



**Date:** 11/16/2018

**To:** Environmental Quality Board Members

**From:** Denise Wilson  
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**RE: Environmental Review Advisory Panel Final Report; Continued Board Discussion**

During the October 17, 2018 Environmental Quality Board (EQB) meeting, Board Members requested time on the agenda at the November 21, 2018 meeting to continue discussion on the Environmental Review Advisory Panel (ERAP/Panel) Final Report (Report: <https://www.eqb.state.mn.us/final-environmental-review-advisory-panel-report>). There was also a request to consolidate and summarize public comments into one document.

This memo organizes the ERAP recommendations and public comments by ERAP report topic (Climate; Mandatory Categories; Streamlining, Flexibility and Alternatives; Health; Meaningful engagement in the Environmental Review (ER) process; and Education and Outreach) as well as a summary of general comments.

Each topic summary includes:

- ERAP recommendations from the final report;
- A summary of concerns from public comments;
- Areas of general agreement;
- Differences of opinions for each topic; and
- Examples of the written public comments and audio of public comments received during the October EQB meeting.

The public comments in the summaries are not intended to be a comprehensive transcript, but include a representative sample of the types of public comments and the predominant themes. For a complete review of public comments, you may review the public comment letters and/or listen to the WebEx recording of the EQB meeting. Copies of the letters are attached to the November 21, 2018 Board agenda: <https://www.eqb.state.mn.us/content/november-21-board-meeting>. A WebEx recording of the October EQB meeting may be found using this link: <https://www.eqb.state.mn.us/webcasts>

ATTACHMENTS

# Topic: Climate

## ERAP Recommendations

- 1) Support Responsible Governmental Units (RGUs) in the quantification of their greenhouse gas (GHG) emissions in metric tons of CO<sub>2</sub>e for all mandatory categories, the EQB should develop and disseminate guidance and tools, including a consistent and simple calculation method.
- 2) All Environmental Assessment Worksheets (EAWs) should provide a narrative discussion of the project's climate adaptation planning and emission mitigation opportunities.
- 3) Additional stakeholder engagement should take place before any recommendations are implemented.

## Summary of concerns from public comments

- There is a need for statewide policies that provide a process for mitigating and managing the effects of climate change.
- There is an urgency for developing the best course of action to reduce climate change impacts.
- Environmental review documents do not sufficiently evaluate climate impacts to inform decision-making.
- Impacts from climate change are largely unregulated.
- Climate Justice should be considered in the analysis during the ER process.

## There is general agreement that:

- Climate change is an important issue internationally, nationwide and statewide; and
- Action is needed to reduce Minnesota-generated GHG emissions.

## Some differences of opinion include:

- Whether potential climate impacts should be considered before governmental approvals are granted for a single project and what level should be used for the evaluation - local, state, national potential impacts;
- Whether there are sufficient tools and reliable sources of data available for assessing potential climate impacts;
- Lack of agreement on what criteria should be used for assessing the significance of the potential climate impacts;
- Whether the ER process is the most effective tool for making progress on reducing climate change impacts statewide; and
- How climate change impacts should be evaluated within the ER process:
  - whether RGUS have sufficient technical resources to be able to evaluate climate impacts,
  - how climate assessment information should be used in decision making for ER documents, (for example when should an EIS be required because of a GHG number),
  - which project types should be required to review their potential climate change impacts,
  - whether individual projects need to be evaluated against a statewide GHG limit (statewide baseline for GHG emissions)
  - how should adaptation strategies be considered when making the decision on the need for an Environmental Impact Statement (EIS); how should they be "required," if they are not regulated.

## Examples of Public Comments

The following are:

- Excerpts from letters received before and after the October 17, 2018 EQB meeting; and
- Summaries of public comments presented during the October 17, 2018 EQB meeting.

