ENVIRONMENTAL QUALITY BOARD

Evaluation and Recommendations for
Improving Environmental Review

As Approved by EQB
November 14, 2012

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1. Introduction

Summary of Executive Order 11-32

Governor Dayton through Executive Order 11-32 directed the Environmental Quality Board (EQB) to undertake four efforts:

1. Evaluate and make recommendations on how to improve environmental review.

2. Evaluate and make recommendations for improved environmental governance and coordination.

3. Prepare an environmental and energy report card that identifies metrics which the State of Minnesota can use to measure its performance and progress protecting Minnesota's valuable air, water and land resources.

4. Organize and host an environmental congress focused on the current state of Minnesota's environment.

This report is prepared in response to the effort of evaluating and making recommendations on how to improve environmental review.

Summary of Environmental Review

Environmental reviews are required by Minn. Stat. 116D, known as the Minnesota Environmental Policy Act or MEPA. The statute requires the adoption of implementation rules: Minn. Rules 4410. The following summary provides a brief overview of the environmental review program established by the statute and rules.

"Environmental review" refers to the preparation of an environmental document, which usually will be an Environmental Assessment Worksheet (EAW) or an Environmental Impact Statement (EIS). An EAW is intended to assess the environmental effects that may be associated with a project and to determine if an EIS is needed. An EIS is a more extensive study intended to provide information to identify potential environmental effects and explore methods for reducing the effects. There are other documents that are prepared occasionally, but the EAW and EIS make up the vast majority of environmental documents.

Under the environmental review program, the unit of government that prepares an environmental review document is called the Responsible Governmental Unit (RGU). The program rules include project categories and specify the RGU for each category. Typically, the RGU will be the government with the greatest responsibility for supervising or approving the project. When a project exceeds the threshold described in a category, an environmental review is mandatory. There are EAW thresholds and EIS thresholds. An RGU also can decide to do a 'discretionary' EAW for a project even if the project doesn't cross a mandatory threshold. Once an RGU determines

environmental review is necessary, it works with the project proposer to assemble information to complete the environmental document. There are timelines for completion of a draft document, for public comment periods, and for completion of a final document.

The program includes an opportunity for the public to submit a petition requesting the preparation of an EAW for any project. The petition is reviewed for completeness by the EQB then forwarded to the appropriate RGU for consideration. The RGU then determines if an EAW will be prepared using criteria found in the program rules.

When environmental review is required or a complete petition is submitted, a project cannot be started and no governmental approvals can be granted until the applicable document process has been completed. Once the required process has been completed, project approvals can proceed.

The underlying purpose of environmental review is to inform government actions such as projects and permits. There is however a substantive component to MEPA under Minnesota Statute 116D.04, Subd. 6, which states, " No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct."

Summary of Report Development

As noted above, this report has been prepared in the effort to evaluate and make recommendations on the improvement of environmental review, as directed by Executive Order 11-32. The EQB was very specific in directing agency staff how to go about the evaluation portion of this effort. The EQB directed staff to:

- Look at the original intent of environmental review and consider if circumstances in Minnesota have changed such that a fundamental change in the original intent is needed.

- Consider recommendations that were made as part of previous efforts, including recent reports such as the Minnesota Pollution Control Agency's, "Environmental Streamlining Report and the Office of Legislative Auditor Environmental Review and Permitting Report."

- Look at other states' environmental review processes to see if anything can be learned or if there are any good ideas Minnesota could adopt.

- Consider the relationship between environmental review and permitting for potential areas of improvement.
- Conduct focused stakeholder input prior to the development of any draft recommendations.

With this direction a core team of agency staff developed and implemented a work plan that included the following components:

- Examination of the intent of environmental review;
- Consideration of previous efforts at improving environmental review;
- Looking at other states' environmental review processes;
- Evaluation of the relationship between environmental review and permitting;
- Holding a series of EQB focus groups for improving environmental review;
- Evaluation of recommendations gleaned from each of the above activities; and
- Proposal of recommendations for improving environmental review.

The main body of this report is organized around these specific work plan activities. In some cases the work under each activity is summarized in this report with the additional detail and specifics of the work documented in an appendix. The following appendices are attached to this report:

- Appendix A – Previous Efforts at Improving Environmental Review
- Appendix B – Other State's Environmental Review Processes
- Appendix C – Report on Stakeholder Focus Groups for Environmental Review Improvement (contract with Minnesota Management and Budget)
- Appendix D – Evaluation of recommendations
- Appendix E – Comments received during the Public Comment Period September 19 – October 19, 2012

The intent of this report is to provide a transparent depiction of the process, including broad public review efforts, that was used to develop recommendations included in part 8 of this report. It should be noted that previous efforts to revise the environmental review program in Minnesota have been complex and controversial. This report attempts to embrace this complexity and work creatively to develop sound recommendations that will lead to improvement of the program.

2. Intent of Environmental Review

Evaluation of the intent of environmental review consisted of looking at the underlying purpose of MEPA as articulated by the Minnesota Legislature as well as language and its purpose in subsequent rulemaking.

Minnesota Statute Chapter 116D provides the following statements of purpose.

> *" …it is the continuing policy of the state government, in cooperation with federal and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which human beings and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of the state's people."*
>
> *"make available to the federal government, counties, municipalities, institutions and individuals, information useful in restoring, maintaining, and enhancing the quality of the environment, and in meeting the policies of the state as set forth in Laws 1973, chapter 412"*
>
> ***"Early notice.** In order to facilitate coordination of environmental decision making and the timely review of agency decisions, the board shall establish by rule a procedure for early notice to the board and the public of natural resource management and development permit applications and other impending state actions having significant environmental effects."*

Minnesota Rules Part 4410 provides additional details regarding the purpose and objectives of environmental review.

> ***"Purpose**.*
> *The Minnesota Environmental Policy Act recognizes that the restoration and maintenance of environmental quality is critically important to our welfare. The act also recognizes that human activity has a profound and often adverse impact on the environment.*
>
> *A first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of parts 4410.0200 to 4410.6500 is to aid in providing that understanding through the preparation and public review of environmental documents.*

Environmental documents shall contain information that addresses the significant environmental issues of a proposed action. This information shall be available to governmental units and citizens early in the decision making process.

Environmental documents shall not be used to justify a decision, nor shall indications of adverse environmental effects necessarily require that a project be disapproved. Environmental documents shall be used as guides in issuing, amending, and denying permits and carrying out other responsibilities of governmental units to avoid or minimize adverse environmental effects and to restore and enhance environmental quality.

Objectives.

The process created by parts 4410.0200 to 4410.6500 is designed to:

A. provide usable information to the project proposer, governmental decision makers and the public concerning the primary environmental effects of a proposed project;

B. provide the public with systematic access to decision makers, which will help to maintain public awareness of environmental concerns and encourage accountability in public and private decision making;

C. delegate authority and responsibility for environmental review to the governmental unit most closely involved in the project;

D. reduce delay and uncertainty in the environmental review process; and

E. eliminate duplication."

Based on review of statute and rule, agency staff have developed a definition of the intent of environmental review:

> To understand the environmental effects of proposed projects in order to promote harmony between human activities and the environment, with consideration of both short and long term social and economic needs of the state.

Principles:

- Providing information for decision makers and project proposers
- Coordination with federal, state and local agencies
- Public involvement in decision making
- Efficiency in process

With this definition, agency staff believe the original intent of environmental review is just as valid today as it was when first envisioned by the legislature in the 1970s. One significant difference between the 1970s and today is the "information" that is available, needed, and desired for understanding environmental effects and therefore promoting harmony between human activities and the environment. The information and technology available is much greater today, but there is also a better understanding of the complexity of environmental systems and the challenges with predicting and implementing harmony with human activities.

3. Previous Efforts at Improving Environmental Review

A review was conducted of previous efforts to assess and recommend improvements to Minnesota's environmental review process. Past reports, surveys, and interviews had been conducted with project proposers, RGUs, regulatory staff, and public participants, in order to identify gaps and roadblocks in the process as it currently operates. Each report that assessed Minnesota's environmental review program made recommendations for improvement based on its findings. These reports differed greatly. One document included ideas and observations from research; another contains comments gathered from public input sessions. Most of the reports reviewed include recommendations for improving environmental review, although one report concluded that due to the vast disparity among comments received, it could not make recommendations. Even in the reports where recommendations are provided, there is little commonality. Similar broad themes can be found in some of these reports, but no consistent recommendations or findings are found among all.

Each of the reports in the following list was summarized and reviewed for recommendations as part of this effort. These summaries and associated recommendations can be found in Appendix A.

The recommendations taken from these past efforts were reviewed and included in the overall review of recommendations included in Appendix D. This is the list of previous reports on the improvement of environmental review that were included as part of this effort:

- Improving Environmental Review in Minnesota: A Survey with Recommendations— Sierra Club--2003
- Technical Representatives' Report to the Environmental Quality Board on Environmental Review –April 11, 2007
- Environmental Review Streamlining Report – Minnesota Pollution Control Agency – December 2009
- Bench and Bar of Minnesota – Volume 67, Number 1, January 2010 – Peder Larson and Julie Perrus
- Office of the Legislative Auditor - Evaluation Report–Environmental Review and Permitting –March 2011

The Technical Representatives' Report to the Environmental Quality Board on Environmental Review, listed above, examined all reports regarding environmental review improvement initiatives prior to 2007. Although these additional reports were not attached to the 2007 Technical Representatives' Report, a table summarizing these previous reports and their respective recommendations was

developed by the EQB Technical Representatives, a staff-level group whose membership is composed of one member from each agency represented on the EQB. The table developed from this 2007 report acted as a foundation upon which this effort could build to further evaluate other, more recent, studies regarding environmental review improvement.

Recommendations from the additional reports listed above, which had not been considered in the drafting of the 2007 EQB Technical Representatives report, were added to the table. All of the recommendations taken from all of the reports on past environmental review improvement initiatives were evaluated for consideration as part of this effort, with the exception of specific recommendations which have already been implemented.

4. Other States' Environmental Review Processes

In the process of assessing areas for improvement of environmental review in Minnesota as part of the Executive Order 11-32 requirements, the environmental review processes followed by other states were considered to evaluate other states' strategies which could be implemented into Minnesota's environmental review processes.

Due to the time limitations of this project, a thorough analysis and comparison of an exhaustive list of environmental review processes from all other states was not feasible. However, the team examined studies conducted by other states of the respective state environmental review processes. The complete details of this review are attached as Appendix B – Other States' Environmental Review Processes. Also as part of this effort, twelve specific recommendations were developed and included as part of the evaluation of all recommendations which is located in Appendix D.

5. Environmental Review and Permitting

Environmental review and environmental permits are tools that can be used to analyze a great variety of projects. These tools utilize separate and complex processes. Many people believe they duplicate effort. To begin to analyze these two tools and review them for any duplication of efforts, one must first understand the purpose of each tool and also consider the use of each tool as it applies to projects. Though environmental review and environmental permits may, in some cases, address topics of a similar nature, the fundamental purpose and the product of each tool is quite different.

Environmental Review

Environmental reviews are required by state statute. "Environmental review" refers to the preparation of an environmental document, which usually will be an Environmental Assessment Worksheet (EAW) or an Environmental Impact Statement (EIS). The Minnesota Environmental Policy Act (MEPA, Minn. Stat. 116D) mandates the preparation of these documents. An EAW is a tool used by the responsible governmental unit (RGU) to decide if there are potentially significant environmental effects that would result from a project. If there is potential for significant environmental effects from a project, the statute requires that an EIS shall be prepared, and that it be prepared as early as practical to ensure its use in governmental decisions about the project. Public comment periods are required for both documents, and an early, open process is required to define what topics will be included (i.e., the scope) in the development of an EIS.

The statute also requires implementation rules which were adopted as Minnesota Rules 4410.0200-4410.6500. The rules' purpose statement includes understanding project impacts on the environment through the preparation and public review of environmental documents. Objectives of the rules include providing usable information for the project proposer, governmental decision makers, and the public; and providing the public with systematic access to decision makers to help maintain public awareness of environmental concerns and encourage accountability in decision making.

In summary, the vital elements of Minnesota' environmental review program are: information about environmental impacts; using that information when designing and reviewing projects; and public access to the process.

Environmental review documents, such as the EAWs and EISs, are intended to provide a single consolidated source of information about potential or expected environmental impacts from a project. This information then is available to the public and to decision makers to inform governmental actions, which may include environmental permits and other types of approval. Environmental reviews identify and analyze the effects or potential effects on the environment, including: air, land, surface water, groundwater, habitat, etc. Depending upon the scope of the environmental review, they also may include analysis of potential economic, employment, and sociological impacts of a

project. While an environmental review may inform governmental and other decisions, by itself it is not a decision document: a project does not pass or fail environmental review.

In addition, environmental review documents must assess the potential for cumulative environmental impacts: effects that result from the incremental effects of a project in addition to other projects in the environmentally relevant area. Significant cumulative impacts can result from individually minor projects taking place over a period of time.

Though the forms used for EAWs are consistent, completed environmental review documents for projects across Minnesota are highly variable. The depth and extent of their analyses are largely a function of the resources and expertise available to the RGU, the complexity of the project, or other factors.

Environmental Permits

Environmental permits are both technical documents as well as regulatory tools. Permits include requirements and limits that, if adhered to by the permittee, will ensure compliance with standards, rules and laws at local, state or federal levels. These permits often contain the specific engineering designs, equipment, and operational parameters, as well as ongoing monitoring requirements, needed to ensure compliance with the applicable requirements. Many environmental permits, once developed, will also be available for public comments for a period of time prior to permit issuance.

At the state level, environmental permits also must be maintained by the permittee, and it is the responsibility of the permittee to acquire a permit modification or renewal from the regulatory agency if there is a planned change in facility operations, or if the permit term expires. State level permits are a key tool to enable regulatory agencies to conduct compliance audits of a facility. If the permittee does not operate the facility as required by the environmental permit, they may be subject to enforcement action on the part of the regulatory agency.

A single project may require several media-specific state and/or federal environmental permits for each key area of its operation (e.g., wastewater, air emissions, solid waste, water appropriation, stormwater, tanks) or phase (e.g., construction, operation). Permits may include related information but they do not explicitly analyze cumulative impacts. Nor do permits analyze alternatives to the project as proposed. A permit is a decision document: a project either gets a permit or it doesn't.

At the local government level, project approval might include such things as amendment to a comprehensive plan, rezoning, variances, conditional use permits, or other mechanisms required by a specific local jurisdiction. Most of these mechanisms focus on a specific element of the project. Only a few of them will examine broader environmental issues and impacts and they may or may not include conditions or

monitoring elements. Unlike a state agency, the level of analysis and expertise will vary significantly from one local government to another. The statewide result is inconsistent consideration of environmental effects and means of avoiding or reducing them.

Comparative Analysis

Both the MEPA statute and 4410 rules require concurrent information gathering. Permits that will be required for the project must be identified during an EIS-related scoping process. Whenever practical, information needed for permit decisions must be developed in conjunction with an EIS. In addition, the scoping must identify what permit information will be developed concurrently with the EIS. (Minn. Stat. 116D.04 Subd.2a.(f) and (g), Minn. Rules 4410.2100, Subp. 6.) Information needed for permit decisions and EAWs may be developed in a similar manner. The intent is to identify potential environmental impacts early and try to design the project to avoid those impacts.

As noted above, environmental review documents provide a consolidated source of information about environmental impacts. Consolidating information in one place—and doing it as early as possible—serves several purposes.

Identifying environmental impacts early allows project proposers to design or redesign the project to avoid the impacts. This often will avoid creating unnecessary costs for both the project proposer and governmental units. Project design costs increase as the design is refined, and redesign is less costly when it occurs earlier in the planning process rather than later.

Consolidating the information also helps inform a permit decision making process. Analyzing all media at one time (air, land, water, groundwater) facilitates identifying ways to improve production and/or treatment processes to make them more effective and efficient. This also allows the RGU to identify potential problems such as where a treatment process for one media that could potentially impact the treatment process for another media. This can affect whether or not the project can meet the federal or state permit standards. Having more complete information consolidated in one place—and having it completed early in the process—reduces the costs of project design (and redesign), permit writing (and rewriting), and therefore the costs of review time.

There also are situations in which critical environmental information is needed to make a reasoned choice among alternatives that are identified in the environmental review. In this case it may be most efficient for a permit application to be processed concurrently with the environmental review. That is, alternatives must be compared in an EIS, and a permit analysis may be necessary for the comparisons. In such cases where the two tools depend on one another, the same information may be in both documents, but in the form of attachments or copied summaries. These are minor word processing and printing tasks, not duplicated analyses.

A common misperception is that there are a large number of projects that undergo both environmental review and permitting. By way of example, in 2011 the Minnesota

Pollution Control Agency (MPCA) completed environmental review for 13 projects involving EAWs, all of which also required environmental permits. During that same time frame the MPCA issued over 2,200 environmental permits that did not trigger any mandatory environmental review preparation.

Generally, the projects that require environmental review represent the largest, most complex, or most controversial projects of their kind. Experience has shown that large or complex projects are more likely to have the potential for significant environmental impacts. These are the type of projects that may benefit from the coordinated analysis and public review that is provided by environmental review. If a project warrants an EIS, there will be an analysis of alternatives to the project as proposed. Consideration of alternatives can result in improvements to the project, design changes, or simply demonstrate why the project as proposed is the best approach.

While both environmental review and environmental permits provide valuable information and analysis, and are inherently different processes, there are situations where similar information may be used in both documents. Air emission analysis provides an example. When drafting an air emissions permit for a larger source (e.g. a potential air emission source greater than 250 tons per year), analyses are conducted to demonstrate the source's compliance with air quality standards. The results will inform the MPCA about the permit limits needed to meet those standards, thereby protecting air quality and minimizing risk to human health and the environment. If appropriate, these will be incorporated into the permit conditions. The results of this analysis often will be used to help draft the air impacts section of the associated environmental review document. This helps inform the public of what the potential impacts might be and what is being done to mitigate those potential impacts.

The air permit and accompanying technical support document generally do not fully present the results of the assessment studies. An air permit contains technical information based on even more detailed technical analyses, including a description of the facility, the proposed modifications, and proposed requirements and emission limits. The analysis presented in a technical support document covers the permit requirements, designed for specific standards and conformity with state and federal rules. These permit documents do not contain information to help understand the total environmental impacts of a facility.

Comparatively, the description in an environmental review is broader and focused on the project as a whole and may incorporate or summarize the air permit information as it affects the whole environmental review. Alternatively, the permitting analysis for a specific media may be initially performed for an environmental review, but refined and further developed for permit documents. Therefore, though analysis of environmental impacts may occur within both types of documents related to air emissions, the analysis included in the separate documents are not a duplication of effort, but instead illustrate a difference in detail and purpose. Again, statute and rule both require concurrent information gathering.

Another key difference between environmental review and permitting is that environmental review is not a decision document but a permit is. The environmental review is intended to provide information that will be used to help support decision making as part of the environmental permitting process.

This example provides an opportunity to consider whether it is necessary for both the environmental review and environmental permitting tools to document air risk analysis, for example. It is important to seek opportunities to reduce the instances of duplicative narrative documents while not sacrificing the fundamental—and different—purposes of the environmental reviews and environmental permits. Through the use of technology we may be able to further tailor both environmental reviews and permits.

In doing so, it is vital to recognize that there are many different types of projects that undergo environmental review and one approach will not fit all situations. For example, an industrial facility on a 100-acre site differs greatly from a land development project for several hundred house lots covering the same amount of land, and both differ from a road project. This is one of the extremely important elements of environmental review which is not part of the environmental permitting process: the consideration and analysis of alternatives in location, technology, design, or scale.

The industrial project may be governed by federal and state rules with specific technical and design requirements. The industrial project design should consider potential impacts on the site and the surrounding community but it must meet the federal and state regulatory specifications. The manufacturing process may require the facility to be laid out on the site in a certain way. Because of these factors, there may be little flexibility when looking at alternatives for the project. On such a project, the permits and environmental review often are prepared concurrently rather than sequentially.

Design possibilities for a residential development are greater because local governments have great discretion in their design parameters, and thus for considering project alternatives. The environmental review for a residential project should be a fundamental planning tool for the design of the site. Based on the knowledge gained from environmental review, the site design should minimize adverse impacts on the environment, including the surrounding community. Therefore, the environmental review is prepared based on a draft design. Based on the environmental review information, the design is then finalized, often including significant changes from the draft. Local approvals then will be based on the final project design.

Road projects often require environmental reviews as well. Highway projects typically involve federal funding, so there are federal information and process requirements that are not part of permit requirements. Project alternatives are possible but may be limited. Similar to the residential project example, permits and approvals are not prepared concurrently with the environmental review because the permits must be based on the ultimate design of the project, and the final design must take into account the knowledge gained from environmental review.

In summary, when it comes to techniques to dovetail design, environmental review, and permits/approvals, one size does not fit all.

6. EQB Focus Groups for Improving Environmental Review

The EQB contracted with Management Analysis & Development (MAD), a division of Minnesota Management & Budget, to help facilitate a series of information gathering sessions with key stakeholders. These sessions, termed Environmental Review Improvement Focus Groups, were two and one-half hours in length and asked a series of questions to identify both favored and frustrating elements of the environmental review process. Additionally, the groups were asked to brainstorm ideas on how to address these frustrating elements and improve the effectiveness and efficiency of the process.

Ten stakeholder focus groups were held between late May and early July 2012 and a total of approximately 80 people participated in the meetings. It was decided by EQB staff that each of the stakeholder meetings would bring together individuals with similar perspectives regarding environmental review. Stakeholder groups emerged around the several specialties, including local governments, project proposers, environmental conservationists, academicians, and administrators.

The report prepared under the contract with MAD is attached as Appendix C –Report on Stakeholder Focus Groups for Environmental Review Improvement. In addition to the identification of common themes, areas of agreement and areas of disagreement, the MAD report includes the "raw data" for each focus group. This raw data consists of everything that was captured on flip charts or attachable notes during the focus groups. Part of this raw data included lists of recommendations for improving environmental review. All of the recommendations contained within the raw data were included as part of the evaluation of recommendations, listed in Appendix D. The information gathered as part of the focus group effort was also used to help develop the criteria used in the evaluation of recommendations.

7. Evaluation of Recommendations

All of the recommendations that had been identified as part of this effort were rated against evaluation criteria in an effort to identify those recommendations that have the best potential for leading to improvement of the environmental review program and to prioritize which recommendations to implement. The evaluation criteria were developed based on the goals and desired outcomes from environmental review, based on the intent of environmental review as well as input received from the focus groups and other sources researched for this report. The goal for this evaluation was to make each criterion as clear as possible so that all reviewers of this effort could easily understand what measures were used to evaluate a specific recommendation. The recommendations were evaluated using the following criteria:

- How will the recommendation affect the availability of information?
- How will the recommendation affect the reliability/objectivity of information?
- How will the recommendation affect the usability of information by governmental units?
- How will the recommendation affect the usability of information by project proposers?
- How will the recommendation affect the usability of information by the public?
- How will the recommendation affect coordination among governmental units?
- How will the recommendation affect duplication of effort?
- How will the recommendation affect project review time?
- How will the recommendation affect complexity/simplicity of the environmental review?
- How will the recommendation affect the ability to understand the environmental review process?
- How will the recommendation affect consistency across governmental units as it relates to the process itself, information needed, and decision reached?
- Will the recommendation require changes to statutes or rules?
- How will the recommendation affect costs?
- How will the recommendation affect the need for technology requirements?
- How difficult will the recommendation be to implement?

