

Additional information for August 16, 2023 board meeting:

1. Public comments received
2. Additional information on Duluth

1. Public comments received

From: Mark A. Baker
Sent: Monday, August 7, 2023 7:04 PM
To: MN_EQB_Info <info.EQB@state.mn.us>
Subject: August EQB Board meeting

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Hello:

I am writing to specifically address the fiasco in Duluth.

First, as I read the follow-up to the May 17th board meeting comments, I am simply amazed at the lack of understanding that the EQB's staff has about the law and rules that inform agency action and how they apply in this case. The RGU for environmental reviews, under the rules, cannot simply be referred to as the City of Y or the County of X. This serves to assume that the RGU is always the "highest" authority for that local governmental unit, i.e. city council, county board, etc, AND THAT IS NOT NECESSARILY THE CASE. And it does not have to be the case. The RGU can be whatever unit of government that is in the best position to understand a project and has the most permitting authority. It could be, for example, a housing and redevelopment authority or an economic development authority.

But for some reason, in this matter EQB staff would simply not even look at the city's own correspondence, or the city's own ordinances as well as its past practices, which all indicated without a shadow of a doubt that the RGU for the city of Duluth was the PLANNING COMMISSION. Full Stop.

Now, despite the language in 116(d), subdivision 10, this does not mean there couldn't be a "local appeal" of the RGU Planning Commission's decision on an environmental review. But the appeal process would have to already be in place and the appeal would have to be to the RGU, the decider. But what Duluth did was allow an appeal of an RGU decision to an agency that is NOT the RGU. And the EQB staff, which again is really hard to comprehend, seemed to find this ok, calling the RGU decision an "interim" decision and that a final decision by NOT THE RGU could be contemplated. A local appeal to an agency that is not the RGU simply cannot happen.

And then to ask "Who has the final authority- the Planning Committee(sic) or the city council"? Are you kidding me? A 2-minute check of the the city's own correspondence, or the city's one paragraph ordinance that clearly says who the RGU is and that is is the final decision-maker or even a review of the city's past EAW decisions would have told the staff, beyond all doubt, that what the city tried to do was contrary to law and rule.

I guess the final kick in the gut for me is to for EQB staff to not recommend taking any action, even though the EQB has all the authority it needs to intervene in this manner. Just kick the can down the street for someone else to deal with. Is it any wonder confidence in government agencies is at an all-time low?

Sad,

Thank you!

Mark A. Baker
Duluth, MN
319-471-8877



101 East Fifth Street
Suite 2000
Saint Paul, MN 55101

651-222-2193
www.fmr.org
info@fmr.org

August 10, 2023

Re: Support for inclusion of greenhouse gas lifecycle emissions in the environmental review process

Dear Members of the Environmental Quality Board,

On behalf of Friends of the Mississippi River, I am writing to express our support for the board's proposed continuous improvement process for environmental review, including lifecycle analysis of greenhouse gas emissions. We appreciate your leadership and emphasize the urgency with which the board must act in implementing this plan.

Friends of the Mississippi River (FMR) is a non-profit organization with a mission to engage community members and other stakeholders to protect, restore and enhance the Mississippi River and its watershed in the Twin Cities Region. We represent thousands of people in the metropolitan area who care deeply about the river, including over 6,000 who participate as FMR advocates, volunteers, and members each year.

As part of our commitment to the Mississippi River, we are strongly in favor of plans that protect both the river and future generations from projects that could cause damage to the ecosystem and our communities. We commend you for your commitment to include lifecycle analysis of greenhouse gas emissions in this plan and encourage its expedited adoption into the environmental review process.

Climate change and the health of the Mississippi River are inextricably intertwined. Understanding the full breadth of environmental consequences of a project is an imperative part of addressing climate change and improving the health of our communities. The EQB has a unique opportunity with Minnesota's current administration to enact lasting changes regardless of who is in a position of power. We commend your efforts and leadership to improve the environmental review process and join other states in prioritizing future generations.

This plan is a great step forward, and we urge you to expedite the timelines for allocating additional staff to ensure the thorough implementation of this plan. It has become exceedingly clear this summer that climate change is happening now. We do not have time to delay in assessing whether future projects will exacerbate the effects of what is already upon us.

At FMR, we dream of a future where generations continue to make memories on the river with clean water and an abundance of life. Implementing this plan is a key way in which that can be accomplished, but only if that process begins as promptly as possible.

Thank you for your time and consideration.

For the river,

A handwritten signature in cursive script that reads "Maddie Miller".

Maddie Miller
Grassroots Organizing Coordinator

A handwritten signature in cursive script that reads "Trevor Russell".

