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June 6, 2006

TO: EQB Members

FROM: Michael Sullivan
Telephone: 651-201-2462

RE: **ANNOTATED AGENDA FOR
June 15, 2006 Board Meeting**

General

This month's meeting will take place at the State Office Building, Hearing Room 5. The meeting will begin at 9:00 a.m. Staff will be available for briefing and questions at 8:00 a.m.

Attention: *Denotes an agenda item that may require Board action.

I. *Adoption of Consent Agenda

- Adoption of the Proposed Agenda for **June 15, 2006** meeting
- Adoption of the Proposed Minutes for **April 20, 2006** meeting

II. Executive Director's Report

III. Legal Counsel Report

IV. *Adoption of "Phase 1" Amendments to Rules Governing the Environmental Review Program

Presenter: Gregg Downing, Environmental review coordinator
(651-201-2476)

Material enclosed:

1. Report of the Administrative Law Judge
2. Rules as proposed for adoption
3. Sample Resolution
4. Order Adopting Rules

Note: public written comments on the proposed rule and transcripts of the public hearing are not included in your packet. These comments are summarized in the report of the ALJ and

were previously provided to Board members. Any Board member interested in seeing the comments or transcripts should contact the EQB staff.

Issue before the Board

The Board is asked to approve and adopt final amendments to the Environmental Review program rules, as recommended by the Administrative Law Judge. These are the amendments we have been referring to as the “Phase 1” amendments. The EQB has followed the standard rulemaking process and is now at the point of actually adopting amendments to the rules. If the Board adopts the rule amendments at this meeting, we expect the amendments to become effective sometime in August.

Background

This rulemaking involves the group of rule amendments termed the “Phase 1” rule revisions for the Environmental Review program rules. Phase 1 originally included amendments at 39 subparts of the rule; however, due to the withdrawal of three proposed amendments during the hearing process, there are now only amendments to 36 subparts proposed for final adoption.

The Board authorized the formal rulemaking procedures at its meeting on December 15, 2005. The Dual Notice of Rulemaking published on February 13, 2006 indicated that a hearing would be held only if at least 25 persons requested a hearing. Because more than 25 hearing requests were received, a rulemaking hearing was held at Fort Snelling History Center on March 30, 2006, with one session in the afternoon and another in the evening. Administrative Law Judge Steve Mihalchick presided at the hearing. Transcripts were made of both sessions. After the close of the hearing, the public was given an additional 20 days to submit written comments into the record.

During the hearing and comment period seven written comments were received by the ALJ. After the hearing, the EQB staff submitted suggestions to the ALJ for modifying the proposed amendments in response to certain comments, as explained at the April Board meeting. The modifications make clarifications to four subparts but do not make any changes in their substance. In addition, the EQB withdrew the proposed amendments at three subparts (the definition of “sewered area” and the subparts of the AUAR process adding a procedure for dropping a small project out of the AUAR analysis and for ‘scoping’ the AUAR analysis with respect to development scenarios in cases where a specific large project was being reviewed through the AUAR procedures) due in part to comments received and in part to the issuance during the comment period of a decision of the Court of Appeals that related to the proposed AUAR amendments. The ALJ approved of all the modifications suggested by the staff.

Since the hearing the EQB staff has not had any contact from any interested persons about this rulemaking. It is possible that interested persons may attend the Board meeting to testify and attempt to influence the rules before the Board adopts them.

MEQB staff recommendation

The staff recommends that the Board adopt the rules as proposed, with the modifications indicated, as recommended by the ALJ. A sample resolution that would implement this

recommendation is in the packet. The resolution would authorize the Chair to sign the Order Adopting Rules and take the actions necessary to complete the rulemaking process.

V. *Discussion of proposed “Phase 2” Amendments to Rules Governing the Environmental Review Program; authorization to publish a Request for Comments

Presenter: Gregg Downing, Environmental review coordinator
(651-201-2476)

Material enclosed:

1. List of Topics for Phase 2 Rulemaking
2. Sample Resolution authorizing publication of a Request for Comments

Issue before the Board

The staff will present its recommended list of topics for revisions as part of the “Phase 2” amendments to the Environmental Review program rules. The staff requests that the Board authorize the Chair to issue a Request for Comments, the first step in process of rulemaking.

Background

In February 2005, the EQB published a Request for Comments covering about 50 possible revisions to the Environmental Review program rules. In August 2005, the Board decided which of the topics in that original group were ready for rulemaking, and proceeded with the “phase 1” rulemaking process on those topics. It was understood that topics not ready for phase 1 would be considered for inclusion in a second round of rulemaking, termed “phase 2.”

Having completed development of the phase 1 amendments, it is time to begin phase 2 of the rulemaking. The staff has prepared a list of topics ready for phase 2 which it will discuss with the Board at this meeting.

Some of the topics on the list are among those set aside for Phase 2 last August. Notable among those is the proposal for new mandatory categories for projects in shorelands, as described by the DNR staff at the April Board meeting. Several others are the topics that were included in the Phase 1 rulemaking but were withdrawn during the hearing process for further work (as listed above). In addition, recent events have pointed out the desirability of clarifying the rules with respect to other topics which were never considered before.

Some topics which had been anticipated to be covered in Phase 2 are still not ready for rulemaking, and will need to be pursued in the future. Among those topics are the mandatory categories for animal feedlots and for projects near Highly-Important Natural Resources.

Although the majority of the topics proposed for Phase 2 were covered in the original request for Comments, the fact that a few of the topics were not requires that a new Request for Comments be issued. Staff proposes to include all the Phase 2 topics in a new notice, for sake of completeness and to avoid any confusion that might occur if the new Request included only the new topics.

If the Board authorizes publication of the request for Comments, it is anticipated that the Request would be published sometime in July and that the comment period would extend until early September. At subsequent meetings, the Board would be able to discuss comments received, review and advise the staff regarding potential rule language, and ultimately authorize rulemaking hearings on the topics and language chosen by the Board.

MEQB staff recommendation

The staff recommends that the Board adopt the enclosed sample resolution which would authorize the Chair to publish an official Request for Comments on the topics on the proposed list. This would allow the Phase 2 rulemaking to begin.