For a complete review of public comments, you may review the public comment letters and/or listen to the WebEx recording of the EQB meeting. Copies of the letters are attached to the November 21, 2018, Board agenda: <https://www.eqb.state.mn.us/content/november-21-board-meeting>. A WebEx recording of the October EQB meeting may be found using this link: <https://www.eqb.state.mn.us/webcasts>

- Climate change issues are looming larger and larger for global society every day.
- Climate change impacts cannot be satisfactorily addressed by improving the accuracy of methods for predicting GHG emissions in ER documents.
- The ERAP's emphasis on simply using better bookkeeping methods for a proposed project's GHG emissions falls short of Minnesota Environmental Policy Act (MEPA) goals unless it is coupled with serious examination of sound energy alternatives, rational carbon sequestration budgets and adequate mitigation and adaptation measures that are commensurate with the known scale and immediacy of the issue.
- There is still a lack of general comprehension about the implication of climate change impacts.
- Impacts from climate change are still largely unregulated, so there are no subsequent permitting authorities that an RGU can depend on to address this issue.
- The latest Intergovernmental Panel on Climate Change report represents the situation of climate change as critical and urgent, requiring strong leadership and a "bold course of action."
- Small steps forward are far less than what we need at this point in the climate crisis.
- Climate change is not currently analyzed in the ER process.
- Climate justice should be evaluated in ER documents.

## Topic: Mandatory Categories

**ERAP Discussion:** The Panel was not able to reach agreement on recommendations for the mandatory categories topic, but discussed the following potential options:

- Broaden the scope of categories identified in the proposed 2017 rulemaking to include panel recommendations for specific categories.
- Identify all categories that have thresholds for applicability and affirm with RGUs that have permitting authority if those thresholds are still appropriate; make changes if needed.
- Evaluate and eliminate some existing categories if those project types no longer have the potential for significant environmental effects.
- Ensure mandatory categories are easily understood and the thresholds are relevant.

### Summary of concerns from public comments

- Members of the public expressed concern that Panel member survey responses would be approved by the EQB, without additional public input.

### There is general agreement that:

- The mandatory EAW and EIS categories should be regularly evaluated to ensure the thresholds effectively capture the types of projects with the potential for significant environmental effects; and
- Not all mandatory categories have easily understood language.

### Some differences of opinion include:

- Whether any of the current mandatory EAW and EIS categories should be eliminated or changed; and
- Whether there should be a "stand alone" mandatory category for GHG emissions.

## Examples of Public Comments

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- There is concern with recommendations for eliminating some of the mandatory EAW and EIS categories in Appendix C of the ERAP Report. The purposes of ER are to provide information to decision makers as well as consider alternatives and mitigation options.
- The EQB should engage citizens throughout the State in an open process engaging rural, low-income, tribal, and environmental justice communities to recommend how ER should be strengthened by adding and broadening mandatory environmental assessment and environmental impact statement categories.

## Topic: Streamlining the process, flexibility, and alternatives

### ERAP Recommendations

- 1) The EQB should review and update as needed, existing guidance and rules relative to developing a scoped EAW.
- 2) The EQB should consider piloting a new “application for exception” process to an EAW when an EAW is mandatory pursuant to Minnesota Rules 4410.1000.
- 3) Instead of an “expedited” process, a new process for an “application for exception” should be created.
  - The process would be similar to the petition process, except that it would be initiated by a project proposer for an exception.
  - A project proposer could submit an application, with sufficient information that an RGU would be able to use the criteria in Minnesota Rules 4410.1700 to decide whether an EAW must be prepared because the project may have the potential for significant environmental effects.

Other workgroup considerations related to developing an application for exception process included:

- The ability of the public to file an “objection” to the decision and appeal directly to the EQB.
- Using similar criteria for the decision as the petition process found in Minnesota Rules 4410.1100.

### Summary of concerns from public comments

- There was strong public opposition to concept of creating a new “exception” process.
- More review and input should be required before considering any changes to the current ER process.
- Many local RGUs lack the technical expertise to evaluate the potential impacts of a project.
- If the ER process is “streamlined,” projects may be approved without sufficient information for making approval decisions.
- “Streamlining” the ER procedures will result in environmental degradation.
- Environmental Review documents do not currently evaluate projects using an ecosystems review approach.

## There is general agreement that:

- The ER process serves a useful purpose that is separate and distinct from a permitting process; and
- Information assessed through the ER process is needed, before government approvals are granted.