Trevor Russell
Water Program Director



MINNESOTA DIVISION IZAAK WALTON LEAGUE OF AMERICA

Our Mission: To conserve, restore, and promote the sustainable use and enjoyment of our natural resources, including soil, air, woods, waters, and wildlife

August 15th, 2023

Nancy Daubenberger, Chair
Catherine Neushler, Executive Director
Minnesota Environmental Quality Board
520 Lafayette Rd
St. Paul, Minnesota 55155

(This letter sent as attachment to cover email dated August 15, 2023)

Dear Chair Daubenberger and Director Neuschler,

Thank you for the opportunity to provide the Izaak Walton League of America Minnesota Division's comments on the Environmental Quality Board's (EQB) environmental review continuous improvement efforts and on the FY 2024 work plan. We compliment the Environmental Review Improvement Subcommittee (ERIS) and EQB staff for their diligence and efforts to address the environmental and climate challenges we all face. And thank you for reviewing our and our associate's recommendations that staff ranked so highly by EQB criteria.

Unfortunately, our review of the final work plan proposed for adoption finds that it lacks the required priorities, detailed specificity, scientific integrity and existential urgency we advocated in order for these improvements to be effective.

The League emphatically urges the Board and staff to rethink the proposed work plan allowing more time for reordering priorities, improving the science, establishing more specific means and metrics for evaluating results and for employing other methods for securing necessary resources. This letter is too brief and the two-minute public comment allotments offered at the upcoming Board meeting on August 16th are wholly inadequate to delve into the details of our reasoning and justify our sense of urgency. Serious, detailed dialogue is in order. Therefore, with this letter, we are requesting more time be allotted and special in-person meetings be held for this important dialogue before the work plan and the associated strategic plan are finally adopted.

The Izaak Walton League is America's oldest and most successful volunteer conservation organization and is now entering its second century of protecting our nation's air, water, soil, woods and wildlife. However, in spite of the League's and our associate's best efforts to partner with local, state and federal governments, including the EQB, to achieve our common missions for preserving



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it, our planet is now suffering devastating impacts from unabated climate change and alarming losses of biodiversity at rates that are actually worsening every year. Regular reports from highly credible global monitors like the United Nations Intergovernmental Panels on Climate Change (IPCC) and the Intergovernmental Panel on Biodiversity and Ecosystem Services (IPBES), the World Wildlife Fund and the National Audubon Society and many others confirm this rapid degradation in spite of national and state pledges to reverse these alarming trends. Even popular news media outlets—both world and local—are reporting and opining about these crises in “emergency” terms¹. The news media reports daily now on the growing human death tolls and unspeakable property damage due to climate driven heat, drought, storms, floods and fires.

Environmental Review (ER) can and must play a much more efficient and effective role providing high integrity science and transparent expert decision guidance to preparers of Environmental Assessment Worksheets and Impact Statements, (EAWs and EISs). Without trustworthy, science-based information responsible government units (RGUs) cannot steer project proposers and citizens toward the effective climate solutions and ecosystem protection and restoration measures needed to reverse these trends.

To that end, the League and our associates provided a number of suggestions to improve ER; four of which EQB staff ranked among the highest of all submitted. In general, our improvement suggestions included:

1. Establishing **panels of experts** to ensure scientific integrity, lighten staff workloads and fend off undue political pressures by providing independent peer review of EQB policies, reports and ER documents (as mandated by MEPA²);

¹ *The Climate Emergency Intensifies* – by The Editorial Board and republished in the Mpls Star Tribune on August 5, 2023: <https://m.startribune.com/the-climate-emergency-intensifies/600295125/>

² “...there **shall** be established advisory councils”... “to ensure that the latest and most authoritative findings will be considered in administrative and regulatory decision making as quickly and as amply as possible”. Mn Stat 116D.03 subd. 2 (2)



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2. Developing and applying objective, **science-based criteria for determining impact significance** and **adjusting mandatory thresholds** accordingly;
3. Establishing **science-based methods for assessing cumulative impacts** and;
4. Developing standardized methods to more fully assess a project's entire **life-cycle impacts** including for green house gas emissions;
5. Requesting member agencies to **transfer or loan highly qualified staff to the EQB** to expedite these improvements.

We assert that the ER process must be radically and immediately reformed to provide regulatory bodies with the necessary “evidence-based” information they need to select alternatives or say “no” when necessary rather than the “eminence-based” documents that have historically but unjustifiably kept saying “yes”. Thresholds for triggering consideration of alternatives through the higher scrutiny of EISs are far too high and too many projects with seemingly insignificant impacts have been and are actually quite significant as a result of cumulative factors that have been poorly understood.