The evaluation of the exhaustive list of recommendations generated during this process, including a matrix illustrating this evaluation, is attached as Appendix D – Evaluation of Recommendations.

8. Recommendations for Improving Environmental Review REVISED AFTER PUBLIC COMMENT

The following recommendations have been developed as specific actions that would improve environmental review. The recommendations are listed in priority order for implementation:

<u>First Priority</u>: Strengthen EQB capacity for oversight and assistance in implementation of environmental review:

- Continue evaluation and development of customized EAW forms and guidance to address specific sectors commonly engaged in environmental review.
- Work with associations of local governments to assist local governments that lack experience or expertise with environmental review by development and promotion of environmental review training for continuing education of association members.
- Provide enhanced oversight of RGUs regarding compliance with environmental review rules. EQB staff would act to educate and correct an RGU when there is a misinterpretation of the rules or an error in the process will help avoid problems in the process and lead to a more consistent application of the rules. It is acknowledged that EQB does not have enforcement authority over the environmental review rules, and this proposed enhanced oversight does not propose any changes in enforcement authority. This oversight is a leadership role to ensure RGUs, project proposers, and the public are aware of the rules; this would also increase the likelihood that the rules are properly interpreted and implemented consistently across the state.
- Implement periodic audits of the environmental review program. Collect and analyze data (see second priority recommendation) on the environmental review process to identify issues or problem areas and take corrective actions such as providing additional training or guidance or making rule revisions.
- Conduct periodic rule revisions and mandatory category updates as needed. This recommendation was enacted by Minnesota Laws 2012 Chapter 150 (Senate File 1567), which directs EQB and other agencies to evaluate and make recommendations for revisions to mandatory categories every five years.

<u>Second Priority</u>: Develop a better system of making information available

- Bring Minnesota's environmental review program into the 21st century by developing a more enhanced system of information assembly and distribution. A central part of this would be to have web-based access to environmental review information from a central EQB website. This would assist the public, agencies and project proposers by having immediate access to the details of an environmental review for a specific project, as well as a body of environmental reviews of previous projects as examples, ideas, data, and cumulative effects analysis. The available information also should include, when appropriate, agency permitting data that was assembled concurrently

with environmental review. Development of this type of system should occur incrementally over a phased period with the initial phase of the system development focusing on making environmental review documents available and an associated database that tracks specific information contained in the documents. This will allow immediate access to documents while also collecting information on specific projects and as well as the environmental review process itself, allowing EQB staff to monitor and evaluate implementation of the environmental review program. The analysis of this information will support and highlight within the environmental review program process improvement needs, increased guidance development needs and needs for potential rule revisions. Current efforts for these types of changes have lacked the rigorous collection and analysis of information that would lead to informed decision making for an improved environmental review program. Future phases of the information system could expand to include access to other agency data, permits, or other information related to environmental documents.

Other efforts that could be informative:

- The Public Utility Commission uses an eDocket system for projects that allows real time submittal of documents by project proposers, government agencies, and the public. This system provides a good model of transparency during the project review process.
- MPCA is considering implementation of a pilot program for select projects that require both: 1) an EAW for which MPCA is the RGU and 2) one or more permits for which MPCA has the approval authority. The MPCA would be using existing worksheets and formats and incorporate the supporting permit documents by reference into an EAW. This type of pilot program could serve as a learning tool for MPCA with the potential to expand the system to other types of projects reviewed by MPCA and other agencies. If the pilot program is successful in improving efficiency of producing and completing the concurrent EAW and permitting processes, MPCA could then create an on-line portal that allows development of the environmental review document online with links to the permits and other supporting technical documents. The EAW portion would not need to include the complete set of technical information needed for a permit from a state agency. However, the public would have access to as many levels of technical specificity as they wish via web links.

<u>Third Priority</u>: Expand the use of AUAR or AUAR like alternative review processes

- The Alternative Urban Areawide Review (AUAR) process has been seen by many as a very efficient way of combining environmental review with land use planning. By investing in this kind of effort in advance of specific projects, the process of project development is more efficient and effective in addressing potential environmental effects. This should focus on geographic areas where future project proposals are somewhat foreseeable to ensure the evaluation would provide helpful and useable information. This could be conducted under existing authorization for development of alternative environmental review processes, but eventual rulemaking for clarification may be needed after developing some experience with the process. The AUAR rules could be amended to allow AUARs and updates to coincide with decennial comprehensive plan updates required in the seven counties of the Metropolitan Area.

<u>Fourth Priority</u>: Develop a pilot screening tool for EAW development and early coordination process

- Build off the work of the revised EAW form and guidance (see priority one recommendation) to develop screening level assessments for RGUs and project proposers to gauge what level of effort is needed to respond to specific EAW questions.
- Work with local government units and other RGUs to develop best practices regarding early stakeholder engagement using a detailed project description and screening level analysis. This would provide additional information to RGUs, project proposers, and the public to help assess which EAW questions are most important to address for a specific project.
- This process should initially be developed as a voluntary "best practices" procedure for RGUs and proposers. Information should be collected from these efforts to determine what process and project improvements are achieved to potentially further refine the process of early engagement. If successful, rulemaking could be considered to require early coordination.
- Use of the enhanced information availability (see second priority recommendation) could assist in early engagement of stakeholders and continued engagement throughout the process.

<u>Fifth Priority</u>: Develop an easier process for RGU re-designation

- Current rules require RGU re-designation to occur by board action. A process that would allow re-designation without board action should be designed and the rules amended.
- The rule amendments should include additional criteria for determining RGU re-designation to avoid potential situations of inappropriate RGU re-designation.

<u>Sixth Priority</u>: Revise EAW to Consider Broader Issues or Effects

- This recommendation has occurred in various forms as part of the many previous environmental review improvement efforts, but it is difficult to move forward on due to the unknowns of how much the additional information and complexity will actually result in improvements of the environmental review process or the program. There is little consensus on this recommendation.
- As the other recommendations move forward (especially the first priority recommendation), EQB staff should re-evaluate the need for this recommendation. It is possible with increased guidance, better information being available and early coordination efforts, the need for this recommendation may be diminished or achieved via other EQB actions.

EQB Staff Resources: In order to implement any of these recommendations additional EQB staff resources are needed.

- The speed at which recommendations can be implemented will depend on the availability of EQB staff resources. At a minimum, two FTEs should be dedicated solely to administration of the environmental review program with appropriate administrative support and leadership from an Executive Director.
- A substantial one-time cost and an annual maintenance cost will be needed to implement the second priority recommendation.
- To fully implement the first and second priority recommendations, at minimum an additional FTE is needed for data collection, analysis, and audit functions.

Appendix A:

Past Environmental Review Efforts

As part of Executive Order 11-32, a review was conducted of previous efforts to assess and recommend improvements to the state Environmental Review process in Minnesota. Past reports, surveys, and interviews had been conducted with proposers, responsible governmental units (RGUs), regulators, and public participants, in order to identify gaps and roadblocks in the current process. Each report made recommendations based on their findings. These reports differed greatly. One document included ideas and observations from research; another has comments from public input sessions. Most have recommendations, but one report concluded it could not make recommendations, because of the vast disparity of comments received. Even when recommendations are found, there is little commonality across the different reports other than broad themes found in some, but not all of them. This makes it difficult, even impossible, to assemble the recommendations in neat categories. We made our best effort at summarizing the results of these sources.

1, Improving Environmental Review in Minnesota: A Survey with Recommendations—Sierra Club--2003

2. Technical Representatives' Report to the Environmental Quality Board on Environmental Review –April 11, 2007

3. Environmental Review Streamlining Report – Minnesota Pollution Control Agency – December 2009

4. Bench and Bar of Minnesota – Volume 67, Number 1, January 2010 – Peder Larson and Julie Perrus

5. Office of the Legislative Auditor - Evaluation Report–Environmental Review and Permitting – March 2011

Improving Environmental Review in Minnesota: A Survey with Recommendations—Sierra Club—2003

In December of 2003 Sierra Club's North Star Chapter released their report, *Improving Environmental Review in Minnesota: A Survey with Recommendations*. Their survey consisted of meetings with Soil and Water Conservation Districts and counties to interview them about their experience with the environmental review process. They chose five counties in the Twin Cities Metro Area which were currently engaged in rapid development (Anoka, Carver, Dakota, Scott, and Washington).

Conclusions

1. Technical comments and local planning documents containing relevant environmental information are often ignored by RGUs.
2. Bias of RGU's toward project development has also been noted.
3. There is no appeals procedure for hearing objections to RGU performance, except slow and costly litigation.
4. Supporting documents are not readily available in an electronic format for RGUs to review
5. Inconsistency, among RGUs, in implementation.
6. Significant lack of consideration, by RGUs, of comments, plans, and cumulative impacts.
7. EISs seldom result from significant impacts discovered in EAWs.

Recommendations

1. Create an appeals process, outside of courts, to hear objections with RGU performance (similar to AUAR for state agencies or BWSR for water policy conflicts) **OR** Provide RGU authority permanently to EQB for all projects.
2. Establish a stakeholder committee to formally review document.
3. The consideration of local management plans should be listed in these Rules along with other required elements so they are consistently implemented across the state.
    a. The EAW should discuss whether the project is subject to any of these official governmental management plans and if the project does or does not comply with the plan.
    b. Emphasis in the EAW should be given to any conflicts or incompatibilities between the project and plan provisions that relate to the environment or use of natural resources.
4. Incorporate environmental concerns in land use criteria.
5. Require that land-use plans meet local water quality standards and allow water quality boards to veto plans that don't meet standards.
6. EQB should provide additional guidance for RGUs for providing comment responses and developing greater accountability for RGUs.
7. Cumulative impact concerns and supporting data should be provided in local plans, in order to give RGUs better access to this information.

Technical Representatives' Report to the Environmental Quality Board on Environmental Review - April 11, 2007

The following is a partial overview extracted from the report summary:

At its retreat on January 31, 2007, the EQB directed the EQB staff and Technical Representatives, representatives from state agencies, to review EQB's role as it pertains to the Environmental Review Program and report back to the EQB with recommendations. In order to accomplish this task, EQB staff and Technical Representatives held two special meetings in addition to discussions at two regular Technical Committee meetings. A subgroup studied the issue in more detail and provided the structure and basis for each discussion. Specifically, the EQB staff and Technical Representatives:

1. Reviewed Environmental Review reform ideas coming out of significant reports, studies, and efforts from 1990 to 2002 including the following:
   - Tech Rep Report on changes to ER 1991
   - 1995 Advisory Workgroup (preliminary agreement, never published)
   - "EQB Topics & Issues for Environmental Review Special Advisory Committee to Consider", 12/17/01
   - EQB Analysis of SAC Recommendations, 12/02
   - MEI Program Findings and Recommendations 1992
   - Citizen Meeting Summary, MPCA 2000
   - Concepts for Revision of the Environmental Review Program, EQB 1993
   - Unfulfilled Promise, MCEA 1994
   - From *Environmental Review: An Unfulfilled Promise*, Dayton and Herman 1990

2. Sorted and grouped those reform ideas to discover the broad underlying issues/problems

3. Examined the history of Environmental Review reform efforts overall to glean what lessons could be learned.

Recommendations

Policy and Assistance
The EQB administers the Environmental Review program and makes certain decisions at the policy level as described in "EQB‟s Historical and Present Role in Environmental Review" section of this report. Overall, EQB staff and Technical Representatives do not recommend any changes in this role.

Major Structural Reform
After several attempts and significant time spent, successful resolution of major structural reform issues has proven elusive. These failed attempts have resulted in a degree of fatigue and frustration for all participants, including EQB staff and Technical Representatives. EQB staff and Technical Representatives believe that many of the issues are important and still relevant. However, unless a different approach is used, new attempts at major structural reform are likely to result a similar impasse as in past efforts. The EQB staff and Technical Representatives recommend that any new effort to restructure Environmental Review be attempted only if the following conditions are met:

1. There is a clearly defined problem or opportunity that EQB members, given the EQB‟s mission, feel would be irresponsible of them not to address now;

2. Significant resources (money) are secured for the effort and a work plan is clearly defined; and

3. If, to move structural reform ahead, the Board feels that some level of consensus among stakeholders is needed, the process should be headed by professionals with expertise in consensus-building/conflict resolution and ideally experience with similar issues. The EQB staff and Technical Representatives believe that state agency staff should not embark on Environmental Review reform again without leadership from a qualified outside party, possibly from outside the state system and selected through a nation-wide search.

Environmental Review Streamlining Report – Minnesota Pollution Control Agency–December 2009

The following is a partial overview extracted from the report summary:

The 2009 Minnesota Legislature required the Minnesota Pollution Control Agency (MPCA) to prepare an Environmental Review Streamlining Report. According to the legislation, streamlining means to make the process faster and less expensive. These streamlining options must not only provide potential cost and time savings, but also maintain or improve air, land, and water quality standards.

The MPCA held a public information meeting and asked stakeholders to submit their ideas for streamlining the environmental review process while maintaining or improving the environment. The Agency received 13 letters that included ideas for changing the process, but did not address how these ideas would maintain or improve the environment. The MPCA also received 31 comment letters expressly opposed to streamlining. These commenters expressed concern that streamlining translates to "weakening" and would "erode citizen participation in the process".

Conclusions

Many modifications have been made to the environmental review processes over the last 32 years. Changes have typically been in response to stakeholder concerns, emerging issues, new technologies, experience with the program, or regulatory requirements. Some changes have been designed to streamline the process while others were simply to provide general clarification. Past efforts to explore broad streamlining of environmental review have often resulted in polarized views among stakeholders and these efforts have largely been unable to find a path toward further streamlining.

In preparing this report the MPCA reviewed the history of past streamlining efforts, analyzed data from the past two years, and sought stakeholder ideas and comments regarding environmental review streamlining. The report summarizes the history of past efforts and includes a copy of the January 2007 EQB Technical Representatives Report to the Environmental Quality Board, which provides a comprehensive accounting of all past efforts. In the course of this latest effort, it became clear that the state is lacking complete data for projects that are led by local-level RGUs. While data does exist for state agencies, the MPCA recommends that efforts be implemented to standardize data collection and reporting across all RGUs to help ensure that the Legislature has access to quality data that is representative of the entire system.

This effort has clearly demonstrated that there is still a significant divide among stakeholders on whether environmental review should be streamlined at all. While some stakeholders may agree that streamlining is warranted, there remains significant debate about the potential environmental effects of specific streamlining ideas as well as their potential to erode the public participation process. As is evident in the comment letters, there is substantial debate on whether any of the ideas could be implemented while also maintaining or improving air, land, and water quality standards. The MPCA has attempted in this report to reference the specific comment letters related to each particular idea to provide the specific comments both for and against any streamlining idea.

Bench and Bar of Minnesota–Volume 67, Number 1, January 2010–
Peder Larson and Julie Perrus

The article by Larson and Perrus provided a brief history of environmental review, attempts at reform, a look at MEPA today, changes for consideration, and their vision of successful reform.

Recommendations

1. The law and process of environmental review should be reformed to focus on environmental impacts that will not otherwise be addressed by existing regulatory programs
2. The processes of environmental review should be improved to ensure that the time and expense of environmental review produce environmental results.

Successful Reform

"Successful reform will mean that detailed review of potentially significant environmental impacts and required mitigation will take place in existing regulatory programs to the maximum extent possible. Environmental review of individual projects should then produce three things. First, it should produce a concise and understandable description of potential environmental effects of a project that will be mitigated by preexisting regulatory oversight. Second, it should provide a detailed description of other environmental risks and an analysis to determine whether additional environmental review is required. Finally, when necessary it should provide and EIS prepared in a timely and cost-effective manner that provides important information for use by the public and permitting authorities".

Office of the Legislative Auditor - Evaluation Report–Environmental Review and Permitting– March 2011

The following is a partial overview extracted from the report summary

This evaluation focused exclusively on projects proposed in the private sector. Between fiscal years 2007 and 2010, 229 notices of EAWs were published for private projects. Numbers declined over those four years, with 99 in fiscal year 2007 but only 22 in 2010. Seven EISs for private sector proposals were also started during that four-year period

Conclusions

- Minnesota's environmental review process provides the public with information about important environmental concerns.
- However, environmental reviews do not always achieve key objectives; they do not consistently reduce delay, uncertainty, and duplication in the process. In addition, the structure for providing public access to decision makers has flaws.
- There is wide variation in the expertise and experience among the government units charged with managing environmental assessment worksheets (EAWs) and environmental impact statements (EISs)
- Attempts by the Environmental Quality Board (EQB) and other to reform the environmental review process have had limited success
- Minnesota's Pollution Control Agency (PCA) and Department of Natural Resources (DNR) lack adequate data to measure the timeliness of their environmental review and permitting processes, monitor timeliness, and identify needed improvements. Based on date we could obtain, the time taken to complete environmental reviews by PCA, DNR and a sample of local governments varied greatly and for different reason depending on the project

Recommendations

- The Pollution Control Agency (PCA) and Department of Natural Resources (DNR) should improve the value of their data by routinely compiling complete and accurate timeliness information on environmental reviews and priority permits. Doing so will enable them to report on agency performance, identify opportunities for improvement, and change their processes when necessary.
- PCA and DNR should establish explicit standards for the timeliness of agency responsiveness to proposers' initial and supplemental data submissions for environmental assessment worksheets (EAWs). Each agency should measure its performance against these standards and against time lines already in Minnesota Rules.
- PCA and DNR should each develop clear guidance on what constitutes a complete EAW data submittal.
- PCA and DNR should consistently inform project proposers of the environmental review process, information needed for a complete EAW data submittal, agency timeliness standards, and the agency's expectations of the proposers and their consultants.
- The Legislature should authorize and fund the Environmental Quality Board (EQB) to examine on a trial basis the feasibility of allowing certain proposed projects, based on criteria that identify them as low risk, to bypass the EAW process.
- EQB should modify the process for re-designating a responsible governmental unit and develop criteria to help potential responsible governmental units determine whether they have sufficient expertise and experience to conduct environmental reviews.

- EQB should work with associations of local governments to 1) identify resources to assist local governments that lack experience or expertise with environmental review and 2) develop and promote environmental review training for continuing education of association members.
- EQB should identify best practices of the environmental review process and encourage their widespread use where appropriate.
- The Legislature should extend statutes governing potential conflicts of interest to cover all public officials who may serve as members of a responsible governmental unit.
- EQB should continue to make its work on customizing EAW forms a priority.

Appendix B:

Review of Other States' Environmental Review Programs

Introduction

In the process of assessing areas for improvement for environmental review in Minnesota as part of the requirements of Executive Order 11-32, the environmental review processes of other states were considered to evaluate if there were strategies used by other states which could be implemented in the Minnesota environmental review processes.

Due to the time limitations of this project, a thorough analysis and comparison of the environmental review processes of other states was not feasible. Therefore, a review of existing studies of environmental review processes of other states was conducted.

Discussion

A total of thirty seven states have adopted some environmental review requirements. Minnesota is one of seventeen states (including the District of Columbia) that have enacted state environmental policy acts, often called "mini-NEPAs" (National Environmental Policy Act).

Table 1 provides a list of states with state environmental policy acts. These Acts established environmental review processes that range from a sentence or two of regulation requiring that a project must state its environmental impact, to full checklists and guidelines for completing the review.

Table 1
States with environmental policy acts

State	Act/Regulation
California	CEQA
Connecticut	CEPA
District of Columbia	EPA
Georgia	GEPA
Hawaii	OEQC
Indiana	IDEM
Massachusetts	MEPA
Maryland	MEPA
Minnesota	MEPA
Montana	MEPA
New Jersey	Executive Order #215
New York	SEQR
North Carolina	SEPA
South Dakota	Statute 34A
Virginia	Virginia Code 3.2
Washington	SEPA
Wisconsin	WEPA

Source: MDH, 2012.

States with these types of legislation have more comprehensive policies related to evaluation of environmental impacts and procedural requirements. These states also have more consistent requirements and content/format policies. (Ma, et al, 2009) Additionally, although considerable differences exist, states do seem to experience many of the same successes and encounter many of the same obstacles. (Aylesworth, 2008)

Unlike some states where the decision to conduct review is discretionary, Minnesota requires responsible governmental units to undertake environmental review for applicable state- and local-level actions, and for both publicly and privately proposed projects. Certain projects are required to undergo an EIS, whereas in other states, the EIS is done only for projects with the potential for significant environmental effects. Minnesota has explicit requirements for public review of environmental documents, and it is one of only a small number of states allowing environmental review via citizen petition. Minnesota's Environmental Quality Board (EQB) provides a level of statewide rulemaking and coordination that many other states lack.

However, in Minnesota an EAW is mandatory for only certain projects specified in rule, whereas other states require the equivalent to an EAW for all projects unless otherwise specifically exempted by state law. Plus, Minnesota's requirements apply exclusively to physical actions, such as housing developments, and do not apply to nonphysical actions, such as adopting regulations. (OLA, 2011)

Regardless of the review required by various states, critical factors in effective environmental review include (Ma et al, 2009):

1. Communicating significance of environmental impacts.
    a. Clear scope of review.
    b. Appropriate criteria for determining level of significance.
2. Provision of public involvement opportunities.
3. Judicial review of procedures and decisions.

Some aspects of Minnesota's environmental review and permitting processes, like the public involvement process, were found to be more time consuming than in other states. However, the stages of review in Minnesota provide a considerable amount of other benefits (e.g., citizen engagement) that could be lost if efficiencies in review time was the ultimate end goal. (Aylesworth, 2008)

Recommendations

The following recommendations were identified from the review of existing literature and references are provided as applicable. These recommendations are evaluated in the body of the report using the criteria established by the Environmental Review Improvement work team.

1. Retain a single entity with responsibility for overseeing and coordinating environmental review efforts statewide.

2. Consider negative consequence (decreased opportunity for public involvement) of reducing overall project review time. (Aylesworth, 2008)

3. Implement environmental review and permitting as integrated, not separate processes and make them as predictable as possible. (WDNR, 2003) (Aylesworth, 2008)

4. Expand use of generic assessment of cumulative impacts at the regional scale and utilize existing regional planning mechanisms as possible. (Ma et al, 2008) (Aylesworth, 2008)

5. Develop explicit guidelines that provide step-by-step directions for predicting and evaluating potential cumulative impacts. (Ma et al, 2008)

6. Analyze the use and consumption of energy resources. (WDNR, 2003)

7. Prepare analyses and reports in plain language. (WDNR, 2003)

8. Incorporate innovate technologies to increase communication ("e-permitting") and efficiencies (Aylesworth, 2008) (California is developing an innovative database where information for an individual project can be uploaded for use to make subsequent or supplemental environmental determinations).

9. Increase coordination between state departments of economic development, environmental review, and permitting authorities. (Aylesworth, 2008)

10. Encourage pre-application meetings between project proposers and the RGU. (Aylesworth, 2008)

11. Educate the public about the role and process of environmental review to improve the quality of public comments and the public involvement process as a whole. (Aylesworth, 2008)

12. Adopt significance criteria. Adopting significance criteria has been identified as one of the most critical elements contributing to effective environmental review. (Ma et al, 2009)

Resources

- Aylesworth, Becker, and Kilgore. 2008. University of Minnesota, Department of Forest Resources. Benchmarking Minnesota's Environmental Review and Permitting Processes for Forestry and Mining Industries: A Comparative Assessment.

- Ma, Becker, and Kilgore. 2008. The Integration of Cumulative Environmental Impact Assessments and State Environmental Review Frameworks.

