

# MINNESOTA ENVIRONMENTAL QUALITY BOARD

## MEETING MINUTES

**Thursday, March 19, 2009**

**PCA Conference Room**

**EQB Members Present:** Dana Badgerow, Jonathan Bloomberg, Paul Eger, Julie Goehring, Randy Kramer, Susan McCarville, Gene Hugoson, Sanne Magnan, and Dennis Wenzel

**EQB Members Absent:** Thomas Sorel, Dan McElroy, and Glenn Wilson

**Others Present:** Robert Roche, Shelia Reger, David Arbeit and Tim Scherkenbach

**EQB Staff Present:** Gregg Downing, John Wells, Jon Larsen, and Princessa VanBuren

The meeting was called to order at 9:00 a.m. by Chair Hugoson.

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

Citizen member Jon Bloomberg moved and Commissioner Badgerow seconded approval of the consent agenda and minutes of the November 20, 2008 EQB meeting. The motion was approved.

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

Chairman Hugoson commented on a February letter received from Mr. Donald A. Dee from Emily, Minnesota. As a follow up, EQB staff arranged a telephone conference call with Mr. Dee and others to discuss their concerns about the environmental review of the Northern Lights over Roosevelt Lake project. A copy of a letter dated March 17, 2009 clarifying EQB's position was sent to Mr. Dee. This letter was also distributed to the EQB members for their information.

### **III. EQB Staff Report**

John Wells distributed copies of the *Managing for Water Sustainability: A report of the EQB Water Availability Project*, which the board adopted in November. He reported that the EQB staff has been busy preparing for the

Environmental Review hearings and tracking legislation regarding EQB at the Capitol.

#### **IV. Environmental Review Rule Amendment Hearings Update**

Gregg Downing, EQB staff, presented a summary of the issues raised at the public hearings recently completed on the rule making process. A public hearing was held at five locations around the state - the metro area, Bemidji, Baxter, Brainerd, Alexandria and the Duluth area. Mr. Downing reviewed the history of this rule making process. This rule making was referred to this as the "Phase 2-Rule Making", because there had been an earlier "phase 1" in which the EQB adopted relatively noncontroversial rule amendments. Phase 2 considered those topics which took a longer time to develop. Five topical areas are addressed in the Phase 2-rule making process: (1) new mandatory EAW, EIS and Exemption categories for projects in shoreland areas; (2) various changes to the treatment of cumulative potential affects throughout the rules; (3) several changes to alternative area wide review process; (4) a new mandatory EIS category for the release of genetically engineered wild rice, which is something the Legislature specifically directed the board to do; and (5) changes to thirteen other rule subparts considered to be clarifications or corrections.

Mr. Downing mentioned there were two main observations about the hearing. First, there was less controversy than expected, especially regarding the proposed mandatory categories for shoreland projects. The EQB staff expected more public interest in and controversy about the thresholds proposed. The second overall observation is that most of the negative comment received on any of the topics basically reiterated objections raised earlier, either in Phase 1 or at the Request for Comments stage in this rulemaking. Mr. Downing briefly reviewed the nature of these comments and the staffs' responses.

In conclusion, Mr. Downing reviewed the remaining steps of the rulemaking process. The written comments end on March 25<sup>th</sup> and after that there is a one week rebuttal period in which to respond to comments submitted. EQB staff will be submitting letters to the law judge after both of those deadlines, responding to comments that have been received, and proposing modifications where changes are to be made. He noted that the judge's report should be issued by the end of April, and that the EQB staff expects to present the rules with modification to the board at its next meeting in May or June for adoption.

Member Kramer asked for clarification about how the process works in regard to the board adopting the rules. Mr. Downing replied that board is allowed to make modifications to the rules prior to adoption, but that if there are changes that were not reviewed or recommended by the Administrative Law Judge, they must be reviewed by the Administration Law Judge's office to make sure that the board is not making a substantial change. Also, if the board changes its mind on some of the revisions based on comments, they are not obligated to adopt any specific provision just because they once proposed it. Almost all of the parts are separable from other parts. The board is not obligated to go forward with anything that it doesn't feel comfortable with.

Member McCarville asked how the RGUs would be educated about implementing the changes in the rules. Mr. Downing stated that the staff's primary means of informing the RGUs is through written notification, mostly through the Web site and placing notices through the EQB Monitor. The written guidance posted on the Web site also provides more information on the various processes and forms.

**V. Discussion of Possible EQB Transfer to PCA – Governor's Office Recommendations; Department of Administration's position on the transfer**

Chair Hugoson provided a brief summary of events that led to the possible transfer of EQB to PCA. Tim Scherkenbach, Deputy Commissioner, MPCA provided an overview of the Governor's recommendations for staged transfer of EQB staff, resources and functions to the MPCA. The Governor decided to ask the Legislature to approve the transfer.