Meticulous Rule-making and new legislation that might have served the purpose decades ago are not the answer now that we are in crises mode. Furthermore, it would be a mistake to conclude that impact significance thresholds and mechanisms of impact accumulation (cumulative impacts) can be legislated or codified into administrative rules. These are professional scientific judgment decisions that are so project and site specific and are so complex as to defy codification.

We are also concerned that Board members and staff may not view the climate/biodiversity crises with the same level of ubiquity and urgency as the scientific community has reported. Therefore, we request an opportunity to meet with key staff and board members in technical, in-person sessions to address these discrepancies of understanding and lay out in more detail how our suggested strategies could be effectively and rapidly deployed.

Assuming these meetings are successful at finding common ground we further request a special item be included in the Board's September meeting agenda to report (in-person) our common understandings and how the urgency of these crises can be more meaningfully reflected in revised work and strategic plans.



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Please contact Willis Mattison, IWLA Minnesota Division Climate and Energy Committee member to arrange for the requested meetings, his contact information is shown below.

Sincerely,

John Rust,
President, Minnesota Division, Izaak Walton League of America
imgahn2u@yahoo.com Cell 763-202-3346

Cc: Willis Mattison, IWLA Minnesota Division Climate and Energy Committee, at mattison@arvig.net or phone 218-849-2956.

From: Mike Tauber
Sent: Tuesday, August 15, 2023 9:05 AM
To: MN_EQB_Info <info.EQB@state.mn.us>
Subject: Comment for August 2024 EQB meeting

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8-13-23

To : Members of the Mn Environmental Quality Board
From : Northern Water Alliance of Mn

Having reviewed the EQB August meeting packet we, as members of the Northern Water Alliance of Mn, would like to add our thoughts to the record.

Public comments from the July 19th EQB meeting well represented our sentiments that the work plan be revised to make clear that reforms to NEPA and MEPA are needed **and** make the implementation of them **immediate** rather than long term. The need to act promptly in response to exponentially increasing environmental degradation is of the utmost importance and is something Minnesotans desperately need.

A system built by industrial-political interests has developed in the culture of Minnesota's regulatory agencies over several decades, putting environmental concerns in the back seat and bringing Minnesota to the precipice of ecosystem collapse scenarios. One of the most glaring inadequacies of the current Mn Environmental Review process is that nearly every project that is reviewed is stamped for approval. EAWs almost never result in EISs (much less the "no-build" option), which the spirit of NEPA and MEPA suggest, and which regulatory capture inhibits.

The strategic plan values and principles espoused in the documentation of the August meeting packet are admirable, and we would like to assist and encourage EQB members and staff in this effort. Adding FTE attention to current and emerging issues may make EQB relevant in protecting Mn resources again, as long as regulatory capture is addressed simultaneously. We support the formation of a citizen panel (similar to the abolished MPCA Citizen's Board) to work with EQB and balance the influence of industry.

Minnesotans now also need the EQB to reinstate in-person meetings to rebuild public confidence in the work of the board. We will greatly appreciate the return to open meetings and *collaboration* with the public.

Time is of the essence.

Thank you providing opportunities for vital public input,



Mike Tauber
Marilyn McKnight
Steve Erickson



4407 E Lake St, Minneapolis, MN 55406

Testimony presented before the Environmental Quality Board on 16 August 2023

Testimony in Support of lifecycle analysis for greenhouse gas emissions and the Environmental Quality Board proposed work plan.

Thank you Chair Daubenberger and Members of the Committee for the opportunity to provide this testimony today. We are humbled by our position to elevate the voices of concerned Minnesotans, who are suffering through the advent of anthropogenic climate change.

From the asphyxiating smoke of the Canadian wildfires, to the droughts decimating agricultural yields, to the deeply uncomfortable record-breaking lethal heat waves, the summer of 2023 has been a wake up call. The climate crisis is not on the horizon; it is here now. And it is critical that the urgency and the solemnity of the climate crisis is reflected in our data analyses and our governmental plans. We have an obligation to do everything we can to mitigate any possible damage that we might do to the climate, and one way that we can do that is through life cycle analysis for greenhouse gas emissions.

Life cycle analysis for greenhouse gas emissions is the most comprehensive method for understanding the overall effects of fossil fuels, along every step of the fuel's extraction, transportation, combustion, and lingering presence. Without life cycle analysis, it is impossible to get the full breadth of how Minnesota's greenhouse gas emissions are contributing to climate change and will give us better information to reign in our overall carbon footprint. Life cycle analyses allow for better policies, regulations, and choices to be made that help hold fossil fuel companies, government agencies, and each other accountable to the health and wellbeing of all Minnesotans as we transition into the climate crisis. Without full data that best gives us the fullest available picture, we cannot meet the moment in which we currently find ourselves. We at MN350 Action urge the Environmental Quality Board (EQB) to prioritize life cycle analysis as a method that will help keep Minnesotans safe, and to preserve our natural resources for future generations,

In order to get the proper analysis and implementation of life cycle analysis for greenhouse gas emissions, agencies that sit on the EQB must offer expert staff support to make the needed analysis a reality. In order to implement this necessary work, manpower must be given to move this crucial work forward. Additionally, we request that there be proper oversight to ensure that

the EQB implement this important analysis whenever it is needed. Too often we give little oversight to state agencies that leave the wellbeing of our environment to political appointees. Our climate is too important to hope that the election cycle will always bring us climate champions.