- Ma, Becker, and Kilgore. 2009. Characterising the Landscape of State Environmental Review Policies and Procedures in the United States: A National Assessment. *Journal of Environmental Planning and Management*, 52, n. 8, 1035-1051.

- Minnesota Department of Health (MDH). 2012. Incorporating Health and Climate Change into the Minnesota Environmental Assessment Worksheet.

- Minnesota Pollution Control Agency (MPCA). 2009. Environmental Review Streamlining: A summary of past efforts, current ideas, and stakeholder input.

- Office of the Legislative Auditor (OLA). 2011. Evaluation Report: Environmental Review and Permitting.

- Wisconsin Department of Natural Resources (WDNR). 2003. Environmental Analysis and Review Procedures for Department Actions. Chapter NR 150.

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Minnesota Environmental Quality Board

Report on Stakeholder Focus Groups for Environmental Review Improvement

July 2012

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Contents

Background

The Governor's Executive Order 11-32 directed the Environmental Quality Board (EQB) to undertake several tasks related to environmental policy and coordination to advance the Administration's goal to deliver the best services to the public at the best price. One of the tasks is to evaluate and make recommendations on how to improve environmental review. The EQB recognized immediately that early stakeholder input is essential to developing sound recommendations. Toward that end, EQB directed agency staff to engage focused stakeholder input as a part of developing specific recommendations. With this input, the EQB would develop informed recommendations that would in turn be subject to broader public input prior to finalizing them for the Governor.

The Minnesota Environmental Policy Act of 1973 established a formal process for investigating the environmental impact of major development projects. The purpose of the review is to provide information about a project's environmental impacts before approvals or necessary permits are issued. The process operates according to rules adopted by the EQB and is assigned to a unit of government, Responsible Governmental Unit (RGU) – local government, state agency, or joint powers organization.

Environmental review applies to public and private development projects that are site-specific and contemplate on-the-ground environmental changes. Such projects as building projects, feedlots, shopping centers, mining operations, residential developments, etc. are subject to review.

There are generally three types of analysis documents prepared through environmental review: Environmental Assessment Worksheets (EAWs), Environmental Impact Statements (EISs), and/or Alternative Urban Areawide Reviews (AUARs).

The EAW document is designed to provide a brief analysis and overview of the potential environmental impacts for a specific project and to help the RGU determine whether an EIS is necessary. It is usually relatively short in length consisting of a standard list of questions meant to set out the basic facts of the project's environmental impacts. The EAW usually takes only a few months to complete and is meant as a source of information to guide other approvals and permitting decisions.

The EIS is a much more detailed analysis of environmental effects. It focuses on the key environmental, social, and economic issues that are likely to result from the project, and develops a detailed analysis of those issues. The EIS also examines whether there are alternative project designs or locations that would result in fewer or less harmful environmental impacts. An EIS may take as long as one year to complete.

The AUAR is designed to look at the cumulative impacts of anticipated development scenarios within a given geographic area. The AUAR is a planning tool that local governments can use to understand how different development scenarios will affect the environment of their community. It is designed to perform an environmental analysis in advance, before major development occurs in an area, and to use the information to guide local planning and zoning decisions.

Methodology

The EQB contracted with Management Analysis & Development (MAD), a division of Minnesota Management & Budget, to help facilitate a series of stakeholder information gathering sessions. These sessions or focus groups were two and one-half hours in length and asked a series of questions to identify pluses and frustrations with the environmental review process. Additionally, the groups were asked to brainstorm ideas on how to address the concerns and improve the effectiveness and efficiency of the process.

Ten stakeholder meetings or focus groups were held from late May through early July, 2012 and a total of approximately 80 people participated in the meetings. It was decided by EQB staff that the stakeholder meetings would bring together individuals with similar issues regarding environmental review. Stakeholder groups emerged around the areas of: local governments, proposers, environmental conservationists, academicians, and administrators.

The meetings were held in various locations in the Twin Cities metropolitan area and in Greater Minnesota (7 in the metro area, 2 in Grand Rapids and one in Albert Lea).

Emergent Themes

It was noted by several participants that the environmental review process had been studied, looked at, reviewed, etc. many times over the past number of years and in effect little had changed. One participant described the discussion on environmental review as “a bunch of wrestlers who had firmly planted their feet and were tightly gripping one or more opponents’ hands and that each wrestler was afraid to make a move in fear of losing any ground. In effect, you have an entrenched system and a stalemate where no one is able to move in fear of the unknown.”

Common responses by question

Participants were asked to respond to a number of questions. The following are common or frequent responses to those questions. The first two questions generated similar responses from most groups. While they were not all in agreement in these areas the general themes converged and difference can be identified in review of the meeting notes in the appendix.

The last two questions did generate enough difference that it made sense to break the comments out by the type of group. Because of this, there may be duplication where two groups said similar things.

What is one thing in the environmental review process to keep?
Participants' comments included:

- Protection of the environment
- Public participation
- Involvement by local government in the process
- Rules and structure for environmental review process
- Identification and review of alternatives

What are the critical elements of a successful environmental review process?
Participants' comments included:

- Clearly defined purpose of environmental review, stated frequently during process
- Clear and concise guidance in developing an environmental review document
- Clearly defined scope of project, including map, figures and accurate data where appropriate
- A predictable schedule/timeframe for what will happen and what actions need to be taken; EAW focus is shorter worksheet format, EIS more detail and takes longer; efficient process
- Public involvement: inform the public of what is happening, listen to concerns raised about the project, and allow public to follow what is happening in process
- Decision-makers involved early and kept informed throughout process
- Coordination between various parties involved in environmental review process
- RGU is knowledgeable about process and has expertise to review facts provided or has access to such knowledge and expertise
- Review and consideration of viable alternatives
- Compliance with the law as defined in statute and rules

What is your greatest frustration with the environmental review process? – by group type
Participants were asked to identify their frustrations/issues, discuss them, and then select the top two or three for the group. The following comments are highlights from that process broken down by the various groups. Participants' comments included:

Local governmental units

- The environmental review process takes too long to complete and is costly to local governmental units and proposers.
  - Minnesota seems overly restrictive compared to adjoining states
  - A frustration is the length of the process as a whole
- Other agencies are not providing timely comments on environmental review documents.
  - Lack of clear input from agencies; no comment from agencies
  - Poor early communication between government agencies and applicant

- There is confusion from the public about the purpose of environmental review. The process is used to stall or kill a proposal and sets up a conflict of proposer/LGU versus the people.
  - Lack of effective citizen input; public does not understand role of EAW
  - Using process to kill a project
  - Philosophical issue for advocates against a project
  - NIMBY factor; political fallout; petition process should be restricted

Proposers

- The regulatory risk to proposers of the time it takes to complete the process. Project benefits get lost because of the length of time it takes for the environmental review and limited benefits to the environment are gained.
  - "Epidemic of indecision" by agencies; RGUs are risk adverse and they need time to prevent lawsuits (study everything)
  - Time it takes to complete versus benefit to the environment gained; project benefits get lost because of length of time
- Duplication and redundancy between environmental review and permitting processes.
  - Duplication with other regulations and local ordinances
- Thresholds established for environmental review are too low. The thresholds were set a number of years ago.
  - Size or trigger thresholds are too low, they are from the 1970s and the technology has changed
  - Basic similar projects in similar locations should not have to do an environmental review. The impacts are already known
- Agencies are changing the scope and requirements in the middle of the process.
  - Scope is a constantly moving target because of the variety of people in the process
  - Focusing research on nice to know rather than need to know

Environmental conservationists

- "Agency capture" by the industry. Agencies treating industries like customers.
  - Treat citizens as customers and regulated industry as regulated entities
  - Access to information not provided on an equal basis; it should be that information given to proposer is also given to citizens at same time
- There is a lack of accountability for information provided by proposers and decision makers.
  - Engineering is viewed as foolproof and assumptions developed are too rosy; example given of a three-legged stool comprised of: 1) natural environmental threat, 2) geology of the area/region, 3) the engineering ability to overcome or address the first two; engineering is relied upon too much; lack of accountability on data provided
- Environmental review does not provide useful information, meaningful public engagement, and meaningful and appropriate decisions by RGU that result in protection of the Minnesota environment.

- EAW is used against citizens, no flaws are found because citizens found out about proposal too late to make comment and provide input
- Inadequate examination of environmental harms
- Conflict of interest between RGU and proposers
- Hard to see any real environmental impact resulting from environmental review process, environmental review is not tied to environmental benefit

· There is a lack of systematic, ongoing scientific review.

- New science and new tools to use to study the impact on the environment are not being used, agencies are not applying new expertise
- Not enough science on climate change, environmental reviews are bound in current science and do not look forward to new, emerging, or future science

Academic and administrative (includes comments from the open group)

· The environmental review process is used to stop or delay a project rather than shape a project.

- Public use of environmental review as a referendum on projects
- Process abuse by project opponents; extensive data practice acts requests during EIS document preparation
- Opponents can raise non-issues that stall process as proposers try to address them

· The time and cost spent on issues that are already well regulated.

- Reinventing the wheel and not learning from past reviews

· Public participation in the process comes too late to have an impact or make any difference.

- The public is invited too late to the process, after the decision is made
- Should involve everyone earlier and identify real concerns, scoping is not done well; agencies do not show cards early so answers not provided early in process; easy for agencies to “push down the road”

· Poor data submitted in the process

- Need accountability for information presented in document; if information is not good it should be fixed/corrected
- Data submitted is incomplete; if sent back to complete sometimes added, sometimes it is not

What can be done in/with the environmental review process to address these issues and make the process more efficient and more effective? – by group

Participants were asked to brainstorm ideas to address the concerns identified earlier or any ideas they had to improve the environmental review process. The following are highlights from those discussions broken down by various groups. For a more comprehensive list of ideas see the responses to this question for each of the focus groups in the appendix. Participants' comments included:

Local governmental units

- Up front open communications in the beginning, find out what issues are so they can be reviewed and addresses sooner rather than later.
  - Develop a timeline for the project taking into account communications
  - Once project is "scoped" then communicate to stakeholders
  - State sets guidelines for communication and LGUs respond to project based on guidelines
  - Use web/electronics to get information out and receive information in
- Provide guidance and expertise to RGU on environmental review process.
  - Draw on other agency staff for expertise, coordination between agencies and staff
  - Hire expertise: early to understand situation, middle when information get too overwhelming, end to aid in evaluating the data
  - Work with local entities to address questions and provide consistency in process
- Establish a "continuum of information" on project; use technology to get information out and collect data; use best practice aids, inform public and build trust in the process.
  - Availability of documents for all parties involved
  - Allow comments and for others to see comments
  - Repository of information collected
  - Encourage LGU to have own link on website
- Define or identify what the public should expect from an EAW, what an EAW is intended to do – statement of intent.
  - EAW mission state or statement of intent, state purpose publically and frequently, large font so people see
  - Do outreach to public in multiple ways to get information out
  - EQB provides direction and clarity on this process

Proposers

- Require firm timelines be set and adhered to through the process.
  - Twelve months or less should be reasonable; negotiate between proposer and RGU at the start for complex projects; have interim dates through process to show movement
  - Look at neighboring states for suggested timeframe, Michigan and Wisconsin public utility laws
  - Identify who needs to be included in environmental review and who needs to respond, agency should have a team to review and should focus on the project

- Provide leadership at the agency level on what is analyzed and what decision needs to be made.
  - Identify what is important to review or not review; scope should be geared to what is required for permit, the permit conditions; ask question – what is the permit conditions we are trying to meet?
  - Determine who regulates, what agency says yes or no on the permit; when other agencies get involved, it can get confusing
- Reduce the duplication in the process.
  - Consolidate and have only one application covering all items; use environmental review if only a unique situation; if special, unique features are discovered, new technology, former "bad actor" then do environmental review
  - Do gap analysis to determine what aspects of environmental review are not covered by other regulations, ordinances, statutes, laws, etc.
  - Go back and determine the intent of the environmental review process; what rules/laws have been put in place since environmental review was created in the 1970s; look at what other regulations cover the business or industry
- Coordinate effort between local governmental units and the state agencies.
  - Craft a single process for environmental review and all entities follow it
  - Current process limits local government input until later in the project, until environmental review is completed
  - Proposer could check a box (checklist) on what other requirements, permits, etc. have been met or completed for other entities, units of government

Environmental conservationists

This group decided to spend more time in the focus group looking at options to improve the environmental review process. The list below contains some of their suggestions. For a more detailed look at what they identified see pages 47 through 61 in the Appendix.

- Provide support and resources for citizen participation.
  - Make the public a full, supported partner in the process
  - Better and friendlier access (online and offline) to data and agency personnel
  - Provide public information, access to permit documents, discharge monitor, etc. through an online/web docket system
- Engage citizens early and often in the environmental review process.
  - When aware of application get out information to the public, on website if possible
  - Intentional engagement of citizens for project review and input
  - Create a meaningful notice process for public interest groups and surrounding neighbors
- Burden of proof stays on proposer and use science to assess environmental risks.
  - Require project proposer provide sworn certification of complete, accurate, best practice standards with penalties
  - Provide guidance to reduce use of non-peer reviewed science

- Don't always rely on engineers to solve problem; need balance between natural environmental threat, geology of the area/region, and engineering ability. Currently, engineering is relied upon too much to overcome the first two areas

· Clarify the purpose of environmental review.
  - Agency directors need to state to staff the purpose of environmental review is to protect the environment and service the public; need to defend staff
  - Purpose is to decide action, no action, and/or alternatives, mitigation is based on environmental protection
  - Abandon the assumption that "effective" can/has to be "efficient"

Academic and administrative (includes comments from the open group)

· Audit training function for EQB.
  - Identify trends and work to help address issues or to provide training to alleviate common problems
  - Good examples could be used as models, review of data base can help identify issues within environmental review

· Exempt environmental review documents from data practices act but use docket system on web so multiple people can see and use information.
  - Provides accountability and transparency
  - Removes and issues of data practices hassle

· Adequately staff EQB.
  - Resources for RGU/LGU, assist with scoping and guidance on process
  - Strengthen knowledge base on topics
  - Provide reports and information to legislature and Governor
  - Develop ongoing process of monitoring, assessment, and improvement

· Mitigation mandatory enforcement.
  - Make sure mitigations have been done and evaluated
  - Governed by rules and statutes
  - CEQ done in guidance

· Environmental review "hit team."
  - From state with expertise and knowledge of process
  - RGU part of process because of local perspective
  - Use for complex and/or technical projects
  - Funding options include: state agency budget, charge back to proposer, LGU money saved by not doing litigation or paying attorney fees

Overall common themes

Areas of agreement

Some overall common themes emerged at a high level. They included: protecting the environment; public involvement; making decisions on good factual information; and the need for experienced, knowledgeable staff to address technical concerns and issues with the process. Where they varied were in the details: definitions of "protection, involvement, factual," plus the cost of staff, all created disagreements between the participants.

Three board themes did emerge:

1) Create an electronic database on environmental review projects that can be accessed by all stakeholders. Several participants noted the value of the docket system use by the Public Utilities Commission and suggested it be used as a model. Concerns raised around this theme focused on the cost to create and maintain such a site. The following participant comments support this theme:

   - Use a docket system on the web so multiple people can see and use the information
   - A docket-based approach for permitted facilities is recommended; include public information, access to permit documents, discharge monitor, etc.
   - Develop online submission and tracking for process for environmental review; agencies have access and can enter information; documents are on web or some electronic format and all can have access

2) Engage and gather input from affected parties (local units of government, state agencies and the public) **early** in the process. Additionally, clarify the purpose/intent of environmental review and communicate (frequently) this to all affected parties, especially the public. The challenge is defining "early" but most agreed somewhere in the scoping process. An additional concern is getting input back from affected parties in a timely fashion. The following participant comments support this theme:

   - Engage citizens early and often, meaningfully; when aware of application, get it out to the public
   - Get comments back from agencies early and incorporate into documents
   - Better understanding of why environmental review is happening and what the process is and is not; do outreach to help inform; define what public should expect from EAW, what it is intended to do

   While most agreed getting input early was valuable, when to stop gathering input had vastly different responses. Some participants wanted to allow input all through the process while others wanted a definite time in the process to stop gathering input, especially public input.

3) Provide technical assistance, expertise, and /or guidance documents on the environmental review process and some aspects of environmental science. The comments on this area are more widespread but participants desired assistance in doing the process correctly and/or assuring the data presented was factual. In this area, the concern is finding resources for the technical assistance positions. The following participant comments support this theme:

   · Team to call and get information, technical information; staff knowledgeable and able to support local government; people recognized to help and good work

   · Guidance to RGU to seek out expertise; number to call and have person answer or respond; do through process from preparation to evaluation

   · Environmental review "hit team;" with expertise and knowledge of process; use for complex and/or technical projects

Major differences

Two areas stood out because the participants in the groups wanted to take the process in opposite directions. The two areas are:

1) The time it takes to conduct an environmental review – takes too long or need the time to conduct the process properly. The following are a sample of participant comments showing the differing directions.

Takes too long

· Open-ended or never ending reviews; deadlines set but always need for more data

· Require firm times be set – 12 months; look to other neighboring state for suggested (shorter) timelines

· Timeliness – environmental review takes too long and consumers look for quick gratification

Need time to do properly

· Sufficient time for meaningful public participation; public interest expert consideration of information regarding impacts

· Opportunities for dialog with public stakeholders – agency staff, proposers, community

· Alternative analysis are part of EAW; require looking at potential alternatives

2) The relationship to permitting for the project: 1) tie or combine environmental review and permit or 2) environmental review and permit are two separate processes with two separate purposes. The following are a sample of participant comments showing the differing directions.

Tie or combine environmental review and permit

- For one site either have a permit or an environmental review; don't go through two different processes for the same issue
- The point of the environmental review is to say what is in the permit or what permits are needed
- Eliminate environment review, businesses are already covered under permits and allow public comment and other input

Environmental review and permit has separate focus

- Environmental review is not permitting but does inform the process
- Why is the permit process not sufficient to cover environmental review? The permit does not look at context of project and the environmental impact of the project, ER is a broader context
- Permit is frozen, even at the public level, until environmental review is done, the environmental review process is separate from permitting process

While the differences identified are ardent, some participants noted common ground between them. For the time issue, it was noted that, "if better focused and better cooperation the process should not take so long; negotiate in scoping process the timeframe and stick to it for more complex proposals."

For the separation between environment review, a participant noted, "time and sequencing of data gathering and compilation, done in the right order (should lead to) not doing it twice."

Additionally, several participants noted interest in the AUAR model as a "potential to address a variety of issues."

Environmental Quality Board

Environmental Review Improvement Focus Groups

Environmental Quality Board
Environmental Review Improvement Focus Groups

Local Governmental Units Group – May 31, 2012

Albert Lee, Minnesota

What is one thing in the ER process you want to keep?

- The purpose of the environmental review process, mission statement – to keep the environment healthy
- Protect the environment
- To maintain a balance between protection of the environment and not having an unreasonable delay in assessing impact
- Maintain environmental sensitive areas that have already been identified
- Balance – the intent for information sharing with all parties and work toward interagency agreement on issues – set stage for other regulatory action (permit)
- Process for environmental review – have a well-defined set of steps for review with timelines

What are the critical elements of a successful environmental review process?

- Clear and concise guidance and appropriate level of detail when EAW/EIS is required
- An effective scoping process where appropriate issues to the location are identified; contact with key parties impacted and involved in proposal
- Work through the environmental review documents/process and identify mitigation strategies; these strategies should address concerns by identifying how they would be implemented and provide a commitment to action(s) on these strategies
- Defined scope of the project acknowledging established thresholds
    - A concern is addressing a series of proposals each fitting just below the threshold: because producers try to stay under the threshold, they may have a number of smaller projects but together they have a cumulative impact; option suggested to address is to have a comment area in the process to identify "phased" projects and address total impact
- Address cumulative impact of a project or series of projects
- Environmental review process sets a balance between business elements and environmental elements; each set identified and reviewed as appropriate
- Clearly identify roles and responsibilities:
    - who prepares EAW/EIS
    - who evaluates
    - who selects
    - who bears cost

  This will help create a public confidence in the process and result

- Clear definition and scope of the project (a concern raised was the state restricts how far to look out into the future with landfills; state agency (PCA) restricts size of landfill and limits options for expansion
- Establishing a predictable schedule for what will happen and actions taken
- Environmental review document needs to be more understandable; current documents are filled with technical language and acronyms; it is hard for the parties involved (agencies to public) to understand
- Consistency in the level of rigor in the EAW; it depends on RGU (it varies from regulating governmental unit (RGU) to RGU; environmental review process should provide guidance and direction on process and rigor

Participant provided the following comments in writing:

1. Clear and concise guidance on when an EAW or EIS is required
2. Easy to access guidance for public via the Web. Also, have flyers or posters we can use in our office
3. Easy to access and responsive technical staff for questions (Perhaps a standard 800 number?)
4. A predictable schedule for review and approval with standardized correspondence to the local unit of government and the applicant
5. An email "hotline" for questions which has a 24 hour response
6. Ensure adequate staff to provide technical assistance to LGUs
7. Ensure EQB was more of resource that could provide not only clarity on the rules, but also with whom we would work through the process

What is your greatest frustration with the environmental review process?

(Vote on most problematic issue – each participant given three votes)

- Confusion regarding purpose of environmental review (5 votes)
  - Public does not understand role of EAW
  - If the review/identification of potential environmental impacts does not address public concerns the process may not be effective – and may result in a more contentious permitting process
  - Explain to public
- "Political" influence of review process (3 votes)
- Lack of expertise (3 votes)
  - Lack of expertise by review agency (environmental review staff rather than technical staff)
  - When questions arise need adequate technical staff to answer questions
  - When questions arise need to improve the timeliness and responsiveness to the LGU and applicant
  - Idea to fix, 1- 800-# or email hotline with 24 hour response

- Minimal state guidance info resources to access from the "novice" (Referring to "live people")

· Review of proposer's scope of project as opposed to RGU define Scope (2 Votes)
  - Can address future change/expansion thru permit

· Local Government Units depend on state agency review and permitting, LGUs vote up or down relying on continued review; state agencies are lacking and do not do their due diligence
  - PCA does not examine site, etc.
  - False sense of security when rely on permitting process

· Expectations unclear (0 votes)
  - Environmental protection expectations are sometimes unclear. There may be disagreement about what constitutes a significant environmental impact

· Uniform rather than appropriate level of detail (0 votes)
  - Review what is appropriate for proposal, do not review items that do not fit proposal or are irrelevant

· Threshold too low (0 votes)
  - For some small projects there may be many EAWs with same issues, same recommendations and same conclusion – why duplicate
  - Should it be required at all?

· Very few EAW outcomes that state can actually enforce (or even followed by RGU) – (0 votes)

What can be done in/with the environmental review process to address these issues and make the process more efficient and more effective?

