different than what they envisioned. They argued that the current requirements do not:

- adequately consider climate change implications of projects;
- adequately consider alternatives in the review process;
- make use of the best scientific information in the review process; and
- appropriately consider potential cumulative impacts.

They also raised concerns that:

- the mandatory category thresholds are too high, given current available technical information; and
- the trigger for an EIS is ill-defined.

The next panel included representatives from state and local government agencies that provided their experience with how the ER Program is implemented today. They largely provided background information about the program. Additionally, they observed that there is a need for:

- better coordination with other approval processes;
- more flexibility for the review of some projects; and
- more project specific alternative review procedures.

The last panel shared their perspectives on challenges and opportunities as participants in the ER Program. Some observations they offered are:

- RGUs don't all have the capacity for effective implementation of their responsibilities and may have a conflict of interest;
- the EQB should have a role in ensuring the quality of information;
- work is needed for engaging Minnesota's Tribal Nations in the decision-making process;
- there are inefficiencies in how the current ER Program is implemented for smaller projects;
- the mandatory categories and thresholds are outdated; and
- there are important information gaps, most importantly related to climate impacts and review of alternatives.

During the meeting, time was set aside to have a broader public discussion about how the ER Program could be improved. Several themes emerged from those discussions that included the need for:

- better public engagement;
- improved ER Program effectiveness in addressing current information needs on climate and health;
- an additional layer of oversight that could address potential or perceived conflicts of interest among RGUs; and
- an enhanced role for EQB to ensure the quality of information included in environmental documents.

Summary of Responses to Question 1: What is one thing that you learned about the Environmental Review Program?

- Better understanding of the History of the ER program
 - History of MEPA policy
 - History of the environmental review (ER) program. Good to learn the aspirations of early ER practitioner's. Interesting to hear emphasis on EQB as policy driver, as wellspring of environmental ideas
 - An understanding of the architects of MEPA/MERA's original vision and intent of the laws
 - Learned how non-partisan environmental issues were in the 1970s
 - In 70s environment was unregulated, it is remarkable how they were all developed concurrently and the difference it has made. Things seem to go so slowly, but when you look back it's a remarkable transformation
 - What you accomplished was politically possible then
 - Time gap from the 1970s – what has happened? Lost momentum?
 - Bipartisan support is something we should strive for
- Deeper understanding of current process
 - Shocked that there is not more EISs
 - Types of ER and acronyms, e.g., EAW, EIS, AUAR; the difference between an EAW and an EIS.
 - Refreshment of what already knew about environmental review
 - Surprise that alternatives analysis are included in an EIS but NOT in an EAW
 - Surprised at how much effort is used by RGUs (DNR as example) to avoid an EIS, thus avoiding alternatives analysis (feeling that EAW is watered down avoidance of EIS)
 - Amazed to find copper sulfide mining in 1973- can't imagine that damage that would have been done
 - Clearer understanding of EQB Board Authorities
 - Importance of alternative assessment
 - Proud that MN has had MERA/MEPA for so long
 - That environmental review is a complex process, still confused.
 - More projects denied than realized
 - Unaware that project proposers alter project design to fit under mandatory category thresholds
 - Differences between EAW and EIS
 - Surprised that lots of EAWs are done annually, but not many EISs done
 - Clarification of Role of RGU, how it gets sorted out when there could be more than one possible
 - Pleasantly surprised to see that AUARs are more common than realized (this is a good thing)
 - From a consulting angle, it's interesting to hear about sections 2 and 3 (116D.02, and 116D.03) that things can be brought into practice, within existing structures emerging issues can be brought in and implemented. Mechanisms do exist and authorities as well, NEPA opportunities too
 - Learned history of EQB
 - EAW does not include alternatives analysis
- Concerns with how Tribes are engaged in ER process
 - The role of Native American tribes in ER.
 - The disconnect between state processes and federal/tribal processes.
 - Importance of Involvement of Indigenous People
 - You don't care about the planet, people's health, the environment, and especially not indigenous people; offended by the fact that Mr. Fairbanks' speaking time was cut off
 - Relevant Ed Fairbanks' point: 40% of land area is related to Indigenous interests; not considering Indigenous interests/rights/perspectives/needs is to not include a large portion (geographically) of Minnesota interests
 - How much land is under native American care and lack of coordination