## Some differences of opinions include:

- The need, or lack of justification, for changing the existing ER process;
- The public's lack of trust with RGUs' ability to use discretion for making effective decisions to exclude projects from review; and
- The need for all projects to use the same procedures, regardless of consideration of special circumstances, such as:
  - other processes that meet the same requirements as Minnesota Rules chapter 4410, and/or
  - how the proposed project relates to applicable thresholds, etc.

## Examples of Public Comments

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- The letters you are receiving regarding the shortening or simplification of the EIS process and their opposition to the same have our full support. This process has not had adequate public input nor involvement. We stand in opposition along with the Isaac Walton League and others to the proposed changes within the EQB with regard to the MEPA EIS process.
- Further reducing oversight by creating exemptions, exceptions and loop holes in EQB rules will only worsen the already disastrous effects we are seeing near our area.
- Environmental Review documents have largely devolved into mind-numbingly encyclopedic, largely formulaic tomes of mostly irrelevant data that defy cogent analysis and are incomprehensible to the public. This is especially true for large complex projects but is also true for some EAWs.
- The EQB should indefinitely shelve the current ERAP report suggesting that mandatory environment review categories be weakened with "exceptions" or made "discretionary" in various cases.
- The Panel focused on substitute review processes, or ways to justify exceptions to review, rather than emphasizing specific ways for agencies to assist RGUs with difficult issues beyond their capabilities in order to "streamline" the review process while maintaining efficacy.
- The only change needed to enable joint preparation of ERs by all permitting authorities is a simple agreement between the parties to allow the RGU to bill the project proponent for associated costs and reimburse the permitting authorities for their time and travel expenses. The permitting agencies could consider reducing their permit application fees and time periods for their process accordingly. Project proponents could learn of fatal flaws in their proposal before spending considerable time and money taking one step at a time.
- Current EIS documents present a decidedly reductive cataloguing of individual types of impacts, rather than a holistic, systems level analysis that would serve to clearly outline significant, cumulative impacts and elucidate viable alternatives.
- Many RGUs lack the expertise to prepare an adequate EAW or EIS so need to employ appropriate technical assistance.

- Involving the state agency permitting staff in the process of preparing an ER would greatly improve the process for all concerned and allow for concurrent consideration of the required permits, shortening the process for project proponents.
- When project proponents fail to propose mitigation for identified impacts, an RGU should propose mitigation options that could be required as conditions for permits. Alternatively, policy makers could simply deny permits for projects where identified impacts might not be mitigated and those impacts are deemed significant enough to justify project denial.
- There are far more modern assessment tools available to the savvy ER practitioner for making these impact predictions and for describing these impacts with recognizable frames of reference the public and policy-makers can understand.

## Topic: Health

**ERAP Discussion:** The Panel was not able to reach agreement on recommendations around health impact assessments, but discussed the following topics and potential options:

- Panel members disagreed on the level of extent health currently incorporated into ER. Some panel members believe health is incorporated through air, noise, and water standards, whereas other panel members noted that health equity or community health impacts are currently not (consistently) addressed in the ER process.
- Panel members discussed how to define health in ER.
- The Panel discussed Health Impact Assessments (HIAs) as a tool to augment ER in certain situations.

### Summary of concerns from public comments

- Potential health impacts are not adequately evaluated in the current ER process.
- RGUs do not have the necessary technical expertise to evaluate potential health impacts and would benefit from assistance from State agency experts.
- A broader stakeholder engagement process is needed to determine the appropriate level of review for potential health impacts in ER documents.

### There is general agreement that:

- Potential health impacts should be evaluated as part of the ER process.

### Some differences of opinion include:

- How and when the HIA process should be prepared for different types of projects;
- Whether an RGU has the technical expertise to evaluate potential health impacts; and
- What information should be included in the health assessment for ER documents.