(Identify one or two to identify specifics)

A. Streamline process – develop online submission and tracking for process for environmental review; agencies have access and can enter information; documents are on Web or some electronic format and all can have access

B. Guidance to RGU to seek out expertise; have a 1-800 # for RGU to call, have a person answer or respond; do this all through the process from preparation to evaluative comments

Specifics:

- Draw on other agency staff for expertise – coordination between agencies and staff
- Hire expertise for specific common questions or areas of ER process
- Give direction on how to do steps in the ER process
- Hire expertise:
  - Early – to help understand
  - Middle – when information is too overwhelming
  - End – to aid in evaluating data

  [Political concerns and cost issues]

- Work with local entities (public /non-profit) to address questions → provide consistency
- Short window of time to address
- Provide clarity on what LGU can do (and funding to cover cost) on obtaining expertise – funding of expertise – fees?
- Bring in local elective officials earlier; for education on issue and process and to obtain buy-in

C. Proposal to get comments from agencies and questions answered with consistency in responses

D. Define (identify) what public expects from EAW – Included in all opening statement as to what EAW is intended to do – create a statement of intent

Specifics:

- EAW mission statement and overall statement of intent for the process
- Identify key points to focus meeting
- EQB providing clarity
- Mission statement in ER document
- State purpose publicly (frequently)
- Appropriate font size so people can ready; larger font to draw attention
- Do outreach to public in multiple ways to get information out

E. Who pays for outside expertise and how done; determine beforehand

F. Under process allow for public comment; gather comments as early as possible in process

G. Establish a continuum of information on project, shared by public and agencies; use technology to get information out to wide audience; identify projects, their outcome(s), and permits; uses include: best practice aids, inform public, building trust in process

Specifics:

- Continuance of information
- Use technology
- Availability of documents for all parties
- Allow for comments and for others to see comments
- Coordination between agencies – state/local
- Repository of information that has been collected; allow for limited comment
- Identify deciding body but decision needs to remain local; because of local geography, etc.
- Encourage LGU to have own link on electronic/website, link

H. Look at public comments; are they just to stop the project, limit or change project, etc. review comments so they can be better understood to those reviewing – agencies to public

Additional comments:

- Timeliness – environmental review takes too long and consumers look for quick gratification
- Craft a process that reduces government burden
- Address threshold issue and planning overtime
  - Check the box process
  - Define and clarify what is the intent of ER? (specifics vs. intent)
- Legislature does not want responsibility; done through rule making; local government units do not want to be blamed: All play role – balance in the process
- Has the process been enhanced with attorney involvement?

Environmental Quality Board
Environmental Review Improvement Focus Groups

Local Governmental Units Group – June 4, 2012
Maplewood, Minnesota

What is one thing in the ER process you want to keep?

- Involvement by city and local government in the process
- Focus on larger proposals; one-of-a-kind projects need ER review; those with unusual, unexpected or unintended consequences need to be reviewed
- Keep the environmental review process in the hands of the local jurisdictions; like delegating ER processes to local government, this is where we have placed land use decisions in general and it should remain there both the ER process and regulatory process that follows
- A defined time line for review and questions
- Public involvement in the process; public participation
- Combine state and federal review process in MN (only one document to review)
- Community involvement and public disclosure of documents in process
- The AUAR process; review a proposal on its effect to the environment

What are the critical elements of a successful environmental review process?

- Public involvement (to inform the public and to listen to their concerns)
  - Check-in on implications and interest
  - Communication on what is happening with process
  - Make understandable to public (process and proposal)
  - More than 30 day comment period to allow for conversation, to let people know and respond to questions
  - Review and discuss what EAW is for and about
  - Define the purpose of the ER process and that it is more than just to stop a project
- Define decision(s) in the process
  - Disclosure of information and issues
  - Impacts of proposal
  - Decision impacts
  - Determine if EIS is warranted
- Good information
  - All the facts about project, both good and bad, defining what proposal will do
  - Identify what is being proposed and quality responses from public entities – this builds trust and value
  - Issues and how to address the issues – mitigation ideas and action
- Timelines – ER is supposed to be a quick look; the EAW not a longer process than a full EIS; the focus for EAW is a worksheet not a full study

- Have the broader study (EIS) done at right time
    - Trigger because of the type or scope of project (project may change as a result of study)
    - Earlier in process; when looking at a project up front; in planning phase
    - When project is in mind, start figuring out the basics of EAW
- Identify results – environmental benefits and impacts; what actions have resulted from EAW, what was learned, inform current and future policy makers; EAW is a short look from many perspectives, needs coordination
- Decision maker involvement; keep decision makers in the loop, decision makers may have different point of view – keep informed and connected
- All this leads to better projects that reduces impacts

What is your greatest frustration with the environmental review process?

(Vote on most problematic issue – each participant given three votes)

- Using the process to kill a project (6 votes)
    - Lack of guidance about what requires EIS (i.e. significance definition)
    - Used as a "weapon" to stall or kill projects
    - Using process to "kill" project; disclose good things about a project (and bad things); sets up conflict, philosophical issue for advocates against, causes additional cost, delay and controversy; EIS to provide for a "no build" option
    - Adversaries basis:
        - Proposer vs. people
        - State vs. local
- Time and cost of process (4 votes)
    - Financial cost
    - Time and cost
    - EAW now becoming an EIS
- Implementation issues (3 votes)
    - Implement, no teeth in statute to implement or force mitigation
    - Mitigation measures identified in an AUAR. . . how do we ensure they are implemented. . . NEXUS question
- Threshold is too low (3 votes)
    - The process should not occur for routine, anticipated project
    - Too low threshold
    - "One size fits all" flexibility to achieve goal of a better project/outcome
- Not right time in project (0 votes)
    - Reactive – happens too late in the process
    - Should come in as asking "what is the reason for the project"
- The outcomes do not warrant the process (0 votes)
    - Process vs. objectives / outcomes
    - Timelines/rules; legalistic approach, especially EIS not always clear and interpretations vary

- Getting right information; not asking right questions, not all questions have clean answers

What can be done in/with the environmental review process to address these issues and make the process more efficient and more effective?

(Identify one or two to identify specifics)

A. Gather data from LGU's (etc.)
B. Streamline
    a. Divorce EIS (significant impact) and EAW (inform people)
    b. Increase thresholds
    c. Conduct AUAR with comp. plan
C. Better understanding of why ER is happening and what the process is/is not [for all: interested parties / public / RGU's] do outreach to help inform
D. Clarity rules on where ER is needed
    a. Mixed use
    b. Concept phase, should be done at this time
    c. Connected actions
E. Significance – whether an EIS is really needed – objective criteria to determine
    a. Define with real life examples
    b. Benchmark to compare to…
F. Policymakers need to make it happen – statutes and rule to support mitigation findings need to be created or enforced
    a. Share mitigation action from other projects
G. Tie more closely to comprehensive plan; substitutes for EAW
    a. EAW is more of a worksheet, not a full study
    b. If proposal is consistent with local comprehensive plan then don't need to do or do in such detail

Specifics:

- Develop EAW in lieu of:
    - Comp plan (comp plans common in metro area, may not be in some Greater Minnesota areas); the plan should cover land use, water, noise, air, etc.?
    - Already covered by permit from another agency (LGU / State)
    - Laws or ordinance exist at LGU covering items for noise (etc.) limit [EAW works as a GAP analysis and information piece]

H. Eliminate ER process except for extreme proposals, don't need or see value of ER on small projects already covered somewhere else; use comp plan – data is out there
I. Allow for flex without reducing outcomes
    a. Timeline
    b. Triggers – "appropriate threshold"
    c. Waiver with criteria / comp plan > metro has level of sophistication

Specifics:

- Increase thresholds
- Couple with Comp Plan
- Waivers – list out reasons why not to go thru ER process
  - Other reasons covered beside the Comp Plan
  - Already dealt with issue
- Resource thresholds, resource protection; wetland (example), "Upland terrestrial" example, Resource protection, brings awareness to issue so looked at different

J. Go electronic with EIS
   a. Draw boundaries and data built from various sources

K. Incentives to avoid going thru ER process
   a. Extra on front end / cost to do

L. EAW should include pluses and minuses
   a. What will be done / why / positives and negatives
   b. What are the impacts?

M. Team to call and get information (state/LGU)
   a. Tech information
   b. Knowledgeable – support local government
   c. People recognize for help and good work

Additional comments

- One sheet for ER and EAW
- Agency agreement – talk to each other (all have different ideas)
  - Consistency in responses
  - Comments coordinated, not conflicting
- AUAR process – expires, keep updated – how to remember date it expires
- No guidance on how / why to update AUAR
- Mandatory requirement for city to do EIS – no process in place
  - Transfer authority from state / local
  - Expertise
  - Clean-up environment

Environmental Quality Board
Environmental Review Improvement Focus Groups

Proposers' Group – June 4, 2012

Maplewood, MN

What is one thing in the ER process you want to keep?

- Public participation
- Ability to talk to people in Minnesota rather than Chicago – keep focus local
- Voluntary options in EIS
- Rules for environmental review process – guidelines to go by
- Rules – let feedlot permit dictate rules
- Original intent of the law for environmental review process
- Use environmental review for new or unique technology that has not been seen before or is applied differently
- Use for non-permitted program not covered by some other permit, rule or law

All of the items on this list are in the permitting process for feedlots

What are the critical elements of a successful environmental review process?

- Clear scope – what is in study, what is not in study
- Framework with instructions so you know you are doing things right
- Efficient (can call people for technical help to know what to do), accessible (on line), transparent (find publicly and can track)
- No duplication between permit and environmental review (or other review/regulation process approved by regulating governmental unit – i.e. antibiotics use is regulated and approved by FDA)
- Environmental review is factual and not driven by emotions and "NIMBY"
- Collaboration between and with regulating governmental units and local governmental units (and state and federal governments)
- Standardization – the environmental review process does not provide a moving target
- Definitive time line
- Least amount of resource strain on proposer and regulating governmental unit; make sure the benefit from the review justifies the cost
- Do we need a definition of "environment?" (MN Rules 4410.0200 Subp. 23)
- Accountability and feedback loop: keep on track, relevance of data, some form of a discrepancy review board consisting of members who are from both government and business to address a process that goes awry

What is your greatest frustration with the environmental review process?

(Vote on most problematic issue – each participant given two votes)

- Duplication (all voted for – 12)
  - Duplication with other regulations (permit and analysis)
  - Duplication
  - Redundancy with permit program regulatory activity
  - Duplication of information
  - Open-ended timelines and scope pending outside interveners. . . "chasing your tail"
- Thresholds (5 votes)
  - Size or trigger thresholds are too low; from 70's, technology changes since drafted, may force some entities to go larger than needed, for similar, basic projects – already know impact
  - Trigger points: number of animals, units of production, number of years (if already done environmental review and little has changed still have to redo if after a given time
- Cost, time and unknown certainty in environmental review process (4 votes)
  - Uncertainty in time, cost and schedule
  - Requesting additional information during process on new subjects
  - Cost
  - Cost in time and money
  - Cost for benefit
  - Unpredictability of outcome
  - Value and effort versus gain to environment
  - Identical or very similar projects – use past data to change threshold or to exempt projects
- Inconsistency in application and creative license of reviewers (2 votes)
  - Inconsistency in application based on controversy
  - Open timeline and lack of process timeline
  - No part is ever done; constant recycle
  - Regional governmental unit changes policy without checks and balances; creative license implementing the review – inconsistency between agencies
- Coordination (lack of) between agencies involved (1 vote)
  - Incomplete in identifying permits or approvals necessary
  - Coordination among all agencies involved
- Consensus/unanimity means no decision (all have to be in favor)
  - Bureaucracy is paralyzed in process (0 votes)
- Single approved contractor by MPCA to do air reviews – need more options

Additional issues raised:

- Mistrust – not knowing how many options have already been reviewed
- If it is not done, it is not a problem
- Businesses making decision on operations just so they do not have to go through the environmental review process (some have chosen to move elsewhere)
- It is tough on farms that do not have a realistic move option – frequently these are smaller farms or farms that make less money

What can be done in/with the environmental review process to address these issues and make the process more efficient and more effective?

(Identify one or two to identify specifics)

A. Screening criteria for having to do an environmental review:
    a. Something is unique
    b. Does not already require a permit
    c. Exceeds the threshold
    d. Does not have or meet siting criteria
    e. Has special or exacerbating circumstance
B. EQB does a review of issues./items covered in other permitting processes; looking for, identifying and removing duplication – also coordination, exempt from environmental review process if permit exists (covering same items)
C. Analysis of environmental review process
    a. go back to the root value of the law;
    b. review trigger points – modify, standardize, update, etc.;
    c. for one site either have a permit or an environmental review – not both;
    d. look for options – tiered review based on…, pilot various options, have single administrator so process is understood and consistent between entities
D. use and rely on technical expertise; use factual data in review; if people know what to do and how to do it, it will reduce time and duplication
E. Have one single process with one public comment period – do it all at once
F. Provide an exemption or "off ramp" for entities already permitted
G. Don't go through two different processes for the same issue
H. Analyze past data to re-determine thresholds; can use air model results; there is data scattered across multiple organizations
I. Analyze the systems – where there is a problem provide mitigation
J. Look at environmental features for thresholds rather than just the number of animals
K. Eliminate environmental review – we don't need it
    a. Businesses already covered under permits
    b. Permits allow for public comments
    c. Input is requested in permitting
    d. Don't see value in time and cost of doing it
    e. Greater risk of losing project than detrimental risk to environment

f. Input on project is provided by other venues (mainly permits)
g. Go back and determine why

L. "Connected actions" use for thresholds; similar projects can be grouped together; currently based on ownership not environment but why not base on environmental considerations

M. Make a single governmental unit responsible for a single set of rules and timelines

N. Shorten the process back to a worksheet for EAW; current process has a complex guidance document

Specific items for Addressing Duplication

- Pre/post review of environmental review process
  - Go back and determine the intent of the environmental review process and why it was created
  - Identify what rules and regulations have been put in place since environmental review was created in the 1970s?
  - Look at what other regulations cover business/industry etc.
- Do Gap analysis – what aspects of environmental review are not covered by other regulations, ordinance, statutes, rules, etc.
  - Also consider architectural, cultural, and historical regulations
  - Alternative analysis: preferred options selected by proposer but process also requests another option not necessarily by proposer
- Consolidate and have only one application covering all items, use environmental review only if a unique situation: feedlot application as example:
  - General NPDES should cover most environmental issues
  - If special features are discovered and/or
  - Previous "bad actor"
  - Then use the individual permit (also covering environmental issues)
  - Only time to use environmental review is when unique environmental effects are discovered
    - Location of site/geography
    - New chemicals
    - New or changed technology
  - Also consider other regulatory processes and limits guided by ordinances, rules, statutes, etc.

Specific items for addressing public participation

- Boil down public participation to one event or as few as possible
- Focus public comment on factual information
- Permits provide for public input

Specific items for addressing local government unit coordination

- Craft a single process for environmental review
- Current process limits local government weighing in on project until later in process; forbids any environmental action until environmental review is completed
- Proposer could check a box (checklist) on what other requirements, permits, etc. it has met or completed for other agencies or entities of government

Additional comments:

- Resistance to change by governmental units – what it will cost to change the process and what revenue will be lost if some of these process fees go away.
    - Also look internal to agencies and if they change their procedures, what happens
    - Discuss and identify avenues to use to make changes
- Paradigm shift – from preventing something to making what is happening an appropriate action; should meet rules and be complete but that is not good enough now
- Don't lower standard for environment, make those standard clear and develop an efficient way to see if proposer meets standards

Environmental Quality Board
Environmental Review Improvement Focus Groups

State Agency Administrators – June 12, 2012
(St. Paul, MN)

What is one thing in the ER process you want to keep?

- Mitigation measures
- Citizen commenting
- Broad overview of proposal that permitting does not address
- Public participation
- Confidence in review outcomes
- Air quality modeling
- Potential impacts of a project
- Discussion is happening at public level
- Translation of ER information for public
- EIS – an alternatives analysis
- Cumulative effects of these projects

What are the critical elements of a successful environmental review process?

- Good RGU/proposer relationship
- Purpose of ER
- Willing to work with parties involved
- Good project description
    - What will be done and how
    - Figure out more details as they go
- Good early coordination
    - Early enough to make a difference; planning stage – so project not locked in
- Accuracy and consistency of information in document and throughout the document
- ER document and process is easy to understand, also information in document is understandable, public product, public focus
- State, local governments and proposers – use information in project or incorporate into permit for approval – information used, change to make project better, proposal does not have authority to acquire
- Good maps and figures; what you read in the document is covered in map
- Good treatment all thru document – address all relevant issues
- Screening level permitable at the start; early coordination; minimum environmental standards applied

- Good data analysis that allows RGU to come to conclusion, identify impact
- Comment period and comments from variety of governmental units, also public comments
- Thoughtful, insightful public comments
- Who manages the ER process – RGU is knowledge and has ability to do process

What is your greatest frustration with the environmental review process?

(Vote on most problematic issue – each participant given two votes)

- Process "abuse" by opponents (6 votes)
  - Using environmental review for wrong purpose
  - When ER used to delay or stop rather than shape
  - Extensive data practices act requests during EIS document prep
  - "Opportunity" for road blocks over non-issues (Opponents can raise non-issues that stall process as proposers try to address them)
  - Information requests or comments the EAW doesn't provide info on, depth of info
  - Public use of ER as referendum on projects
- Poor data submittals (4 votes)
  - Accountability for information presented in documents – if information is not good then it should be fixed
  - Incomplete data submittals
    - Miss info
    - Review
    - Send back
    - Add – don't add all
- Continual "raising the bar" over time (3 votes)
  - Regarding expectations of analysis (units limited benefit in tmc info gained
  - Collecting more info and conducting more analysis, than necessary to inform ER – impacts and mitigation
  - Over-analysis
  - Public (or even regulatory agency) demand for extensive data analysis that contribute little if anything to understanding of impacts.
- Project changes (2 votes)
  - Every time a change is made to a project, the RGU must go back and re-evaluate impacts. This causes frustration and delay.
  - Proposers see Environmental review as stall tactic – opportunity to stop project
  - Reiterative nature of document development
  - Lots of chunks rather than continuum.
- Poor advice from consultants (1 vote)
  - Some consultants that argue rather than problem solve
  - Environmental consulting firms giving poor advice to clients. Do not learn from project to project – make same mistakes. See same issues over and over. Motivator – tell story for client.

- Cumulative impact (1 vote)
    - Often too late to make difference. “Decisions” made before project proposed. i.e roads and sewers for development
- Failure to restrict public comments to those with immediate impact, neighbors (0 votes)
    - Define landowners
    - Setbacks (in rules)
    - County – neighbor counties
- Unrealistic EIS prep timelines (0 votes)
    - ER rules are unbelievably complex and subject to independent interpretation by individual RGUs.
- ER – RGU staff vilified frequently (0 votes)
    - Focus always on the negative aspects of the program
    - Stakeholders don’t see or understand the positive results
        - Project evolution
        - Time to do process (early debate) cannot write into EAW – value of discussing
        - Purpose of process – walk thru…
        - Changes done in project to make better
- Environmental review viewed as a “to do” or “check” versus early planning for a better project. (0 votes)
    - Lack of real communication and education (not voted on)
    - Process participants that already made up their minds

What can be done in/with the environmental review process to address these issues and make the process more efficient and more effective?

(Identify one or two to identify specifics)

A. Manage expectations
    a. People’s expectations of what document is for…
    b. Education, communication on proposal and issues
    c. Clearly lay out purpose of ER; what it is, is not
    d. Focus on stakeholders (consultants) – what are they looking for and what is to be accomplished by proposal and process [purpose]

B. Rethink public process for significant projects or controversial projects – focus negotiation between parties – Canada does this
    a. What do we want to achieve; use mediation, if needed

C. Discussion on appropriateness of project
    a. New process – at scale of project is project appropriate
    b. What I scale of project and who has authority for such a project (LGUs doing now)

D. Understand process for basic, mundane project (small project)
    a. Better guidelines to help thru project – proposers / RGU
    b. Facilitated by someone else with technical expertise doing ER – consortium/government service provider

E. Need to re-evaluate data we are collecting – narrow down issue
    a. Restore EQB authority of rules
    b. Rule revision on regular basis
    c. Simplify rules/improve; thresholds; EAW/EIS
    d. EAW is a terminal process – change form
    e. Streamline rule making process – mitigation alternatives

F. Understand what ER process is and is for
    a. Purpose of ER
    b. Balance economic value with environmental impact
    c. Both positive and negative impacts

G. More accessibility to archive environmental review documents; to compare across and use to build new ER document, always looking for examples [quick view – go back 2 years or from now forward for RGU]
    a. See what has been done before and create information on impact
    b. Funding to create document repository
    c. Find documents and put in electronic format, many local governments have…

H. Audit training function for EQB
    a. Identify trends and work to help address issue or to provide training to alleviate common problems
    b. Good examples could be used as models, review of data base can help identify issues in environmental review

I. Exempt environmental review documents from data practices act but use docket system on web so multiple people can see and use information
    a. Provides for accountability and transparency
    b. Removed an issue of data practices hassle

J. More generic EIS at high level (AUAR is a programmatic environmental review)
    a. Generic environmental review done
    b. Federal level has a tiered environmental review; (tier 1 is chunk of data that can be used later for other environmental review documents; federal law exempts environmental review on smaller projects

K. Look at cumulative impact studies including:
    a. Cultural resources and impacts; including tribal culture
    b. Systematic review of cultural resources in area
    c. Projection of future impacts
    d. Focus on major issues in geographic area

L. Environmental review check list; it would be below EAW – Wisconsin example (would work for smaller project)

Addition comment:

- State what is purpose of reviewing ER
    - Economic grow and protecting the environment
    - Better economy leads to more jobs
    - Environmental review process is good in state and does a good job
- Tie environmental review to permit…

- What is a successful environmental review? – keep asking / better define what is intended
  - Public is satisfied that legitimate concerns have been heard and given consideration
  - Define project and the issues; identify positive impact on environment or can say no negative impacts and do mitigation, or identify negative impacts,
  - Identify deficiencies in rules
- Partnership(s) – develop value by going thru project and ER process
  - Basic component of creating a project
  - Value of environmental review to regulating governmental unit in addressing considerations
  - Orderly way to review project and get a resolution

Environmental Quality Board
Environmental Review Improvement Focus Groups

Local Governmental Units Group – June 19, 2012
Coon Rapids, MN

What is one thing in the ER process you want to keep?

- Agency review with sufficient time to comment but also include deadline so it has an end time
- Ability to have citizens' petition to local government to request an environmental assessment worksheet (EAW)
- Establish time frame to respond to issues
- Citizen input – public hearing
- Separation between EAW and EIS
- Keep the process
- Investigates water issues and ground issues and has other agency involvement
- All in the room together and focus on one thing

What are the critical elements of a successful environmental review process?

- Efficiency – process follows specific timelines
- Simplified broad categories for an EAW
- Clear understanding of process, role, and responsibilities of entities involved (known rights)
- EAW's broad perspective and EIS being more detail for problem issues and areas
- Standard timelines, questions and forms
- Don't duplicate procedures – local governments already do these reviews or for more complex issue combine agencies (locals, state, and between LGUs)
    - Manage use of resources – don't spend money twice
- Consistency of philosophy of what you want to do…
    - Environmental impact vs. work effort of environmental review – cost factor (much work for minimal gain)
- Local control – rather than state
    - Done locally – controlled locally
    - Maybe done by someone else – contracted third party
- Partnership between agencies on how to do the environmental review – between LGUs and LGU(s) & state
- Communication between governmental units – ALL directions
- Preparation of environmental review by__ (who should do?)_____; define and clearly articulate

- If alternatives to project are identified, more detail on them needs to be collected
- Regulating governmental unit can make recommendations, not just is the project good or bad, allows for flexibility and dialog
- Remove classification of categories (for example, first-class cities) impact is impact regardless of political jurisdiction

What is your greatest frustration with the environmental review process?