Every Minnesotan is affected by climate change. It is a fact that will only grow more accurate with time. We ask that you support life cycle analysis, properly staff the EQB, and implement oversight to make sure the EQB does its job regardless of who may be in charge of it in the future.

Whether or not we are thriving or dying, we are all accountable to each other. We ask that you please act deliberately and urgently. It is the only way we may emerge into this unstable, uncertain future together.

Thank you for your time and consideration,

Tee McClenty, Executive Director, MN350 Action

Noelle Cirisan, Political Manager, MN350 Action

Tuesday Utz, Pipeline Resistance Team, MN350 Action

2. Additional information on Duluth

The following, prepared by EQB Public Member Joseph Bauerkemper, refers to the environmental review process for the Sundby Road Hotel Project in Duluth, MN.

The Duluth City Council held a hearing on 8 May 2023 to consider an appeal requested by the Sundby Road Hotel Project proposer in response to the City's decision—noticed on 25 April 2023 in the *EQB Monitor*—to order an EAW. During the appeal hearing, the Duluth City Council referred to a 4 April 2023 email from the EQB. It appears that the date of the email was stated incorrectly. (4 April 2023 is not a plausible date for any such email.) It appears that the EQB email the Duluth City Council referred to was sent on 21 April 2023. The 21 April 2023 email from EQB was sent to the petitioners and to City of Duluth staff. It included the following:

"According to Minnesota statutes and rules, (MS 116D.04 subdiv 10; MR 4410.0400 subp. 4), anyone aggrieved by the RGU's decision may appeal that decision to the Minnesota Court of Appeals, within 30-days of the notice's publication in the *EQB Monitor*. These statutes and rules do not require that an appeal be submitted to the courts, nor do they limit an RGU from having a separate appeal procedure."

According to the transcript from the Duluth City Council meeting on 8 May 2023, the Council determined that it could function in what it described as a "quasi-judicial capacity" and hear an appeal of the City's decision—which was already noticed in the *EQB Monitor*—to order an EAW. The Council cited the email from EQB, stating that:

"The Environmental Quality Board has confirmed that our local governments that local governments may have an appeal procedure that is separate from an appeal to the judicial courts."

"[C]ommunication from the EQB provided that state statutes and rules do not require that an appeal be submitted to the courts, nor do they limit an RGU from having a separate appeal procedure."

This is concerning. There appears to be no basis for the indication made in the 21 April 2023 email from the EQB that appeal of an already-noticed RGU decision can take place outside of MN courts. There also appears to be no basis for the indication made in that same email that an RGU can hear an appeal of its own already-noticed decision.

The statute and rule citations provided within the EQB email itself provide only for judicial appeal; no other appeal pathway is contemplated or authorized.

Minnesota Statutes 116D.04, Subdivision 10 (in part): "A person aggrieved by a final decision on the need for an environmental assessment worksheet, the need for an

environmental impact statement, or the adequacy of an environmental impact statement is entitled to judicial review of the decision."

Minnesota Administrative Rules 4410.0400, Subpart 4: "Decisions by a RGU on the need for an EAW, the need for an EIS, the adequacy of an EIS, and the adequacy of an alternative urban areawide review document are final decisions and may be reviewed by a declaratory judgment action initiated within 30 days of the RGU's decision in the district court of the county where the proposed project, or any part thereof, would be undertaken."

When an RGU's decision is noticed in the *EQB Monitor*, it has been consistent practice within the MN environmental review process to consider that decision to be a final decision. The City of Duluth's decision to order the EAW was noticed in the *EQB Monitor* on 25 April 2023. If a party was aggrieved by that decision, the only option for appeal made available in statute and rule is through the courts.

The Duluth City Council's determination to function in a self-described "quasi-judicial capacity" in order to hear an appeal of the City's already-noticed decision was likely inappropriate and based on guidance from the EQB that was likely inaccurate.

In order to address these likely errors, in order to seek clarity on what should happen if in the future an RGU attempts to hear an appeal of an already-noticed decision, and in the interests of consistency and transparency, the EQB should now exercise its option under Minnesota Statutes 116D.04, Subdivision 10 to initiate and/or intervene in judicial review of the matter at hand.