- The process isn't working as intended
 - The best intentions for environmental review haven't come to fruition – the system needs radical changes
 - The environmental review process is not working. The process has diverged from its original intent.
 - There seems to be an assumption that projects are good - this is not the case.
 - Concern that EAW is little more than a checklist, doesn't require real analysis
 - Surprised that so many projects are allowed to move forward without alternatives analysis (perception of "rubber stamping")
 - Concern that alternatives are not adequately developed in EISs either
 - Climate Change analysis is not being conducted in ER and should be
 - Concern about climate change
 - Impressed by gaps in the regulatory process; results not taking a holistic approach; very disappointing

- Changes are needed
 - There is a need for more alternative environmental reviews in general and for more types of alternative reviews
 - There needs to be a better balance between EAWs and EISs – more EISs and less EAWs.
 - Environmental impact balanced with potential economic gain. Economics alone not enough for project approval
 - Confirmed that climate change has not been adequately analyzed during EAW/EIS
 - Youth demanding climate action (since 2000)-issue is not going away
 - The expansion of the EAW that Chuck talked about that allowed people to avoid the EIS. I don't know what the solution is but there is a role for EQB. EQB provides the worksheet and beyond that there is very little guidance. There may be a way to address this esp. for RGUs to have more guidance to help them understand what all the details are for
 - Alternatives analysis was very interesting. But also keeping in mind that the proponent is looking at an economic need. I hear from public how much is enough, too much is too much. Doing a robust analysis, but where does it end?
 - I hadn't really understood requirements. Raises interesting question about alternatives to climate impacts etc. Alternatives to aspects of a project, rather build or not build
 - The most important thing to me was the way that Chuck Dayton demonstrated that the development of alternatives was, and remains, central to the purpose of environmental policy and review; he is challenging us to address it, to take the authority we have to require it – in EAWs. I believe that in the situation we find ourselves, mitigation is not enough. And perhaps, as Katie was suggesting, ER is not enough. We may have to take a different path to fulfilling the intent of policy and the will of Minnesotans for the stewardship of our resource commons, and responsibilities to the planet. These are part of the charge of 116D. It is in 116D.03. I would like to see an open, facilitated discussion of that section of statute at the retreat

Summary of Responses to Question 2: How could the Environmental Review Program be improved?

- **A Better engagement process is needed**
 - Citizen involvement is crucial, especially for citizens local to the project – those most impacted by the project
 - There is a need to include tribal government participation in the state's environmental review processes.
 - Hard for citizens to learn about the process/interagency complex structure

- Public engagement is subpar. – public engagement matters, needs to be visible in the environmental process/document
- ER is painful for developers and citizens because of a lack of understanding of the process, and a lack of trust in the process
- **Better coordination is needed**
 - Agencies need to stop acting like silos- cross agency work is needed
 - Better cross agency communication
 - We need to look further out in ER - 100 years or more. Tribes need to be involved. Proposers should not be involved in EAW / EIS drafting.
 - There is a difference between treaty rights lands and tribal lands. This needs to be reflected in ER.
 - When ER started, we had a common goal and proposers wanted uniform playing field. But now it's hard to have a uniform field when businesses are competing globally
- **Additional layer of oversight is needed**
 - There should be citizen review panels required within environmental review.
 - Support for “Blue Ribbon Committee”, a group of non-partisan experts—an opportunity for EQB, but hasn’t occurred to date;
 - Example: Considering a project like Line 3 pipeline—such a committee might look at cumulative effects. Participants wondered if an unbiased committee would be able to deny projects more readily. Could such a committee give “teeth” to experts who can deny projects/look at alternatives
 - Blue Ribbon Panel should assess MN environmental review process and make recommendations for change. Realign with original MERA/MEPA language/intent.
 - Community members voices heard- having full time committees at the EQB
 - Commission of independent scientists
- **Potential conflicts of interest should be addressed**
 - EAWs are completed by the project proposer - they should be framed by the RGU first and then completed by either the proposer, the RGU, or both
- **Changes are needed to improve program effectiveness**
 - Better education and guidance materials are needed for RGUs
 - We need to improve the competency of the reviewers.
 - EQB has a role in ensuring quality
 - EQB needs to look more closely at the quality of decisions that RGUs are making.
 - EAWs not accurate or complete
 - Information on websites is inaccurate
 - Policy and rule changes needed
 - There are policy and regulatory changes that need to be made – these changes could improve the environmental outcomes as well as save money that is currently wasted.
 - We have no idea how to change or improve the review process – it may already be too late.
 - The EAW process could be tiered to suit individual projects - e.g., some components not required for simpler projects.
 - Environmental review should be an analytical process rather than just a catalog of environmental facts.
 - Required by law to ask agencies for input but no requirement to use input in the analysis.
 - There are 40 categories—EQB should consider whether all of them are still relevant