(Vote on most problematic issue – each participant given three votes)

- Agencies not commenting (7 votes)
  - Lack of clear input from agencies (especially early)
  - No comments from agencies [request longer review period]
  - Not people to do process – staff cuts
  - Poor early communication between government agency and applicants – doesn't happen enough
- Lack of effective citizen input (5 votes)
  - Citizen petitions used spuriously (NIMBY – Not In My Back Yard)
    - Does proposal meet requirements in law or plan?
    - EQB provisions for petitions need to be followed
    - Need to identify risks [governing body of local governmental unit determines]
  - NIMBY Factor; political fallout; petition process should be restricted
- Review process takes too long (1 vote)
  - Review periods
  - The time it takes
- All projects cause impact… How much are we willing to accept? (1 vote)
  - Who prepares environmental review determines focus and slant
  - LGU charges for review
  - Lack of trust
  - LGUs do differently
  - LGU need money to do
  - If proposer prepares – they slant
- Vague interpretation of rules (0 votes)
  - EQB rules on environmental review are confusing and unclear
  - Questions are not one size fits all (EAW questions)
- Duplication of efforts (0 votes)
  - EAW worksheet questions being done by LGU – answers taken care of in LGU process
  - Duplication of efforts between agencies
- Other outcomes must wait for declaration but is not effected (o votes)
  - EAW may have recommendation by other governmental units are not beholden to…

What can be done in/with the environmental review process to address these issues and make the process more efficient and more effective?

(Identify one or two to identify specifics)

A. Use electronic means for full disclosure
    a. Put on website
    b. Use technology to document what went into EAW
B. For big statewide issues start with communication with agency, early communication
    a. Local governmental units do not control communication well, need to go to appropriate governmental unit in state; ability to respond to and get pertinent communication
C. Formalizing early communication between agencies
    a. Set procedures to happen within "x" number of days; then get parties together to address
    b. Provide information early on
    c. Give agency application and then agency can review
    d. At very first, identify location and project description
D. Decision on petition process should be at EQB rather than local level – move politics to more neutral setting
E. Educate public on project and process
    a. Know what project is and what it entails
    b. Meeting with public to explain project
    c. Also explain environmental review process and why important and why things are done
F. Discontinue petition process
    a. Hearing should cover for petition, provide evidence of issue(s)
    b. Have review period of document (all can see)
    c. Lawsuit
    d. Petition process can raise additional concerns

Specifics: for NIMBY / Petition

- More science in early review
- Work research into petition
- Have EQB staff make decision – base on science
    - Meets criteria
    - LGU decides doing EAW
    - Timing issues
- Get politics out

G. Get comments back from agencies early and incorporate into documents
    a. Ask for comments and incorporate
    b. Local governmental units and regulating governmental units incorporates comments
H. Develop (and distribute) technical bulletins on most frequent issues…
    a. For example, wind energy

b. Develop bulletins where there are similarities between projects
c. Look at what is in proposal, do analysis, then develop criteria and if company complies they get credit
d. Look at what locals have done and build from… develop state standards
e. Research similar projects and develop criteria to inform similar future projects

I. Identify where there is duplication and where there is data
   a. Link data; copy and cross reference
   b. Fill in gaps of data
   c. Develop tools, education materials on how to find data on forms

J. Exempt from state process any entity that goes through federal process

K. Focus citizen input – no clear question to answer
   a. Provide level of information
   b. Invest more in education for citizens

L. Early and prompt communication
   a. LGU identifies what is going on and is it political, then it can use petition
   b. Staffing issue, timeframe issue with the EQB and state, not time and resources to do the work
   c. Meet with neighborhood groups etc. and inform and educate
   d. Identify location and project description
   e. Use web/electronics to get information out and in
   f. Determine political landscape – depends on who is governor. etc.

Additional comments:

- EQB expertise and autonomy – not all power in one agency
- Have one permitting process
- Streamline Mandatory categories
  - Mandatory new categories
    - Mineral
    - Facility operation – asphalt / concrete
  - What is environmental effect? Define
- Development of "undesirable" lots
  - Environmental review
- DNR / PCA not best relation with LGU
  - LGU doing whatever it wants without state input
- EQB provide
  - Help – assistance – yes
  - Make decision – no
  - Weigh local sectors

Environmental Quality Board
Environmental Review Improvement Focus Groups

Proposers' Group – June 25, 2012
Grand Rapids, MN

What is one thing in the ER process you want to keep?

- Weekly meeting with DNR, PCA, various governmental agencies, Army Corps of Engineers
- Review and analysis of alternatives
- Public review
- Keep 150 day timeframe for supplemental review (try and meet)
- EQB knowledgeable of projects, as a sounding board for projects
- Really understand rule and laws and how it works, the checks and balances it involves
- Cooperating agencies roles with other governments and doing one environmental review (ER) whenever possible
- Operator writing draft ER statement, time to try out and see if it short cuts time requirements

What are the critical elements of a successful environmental review process?

- Project proposer and putting forth a project that is sound
- Project is clearly articulated
- Purpose and needs statement where alternatives can be vetted
- Public review timeframe – agency comments to come in a timely fashion during ER process
    - Comments in soon, agencies need to not remain silent and then comment late, if they opt out they should state they are not commenting
- Agencies commenting include state and tribal
- Agencies that have the appropriate level of expertise to review proposals and others should listen to them – agency capacity
- Completeness determination – say "we have what we need," acknowledge the document is complete, there is a limited timeframe (EIS & EAW)
- Well defined scope of work –
    - Things to study and things not to study – reduce creep of scope
- Define scope of work and stick with it, agencies bring up topics… that extend study and time, need to reduce the arguments over the scope of the analysis
- A schedule that is kept and entities held accountable to meeting it

- Regulating governmental unit (RGU) is responsible party for document; manage scope and environmental screen; manage own departments in RGU; deals with process and questions and does not have conflicting questions and/or contradictory responses
- Public input and comment
- Public input on scoping between EAW and EIS

What is your greatest frustration with the environmental review process?

(Vote on most problematic issue – each participant given two votes)

- Regulatory Risk (6 votes)
    - No defined timeline; scope creep as timeline lengthens, no incentive for staff to maintain schedule
    - "Epidemic of indecision" by agencies…; agencies ask continuous questions with appearance to: not get sued or eventually stop project; agencies need to ask and respond to "What are the effects of project?"
    - Analysis paralysis leads to decision making being very slow: RGUs are risk averse and they need time to prevent law suits therefore study everything. . ., leading to proposers loss of time, loss of opportunity and increased cost; Minnesota has a bad name in the investment climate because of this; more research no, more information yes; basically if the project meets the threshold then it should be OK
    - Time it takes to complete environmental review vs. benefit to the environment gained; project benefits get lost because of length of time; additional study creates only more work and funding opportunities for consultants
- Agencies changing scope and requirements (6 votes)
    - Scope is a constantly moving target
        - Scope is tough to make clear because of variety of people in process
        - Research can focus on thing that are nice to know rather than need to know in making the permit decision
- Misperception of what is "environmental review"
    - Public confusion on purpose of environmental review
        - What are the pluses and minuses of the proposal; how does it "affect the environment;" what are the "environmental consequences including: socioeconomic, environmental justice and other elements that could provide positive affects in the public's interest
        - Public looks at environmental review to address permit question not as information to consider
        - A good example is the recent cell tower issue, Supreme Court case where is was deemed appropriate because of public interest
- Conflicting regulations and duplication of effort
    - Process duplicative of permitting, process began prior to extensive permit rules and process
- Third party consultants for supplemental environmental impact statement

- Additional cost for little value, RGU went with low bid and consultant had to be brought up to speed on project, proposer paid cost of consultant and the work (rework and extra work)

· Opposition use of environmental review process to stop the project from being completed
  - Time; agency/RGU level, start the clock; Not In My Back Yard (NIMBY) derailment
    - Data practice request used to slow process by obtaining data (draft EAW and EIS should be private)
    - Legal challenges

What can be done in/with the environmental review process to address these issues and make the process more efficient and more effective?

(Identify one or two to identify specifics)

A. Leadership at the agency level
   a. Reduce or eliminate scope creep
   b. Identify what is important to review and not important to review
   c. Cultural – empowerment and accountability in agencies (all governmental agencies); rely on staff to make decisions and hold acct.

B. Require that firm timelines be set – 12 months or less should be reasonable
   a. Look to Michigan and Wisconsin (public utility) laws that have timelines; options for suggested timeframes in neighboring states
   b. 150 days for supplemental EIS
   c. Negotiate between company and RGU at start for complex projects

C. Policy for new regulations, regarding scoping in environmental review not permitting
   a. Longer it takes the more regulations reviewed, need to modify this process to focus analysis to meet permit requirement
   b. Information focused, don't need to look at and/or drill into all areas

D. Shrink environmental review timeframe, also have to shrink permit timeframe
   a. The point of the ER is to say what is in permit or what permits are needed, what do we need to expect and review for permitting project

E. For smaller projects, where there is a lack of experience at local level, should RGU be deciding entity?
   a. Need the experience to review and what to review
   b. Limited availability of staff and/or resources needed to do work
   c. Operator can write EIS/EAW so takes some pressure off of RGU
   d. ER thresholds – who is responsible for what?
   e. Need access to expertise, knowledgeable people; keepers of process, knowledge of science and legal issues

F. Guidance document on what studies might be required to do based on a project and the appropriate season (some issues are season specific) to get best results
   a. Document should be recommendation rather than requirements and under what premise

G. Look at resources needed to do study – i.e. plant survey

a. What is likelihood of an issue in this area? “Do we need to do the study?”
b. Also include cultural studies, what is there value
c. Agency should be more definitive in what is needed; is it a requirement or a recommended area of study; the agency needs to ask, “Do we know what we need to do and will the results inform our decision?

H. Determine that draft and internal documents are agency documents until they are set for public comment – like federal agencies

Specifics on analysis and decision making:

- Scope should be geared to what is requires for permit; the permit conditions
- Keep asking the question: What is permit condition we are trying to meet?
- Determine who regulates; when other agencies get interested it can be confusing; what agency says yes/no with permit

Specific items for addressing timelines:

- What is recourse commitment for both agencies and proposer; set timelines can help determine
- What is submitted is complete, limit options to keep adding items
- Agency should have a team to review and should focus on the project
- The process starts with the RGU then to state agencies then to federal government, if needed
- Project proposer knows what permits are needed, then RGU determines what agencies to get on hand for ER
- Have interim dates through the process to show movement
- Hire a mining coordinator as an attempt by government to help industry and be a state resource to do it right, should be above agency but below commissioner
    - Legal expertise on national environmental quality policy act and MN environmental quality policy act – smaller providers don’t have access to legal information
    - Technical advisor and counsel to RGU
- Identify who needs to be included for environmental review and who needs to respond
- Review thresholds for small projects, review should be commensurate of project
- What regulations need to be addressed? From RGU to EQB we need help to change law and put resources in place to make it happen (stadium example – if you want it done, it will get done)

Additional comments:

- Tighten language on guidance document for ER preparation process; it is old, unclear, not specific
- Set a standard number of days for agencies to review – 2 weeks or more
  - Agreement or negotiate for shorter time to review at agency level, for more aggressive project managers
- Public comment; agencies obligated to say whether commenting or not; if they do not comments, then they cannot respond later
- Distribution of documents electronically and be on website both RGU and/or EQB
- If there is a conflict with RGU and proposer, have ability to take somewhere else for review and to address the conflict

Environmental Quality Board
Environmental Review Improvement Focus Groups

Local Governmental Units Group – June 25, 2012
Grand Rapids, MN

What is one thing in the ER process you want to keep?

- Staffing at state to answer questions, etc.
- Public input – chance for the public to comment on the proposal
- The things that are not caught during permit process
- Clarity
- Communication and using communication to work through the issues
- Open communication – all directions
- Local input on the proposal; not just "one size fits all" image
- Keep a level of perspective; economic develop is not bad, can't ignore environmental impact and need to protect but need to balance between

What are the critical elements of a successful environmental review process?

- Clearly defined objective with environmental review; including boundaries and objectives
- Public input – opportunity for public to be heard
    - With reasonable defined time periods to allow public comment
- Trust in public input process; it is used because it adds value
- Public comments need to be on point and regulating governmental unit defines
- Short process to complete: timing – 60 days is better than 2 years; work to keep it short
    - Realistic and defendable process
    - "Speed of commence" – timing
- A legitimate focus on actual risk; public health and environmental concerns
- Involve public early in process
    - Agencies allow early public input
    - Do not wait for public comment period, too late
- Identify or define protection of the environment; identify standards to compare proposal against; have some measures to use to help determine "value"

What is your greatest frustration with the environmental review process?

(Vote on most problematic issue – each participant given two votes)

- Timing (5 votes)
  - Length of the process as a whole
  - Need to be nimble enough to adequately address, yet if acceptable ultimately allow innovative approaches – processing, recirculating, methane
  - Too long to review and develop environmental reviews
- Economics (5 votes)
  - Cost to local governmental units and proposers
  - MN, seems to be overly restrictive compared to adjoining or other states
    - Impacts time of project and economic impact (on all entities)
- Politicization of what should be a process intended to benefit all parties. (2 votes)
  - Lack of agreed or enforced accountability by participants; proposers and commenters have limited guideline so it allows for a wide variety of comments valid or not; the need is for accurate information (and a way to determine accuracy)
  - Review process is too one sided from the review board; it is not balanced between economic concerns and environmental concerns – it is weighted to environment

  [This issue is tied to the first issue identified as "timing"]
- Lack of trust in process and officials doing work (1 vote)
  - No consistency in process or results
  - Everyone wants their own say (from a variety of perspectives)
  - Parties involved are not held accountable for decision or lack thereof
  - Staffs' personal opinions and beliefs can influence the outcome
- Agencies not following rules(1 vote)
  - Inconsistencies in scoping project
- Not getting clarity from EQB staff (0 votes)
  - Need more technical assistance from EQB staff
  - Want and need training on ER process and how to carry out
- Clarifying between any and/or all potential environmental risk vs. real environmental risks; usually outlined in scoping activity (0 votes)

What can be done in/with the environmental review process to address these issues and make the process more efficient and more effective?

(Identify one or two to identify specifics)

A. More elected people on EQB
   a. Take input from local representatives and those who have studied issue
   b. Listen to experts in area; both local impact of proposal and technical expertise on impact of environment and economy

B. Groups that oppose are proposal made financially responsible for delays in process, they should have "some skin in the game"

C. Up front open communications in the beginning, find out what issues are so they can be reviewed and addressed sooner rather than last minute
D. More built in mitigating science in process; have flexibility in rules to allow ideas and input from locals on mitigation ideas; flexibility to identify and review options to mitigate issues.
E. More general EIS to identify basic risks for broad actions and encourage good ideas to be brought up
    a. Reduce cost
    b. Basic elements early
    c. Local public value
F. Eliminate repetition between ER and permits
    a. Category exclusion
    b. Basic controls; if issues identified then narrow scope of ER to those
G. Define reasonable timeline – 6 months
    a. Legislative or executive order to do
    b. Look at Wisconsin and Indiana laws; compare as peers
    c. Look at what needs to be done and is it 45 days or 6 months
    d. Length of time depends on type of project
    e. If it is a "canned" (simple, similar to many others, etc.)project, then timeframe can be short, if not the first time for project it can be quick
    f. Larger, unique projects will take longer, new projects will be longer
    g. Size and newness are factors to consider for process
H. Alternative urban area review (AUAR), allow for great use of…
    a. Can lump similar areas and projects together
    b. Define geographic areas
I. Binding arbitration; not trust EQB board (they have a fear of lawsuit also)
    a. Skip past
    b. 3rd party review with no bias, EQB already qualifies as a 3rd party reviewer
J. Timeline agreeable, if EQB board does not act the permit goes thru
    a. Set guidelines and meet them
    b. If staff try to delay, they get fired
K. Develop an autonomous EQB – not tied to agencies

Specifics on early communication:

- Tie to timeline, develop timeline taking into account communications
- Open communication between all parties;
- Notify people in area when permit process starts
- LGU need to get involved early
- Once project is "scoped" then communicate to stakeholders
- State sets guidelines for communication and LGUs then responds to project based on guidelines

- Rules making and rule rate changes; let people know as soon as possible; also rule interpretation
- Key piece is to let parities know as soon as possible

Specifics on AUAR

- Discretionary to regulating governmental unit to design as they want
- Geographic area with similar characteristics
- Can disperse cost to multiply landowners
- Allows for flexible scoping; can define scope and eliminate unnecessary reviews
- Use when baseline of data known or proposals are similar (similar data collected)
- If a proposal meets the criteria in AURA, it is covered and does not go to EAW or EIS

Additional comments:

- Threshold concerns; identify what thresholds are and how they can be improved or raised? Concern is cumulative small projects that have same impact as a big project
- Environmental review improvements should have happened earlier, we have been talking about things for a long time
- What will happen? Will anything happen? Can the “minds in St Paul” be changed?

Environmental Quality Board
Environmental Review Improvement Focus Groups

Environmental Conservationists – June 26, 2012
Roseville, MN

What is one thing in the ER process you want to keep?

- Appeals and judicial review process
- Substantive part of Minnesota law is beyond federal law
- Public comment and public information input
- Appeals and judicial review, keep as is
- Underlying structure of the environmental review law, MPCA has not developed this area, like the choice of alternatives to protect the environment
- Evaluate and come up with recommendations from public interest and public input
- Underlying benefit and meaningful public engagement in decision making; it is transparent and provided early
- Permit is frozen, even at the public level, until environmental review is done, the environmental review process is separate from permitting process
- Make the right outcome and/or good decision, burden of proof is with the proposer (moved to the public?)
- Accessibility of citizen petition process, "the watchfulness of the citizen. . .;" hold facilitated task forces on environmental review

What are the critical elements of a successful environmental review process?

- Treat citizens as customers and regulated industry as regulated entities, avoid "agency capture"
- No conflict of interest between regulating governmental unit (RGU) and proposer
- Competency in understanding potential natural resource impact
- Separate regulator from decision-maker, with adequate funding to do work
- Early bias to citizen input, with early appropriate notice of proposal
- Access to information on an equal basis; citizens treated at same level as proposers – information given to proposers is also given to citizens at same time
- Law is followed; if law warrants an EIS then agencies need to order and EIS (or shorter EAW where appropriate)
- Necessary tools for critical review of the proposal; resources to review facts and project proposer's facts (Office of Administrative Hearings OAH is an option to use)
- Reinforce clarity that economic considerations should not be determinative

- Having mitigations identified following an environmental review; the mitigations should be monitored and enforced and impact noted; mitigations carried forward to permits [don't deny EIS and affirm at same hearing]
- Respect flows through the process, all parties respected and empowered
- Deliberate efforts to reach out to a variety of communities, to inform on project, include all stakeholders
- Consideration of alternatives, true alternatives
- Burden of proof is on proposer
- Meaningful substantial comments from agencies and local units of government; based in expertise and science, follow science (health and environmental impact)
- Balance of expertise, expert input from multiple perspectives; hire experts from tax dollars to provide public interest input
- Adequate resources and tools to share information between agencies and with the public, have a central repository to keep data and information (example was given of the Minnesota PUC's docket system)
- Separation of environmental review and permitting processes; allow a gap of time as a cooling off period between
- Clear roles
- Citizen access to expertise
- Environmental review as a comprehensive frame for project planning with early input, allow environmental review to inform design
- "No action" can be an alternative
- A checklist for RGUs on environmental review, includes conflict of interest points
- Process that is predictable regardless of who is RGU (local entities or state)

The following list was provided in response to the "elements of success" question by one of the participants. The document, in its entirety, follows (pages 57 through 61).

- Quick, comprehensive and confidential public access at no charge to complete and intelligible information regarding the project proposed, the history of environmental consequences of any existing facilities and history of environmental consequences at similar facilities.

- Distinction between public engagement prior to or instead of providing reliable factual project information (better known as "public relations") and engagement of the community in reviewing project information and recommending alternatives to protect the public interest.

- Project proposer obligation to provide complete and accurate applications, monitoring information, peer-reviewed science and transparency of modeling to agencies, with requirements of certification of reliability of information.

- Project proposer responsibility to provide accurate and project-specific information in the environmental review process, rather than generic and repetitive documents that gloss over actual project designs, alternatives and impacts.

- Agency mission to serve the public interest, not the interest of project proposers. Explicit recognition that "voluntary" compliance that is not reinforced by regulatory mandates is contrary to economic and legal obligations of corporate entities.

- Boundaries between responsible government agencies and project proposers, so that agencies do not identify with project proposers or determine whether or not to support a proposal until the full environmental review inquiry has been completed.

- Sufficient and appropriate agency expertise to make critical judgments about the likely validity of project proposers' predictions, including budget to retain expertise as needed.

- Sufficient time for agencies to make responsible decisions on the project, its alternatives and appropriate conditions to mitigate and minimize impacts.

- Opportunities for dialogue with public stakeholders, including informal meetings with agency staff and public hearings where the project proposers, community proponents and stakeholders with concerns about the project or project opponents can all be heard.

- Sufficient time for meaningful public participation, including public interest expert consideration of information regarding impacts to recommend whether a project should be permitted and, if so, under what conditions.

- Reduction of transaction costs and adequate resources within the community to ensure that responsible governmental units hear of concerns and alternatives as well as hearing from the project proposers and the lobbyists that their profits fund.

What is your greatest frustration with the environmental review process?

(Vote on most problematic issue – each participant given three votes)

- Lack of accountability for information provided by proposer and decision makers
- Inadequate examination of environmental harms
- Timelines, it takes forever and it feels like they cannot be impacted
- Use of APA standard rather than de novo review, court should have ability to look at evidence
- Legislature and/or agency weakens rules to allow for proposer success
- Lack of systematic, ongoing scientific review
- New science and new tools to use to study the impact on the environment are not being used, agencies are not applying new expertise
- Conflicts of interest with LGU, agency, RGU
- Hard to see any real environmental impacts resulting from environmental review process, environmental review is not tied to environmental benefit
- Lack of regard by RGUs for the environmental process, actual contempt by RGU for the process and public interest
- Overuse of promise of considering mitigation, it is an escape hatch to reach a negative declaration, (positive declaration from EAW process)

- RGUs operate in fear of proposer litigation but not citizen litigation, there is no respect for citizen litigation
- Engineering is viewed as foolproof and assumptions developed are too rosy; example given of a three-legged stool comprised of: 1) natural environmental threat, 2) geology of the area/region, 3) the engineering ability to overcome or address the first two; engineering is relied upon too much; lack of accountability on data provided
- EAW is used against citizens, no flaws are found because citizens found out about proposal too late to make comments, provide input
- Not enough use of science on climate change; environmental reviews are bound in current science and do not look forward to new, emerging, or future science.
- Minnesota government should work for the public's interest
- Rewrite problem statement along the lines of: "Environmental review does not provide useful information, meaningful public engagement, and meaningful and appropriate decisions by RGU that result in protection of the Minnesota environment."
- Surprised at how few projects do environmental review
- Outcome "camps" are built (already set) and few care about the process
- A way needs to be developed to make these proposals work; some are too disastrous but some can be worked out

What can be done in/with the environmental review process to address these issues and make the process more efficient and more effective? Comments in italics are from participant's written input (pages 57 through 61). The participant also commented on the topics during the meeting. Those comments are combined with other participant comments with the full text (in italic) following. The number at the end of each comment corresponds to the numbering in the attached document.