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- Generally agree with the Panel members who noted that “health equity or community-wide health impacts are currently not consistently addressed in the ER process. We need only look at recent statistics.
- It should be the responsibility of the Minnesota Department of Health (MDH), which is on the mandatory review list, to identify specific aspects of a project being reviewed that might suggest potential public health risks and to recommend to the RGU how those risks could be evaluated.
- Health Impact Assessments were recommended for inclusion in ER by the Minnesota Academy of Family Physicians and referred to the ERAP for more in depth consideration by the EQB Board two years ago was rejected. This was in spite of the MDH having developed rather detailed process and rationale for HIA’s.
- The EQB should follow the lead of members of the medical community, learn from MDH best practices, and make a commitment to implement HIAs in ER.
- Current ER questions could suffice to expose any significant public health risks for the project
- To address the issue of a need for an HIA, the ER documents should be signed by a Registered Environmental Health Specialist.
- The professional health care community points to failing ecosystem services and climate change as the primary causes of a vast array of emerging human diseases and deaths especially those that are from tick and other insect borne diseases or heat and drought related causes.
- Registered Environmental Health Specialists along with qualified professionals in each area where impacts are identified, should also be actively involved in review and preparation of responses to comments received in preparation of the Findings of Fact recommendations.
- The ERAP’s report is incomplete and the health and wellbeing of Minnesotans requires a more thorough and comprehensive evaluation of potential environmental effects. Going forward we would like to see MDH offer further suggestions on how HIAs can be incorporated in EAWs and EIS.
- It’s possible that an HIA is not needed on every project but there are certain examples that this would be a necessity
- EQB should convene facilitated discussions with citizens and medical professionals in Cloquet/Duluth, Southern Minnesota, the Twin Cities and other impacted regions to recommend for adoption changes in rules and practices that would result in rigorous implementation of HIA in Minnesota ER.

## Topic: Meaningful engagement in the ER process

### Education and outreach

#### ERAP Recommendations

1. The EQB should more actively recruit tribal representatives on future panels as the Panel observed a lack of representation of tribal voices in the ER process.
2. The ER program should intentionally recruit and engage diverse audiences, with particular emphasis on people who are traditionally underrepresented and underserved.
3. Recommend RGUs to use accepted best practices for public engagement that are appropriate for their project needs.
4. Encourage RGUs to bring the public into project discussions early in the process and provide guidance for initiating conversations with the public.
5. Add a question on the EAW form that asks project proposers and RGUs to describe the public engagement process.
  - The form should also specify opportunities for public participation in other approval processes.
6. A concise summary in plain language should be provided at the beginning of the ER document.
7. The EQB should develop best practices around notification policy, including tribal notification.
8. The EQB should facilitate technical support from state experts for topic areas outside of their permitting authority.

9. The EQB should build capacity among RGUs, project proposers, and consultants to advance effective public engagement.
  - The EQB should continuously identify, document, and disseminate best practices through its website; trainings for RGUs, project proposers, and consultants; workshops for sharing best practices among practitioners; and supporting documents.
10. Provide training for local RGUs to ensure consistent approaches for implementing Minnesota Rules 4410.
11. Convene a practitioners group of RGUs, specialized consultants, and other interested parties for recurring meetings to increase information sharing and identification of new and emerging issues.

### **Summary of concerns from public comments**

- The current public engagement requirements in the ER rules do not meet the needs of the public.
- Public engagement requirements should include best practices for engaging Tribal Nations, minority communities and economically disadvantaged populations.
- Environmental review documents do not consistently address the needs of the public and are not always easy to comprehend.

### **There is general agreement that:**

- Public engagement is an important part of the ER process;
- Guidance is needed to help the public, project proposers and RGUs understand the ER process; and
- Tools are needed to help RGUs more effectively implement the requirements of the ER process.

### **Some differences of opinion includes:**

- Whether best practices for public engagement should be required or voluntary.

### **Examples of Public Comments**

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- The EQB should provide more guidance on how to incorporate human health impacts into ER.
- Many experts in civic engagement techniques have labeled most conventional public participation practices commonly used in ER as either ineffective at best or counterfeit and counterproductive at worst.
- The Report recommends "best public participation practices" general, but fails to acknowledge the excellent and more specific "best civic practices" already recommended to the EQB by the Human Rights Department this past year.
- The business-as-usual public participation process can readily be upgraded to more effective civic engagement techniques for ER purposes. Excellent examples of effective civic engagement best practices were presented to the EQB by the State Human Rights Department over a year ago.
- The EQB should create a new position for a citizens' empowerment coordinator who would:
  - organize meetings of various communities to develop citizen engagement policies for EQB;
  - assist individual citizens in ER processes; and

- work with responsible government units to implement best practices in public engagement (such as timing of meetings, location in the community, providing food and child care, including citizens in facilitated discussions) which must then be described in any ER document sent to EQB.