- There are lots of planning laws that should be incorporated into planning, and planning processes need to be incorporated into ER
 - Respecting Indigenous Rights, indigenous responsibilities and health should be paramount
 - Need to look longer term, e.g., pipelines, mining. Climate change will exacerbate impacts, e.g., rainfalls events. Need to focus ER resources on larger, long-term projects
 - Mandatory Categories for projects that no one cares about
 - Current program requirements are outdated
- Review and updates are need for technical information requirements
 - Collect a ton of information by the applicant but don't analyze the data in the EAW. Don't gather data that you're not going to use and if you gather it use it No real data or science
 - Needs real data and real analysis
 - Inclusion of Ecosystems' Analysis in Environmental Review documents
 - As part of routine work, some issues are well known and can be handled more easily (water), but other issues are not as adequately dealt with. Ecosystems thinking approach should be added to environmental review; including an inventory of ecological services provided within the geographical area; natural capital is not yet routinely identified/analyzed in plans/documents (as part of 1 Watershed, 1 Plan efforts)
 - Ecosystems analysis—consider multiple impacts
 - Don't try to find out answers to questions that agencies can't answer
 - We should focus our ER resources on projects that have the greatest potential for impacts. Current system is inefficient; many smaller projects are covered by other processes; we should reduce the number of mandatory ER categories
 - There is the whole issue of land use planning. We don't use other mechanisms to make these decisions – so EAW is used for this [where more proactive planning is needed]
- Generic and alternative review should be expanded
 - EQB can provide generic reviews. From the beginning GEIS we thought would be used more than they have. We came within 2 weeks of having to issue the copper nickel mining permit. Then the demand dropped suddenly and they were gone. The EIS is still there -- cost of 5 million in 1974
 - More discussion of "what is an alternative;" state needs to make wind and solar more available, hemp too
- Cost benefit assessments are needed
 - ER needs ways to monetize environmental costs so that they can be compared to benefits. It can be difficult to value certain lands, e.g., wetlands
- EIS need decisions should be evaluated
 - The expansion of the EAW that Chuck talked about that allowed people to avoid the EIS. I don't know what the solution is but there is a role for EQB. EQB provides the worksheet and beyond that there is very little guidance. There may be a way to address this esp. for RGUs to have more guidance to help them understand what all the details are for
- Climate change analyses should be required as part of the process
 - The effects on climate change needs to be specifically addressed in every EAW and EIS.
 - Need to consider its inclusion on EAWs/EISs

- Climate change analysis is possible: 5 years ago we were still not sure about how to implement climate change analysis; now we have better tools
- Existing priority, needing political will for further action: Climate change is still number 1 on EQB's agenda, time is short and we do have the ability, but we need the political will
- Opposing viewpoint: Not missing political will, inaction is related to lack of respect for earth. Correct policy should value earth as "sacred" and "alive," rather than composed of extractable capital. Children are standing up and taking action. Decision Makers have key roles in determining the results of these projects.
- Changing EIS to include climate- don't let the stakeholders decide the science
- Need robust climate change analysis added