A. Support and resources for citizen participation

a. Proposers get RGU support, citizens get contempt
b. Make the public a full, supported partner in the process
c. The public has the resources to provide real input
d. Information accessible to diverse communities
e. Easy to follow template for filing an EAW petition
f. More time for public comments than currently allowed (balance to proposers long period of preparation leading up to ER
g. Better and friendlier access (online and offline) to data and agency personnel (specifically for the public to access up-to-date and complete information)
h. Public information, access to permit documents, discharge monitor, etc. Online docket
    - *Provide better public access to information in the permitting process. The current system provides poor quality electronic access to information and requires the public to ask for documents individually, creating substantial barriers to participation, consuming staff time in ministerial work and*

increasing costs. The MPCA web site does not permit searches to find basic information about a project history – permit application, prior permits, discharge monitoring reports, staff technical reports, etc. (In the U.S. Steel Keetac NPDES/SDS case, the U.S. EPA asked MPCA staff to post project information on the U.S. EPA's web site, but the MPCA declined.) Specifically, a docket-based approach for permitted facilities is recommended.[Response 7)]

i. Extended time for comments, presume longer times needed for EIS comments
   - *Extend time periods in complicated matters, with a presumption that a draft EIS in such a case will require at least a 120-day comment period. Agencies should also reject pressure from industry to reduce time for public comments on scoping, since the scoping process serves to identify both alternatives and mitigation measures requiring assessment.* [Response 8)]

j. Increase public access to environmental review documents (technical, drafts prior to final document)
   - *Increase public access to information in the environmental review process. All documents related to EAW and EIS preparation, including technical reports and monitoring data, memos and meeting summaries, are public information under Minnesota law. Yet, members of the public may not know that these documents exist and, even if they have retained sophisticated advocates, the process of requesting and obtaining these materials may take weeks if not months. A web site address where environmental documents are routinely posted in intelligible subject matter areas as they are created would reduce agency staff time in responding to requests as well as allowing members of the public confidential, comprehensive and timely access to information.* [Response 9)]

k. Provide public with opportunities for informal communication (proposer equity)
   - *Provide members of the public and public interest advocacy groups with informal opportunities to discuss permitting and environmental review matters with agency staff and management. Agency staff and management routinely meet with project proposers. Yet, even where members of the public have provided factual and legal information critical to environmental permitting and environmental review, agencies refuse to meet with members of the public or with public interest stakeholders. Informal consultation would increase knowledge on the part of both agencies and the public, increase the sense that regulators serve public interests and avoid the need for proceedings, such as litigation, that may have greater transaction costs.* [Response 11)]

l. Transcripts available to public at no cost

- *Provide transcripts of public meetings and evidentiary hearings related to environmental review and permitting matters to members of the public free of charge. Post electronic copies of such transcripts on the web sites for environmental review and facility permits.* [Response 16]

m. Intervenor compensation for public interest advocacy
   - *Provide intervenor compensation to members of the public and public interest groups if their participation in the process resulted in development of the record, changes to projects, mitigation or permits that protect the natural and human environment. In order to reduce intervenor costs, agencies would have an incentive to write permits and suggest design modifications to protect environmental public interest values.* [Response 17)]

B. Specific suggestions for changing environmental review process

a. Always prepare an order with findings of fact to do EAW or EIS for consideration; staff prepares, possible for dual recommendation
b. Routinely improve and update the worksheet to reflect policy change (i.e. next Generation Energy) and reflect science changes
c. Penalties for proposer submitting inaccurate information
d. Fully study and consider socio-economic impacts (as required)
e. Change in project restarts process
f. Eliminate categorical exemptions to environmental review
   - *Eliminate all categorical exemptions to the environmental review process. The use of exemptions suggests that environmental review can be eliminated due to special interest lobbying rather than a fact-based determination that a project does not have the potential to cause environmental harm. Any deviation from judgments based on objective project-specific evidence undermines the basic premise of environmental review.* [Response 6)]
g. Use OAH for fact-based hearings
   - *Utilize contested case Office of Administrative Hearings to provide factual analysis, fair process on permitting and environmental review matters. Develop a practice of referral of complicated and contested matters to the OAH to provide an objective and fact-oriented way short of litigation to address public interest concerns.* [Response 15)]

C. Clarify purpose of environmental review

a. Agency directors need to state to staff the purpose of environmental review is to protect the environment and serve the public; need to defend staff
b. Abandon the assumption that “effective” can/has to be “efficient”
c. Destroy idea in agencies that proposers are the customers. They are the regulated party
d. Purpose is to decide action/no action, alternatives. Mitigation based on environmental protection

- *State from the outset that the purpose of environmental review and the permitting process is to determine which projects and alternatives should be approved and, for those that should be approved, what conditions should be included to minimize and mitigate environmental and socioeconomic harms and to assure compliance with all state and federal statutes and rules. The current understanding of "efficiency" and "effectiveness" in environmental review is primarily a calculation of how to get the industry paperwork done as fast and as easily as possible and get on with the project that industry wants to do. This is only "efficient" and "effective" if what one wants to effectuate is private profit without internalizing externalities.* [Response 1)]

D. Programmatic EIS/EAW

E. Regular, routine review of science incorporated into rules

a. Make priority (instead of mitigation) to design projects and project alternatives to support and not undermine system sustainability of low cost green infrastructure services
b. Require climate change impacts be considered and/or included in environmental impact study and inform decision, also climate change adaptation
c. Broader cost/benefit analysis. Compare copper recycling with mining (e.g.) infrastructure and energy costs
    - *Authorize the responsible governmental unit RGU to assess to a private project proponent costs for the RGU's reasonable consultants' fees if needed to provide independent professional judgment of the accuracy, reliability and completeness of information and the appropriateness of monitoring and modeling used in environmental review (EAW, environmental assessment, environmental report or EIS). Create a public and transparent record of any such findings*.[Response 18)]

F. Remove RGU conflict of interest position

a. EQB decision if RGU is in conflict position
b. Create petition process for transfer to independent/different RGU
c. Require LGU RGUs to partner with EQB, EQB runs the process (as originally configured)
d. Strong economy is dependent on healthy environment (these are interdependent not opposites), educate and enforce this regulation in ER, traditional destructive "conflict of interest" between economy and environment
e. Change "industrial division" structure at MPCA
    - *Change the "Industrial Division" structure of the MPCA and develop permitting standards based on compliance with rules and assessment of environmental and health impacts, rather than allowing the least cost*

engineering solutions requested by industry. Ensure that permitting and environmental review decisions are led by environmental scientists rather than agency advocates for economic development.[Response 12)]

f. Take mining development out of DNR (DEED) to remove conflict of interest
    - *Change the structure of the MDNR to place minerals development responsibilities in a department responsible for economic development (DEED) to avoid the conflict of interest between natural resources management and mineral exploitation.*[Response 13]

G. Increase expertise at RGU on environmental review

a. Independent panels of retired experts on science to serve EQB review panel
b. RGU competency test, expertise at local level to do environmental review work
c. Rules check list for RGU

H. Improve appeal process

a. De novo review of RGU decision
b. Monitoring and enforcement of mitigations
c. Automatic stay of permitting during judicial appeal

I. True environmental review

a. True environmental review: open comments as wide as possible; independent of interest groups and conflicts, conflict of interest of decision maker; considers environmental harms adequately; adequate resources to complete
b. Guarantee adequate funding for environmental review
c. Consider real alternatives; RGUs, agencies, public gets input into alternatives, agency has final say
d. Do not allow consideration of mitigation measures in determination of potential for significant environmental effects, EAW process
e. Resist industry withholding information until permitting, prevents consideration of alternatives and no action
    - *Resist industry attempts to restrict availability of environmental review information until the permitting process, a tactic that forecloses use of the information to determine the costs and benefits of a project as compared to its alternatives. Ensure that all environmental review information is available before and during any permitting process.* [Response 5)]

J. Engage citizens early and often

a. Engage citizens early and often, meaningfully; when aware of application get out to public (on website, if possible); right to view and research project sites
b. Early citizen notification and intentional engagement of project review

c. Meaningful notice – neighbors, neighborhood organizations, newspapers of community
    - *Create a meaningful notice process for public interest groups and surrounding neighbors. The electronic notification system at the MPCA is a positive initial step. Public interest organizations and individuals who have commented in prior proceedings should be invited to participate in the electronic notification system. In addition, notices should be sent to neighbors, neighborhood organizations and neighborhood newspapers as well as to an "official" publication.*[Response 2)]

K. Later stages of public input

a. Trigger EIS, allow public role in determining need for EIS
    - *Ensure that evidence from the EAW disclosures and from public participation in the EAW process can trigger a full and complete environmental review in the EIS process. Ensure that administrative review and an open process are used to make the determination of whether the threshold for an EIS has been reached.* [Response 4)]

b. Encourage EAWs, allow and grant petitions of citizens and local businesses
    - *Encourage the preparation of environmental assessment worksheets to provide early and complete disclosure of environmental evaluations and require the earliest possible disclosure of information pertinent to an EIS. Broadly define individuals and entities that can petition for an EAW, grant reasonable petitions for an EAW, and encourage use of this initial tool for the public to understand the nature and impacts of a proposed project.* [Response 3)]

c. Fair and open public meetings convenient sites, hear each other, civility, transcripts; allow cooperating agencies to share views
    - *Conduct fair and open meetings in environmental review matters. Public meetings must be located in sites that are convenient to the persons that would be adversely impacted by a project, not merely its proponents. Members of the public must have opportunities to hear each other and to provide both oral (transcribed) and written testimony. Civility should be enforced and politicians given no special privileges in testifying. If there are various responsible and cooperating agency perspectives, members of the public should have an opportunity to hear diverse views on the project.* [Response 10)]

L. Burden of proof stays on proposer, use science to assess environmental risks

a. No more “three legged stool”
b. Require project proposer sworn certification of complete, accurate, best practice standards with penalties
    - *Require, if a project proposer prepares a preliminary draft EIS, that the project proposer do the following: submit a sworn certification that all information provided is complete, accurate and prepared according to professional best standards and that, should any information be deemed missing from the draft EIS the project proposer waives any and all applicable deadlines for environmental review and permitting* [Response 14) partial]
c. Guidance to reduce use of non-peer reviewed “science”
    - *Establish guidance in permitting and environmental review that non-peer reviewed technical information will be given substantially less weight in considering potential impacts of an action than peer-reviewed data and that research funded by industry will be given less weight than research that is independently funded.* [Response 14) partial]
d. RGU able to assess proposer for needed contract expertise
    - *Authorize the responsible governmental unit RGU to assess to a private project proponent costs for the RGU’s reasonable consultants’ fees if needed to provide independent professional judgment of the accuracy, reliability and completeness of information and the appropriateness of monitoring and modeling used in environmental review (EAW, environmental assessment, environmental report or EIS). Create a public and transparent record of any such findings.* [Response 18)]

TO: Environmental Review Improvement Focus Group

FROM: Paula Maccabee

RE: **Environmental Review Objectives, Elements & Recommendations**

DATE: June 26, 2012

The following memorandum provides an initial discussion of objectives and elements of environmental review and some general recommendations. It reflects my experience working with various clients over the past 30 years rather than the views of any specific client. This initial discussion is neither final nor exhaustive, and I expressly reserve the right to modify or supplement the reflections and recommendations provided below.

What are the critical elements of a successful environmental review process?

Objectives:

- Compel governmental units to scrutinize and independently verify representations of project proposers prior to approval of projects that have the potential to adversely impact the environment, including human health and the socioeconomic environment.

- Compel project proposers to demonstrate objective, candid and peer-reviewed information regarding project experience, experience with similar technologies to accurately predict project outcomes.

- Provide the public with access to usable, reliable and comprehensive information on the potential impacts of a proposed project.

- Provide the public and various non-project proposer stakeholders (health, environmental and faith-based organizations, tribes, unions, businesses that may be adversely affected by a project) with the opportunity to participate meaningfully in the process of consideration of the project, other than through litigation after a project has been approved.

- Allow responsible governmental units, as a result of accurate scientific information and public/stakeholder input to determine which projects should not be permitted to proceed due to likely violations of environmental standards, and/or adverse consequences to public health, socioeconomic factors or other public interest considerations.

- Allow responsible governmental units, as a result of accurate scientific information and public/stakeholder input to select feasible and prudent alternatives for projects that should not be permitted to proceed.

- Allow responsible governmental units, as a result of accurate scientific information and public/stakeholder input to determine which measures should be required to minimize and mitigate impacts of projects that can appropriately be permitted with controls and conditions and to determine what mechanisms of monitoring and disclosure will ensure that these controls are applied and conditions met.

Elements for Success:

- Quick, comprehensive and confidential public access at no charge to complete and intelligible information regarding the project proposed, the history of environmental consequences of any existing facilities and history of environmental consequences at similar facilities.

- Distinction between public engagement prior to or instead of providing reliable factual project information (better known as "public relations") and engagement of the community in reviewing project information and recommending alternatives to protect the public interest.

- Project proposer obligation to provide complete and accurate applications, monitoring information, peer-reviewed science and transparency of modeling to agencies, with requirements of certification of reliability of information.

- Project proposer responsibility to provide accurate and project-specific information in the environmental review process, rather than generic and repetitive documents that gloss over actual project designs, alternatives and impacts.

- Agency mission to serve the public interest, not the interest of project proposers. Explicit recognition that "voluntary" compliance that is not reinforced by regulatory mandates is contrary to economic and legal obligations of corporate entities.

- Boundaries between responsible government agencies and project proposers, so that agencies do not identify with project proposers or determine whether or not to support a proposal until the full environmental review inquiry has been completed.

- Sufficient and appropriate agency expertise to make critical judgments about the likely validity of project proposers' predictions, including budget to retain expertise as needed.

- Sufficient time for agencies to make responsible decisions on the project, its alternatives and appropriate conditions to mitigate and minimize impacts.

- Opportunities for dialogue with public stakeholders, including informal meetings with agency staff and public hearings where the project proposers, community proponents and stakeholders with concerns about the project or project opponents can all be heard.

- Sufficient time for meaningful public participation, including public interest expert consideration of information regarding impacts to recommend whether a project should be permitted and, if so, under what conditions.

- Reduction of transaction costs and adequate resources within the community to ensure that responsible governmental units hear of concerns and alternatives as well as hearing from the project proposers and the lobbyists that their profits fund.

What is your greatest frustration with the environmental review process?

Incessant political pressure on agencies resulting from industry lobbyists creating a culture of deference to industry, failure to adequately fund agencies, insufficient time to do the job at hand, inadequate examination of environmental harms, unwillingness to impose mitigation, let alone to require alternatives, and systematic exclusion and/or disregard of any community or public interest stakeholder participation.

What can be done in/with the environmental review process to address these issues and make the process more efficient and more effective?

Making the environmental review and permitting process efficient as well as more effective would include the following:

1) State from the outset that the purpose of environmental review and the permitting process is to determine which projects and alternatives should be approved and, for those that should be approved, what conditions should be included to minimize and mitigate environmental and socioeconomic harms and to assure compliance with all state and federal statutes and rules. The current understanding of "efficiency" and "effectiveness" in environmental review is primarily a calculation of how to get the industry paperwork done as fast and as easily as possible and get on with the project that industry wants to do. This is only "efficient" and "effective" if what one wants to effectuate is private profit without internalizing externalities.

2) Create a meaningful notice process for public interest groups and surrounding neighbors. The electronic notification system at the MPCA is a positive initial step. Public interest organizations and individuals who have commented in prior proceedings should be invited to participate in the electronic notification system. In addition, notices should be sent to neighbors, neighborhood organizations and neighborhood newspapers as well as to an "official" publication.

3) Encourage the preparation of environmental assessment worksheets to provide early and complete disclosure of environmental evaluations and require the earliest possible disclosure of information pertinent to an EIS. Broadly define individuals and entities that can petition for an EAW, grant reasonable petitions for an EAW, and encourage use of this initial tool for the public to understand the nature and impacts of a proposed project.

4) Ensure that evidence from the EAW disclosures and from public participation in the EAW process can trigger a full and complete environmental review in the EIS process. Ensure that administrative review and an open process are used to make the determination of whether the threshold for an EIS has been reached.

5) Resist industry attempts to restrict availability of environmental review information until the permitting process, a tactic that forecloses use of the information to determine the costs and benefits of a project as compared to its alternatives. Ensure that all environmental review information is available before and during any permitting process.

6) Eliminate all categorical exemptions to the environmental review process. The use of exemptions suggests that environmental review can be eliminated due to special interest lobbying rather than a fact-based determination that a project does not have the potential to cause environmental harm. Any deviation from judgments based on objective project-specific evidence undermines the basic premise of environmental review.

7) Provide better public access to information in the permitting process. The current system provides poor quality electronic access to information and requires the public to ask for documents individually, creating substantial barriers to participation, consuming staff time in ministerial work and increasing costs. The MPCA web site does not permit searches to find basic information about a project history – permit application, prior permits, discharge monitoring reports, staff technical reports, etc. (In the U.S. Steel Keetac NPDES/SDS case, the U.S. EPA asked MPCA staff to post project information on the U.S. EPA's web site, but the MPCA declined.) Specifically, a docket-based approach for permitted facilities is recommended.

8) Extend time periods in complicated matters, with a presumption that a draft EIS in such a case will require at least a 120-day comment period. Agencies should also reject pressure from industry to reduce time for public comments on scoping, since the scoping process serves to identify both alternatives and mitigation measures requiring assessment.

9) Increase public access to information in the environmental review process. All documents related to EAW and EIS preparation, including technical reports and monitoring data, memos and meeting summaries, are public information under Minnesota law. Yet, members of the public may not know that these documents exist and, even if they have retained sophisticated advocates, the process of requesting and obtaining these materials may take weeks if not months. A web site address where environmental documents are routinely posted in intelligible subject matter areas as they are created would reduce agency staff time in responding to requests as well as allowing members of the public confidential, comprehensive and timely access to information.

10) Conduct fair and open meetings in environmental review matters. Public meetings must be located in sites that are convenient to the persons that would be adversely impacted by a project, not merely its proponents. Members of the public must have opportunities to hear each other and to provide both oral (transcribed) and written testimony. Civility should be enforced and politicians given no special privileges in testifying. If there are various responsible and cooperating agency perspectives, members of the public should have an opportunity to hear diverse views on the project.

11) Provide members of the public and public interest advocacy groups with informal opportunities to discuss permitting and environmental review matters with agency staff and management. Agency staff and management routinely meet with project proposers. Yet, even where members of the public have provided factual and legal information critical to environmental permitting and environmental review, agencies refuse to meet with members of the public or with public interest stakeholders. Informal consultation would increase knowledge on the part of both agencies and the public, increase the sense that regulators serve public interests and avoid the need for proceedings, such as litigation, that may have greater transaction costs.

12) Change the “Industrial Division” structure of the MPCA and develop permitting standards based on compliance with rules and assessment of environmental and health impacts, rather than allowing the least cost engineering solutions requested by industry. Ensure that permitting and environmental review decisions are led by environmental scientists rather than agency advocates for economic development.

13) Change the structure of the MDNR to place minerals development responsibilities in a department responsible for economic development (DEED) to avoid the conflict of interest between natural resources management and mineral exploitation.

14) Require, if a project proposer prepares a preliminary draft EIS, that the project proposer do the following: submit a sworn certification that all information provided is complete, accurate and prepared according to professional best standards and that, should any information be deemed missing from the draft EIS the project proposer waives any and all applicable deadlines for environmental review and permitting. Establish guidance in permitting and environmental review that non-peer reviewed technical information will be given substantially less weight in considering potential impacts of an action than peer-reviewed data and that research funded by industry will be given less weight than research that is independently funded.

15) Utilize contested case Office of Administrative Hearings to provide factual analysis, fair process on permitting and environmental review matters. Develop a practice of referral of complicated and contested matters to the OAH to provide an objective and fact-oriented way short of litigation to address public interest concerns.

16) Provide transcripts of public meetings and evidentiary hearings related to environmental review and permitting matters to members of the public free of charge. Post electronic copies of such transcripts on the web sites for environmental review and facility permits.

17) Provide intervenor compensation to members of the public and public interest groups if their participation in the process resulted in development of the record, changes to projects, mitigation or permits that protect the natural and human environment. In order to reduce intervenor costs, agencies would have an incentive to write permits and suggest design modifications to protect environmental public interest values.

18) Authorize the responsible governmental unit RGU to assess to a private project proponent costs for the RGU's reasonable consultants' fees if needed to provide independent professional judgment of the accuracy, reliability and completeness of information and the appropriateness of monitoring and modeling used in environmental review (EAW, environmental assessment, environmental report or EIS). Create a public and transparent record of any such findings.

19) Engage agencies to evaluate a broader range of costs and alternatives than is required in a traditional MEPA or NEPA review before policy or permit decisions are made regarding industries that could substantially impact Minnesota resources. In consideration of sulfide mining, research costs and benefits of obtaining copper and nickel scrap through recycling, rather than mining. In addition, quantify the energy and infrastructure costs of proposed industrial mining activities, asking questions like the following: Are roads being built or reconstructed to serve mining, at what cost and to what taxpayers? What energy facilities will be needed to serve mining, at what costs and to what ratepayers?

I look forward to the opportunity to discuss these observations and recommendations with members of the stakeholder focus group and various staff representatives.

Please feel free to contact me at 651-646-8890 or pmaccabee@justchangelaw.com with any questions or comments regarding the above discussion and recommendations. Please also let me know the ways in which these recommendations will be used and what process will be available to post them electronically and make them available to members of the public who may be interested in protecting their communities from potential environmental harms.

Environmental Quality Board
Environmental review Improvement Focus Groups

Academic Group – June 29, 2012
Roseville, MN

What is one thing in the ER process you want to keep?

- Environmental Assessment Worksheet (EAW) form, it holds the basic idea
- Public participation
- Community conversation about projects
- Appeals through Court of Appeals
- Environmental review (ER) looks at things/issues that are important and unregulated
- Analysis on cumulative impacts
- Continue mandatory thresholds for necessary review
- Alternative Urban Area wide Review (AUAR) is unique
- To develop an outcome that is environmentally sound it takes a process to go through and time to do it

What are the critical elements of a successful environmental review process?

- Good faith participation by all participants in the process; use the process for its intended use and don't use as a stalling tactic
- A well-defined project; define what we are getting and/or getting into; a proposer that has a clear vision of what they want to do and how to go about doing it
- Responsible governmental unit (RGU) staff that owns the project; committed to getting the project done correctly and what is included and/or not included in that effort.
- Meaningful contribution of data from key agencies beyond the RGU; Minnesota Pollution Control (MPCA) role on items; permits, specific and informative, timely
- Understand the purpose of ER and the purpose of permitting; ER is not permitting but does inform the permitting process
- Time and sequencing of data gathering and compilation; done in right order and not doing it twice
- ER informs the permitting process, mitigation that matters, and the actions taken
- A schedule that is close to being completed within reasonable deadlines

What is your greatest frustration with the environmental review process?