## Summary of General Comments

### Panel composition

- The group was composed primarily of industry and agency representatives and their usual consultants, and included only a few citizen voices. We challenge the assumption that such a group could fairly align behind recommendations for improving the process of ER.
- To avoid the stalemate predicament previous advisory panels repeatedly experienced the ERAP it seems clear that the Panel would have benefited greatly from using that standard forming–storming–norming–performing model of group development identified by Bruce Tuckman way back in 1965.
- Would like to see more diversity and request that when we talk about tribal governments we are not talking about just notifying them, but intentionally including these tribal governments in conversations around the ER process
- Someone from the Native American community and other communities of color from this state need to be represented on future EQB panels.

### Panel process

- Because the Panel had not reached consensus on what ER was actually supposed to accomplish, just how was it to accomplish it, and whether the MEPA goals for ER were by any reasonable indicators actually being accomplished the groups problem identification process and range of potential solutions explored varied quite widely and disjointedly.
- Scheduling of meetings during the day in a single Twin Cities location, with short notice and limited public outreach further ensures that statewide citizen concerns will be poorly represented and that the few public interest members of the panel or task force will have little support in their efforts to serve the broader community.
- Public trust in ER has not changed since 1980. The large hearing format is not effective and citizens who participate do not feel like they are heard.
- We need to see a change in the role of citizens in the EQB panel process. Meetings are more effective when there is childcare, food, and the people are allowed to speak first.
- Half of the Panel got up and left before the citizens had a chance to speak.

### Scope of environmental review

- We need to get back to a natural ecosystem approach for reviewing environmental effects.
- Ecosystem services was requested as one of the things to be looked considered by the Panel.
- Every time we talk about destroying ecosystem services there should be a calculation.
- Unless something directly impacts us then it's not worth our time, we have to get out of that mindset.

### Pace/timing

- We need an impact statement of what's been done in the last 10 years for climate.
- Think of seven generations philosophy we're not thinking big enough.
- We value things in the short term and should focus on the long term.
- Small steps forward are far less than what we need at this point in the [climate] crisis.
- We need you to take bold action on climate change.
- The problems we are discussing today have been the same for 10, 15, 20 years - why has there been no progress.

## **EQB authority**

- The EQB has a responsibility under Minnesota law as well as an ethical responsibility to assume leadership in protecting environmental quality, environmental justice and environmental health.
- MEPA requires that your work represents the public interest – that you represent clean water, clean air, and ecosystems.

## **Recommendations for next steps**

- On the issue of climate change, there is still a lack of general comprehension about the implications of climate changing related impacts. This suggests the need for a separate panel of experts on this topic to be identified as a mandatory review agency to provide comments in a format that is easily understandable to the permitting authorities who must consider the findings of an ER.
- A new reformulated Panel would more reflective of a cross-section of Minnesota, using a random selection process such as Sortition, to ensure a representative sample of ordinary. The panel would be informed by independent experts and be facilitated through the group formation, norming and performing process.
- EQB should take under advisement the ERAP recommendations, and authorize staff to form a new panel to complete the ERAP work. Continuity can be provided during change in administration by the citizen members of the Board.
- It would be great to have a panel of citizens and ecologists to tackle the climate change issue over the next 10-12 years.
- If IPCC says we have 12 years in new report why don't we have a 12 year plan.
- The public, when given the opportunity, can do amazing things, even high-level analysis.
- There is a need for a separate panel of experts on climate to be identified as a mandatory review agency to provide comments in a format that is easily understandable to the permitting authorities who must consider the findings of an ER.
- Recommend a Standing Citizen Panel for Review of MEPA process composed of diverse collection of citizens dedicated to serve the public interest; This panel would have at its disposal an independent panel of experts in such critical fields of ecology, climate change, health impacts, civic engagement, and environmental justice to ground the panels work in evidence-based environmental, health and social sciences.