Mr. Scherkenbach provided a diagram of the three-step process:

1. Moving the EQB staff the board to PCA on July 1, 2009;
2. Completing a report and recommendations on the transfer issues for the Legislature by January 15, 2010; and,
3. Abolishing the board and assigning its responsibilities to the PCA commissioner and board on July 1, 2010.

Sheila Reger, Deputy Commissioner of the Department of Administration, elaborated on the operational efficiencies that would occur as a result of

the reorganization. She noted that the department is not an environmental agency and does not offer the kind of technical environment that MPCA could offer. She mentioned that should the legislation pass the department would work to ensure a smooth transition for the staff.

Member Bloomberg questioned whether Step 3 meant it a forgone conclusion that EQB be eliminated. Mr. Scherkenbach replied in the affirmative.

Member Bloomberg asked if Step 2 was not to question whether there should be an EQB, but to decide if some of the EQB functions should be done by others. Mr. Scherkenbach replied yes. He added that the idea is to have the report come before the 2010 Session, at which time Step 3 could be changed.

Member Bloomberg noted three main issues: the staff functions and where they should reside; the need for an independent Environmental Review oversight function; and the timing of proposal elements. He indicated that once legislation is passed, it is difficult to revise. Bloomberg noted the board's unfulfilled promise was the primary focus of the Subcommittee on Future EQB Directions. The subcommittee's main recommendation was to move forward and rebuild the EQB around its original vision. He did not believe that the board had heard a policy justification for a recommendation to eliminate the EQB.

Commissioner Eger agreed that the role, mission and vision of EQB needs to be reinvigorated. Another issue, however, was the budget deficit. He also mentioned that there is an intervening legislative session during which the MPCA would have to report on the coordination issue. The issue as to whether it is appropriate for an agency such as MPCA to have both an RGU role as well as a policy role would be a fair one to be discussed.

Chair Hugoson noted that the subcommittee derived three options: to continue the status quo, to reinvigorate, and to abolish. He argued that the status quo would be the worst option. The preferred option coming from the subcommittee was to reinvigorate. The problem with this option was that it would require financing. The Department of Administration had already lost the funding for the Executive Director's position. The Governor had the option of issuing an Administrative Order, but instead

asked the Legislature to debate the issue. Member McCarville added that she didn't perceive the savings to be significant.

Commissioner Badgerow commented on the budget issue. She indicated that the Department of Administration has had reductions the last few years on the order of 35 percent. By implementing the transfer, DOA would achieve about 20 percent of its target cut by the end of the year. She mentioned that with the loss of the energy facility siting authority, which gave additional funds to the activity, the department had starved the EQB staff. They have been orphans in that they are not central to the DOA core mission. She indicated that she viewed the transfer as providing the opportunity for this function to once again flourish. She is convinced that the EQB staff will be better placed at MPCA and is aware that though DOA is taking a reduction in its budget, none of the EQB staff will be displaced because MPCA does have opportunities for them. It is important to DOA that the EQB staff be protected. In conclusion, she emphasized that this function needs significant additional resources. She further indicated that where EQB is currently housed, they will never get them.

Mr. Scherkenbach mentioned that if the transfer happens, his idea would be to come back to the board with a plan on how the process will play out over the next six months.

Member Kramer requested background information on the MPCA board, its roles and responsibilities, and how it works. Mr. Scherkenbach responded that the main MPCA board focus is on three issues: permitting, environmental review, and rulemaking. Commissioner Eger added that the board consists of eight citizen members who are appointed by the Governor and confirmed by the Senate. The MPCA commissioner chairs the board.

## **VI. Discussion of Possible FY 2010-2011 Work Elements**

Mr. Wells presented a brief overview of the work elements described in the Governor's budget document. He mentioned the need for the board to consider how it plans to address these in the coming biennium. The work elements include:

1. Complete a state water plan that sets the agenda for the next ten years of water management in Minnesota

2. Introduce a framework for the sustainable allocation of water supplies that meets the long-term needs of Minnesotans
3. Develop an energy and environment strategy report that helps the public understand state efforts and that addresses land use aspects of climate change
4. Provide citizens and local governments the assistance they need to participate in meaningful environmental review
5. Adopt rule changes that streamline and clarify environmental review in Minnesota

In addition to the above, the Board has committed to serve as the nonfederal cosponsor of the Minnesota River Integrated Watershed Management Project. The U.S. Army Corps of Engineers is the primary federal agency for the project. Mr. Wells also informed the Board that while it is not required to, it may want to consider exercising its annual environmental quality board congress authority, given the great amount of environmental activity in which the state is now involved.

The meeting was adjourned at 11:35 a.m.