(Vote on most problematic issue – each participant given three votes)

- Time and cost spent on issues that are already well regulated (6 votes)
  - Reinventing the wheel – not learning from past reviews
- Early public participation (5 votes)
  - Public participation is too late to make a difference; they are invited too late, after the decision is made
  - Should have everyone in earlier; re: real concerns, scoping not done well, agencies don't show cards early and so don't get answers early; like AURA mitigation response better; EQB not wanting to meddle with RGU and tell it what to do; entities do not abide by scoping comments; easy for agencies to "push down the road"
- Difficulty in "right-sizing' ER; reviews that are unnecessary, bulking up the EAW to address review issues (4 votes)
- Open-ended or never-ending reviews (4 votes)
  - Deadlines are set but there is always need for more data and more time to collect data
  - Always easy to ask for more data – process controlled by consultants saying need more work or decision-makers delaying a tough call; need help early from agencies in reviewing and commenting; need guidance with mitigation options; EISs are scary and easy to challenge EIS data; trying to make defensible with a bunch of data
- Lack of support of EQB (3 votes)
  - Starved to death – limiting resources for EQB
  - Underappreciated
- Concerns regarding cumulative effects and/or emerging issues (2 votes)
  - Inconsistency in addressing cumulative effects; guidance to do the document well, interpret it, then review it
  - Current lack for response to emerging issues, human health, climate change, new issues and limited guidance on these issues
- Use of ER process to block project (2 votes)
  - RGUs letting project opponents use ER to delay projects and cost proposers money
  - Beliefs that the process is flawed whereas, in fact, it is the use of the process that is flawed; better understanding of process and better execution of process
  - ER's that kick tough issues down the road; see ER as a box to check not a way to improve the process; analyze easy issues to death and tough issues are dealt with in the permit process
- Environmental review by local government (mainly for larger complex problems but some LGU have problems in general) (2 votes)
  - The LGU does not see ER process very often so does not understand all the nuances
  - No expertise on staff in ER

    - Poor quality work and/or poorly completed
- Bad attitude by parties involved that this is just a burden to get through (2 votes)
    - A big burden so why do we have to do it
    - Attitude of proposers, local governments, etc. that ER is an obstacle to be overcome
- Difficulty in revising the process (0 votes)
    - Difficulty of revision the process, e.g. revising mandatory categories
    - Polarization and retrenchment
    - Wrestling example: feet planted, hands grasping other hands but afraid to make a move because they may lose the position they already have
- Public does not understand the process (0 votes)
    - Lack of public understanding of process; confuse it with permitting

What can be done in/with the environmental review process to address these issues and make the process more efficient and more effective?

(Identify one or two to identify specifics)

A. Increase use of categorical exclusions; National Environmental Protection Act (NEPA) has certain exclusions from ER because they have been identified as having little impact; learn from the past so we are not re-inventing the wheel; standard EAW can be used as a jumping off point
B. Minnesota Environmental Protection Act (MEPA) – EIS is required for environmental effect
    a. Issues not otherwise regulated
    b. If issue requires a permit it can be taken care of in the permitting process but what if issue to look at is not regulated
C. Mitigation mandatory enforcement
    a. Make sure mitigations have been done and evaluated
    b. Governed by rule or statutes
    c. CEQ done in guidance
D. More staff at EQB for scoping and guidance with process
    a. Staff to review data, provide guidance and training
    b. Direct involvement on questions, help out RGUs that do not have experienced staff, or complex questions from other RGUs
    c. Get help from EQB
E. Additional guidance and training on emerging issue and cumulative impacts
    a. Provide help to RGUs on topics
    b. Bring information to those that need it
    c. Work with other agencies that have expertise to get best use of resources
    d. Discuss broader forms of AUAR for certain situations
F. Adjust and/or refine categories
    a. Good example is for ethanol plants
    b. Areas where there is a wealth of accumulated knowledge

G. Adequately staff EQB
    a. Provide reports and information to legislature and Governor
    b. Resource for RGU/LGU
    c. Strengthen knowledge base on topics
    d. Develop ongoing process of monitoring, assessment, and improvement
    e. Ask how to make better
    f. Need funding and support and staff and visibility in legislature
    g. Where should EQB be housed?
H. Develop a process for EQB to review similar, common projects more quickly
I. Conform state law to federal law, alternatives analysis in EAW
J. Coordination between RGU and other governmental units with expertise
    a. Identify lead and cooperating agencies
    b. Coordinate expertise
K. If better focused and better cooperation the process should not take so long
    a. Make extensions of time more difficult; issued within X period, a set deadline, 280 days
    b. Negotiate in scoping process the timeframe and stick to it for more complex proposals; if longer than agreed then have a valid and substantial for extending timeframe; explain to staff, EQB members, the Governor
    c. For EAW, set a time limit and keep it
L. Remove the cumulative effects from EAW
    a. Why should a single proposer pay for something that impacts multiple proposers and other entities
    b. If for a generic EIS or other review then appropriate but not on an individual EIS
    c. Should be in advance by state agency with state monies
    d. For similar project in the same area, proposers could share the cost of doing the environmental review
    e. Agency (state or local) could become the facilitator to bring the various parties together
M. Elevate or raise awareness of environmental benefits the project may create
    a. Use a cost/benefit approach as a decision making tool in the process
N. Create a statewide electronic database of environmental review information that is available
    a. Broadly available, via web
    b. Includes past EIS and the ability to look up
    c. Concern over cost to set up and maintain
O. Invest more time and effort in scoping the project
    a. Need comments from regulating agencies; those that have a limited role in the project do not need to review
    b. Clearly define responsibility of the agency and its role in participating in the scoping process
    c. Also scope out alternatives

Additional comments:

- The environmental review process has calcified, nothing has happened for 25 years; the process should be reworked to be as good as it was 25 years ago
- The AUAR is a model to explore
    - It is tied to the comprehensive planning process
    - Has the most potential to address a variety of issues
    - Identifies enhancement of environmental benefits
    - For similar areas, similar projects it can identify what needs to be done to protect or enhance environment
    - Solves the problem of cumulative projects without requiring EQB/RGU to do an EIS; for projects around a lake or similar geographic area
    - Uses comprehensive plan and zoning as part of process
    - It is good for a period of time – 5 years
    - Requirement of commenting agencies to identify mitigation that should be required

Environmental Quality Board
Environmental Review Improvement Focus Groups

Open Group – July 10, 2012

Roseville, MN

What is one thing in the ER process you want to keep?

- Public notice process; public knows when an EAW or EIS is proposed and can understand the proposal and comment on it
- Mandatory thresholds
- Petition process; response by RGU officials
- Feasibility of alternative improvements that are environmentally sound (116D.04 subd. 6)

What are the critical elements of a successful environmental review process?

- A well-developed plan of the project
- Accurate description of the project
- Willingness of RGU to participate in the process
- Honesty of the part of the RGU and proposers (inform the public of actual entire project)
- Absence of conflict of interest
- Mandatory thresholds
- Enforcement of provisions of the law
- Public notice and the opportunity for public involvement
- Analysis if alternatives and mitigation actions
- Expertise in the RGU on environmental issues
- Education for RGU on process and options in the ER process, and education on the substance of the environmental science
- Ability to defend the RGU from staff cuts
- Enforcement of mandatory thresholds
- Define the jurisdictions involved and their roles, responsibilities, and impacts of the project; substantive standard for decision-making
- Penalty for failure to follow the law; currently through appeal of decision

What is your greatest frustration with the environmental review process?

(Vote on most problematic issue – each participant given one votes)

- There are almost no EISs approved that are not federally required. EAW's which do not look at alternatives have perverted the process (1 vote)
- Helping people understand the process and how and why decisions are made; information and education for RGU staff and elected officials to help understand the process (1 vote)
- ER does not always result in meaningful (accurate) information (including analysis of alternatives, meaningful (notice of proposal, early in process, opportunity to be heard) public engagement, or appropriate (applies to substantive standard) environmental decisions. (1 vote)
- RGU not qualified to examine the project (0 votes)
- When the RGU is a city and ignores virtually every part of the rule, it is prohibitive for private citizens to pay attorneys to fight every point; RGU does not follow the rules (0 votes)
- When the RGU is the secret proposer and wants no part of the environmental review process, the RGU can present an incomplete and inaccurate EAW; conflict of interest on RGU (0 votes)
- If they are not personally affected they do not take it seriously; not listening to citizens' concerns (0 votes)
- The concern of missing a step through the timing of when things need to be noticed; timing is complex and hard to follow (0)
- No waiting period between a negative declaration and permit issue (state level)

What can be done in/with the environmental review process to address these issues and make the process more efficient and more effective?

(Identify one or two to identify specifics)

A. Educate the public and RGU on the process and science relating to environmental review;
    a. Test comprehension; have RGU respond to 20 questions on ER
    b. Provide more public access to information electronically – online
    c. Provide as much data/information as possible on site, used by RGU, public, proposer, etc.
    d. Provide information to public early in process
    e. Hold meeting with those impacted early to understand value, issues and intent with project
    f. Concern is that "public learns only what they want to learn" and will not value both sides of the issue
    g. Model could be the process for permitting large electric generation facilities (PUC)
B. Respect mandatory thresholds; respect the completeness and accuracy needed for EAWs
C. Mandatory training for RGU staff and elected officials to understand the process and science of environmental review

D. Have proposer provide an affidavit of proof that the factual information is true
E. Add adjoining townships to distribution list of proposal
F. Monitor and enforcement of mitigation measures; taken to achieve FONSI
G. Allow petition with a significant number of signatures as a reason to do an EAW
H. Have alternative analysis as part of the EAW; require looking at potential alternatives
I. Make sure language and rules are written so that a majority of the people can understand
J. Environmental review "hit team"
    a. From state with expertise and knowledge of process (can go to any site as needed) to conduct EAW or EIS
    b. RGU is part of this process because of the local perspective; they have history, insight, etc.
    c. Used for complex and/or technical projects; a resource for the RGU of objectivity
    d. Funding options include:
        - Funded out of state agency budget
        - Charged back to proposer
        - LGUs money that is saved by not having to litigate or other legal fees
K. Discussion of carbon emissions and energy conservation in EAW and mitigation
L. Rethink the purpose of EAW as an environmental review document in process
M. On EAW have public testimony taken by an administrative law judge and they write a summary

Additional comments:

- Have a public hearing at the time of negative declaration
    - Provide a summary of project all through the process with staff recommendations
- Why is the permit process not sufficient to cover environmental review? The permit does not look at context of project and the environmental impacts of the project.
    - Environmental review is a broader context than permit
- Designation of RGU; who should RGU be? Options or choices of RGU; least personal interest/conflict of interest

APPENDIX D

Evaluation of Recommendations
8/30/12

	How will the recommendation affect the availability of information?	How will the recommendation affect the reliability/objectivity of information?	How will the recommendation affect the usability of information by governmental units?	How will the recommendation affect the usability of information by project proposers?	How will the recommendation affect the usability of information by the public?	How will the recommendation affect coordination among governmental units?	How will the recommendation affect duplication of effort?	How will the recommendation affect project review time?	How will the recommendation affect complexity of the environmental review?	How will the recommendation affect the ability to understand the environmental review process?	How will the recommendation affect consistency across governmental units as it relates to the process itself, information needed, and decision reached?	Will the recommendation require changes to statutes or rules?	How will the recommendation affect costs?	How will the recommendation affect the need for technology requirements?	How difficult will the recommendation be to implement?	Comments
1. Analysis of Alternative																
1.1. Conduct alternatives analysis as part of EAWs	+	+	+	+	+	=	=	longer	worse	=	-	yes	increase	=	moderate to difficult	models available in NEPA and State EIS and AUAR, but application will be complex and controversial
1.2. Revise EIS rules to improve alternatives analysis	+	+	+	+	+	=	=	=/shorter	better	=	+	yes	=	=	low/moderate	
1.3. Allow for discussion in EAWs of alternatives already considered by project proposers	+	+	=	=	+	=	-/=	=	=	=	=	no	=	=	low	Could be implemented as part of recommendation 1.1
2. Timelines																

	How will the recommendation affect the availability of information?	How will the recommendation affect the reliability/objectivity of information?	How will the recommendation affect the usability of information by governmental units?	How will the recommendation affect the usability of information by project proposers?	How will the recommendation affect the usability of information by the public?	How will the recommendation affect coordination among governmental units?	How will the recommendation affect duplication of effort?	How will the recommendation affect project review time?	How will the recommendation affect complexity of the environmental review?	How will the recommendation affect the ability to understand the environmental review process?	How will the recommendation affect consistency across governmental units as it relates to the process itself, information needed, and decision reached?	Will the recommendation require changes to statutes or rules?	How will the recommendation affect costs?	How will the recommendation affect the need for technology requirements?	How difficult will the recommendation be to implement?	Comments
2.1. Shorter/firmer timelines	-	-	-	=	-	-	more	shorter	slightly worse	=	-	yes	increase	=	moderate/high	Shorter time frame for review of data submittal will lead to increased rejections and therefore duplication. Shorter time for review and analysis may sacrifice quality and usabilty of information and ability to coordinate.
2.2. Increase timelines	+	=	=	=	+	+	=	longer	=	=	=	yes	increase	=	low	
2.3. More detailed timelines with milestones	=	=	=	=	=	+	=	=	worse	+	+	yes	=	=	low/moderate	milestones are generally a good practice within a process but there is variability in how the affect to timelines and

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																duplication
3. EAW/EIS Process																
3.1. EAW as stand alone document (no EIS determination) Single document submitted for review, revised based on comments, reviewed and can still be revised if needed regardless of how many review periods.	-/=	-/=	-/=	=	-	=/+	much more	longer	worse	-	-	yes	increase	=	moderate/high	
3.2. Develop a process that uses a checklist (simplified EAW) to scope area of assessment.	-	=	=/+	=	-	=	slightly less	shorter	slightly better	+	+	no	=	=	low/moderate	
3.3. ER exemption for low-risk, regulated	-	-	-	-	-	-	less	shorter	n/a	=	-	yes	decrease	=	high	

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and/or green projects																
3.4. Replace EAW and EIS with a single ER process	=	=	=	=	=	=	slightly less	=	=	=/+	=	yes	=	=	high	
3.5. Process of early dialogue to allow limited scope of ER (EAW only)	=	=	=	=	+	+	slightly less	longer	worse	-/=	=	no	increase	=	low	more meetings could increase complexity, however if scope is actually reduced, there could be a benefit
3.6. Additional guidance/tracking of AUAR updates	=/+	+	+	+	+	+	slightly less	=	=	+	+	no	=	slightly increase	moderate	Will require development and management of a database
3.7. Expand use of AUAR or AUAR like process	+	+	+	+	+	+	less	shorter	=	=	=	yes	=	=	high	Could be done under alternative ER process, but rule revision is advisable
3.8. Tiering of ER system (Identify and implement Generic EIS to support project specific actions)	+++	+	+	+	+	=/+	less	shorter	=	=	+	no	increase	=	very high	GEIS can be difficult and costly but specific tiered project ER

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																will benefit
3.9. Have EQB staff complete an analysis of ER process to identify recommendations (gap analysis)																
3.10. EIS for private projects should not evaluate alt. sites, alt. technologies, socio-economic impacts, nor cumulative impacts.	-	-	-	-	-	-	less	longer	better	=	=	yes	decrease	=	low	
3.11. Phased actions as thresholds based on environmental considerations not ownership (does not need to be by the same proposer)	=/+	=	+/=	=	+	=	more	longer	worse	-	-	yes	increase	=	moderate/high	will increase total number of environmental reviews
3.12. Allow stronger reliance on comp plans for ER –substitute for EAW or reduced EAW	=	=	=	=	=	-/=	less	shorter	=	=	-	yes	decrease	=	moderate	quality and amount of information may vary across LGUs

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3.13. Use and rely more on technical expertise – factual data	+	+	+	=	=	=	=	longer	worse	=	-	no	increase	=	moderate/high	This assumes insufficient expertise and data are used now
3.14. ER process begins at LGU then moves up through state and federal if needed based on complexity and expertise.	=	=/+	=	=	=	=/+	more	longer	worse	-	+	yes	increase	=	moderate/high	
3.15. Revise State RGU ER process to engage LGU earlier in the process.	+	=	+	=/+	=/+	+	=	=	=	=	+	no	=	=	low	
3.16. Sector specific or customized EAW forms (allow for different forms of ER)	=	=	+	+	=	-/=	less	shorter	worse	-	+	no	decrease	=	moderate/high	
3.17. Amend EIS need criteria with more definitive determinations and examples that would remove variability in decisions across the state.	=	=	=/+	=	=	=	=	shorter	better	+	+	yes	=	=	moderate	

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3.18. Always prepare both positive declaration and negative declaration before making decision.	=	-	-	-	-	=	more	longer	worse	-	-	no	=	=	low	
3.19. Use stakeholder committees to review documents	+	+	=/+	=/+	+	+	=	longer	worse	+	=	no	slight increase	=	low	
3.20. Limit the use of ER to truly unique situations (sensitive sites, new chemicals, new technology, etc.)	-	-	-	-	-	=	less	=	=	=	=	yes	=	=	moderate	will result in fewer reviews
3.21. Increase use of categorical exclusions per NEPA	-	-	-	-	-	-	less	=	=	=	=	yes	=	=	moderate	
4. Public Engagement																
4.1. Educate and invest in public interaction so that public input is informed and relevant to factual information	+	=	=	=	+	=	=	longer	=	+	=	no	increase	=	moderate	
4.2. Provide for public input as part of	=	=	=	=	=	=	=	=	=	=	=	=	=	=	=	outside of scope of ER

	How will the recommendation affect the availability of information?	How will the recommendation affect the reliability/objectivity of information?	How will the recommendation affect the usability of information by governmental units?	How will the recommendation affect the usability of information by project proposers?	How will the recommendation affect the usability of information by the public?	How will the recommendation affect coordination among governmental units?	How will the recommendation affect duplication of effort?	How will the recommendation affect project review time?	How will the recommendation affect complexity of the environmental review?	How will the recommendation affect the ability to understand the environmental review process?	How will the recommendation affect consistency across governmental units as it relates to the process itself, information needed, and decision reached?	Will the recommendation require changes to statutes or rules?	How will the recommendation affect costs?	How will the recommendation affect the need for technology requirements?	How difficult will the recommendation be to implement?	Comments
permitting process																
4.3. Ensure public input (along with information in EAW) is fully considered in determination on the need for an EIS	=	=	=	=	=	=	=	=	=	=	=	=	=	=	=	This is already provided for in rule, the recommendation is intended to improve RGU performance, but doesn't provide mechanism for improvement
4.4. Condense public participation to as few events as possible (preferably one)	-	=	-	-	-	=	=/less	shorter	better	-	=	yes	decrease	=	low	
4.5. Develop an outreach program to educate and inform the public on the purpose and process of ER.	+	=	=	=	+	=	=	=	=	+	=	no	increase	=	moderate	
4.6. Enhance notification process to include earlier notification, adjacent townships and make use of electronic	+	=	+	=	+	+	=	=	=	+	=	no	increase	slight increase	moderate	Could be done administratively, but rule change would ensure implementatio

	How will the recommendation affect the availability of information?	How will the recommendation affect the reliability/objectivity of information?	How will the recommendation affect the usability of information by governmental units?	How will the recommendation affect the usability of information by project proposers?	How will the recommendation affect the usability of information by the public?	How will the recommendation affect coordination among governmental units?	How will the recommendation affect duplication of effort?	How will the recommendation affect project review time?	How will the recommendation affect complexity of the environmental review?	How will the recommendation affect the ability to understand the environmental review process?	How will the recommendation affect consistency across governmental units as it relates to the process itself, information needed, and decision reached?	Will the recommendation require changes to statutes or rules?	How will the recommendation affect costs?	How will the recommendation affect the need for technology requirements?	How difficult will the recommendation be to implement?	Comments
notification.																n
4.7. Make sure the language of rules are written for common understanding	=	=	=	=	=	=	=	shorter	better	+	+	yes	=	=	moderate/high	
4.8. Allow more time for public comment	+	=	=	=	+	+	=	longer	=	=	=	yes	increase	=	low	
4.9. Increase access and ease for public (diverse populations too) to obtain document including technical documents, transcripts, monitoring data etc. (consider web based system)	+	=	+	+	+	+	=	=	slightly worse	+	=	no	increase	big increase	high	
4.10. Enhance public meetings by making them convenient (time/place) and allow for open testimonies that are transcribed for the record. Provide an	=	+	=	=	+	=	=	=	=	=	+	no	=	=	low/moderate	

	How will the recommendation affect the availability of information?	How will the recommendation affect the reliability/objectivity of information?	How will the recommendation affect the usability of information by governmental units?	How will the recommendation affect the usability of information by project proposers?	How will the recommendation affect the usability of information by the public?	How will the recommendation affect coordination among governmental units?	How will the recommendation affect duplication of effort?	How will the recommendation affect project review time?	How will the recommendation affect complexity of the environmental review?	How will the recommendation affect the ability to understand the environmental review process?	How will the recommendation affect consistency across governmental units as it relates to the process itself, information needed, and decision reached?	Will the recommendation require changes to statutes or rules?	How will the recommendation affect costs?	How will the recommendation affect the need for technology requirements?	How difficult will the recommendation be to implement?	Comments
atmosphere of civility and respect for all input. Allow public to hear agency perspectives.																
4.11. Use ALJ process for public input on EAW	+	+	+	+	+	=	more	longer	worse	=	+	yes	increase	=	moderate	
4.12. Develop a process for early and open communication with public as soon as project details are available.	+	=	=	=	+	=	=	longer	=	=	=	no	=	=	low	
4.13. Require agencies to commit to commenting or not. If they don't commit they have no standing or options for further interaction.	-	=	=	=	=	-	less	=	=	=	=	yes	=	=	low	
4.14. Develop a public process that allows information and communication to learn and discuss the issues openly and for significant or controversial projects	+	=	=	=	+	+	more	longer	worse	+	+	yes	increase	=	high	

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to develop a negotiation or mediation process.																
4.15. Allow open process that addresses conflict of interest and adequately considers the environment.	+	+	=	=	+	=	=	=	=	+	+	yes	=	=	moderate	rule making would be needed to address RGU with conflict of interest
5. Conflict of Interest																
5.1. Develop process for identification of conflict interest and reassign of RGU if conflict of interest is found. (Petition by citizens)	+	+	=	=	+	=	=	=	=	+	+	yes	=	=	moderate	
5.2. Formalize a process for verifying accuracy of information/data submitted by proposer (affidavit and/or penalties)	-	+	+	=	+	=	=	longer	=	=	+	yes	increase	=	moderate	

	How will the recommendation affect the availability of information?	How will the recommendation affect the reliability/objectivity of information?	How will the recommendation affect the usability of information by governmental units?	How will the recommendation affect the usability of information by project proposers?	How will the recommendation affect the usability of information by the public?	How will the recommendation affect coordination among governmental units?	How will the recommendation affect duplication of effort?	How will the recommendation affect project review time?	How will the recommendation affect complexity of the environmental review?	How will the recommendation affect the ability to understand the environmental review process?	How will the recommendation affect consistency across governmental units as it relates to the process itself, information needed, and decision reached?	Will the recommendation require changes to statutes or rules?	How will the recommendation affect costs?	How will the recommendation affect the need for technology requirements?	How difficult will the recommendation be to implement?	Comments
5.3. A paradigm shift to a philosophy that the economy is dependent on a healthy environment	=	=	=	=	=	=	=	=	=	=	+	no	increase	=	very high	
5.4. Remove mineral/land development from DNR	+	+	=	=	+	=	=	=	=	=	=	yes	=	=	low	
6. Rule Changes																
6.1. Develop criteria that would provide incentives for project proposers to address the environment and natural resources that would exempt the project from ER.	-	=	-	-	-	-	less	shorter	better	=	=	yes	=	=	moderate/high	
6.2. Expand use of alternative environmental review process that would allow flexibility for RGU	+	+	+	+	+	+	less	shorter	=	=	=	yes	=	=	high	Could be done under alternative ER process, but rule revision is advisable
6.3. Evaluate and revise mandatory category thresholds	=	=	=	=	=	=	=	=	better	+	+	yes	=	=	moderate/high	process currently underway

