

# MINNESOTA ENVIRONMENTAL QUALITY BOARD

## MEETING MINUTES

**Thursday, June 18, 2009**

**PCA Conference Room**

**EQB Members Present:** Jon Bloomberg, vice chair; Paul Eger; Mark Holsten; Gene Hugoson, chair; Julie Goehring; Randy Kramer; Susan McCarville and Glenn Wilson

**EQB Members Absent:** Dan McElroy, Sheila Reger and Thomas Sorel

**Others Present:** David Arbeit and Ryan Church (Administration), Peder Otterson and Paul Radomski (DNR), Robert Roche (Attorney General)

**EQB Staff Present:** Jon Larsen, Bob Patton and John Wells

The meeting was called to order at 9:07 a.m. by Chair Hugoson.

### **I. Adoption of Consent Agenda and Minutes**

The board adopted the consent agenda and minutes.

### **II. Chair's Report**

Chair Hugoson announced: a) the resignation of Dennis Wenzel from the EQB board, thanking him for his insightful service; b) the timing of the board's remaining 2009 meetings, which will take place in September and November; c) the appointment of Bob Patton of the Department of Agriculture as Acting Executive Director of the Environmental Quality Board. Mr. Patton expects to serve in a half-time capacity during the coming biennium. Mr. Patton's appointment is effective immediately; and d) a plan for establishment of a working group to help plan future EQB activities.

### **III. Legal Report**

Robert Roche reported that EQB is being sued by the Minnesota Center for Environmental Advocacy over rules adopted in 1989, as an adjunct to a suit of multiple parties focusing on the action of the Public Utilities Commission to permit the Enbridge pipeline.

#### **IV. EQB Staff Report**

John Wells summarized legislative actions and other initiatives that have implications for the EQB, including:

- A Pollution Control Agency charge to submit an Environmental Review Streamlining Report to the Legislature. The report is to be prepared in consultation with EQB staff.
- A University of Minnesota charge to develop a comprehensive statewide sustainable water resources framework in cooperation with the EQB, DNR, PCA, BWSR, other local water authorities, and non-government organizations with expertise in water resources.
- An EQB proposal to LCCMR to create a multi-agency web page “Water Portal,” making it easier for the public to better understand who does what in this complicated area.
- The Legacy-funded state LIDAR project that is expected to provide approximately \$2.5 million in nonfederal match for the EQB-sponsored Minnesota River project.
- Ongoing work with the DNR and the University of Minnesota on water sustainability issues.

#### **V. Adoption of Amendments to Environmental Review Program Rules**

John Wells introduced this action item with a summary of important highlights of the rule making process since EQB adopted changes to the Environmental Review rule in 2006. The EQB authorized the current rule making in July 2007. The process was authorized by the Governor’s office in late 2008 and hearings were held in February and March 2009. EQB staff received the Administrative Law Judge’s report in May 2009. Wells noted that the ALJ endorsed everything recommended by the staff on behalf of the board. Wells also noted that EQB staff worked closely with the DNR to develop the shoreland categories. Jon Larsen then explained the remaining steps to be taken. The rules, if approved, would likely take effect in August or September.

Mr. Larsen described the hearing process and some of the changes suggested from comments. The one substantive change from the draft rule was a recommended deferral of the shoreland provisions in the Metropolitan region to ensure consistency with evolving DNR shoreland rules.

Mr. Larsen reported that the Administrative Law Judge approved the rules as amended and explained the remaining steps involved in adopting the rules. He indicated the relevant documents for the Board’s use are the ALJ’s Report, the official version of the rules from the Revisor’s Office as amended, and a Sample

Resolution for adoption. Member Bloomberg asked for clarification on how shoreland rule requirements would apply in the metro area, i.e. that current thresholds would still apply until the rule is further modified. Mr. Larsen affirmed that all current requirements and all general development thresholds still apply.

Mary Marrow, Minnesota Center for Environmental Advocacy, expressed the center's concern with:

- Changes to 4410.3100 which address "concurrent review" of permits and environmental review; and
- Changes to 4410.4600, which involves proposed EQB policy relative to government actions exempt from review.

Commissioner Eger moved adoption of the rule amendments as recommended (see attached), which passed by unanimous vote with members Bloomberg, Eger, Holsten, Hugoson, Goehring, Kramer, McCarville and Wilson voting in favor.

#### **VI. Possible 2009-10 Work Elements**

Mr. Wells reviewed possible 2009-2010 work elements for future consideration by EQB. Items included:

1. State water planning
2. Energy and environment strategy development
3. Updating guidance documents for the new rule changes
4. Participating with MPCA in developing the report on streamlining environmental review
5. Minnesota River Basin Project
6. Planning for an environmental congress

#### **VII. Adjournment.** Chairman Hugoson adjourned the meeting at 9:53.

**RESOLUTION OF THE ENVIRONMENTAL QUALITY BOARD**  
**June 18, 2009**

**Adoption of Amendments to the Environmental Review Program Rules**

WHEREAS, on August 14, 2006, December 11, 2006, June 18, 2007, and May 27, 2008, the EQB published a series of Requests for Comments in the State Register identifying possible amendments to the Environmental Review program rules that the EQB was considering; and

WHEREAS, at its meeting of July 19, 2007, the EQB authorized rulemaking to amend the Environmental Review program rules, and at its meeting of May 15, 2008, further authorized four additional amendments to those rules; and

WHEREAS, the proposed amendments were duly noticed using the Notice of Hearing procedure for rulemaking; and

WHEREAS, the EQB held a hearing, presided over by Administrative Law Judge Steve Mihalchick, to receive public comments, which hearing was held in Alexandria, Hermantown, Bemidji, Baxter, and Fort Snelling with an afternoon and an evening session at each location; and

WHEREAS, the EQB staff proposed a number of modifications to the rules as proposed in response to comments received; and

WHEREAS, the Administrative Law Judge has prepared a report recommending that the rule amendments be adopted as modified; and

WHEREAS, the EQB has considered all comments and information in the record; and

WHEREAS, the EQB has the statutory authority to adopt amendments to the Environmental Review program rules and has fulfilled all procedural and substantive requirements to adopt the proposed modified amendments;

NOW THEREFORE BE IT RESOLVED, that the rule amendments relating to the Environmental Review program rules in the form set out in Revisor of Statutes draft, file number AR3732, dated 06/02/09, identified as Minnesota Rules, parts 4410.0200 to 4410.6500, are approved and adopted, pursuant to authority vested in the Environmental Quality Board by Minnesota Statutes, sections 116D.04 and 116D.045.

Gene Hugoson, the Chair of the Environmental Quality Board, is authorized to sign the Order Adopting Rules and further is authorized to modify the rules if necessary to obtain the approval of the rules by the Revisor of Statutes or the Administrative Law Judge and to perform the necessary acts to provide that the rules shall have the force and effect of law.