

MINNESOTA ENVIRONMENTAL QUALITY BOARD
MEETING MINUTES
Thursday, December 15, 2005
State Office Building, Hearing Room 5

EQB Members Present: Robert A. Schroeder, Dana Badgerow, Jonathon Bloomberg, Sheryl Corrigan, Jerome Deal, Gene Hugoson, Matt Kramer, Susan McCarville, Gene Merriam, Glenn Wilson, and Paige Winebarger

EQB Members Absent: Brenda Elmer, Dianne Mandernach, and Lt. Governor Molnau

I. Adoption of the proposed Agenda for the December 15, 2005 meeting and Minutes from the September 15, 2005 and October 20, 2005 Environmental Quality Board Meeting

Commissioner Corrigan made a motion that the minutes and proposed agenda be adopted and Member Deal seconded. The motion was approved on a voice vote.

II. Executive Director's Report:

Michael Sullivan stated that one of the items on next month's agenda will be the Flying Cloud EIS adequacy decision.

Mr. Sullivan indicated that the EQB staff has been working on a compilation of all EQB statutory authorities and an assessment of possible new initiatives that the Board may be interested in considering for future action. Mr. Sullivan indicated that staff would like to bring background documents and a suggested initiative list to the Board as an agenda item for a future EQB meeting.

III. Legal Counsel Report:

Robert Roche stated that the only pending litigation in which the EQB is involved is the Colby lawsuit. Mr. Roche is waiting for a scheduling order from the judge in which it filed an answer and an informational statement laying out the overview of the case. Mr. Roche hopes to hear from the judge with the scheduling order soon, but he does not know exactly when that will happen.

IV. * Authorization to initiate the formal rulemaking process for "phase 1" amendments to the Environmental Review Program rules

Gregg Downing, EQB staff, stated that the staff is requesting the Board to authorize the rulemaking process for the "phase 1" amendments to the Environmental Review Program rules. Those rules and the associated SONAR material are essentially the same as what has been discussed previously. The only significant difference is that the potential revision of the animal feedlot mandatory EAW category is not included in "phase 1". The proposal and associated feedlot material from the staff of the PCA and Department of Agriculture were not completed

in the timeframe to include in the “phase 1” proposal. Mr. Downing indicated that the SONAR material is also essentially the same as last month; it has been edited and some missing information has been added. The SONAR is still a draft. There are a couple of sections that need to be added before it is finalized.

Mr. Downing stated that at this point, there is only one known concern about the proposed amendments and that is related to the letter from Lloyd Grooms of Winthrop and Weinstine writing on behalf of the Builders Association of the Twin Cities. The Builders Association had earlier submitted a letter of comment in response to the Request for Comments document that was published last February. For the most part, the staff addressed their concerns in the modification that have been made in the rules since the original proposals. The Association is satisfied with everything except one point which has to do with one of the changes to the AUAR review process; specifically the proposal that if an AUAR is going to be used to review a single project that is either over the EIS threshold or which comprises of at least 50% of the geographic area in the AUAR. In those cases, the revised AUAR process would have additional procedures to identify additional alternatives that might need to be addressed in that AUAR. The letter does not indicate that the Builders Association is necessarily opposed, but they have some questions about the intent and how the addition process would work. Mr. Grooms asks that the staff meet with him to discuss those issues and the staff is willing to do that. The staff and Mr. Grooms should be able to work out things before the public comment period would begin. If that is not possible, the Builders Association could participate in the rulemaking process and at least have the opportunity to submit comments and if a hearing is held, to participate in that process as well. The staff does not see the letter as a major issue and it does not alter the recommendation that the Board proceed to authorize rulemaking.

Mr. Downing stated that the staff is recommending that the Board authorize the particular form of the rulemaking process that is commonly referred to as the Dual Notice process. That means that when the formal notice of rulemaking is issued, the notice would simultaneously do two things: (1) it would indicate the time, date and place of a public hearing before the Administrative Law Judge, but (2) the notice would also indicate that unless at least 25 people request in writing that we go ahead and hold that hearing, the hearing would be canceled. This procedure allows flexibility. At this point, the staff does not believe there is a need to hold the hearing. If there is a need for a hearing, announcing it in the Dual Notice will avoid loss of time. In either case, there is a 30 day opportunity for parties to submit written comments. The sample resolution authorizes the use of the Dual Notice procedure. The staff estimates that if the rulemaking is authorized today, the written public comment period would take place during February. If a hearing is required, it would occur in mid-March. If there is no hearing, the staff believes they can be back before the Board for adoption in March or April. If a hearing needs to be held, the rule would not come back to the Board for adoption until May or June.

Mr. Downing reminded the Board that even if they authorize rulemaking today, it does not commit them to adopt any of the rule changes in the end and that the rules can be modified based on comments received. The staff’s recommendation is that the Board adopt the sample resolution which would authorize the start of the formal rulemaking using the Dual Notice process.

Commissioner Corrigan noted that Mr. Downing brought up the fact that there will be a slower track taken for the animal feedlot category change. She explained the rationale behind that. She indicated the PCA received numerous comments on that proposed change; literally hundreds of comments, which are taking a long time to respond to. In addition, there has been some new research evolving from the University of Minnesota which needs to be taken into account.

Commissioner Hugoson stated that some of the public comments involved legal cases and the staff at the Department of Agriculture were involved in getting ready for a move so it was not feasible to get all of that put together. He agreed that the University study, which has not yet been issued, will deserve some attention. It seemed more prudent, rather than push something through, to take a slower track.

Chair Schroeder noted that Mr. Lloyd Grooms was in attendance and asked if Mr. Grooms had anything he wanted to add to the record.

Lloyd Grooms, Winthrop & Weinstine, stated that he is representing the Builders Association of the Twin Cities. He stated that his letter speaks for itself and that hopefully in the near term Mr. Downing will be able to meet with him to walk through proposed revisions and get a better understanding of those.

Chair Schroeder stated that there is a resolution before the Board. Member Deal moved the resolution and Member Winebarger seconded. Chair Schroeder called for a roll call vote which passed 11-0.

Member Winebarger asked a question to Mr. Sullivan. Ms. Winebarger stated that at the last meeting she had asked to get a list of who is in the stakeholder groups for animal agriculture rulemaking. Michael Sullivan stated that he thought that was provided already. Mr. Sullivan apologized if it was not received, and it will get sent out today.

Chair Schroeder asked for additional questions and seeing none, asked for a motion to adjourn. Commissioner Wilson made the motion to adjourn and Commissioner Hugoson seconded the motion.