	How will the recommendation affect the availability of information?	How will the recommendation affect the reliability/objectivity of information?	How will the recommendation affect the usability of information by governmental units?	How will the recommendation affect the usability of information by project proposers?	How will the recommendation affect the usability of information by the public?	How will the recommendation affect coordination among governmental units?	How will the recommendation affect duplication of effort?	How will the recommendation affect project review time?	How will the recommendation affect complexity of the environmental review?	How will the recommendation affect the ability to understand the environmental review process?	How will the recommendation affect consistency across governmental units as it relates to the process itself, information needed, and decision reached?	Will the recommendation require changes to statutes or rules?	How will the recommendation affect costs?	How will the recommendation affect the need for technology requirements?	How difficult will the recommendation be to implement?	Comments
(s.f. 1567)																
6.4. Refine criteria for significant environmental effects (be specific)	=	=	=/+	=	=	=	=	shorter	better	+	+	yes	=	=	moderate	
6.5. Consider environmental/resource thresholds rather than project metrics to determine the need for ER	=	=	=	=	=	=	=	=	worse	-	-	yes	=	=	moderate/high	although could produce env. Benefits the implementation would be complex
6.6. Use SWCD and tech panel as part of ER process.	+	+	=/+	=/+	+	+	=	longer	worse	+	=	yes	increase	=	moderate	
6.7. Allow agencies to purchase property prior to ER complete	=	-	=	=	=	=	=	=	=	=	-	yes	=	=	moderate	
6.8. Provide rule based EIS scope for each mandatory EIS category	=	+	+	+	+	=	less	shorter	better	+	+	yes	decrease	=	very high	
6.9. Require public hearing at time of negative declaration	+	=	=	=	+	=	=	longer	worse	+	=	yes	increase	=	moderate	
6.10. Develop process for not	-	-	-	-	-	-	less	shorter	n/a	=	-	yes	decrease	=	high	

	How will the recommendation affect the availability of information?	How will the recommendation affect the reliability/objectivity of information?	How will the recommendation affect the usability of information by governmental units?	How will the recommendation affect the usability of information by project proposers?	How will the recommendation affect the usability of information by the public?	How will the recommendation affect coordination among governmental units?	How will the recommendation affect duplication of effort?	How will the recommendation affect project review time?	How will the recommendation affect complexity of the environmental review?	How will the recommendation affect the ability to understand the environmental review process?	How will the recommendation affect consistency across governmental units as it relates to the process itself, information needed, and decision reached?	Will the recommendation require changes to statutes or rules?	How will the recommendation affect costs?	How will the recommendation affect the need for technology requirements?	How difficult will the recommendation be to implement?	Comments
reviewing smaller/low risk projects																
6.11. Require the ER only address issues not otherwise regulated.	-	=	-	-	-	-	less	shorter	better	-	-	yes	decrease	=	moderate	
6.12. Provide resources that are needed to complete rulemaking	=	=	=	=	=	=	=	=	better	=	+	yes	=	=	moderate	
6.13. Eliminate exemptions	+	=	=	=	=	=	=	=	better	+	-	yes	=	=	moderate	
6.14. Revise mandatory thresholds of staged (phased) projects to better address future actions	+	=	+	+	+	=	=	longer	worse	+	+	yes	increase	=	moderate	
7. Role of EQB																
7.1. Provide more resources for EQB staff to provide training, guidance and maintenance of ER	+	+	+	+	+	=	less	shorter	=	+	+	no	increase	=	moderate	
7.2. Establish gatekeeper and remand authority so decisions go through EQB to determine if acceptable.	=	+	+	+	+	=	more	longer	worse	=	+	yes	increase	=	moderate/high	

	How will the recommendation affect the availability of information?	How will the recommendation affect the reliability/objectivity of information?	How will the recommendation affect the usability of information by governmental units?	How will the recommendation affect the usability of information by project proposers?	How will the recommendation affect the usability of information by the public?	How will the recommendation affect coordination among governmental units?	How will the recommendation affect duplication of effort?	How will the recommendation affect project review time?	How will the recommendation affect complexity of the environmental review?	How will the recommendation affect the ability to understand the environmental review process?	How will the recommendation affect consistency across governmental units as it relates to the process itself, information needed, and decision reached?	Will the recommendation require changes to statutes or rules?	How will the recommendation affect costs?	How will the recommendation affect the need for technology requirements?	How difficult will the recommendation be to implement?	Comments
7.3. EQB to establish enforcement authority over ER rules	=	+	+	+	+	=	more	longer	worse	=	+	yes	increase	=	moderate/high	
7.4. Restructure EQB for more inclusion of citizens and local interest. Include scientific panel and remove agencies.	=	=	=	=	=	-	=	=	=	=	=	yes	=	=	high	recommendation by itself would have very little effect on ER
7.5. Revert to pre-1982 ER	=	+	+	+	+	+	more	longer	better	+	+	yes	increase	=	high	
7.6. EQB as decision maker on petition to determine if EAW is required	=	=	=	=	=	=	=	=	=	=	+	yes	=	=	moderate	
8. Appeals																
8.1. EQB (or other administrative entity) as appeals body	=	+	=	=	=	=	more	longer	worse	-	+	yes	increase	=	moderate	
8.2. De novo review of RGU decision	=	+	=	=	=	=	more	longer	worse	-	-	yes	increase	=	moderate	
8.3. Automatic stay of permitting during appeal	=	+	=	=	=	=	=	longer	=	=	=	yes	increase	=	moderate	

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8.4. Create binding arbitration to avoid appeals (alternative dispute resolution process)	=	+	=	=	=	=/+	=	=	=	=	+	yes	=	=	moderate	
9. Petitions																
9.1. General restriction on petitions (who can sign, higher standards)	-	=	=	=	=	=	less	=	better	+	+	yes	decrease	=	moderate	
9.2. Discontinue petitions process	-	=	=	=	=	=	less	=	better	=	+	yes	decrease	=	moderate	
9.3. Limit timelines for petitions	-	=	=	=	=	=	less	=	better	=	=	yes	decrease	=	moderate	
9.4. Increase petition signatures to 125 people	-	=	=	=	=	=	less	=	better	=	=	yes	decrease	=	moderate	
9.5. Establish a threshold of signatures that would automatically require EAW	+	=	=	=	=	=	more	=	better	+	+	yes	increase	=	moderate	
10. $$$																
10.1.Intervener compensation for public interest	+	-	=	=	+	=	more	increase	worse	-	-	yes	increase	=	moderate	

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advocacy																
10.2.Specific authorization for RGU cost recovery. (State Agency EAW only)	=	=	=	=	=	=	=	decrease	=	=	=	yes	increase	=	moderate	
11. EQB Guidance																
11.1. EQB to collect data on ER process for ongoing evaluation to identify and implement continuous improvement process.	+	+	=	=	=	+	=	=	=	+	+	no	increase	increase	moderate/high	
11.2. Make information available for RGUs and proposers (i.e. potential studies needed, mitigations strategies, past ER documents, baseline data, similar geographic area and characteristics)	+	+	+	+	+	+	=	=	=	=	+	no	increase	increase	high	
11.3. Further clarify “significant environmental effects” through guidance, rule	=	=	=/+	=	=	=	=	shorter	better	+	+	yes	=	=	moderate	

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and examples.																
11.4. Provide additional guidance documents to be more up to date and specific.	=	=	=	=	=	=	less	=	=	+	+	no	=	=	moderate	
11.5. Provide technical assistance available for call in support and training.	=	=	=	=	=	=	less	=	=	+	+	no	=	=	low	
11.6. Develop "ER hit team" of state expertise to conduct EAW/EIS or as support for RGU for complex and/or technical projects.	=	+	+	+	+	+	less	=	=	+	+	yes	increase	=	high	
11.7. Revise and/or customize EAW form (include emphasis on ER intent).	=	=	+	+	=	=	less	shorter	worse	-	+	no	decrease	=	moderate/high	
11.8. Improve RGU competency (i.e. mandatory training, testing, and easier process for re-designation)	=	+	+	+	+	=	=	shorter	=	+	+	no	increase	=	moderate/high	

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11.9. Clarify petition process (i.e. template, what is material evidence, help for petitioners)	+	=	+	=	+	=	=	shorter	=	+	+	yes	=	=	moderate	
11.10. EQB staff to act as coordinator/facilitator during ER process so that state agencies are consistent, coordinated and give appropriate attention/focus to ER by other RGUs.	+	+	+	+	+	+	less	=	=	=	+	yes	=	=	high	
11.11. EAW should include positive and negative aspects of project.	+	=	+	+	+	=	=	=	=	=	-	no	=	=	low	
11.12. Projects that go through federal ER process are exempt from state ER.	-	=	-	-	-	-	less	shorter	=	-	-/=	yes	decrease	=	moderate	
11.13. Provide more information on what is considered a complete data submittal	+	+	+	+	+	=	=	shorter	=	+	+	no	decrease	=	low/moderate	
11.14. Provide guidance that lowers the use and reliance on non-peer reviewed	-	+	-	-	-	=	more	longer	worse	=	+	no	increase	=	high	

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science																
12. ER and Permitting																
12.1. Eliminate duplication between ER and Permitting	-	=	-	-	-	-	less	=	=	-	-	yes	=	=	moderate	
12.2. ER should be based on permit needs and conditions	-	=	-	-	-	-	=	shorter	=	-	=	yes	=	=	moderate/high	cumulative effects, socio-economics would not be addressed in ER
12.3. ER should only address issue that are not explicitly covered by permits	-	=	-	-	-	-	less	=	=	-	-	yes	=	=	moderate	
12.4. Use Office of Administrative Hearings for fact-based decision process	+	+	+	+	+	=	more	longer	worse	=	+	yes	increase	=	moderate	
12.5. Proposer to submit checklist of requirements, permits, etc. that shows issues that have been or will be addressed	+	=	+	+	+	+	=	=	=	=	+	no	=	=	low	

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12.6. Clarify how much permit related information needs to be included in an EAW to identify potential permit conditions that will prevent the "potential for significant environmental effects"	+	=	+	+	+	=	=	=	=	=	+	no	=	=	low/moderate	
12.7. Keep ER and permitting separate so ER can have broader context	=	=	=	=	=	=	=	=	=	=	=	no	=	=	low	this is how it works now
12.8. Eliminate ER for projects that need permits	-	-	-	-	-	-	less	shorter	=	=	=	yes	decrease	=	high	
13. Mitigation																
13.1. Develop a process of monitoring and enforcement to ensure mitigation is implemented and satisfactory in addressing environmental effects.	=	=	=	=	=	=/+	=	=	worse	=	=/+	yes	increase	=	moderate/high	Implementation not reliant on ER process alone

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13.2. Require a draft mitigation for public review as part of EAW and EIS process, final mitigation plan developed based on comments (similar to AUARs)	+	+	+	+	+	+	=	=	worse	+	+	yes	increase	=	moderate	
13.3. Use a systems approach to analyze environmental problems that require mitigation	+	+	+	+	+	=	=	=/longer	worse	=	+	no	increase	=	low/moderate	This ranking assumes a system approach is not being used or not being used well enough
13.4. Change rules so that ER processes can require mitigation	=	=	=	=	=	=/+	=	=	worse	+	=/+	yes	increase	=	moderate/high	fundamental change to MEPA - from information to regulatory based
13.5. Do not allow consideration of mitigation measures in determination of potential for significant environmental effects	=	-	-	-	-	-	more	longer	worse	-	-	yes	increase	=	moderate/high	

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13.6 Reduce reliance on engineering as mitigation - increase avoidance efforts	=	=	-/=	-/=	-/=	=	=	=	=	=	-/=	no	=	=	moderate	
14. Cumulative Effects																
14.1. Revise EAW to require assessment of total impact from project and existing conditions	=	=	=	=	=	=	=	=	=	=	=	no	=	=	=	This is already how ER works
14.2. Require cumulative effects to include cultural resources (including tribal culture)	+	=	+	+	+	+	=	longer	worse	=	=/+	no	=/increase	=	low	
14.3. Remove cumulative effects analysis from EAWs. Use generic EIS or state agency resources to study cumulative effects in advance.	-	-	-	-	-	-	=	shorter	better	+	-	yes	decrease/ increase	=	moderate/high	project specific EAW costs will go down, GEIS/agency resources will be expensive
15. New Impact Analysis																

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15.1. Discuss carbon emissions and energy conservation in EAW and mitigation	+	=	+	+	+	+	=	longer	worse	=	+	yes	increase	=	moderate/high	
15.2. Require climate change impacts and climate change adaptation information	+	=	+	+	+	+	=	longer	worse	=	+	yes	increase	=	moderate/high	
15.3. Consider socio-economic effects as part of EAW	+	=	+	+	+	+	=	longer	worse	+	=/+	yes	increase	=	moderate	
15.4. Revise EAW process to include effects to human health	+	=	+	+	+	+	=	longer	worse	=	+	yes	increase	=	moderate/high	
16. RGU designation based on experience needed, availability of resources, knowledge of process.	+	+	+	+	+	+	=	shorter	=	=	+	yes	=	=	moderate/high	
17. Change in project terminates the ER process and must be restarted.	=	=	=	=	=	=	more	longer	worse	-/=	-	yes	increase	=	low/moderate	

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18. Formalize early communication process by pre-ER (predevelopment) conference between agencies and local government for early involvement and development of ER process/scope/issues to be addressed.	=	=	+	+	=	+	slightly less	longer	worse	-/=	=	no	increase	=	low	more meetings could increase complexity, however if scope is actually reduced, there could be a benefit
19. Establish process for consideration of monetary cost/benefit in decision that includes environmental costs/benefits	+	+	+	+	+	=/+	=	longer	worse	=	+	yes	increase	=/increase	high	
20. Provide for ER process during concept phase of project development.	-	-	-	-	-	-	more	longer	=	=	-	yes	increase	=	moderate/high	vast variation in potential success depending on project

	How will the recommendation affect the availability of information?	How will the recommendation affect the reliability/objectivity of information?	How will the recommendation affect the usability of information by governmental units?	How will the recommendation affect the usability of information by project proposers?	How will the recommendation affect the usability of information by the public?	How will the recommendation affect coordination among governmental units?	How will the recommendation affect duplication of effort?	How will the recommendation affect project review time?	How will the recommendation affect complexity of the environmental review?	How will the recommendation affect the ability to understand the environmental review process?	How will the recommendation affect consistency across governmental units as it relates to the process itself, information needed, and decision reached?	Will the recommendation require changes to statutes or rules?	How will the recommendation affect costs?	How will the recommendation affect the need for technology requirements?	How difficult will the recommendation be to implement?	Comments
21. Consider appropriateness of project and appropriate RGU as part of scale of project.	+	+	+	+	+	+	=	shorter	=	=	+	yes	=	=	moderate/high	
22. Those who oppose a project are held financially accountable for unjustified delays in process.	-	-	-	-	-	=	=	shorter	=	-	-	yes	decrease	=	moderate	cost decrease for proposer, litigation costs would increase
23. Evaluate internal agency process and procedures to make changes.																
24. Require consideration of local management plans as part ER process (need for EAW, information needed, determination of significance)	=	=	=	=	=	=	=	=	=	=	=	no	=	=	low	this is being done already, but additional guidance/training may improve its use

	How will the recommendation affect the availability of information?	How will the recommendation affect the reliability/objectivity of information?	How will the recommendation affect the usability of information by governmental units?	How will the recommendation affect the usability of information by project proposers?	How will the recommendation affect the usability of information by the public?	How will the recommendation affect coordination among governmental units?	How will the recommendation affect duplication of effort?	How will the recommendation affect project review time?	How will the recommendation affect complexity of the environmental review?	How will the recommendation affect the ability to understand the environmental review process?	How will the recommendation affect consistency across governmental units as it relates to the process itself, information needed, and decision reached?	Will the recommendation require changes to statutes or rules?	How will the recommendation affect costs?	How will the recommendation affect the need for technology requirements?	How difficult will the recommendation be to implement?	Comments
25. Clarify how public projects are subject to ER until implemented and private project are subject to ER until permits are issued.	+	=	+	=	+	=	=	=	=	+	+	no	=	=	low	
26. Develop a flexible scoping process that defines issues and eliminate unnecessary reviews.	=	=	=	=	=	=	=	=	=	=	=	no	=	=	low	this is being done already, but additional guidance/training may improve its use
27. Hire a mining coordinator as a state resource to help mining industry.	=	=	=	=	=	=	=	=	=	=	=	no	=	=	low	This was completed, call Joe Henderson with questions
28. Over all ER Process Statements/clarification –big picture purpose	+	=	+	+	+	+	=	shorter	=	+	+	no	=	=	low	

	How will the recommendation affect the availability of information?	How will the recommendation affect the reliability/objectivity of information?	How will the recommendation affect the usability of information by governmental units?	How will the recommendation affect the usability of information by project proposers?	How will the recommendation affect the usability of information by the public?	How will the recommendation affect coordination among governmental units?	How will the recommendation affect duplication of effort?	How will the recommendation affect project review time?	How will the recommendation affect complexity of the environmental review?	How will the recommendation affect the ability to understand the environmental review process?	How will the recommendation affect consistency across governmental units as it relates to the process itself, information needed, and decision reached?	Will the recommendation require changes to statutes or rules?	How will the recommendation affect costs?	How will the recommendation affect the need for technology requirements?	How difficult will the recommendation be to implement?	Comments
29. Invest in scoping to limit scope creep later	+	=	+	+	=/+	+	=	=	=	=	=	no	=	=	low	more effort upfront will save effort later
30. Enhanced alternative analysis	+	=	+	+	+	=	=	longer	worse	=	+	no	increase	=	low/moderate	
31. Enhance electronic delivery	+	=	+	+	+	+	=	=	slightly worse	+	=	no	increase	big increase	high	
32. Pilot program for MPCA project to incorporate permit and EAW information	+	=	+	=	+	=/+	less	=/shorter	=	+	=	no	=/increase	increase	moderate	cost increase for agency

Appendix E:

Draft Report Review and Comments—Agency and Public

The Environmental Quality Board (EQB) released a draft version of this report titled "Evaluation and Recommendations for Improving Environmental Review" (hereafter referred to as the "report") for review and comment on September 11, 2012. The EQB received comments from governmental agencies and the public. Additionally, a public testimony was heard on the draft report during the October 17 EQB Board meeting.

The comments received fell into three primary areas: 1) general writing, 2) content consensus and 3) additional insight and/or recommendations. Examples of these comments are below (in no particular order).

General writing comments included:

- Wording choices
- Requests for clarification/expansion of ideas
- Formatting suggestions
- Organizational recommendations
- Balancing of content (tone, opinion, amount of information, etc.)

Consensus on comments and report content were found in the following areas:

- Need to increase EQB staff and funding
- Need to and effectiveness of involving stakeholders (public, federal agencies) early
- Need to make information accessible, preferably at one central location
- Desire to expand the use of the Alternative Urban Areawide Review (AUAR) process
- Process and relationship of environmental review and permitting

Additional insight and recommendations included:

- Desire to have a more thorough analysis of alternatives
- Request to evaluate how agency interaction could be enhanced
- Integration of existing planning documents in the review
- Integration of early permit identification
- Need to evaluate how to education of RGUs can be enhanced
- Desire to place more emphasis on socioeconomic considerations
- Desire to place more emphasis on cultural considerations
- Concern regarding the focus group participation being too limited

A full list of commenters, comment summaries and letters received are found on the next pages.

EQB Meeting

October 17, 2012

Public Testimony on Environmental Review Improvement Report

1. Jim Erkel (MCEA)
    a. MPCA and EQB good for big complicated projects. However, 90% of MnDOT projects exempt. Evaluation of two things:
        i. No decision docs—true for M/NEPA, not true of MPEA116d-6
        ii. ER permit identified
    b. Recommend: EAW should include examples of remediation – database should proive for monitoring and compliance and enforcement
2. Mike Robertson (MCC)
    a. Revise to engage stakeholders earlier b/c the benefits are well known and can help public better understand. BUT this lengthens time. Can this be formalized in the process?
    b. Supportive of pilot programs
    c. Supportive of the development of a checklist
    d. Revise EAW to consider more broad topics
    e. Expand use of the AUAR
    f. Improve/reevaluate mandatory categories
3. Carol Overland (public)
    a. Keep an eye on MEPA and rights act
    b. No more lawsuits or gutting
    c. In need of review/revision ties with economic development: conflict
    d. EQB not sufficiently staffed
    e. Environmental Congress late
    f. Alternatives Review not sufficiently completed
    g. Fund EQB
    h. Department of commerce should not participate, put transmission work back with EQB
    i. Agency interaction and communication needs to increase and be very public with easy access
4. Alan Mueller (public)
    a. ER not addressing very large proejcts
    b. ER pushed projects through
    c. Letter to Gov. Dayton: streamlining will weaken the economy
    d. EAW not screening for alternatives and it should
    e. Webcast meetings
    f. Restore staff to EQB
    g. Look at mandatory categories and breakpoints
    h. Increase public participation
    i. Abuse of process to stop projects
5. Kristin Heidi Tollofson (public)a. More tech rep presence
    b. More public involvement
    c. Increase online access (to research and documents)
    d. More integration of planning docs

    e. More education to RGUs
    f. No definition of socioeconomic, not in EIS
6. Paul Maccabee (Public)
    a. Ask Governor for no legislation re: streamlining ER
    b. Environmental congress should review recommendation before submittal
    c. Involve citizens early and often
    d. Strengthen EQB staff capiacility and get back to what their mission is
    e. Make information available on database bc data requests waste staff time
    f. More to more consistent process
7. Mike ___(public)
    a. Cumulative water impact treated different with EIS, EAQ, GEIS
8. Ms. Decker
    a. Increase public outreach and participation
    b. Don't cut staff
    c. Get info from techs faster

From: Jim Erkel
To: Doneen, Randall (DNR)
Subject: Bench & Bar Article
Date: Saturday, October 20, 2012 1:28:54 PM
Attachments: Bench & Bar LTE.pdf

Randall – My point about the Peder Larson article had to do with the article itself and not how you used it. It repeated an old objection that environmental review isn't needed because of all of the environmental permitting that exists. As I noted, the Minnesota Legislature addressed the question in 1980 and decided that the multiplication of the permitting requirements made environmental review even more important because it was the one place where all of the information about a project subject to different permitting requirements could be amassed and shared by permitting agencies and, more importantly, by the public concerned about the project. The changes made by the Legislature in 1980 remain part of MEPA. MCEA pointed out the Legislature had asked and answered the objection raised by Larson in a letter to the editor in the next issue of Bench & Bar. (I have attached a copy of the LTE.) By simply explaining what MEPA says and how it should be applied, you did a good job of knocking down Larson's thesis, whether you intended to or not.

Jim

James L. Erkel
Attorney & Director,
Land Use & Transportation Program
Minnesota Center for Environmental Advocacy
26 Exchange Street East, Suite 206
Saint Paul, Minnesota
55101 (651) 287-
4862 jerkel@mncenter.or
g

From: Kenneth Nimmer
To: *Review, Environmental (DNR)
Cc: Larry Dallam; Frantz, Kate (MPCA); Grant Fernelius
Subject: Environmental Review Improvements **Date:** Tuesday, October 16, 2012 9:41:41 AM

October 16, 2012
1866 Summit Avenue
Saint Paul, MN 55105
Environmental Quality Board
520 Lafayette Road North 4th Floor
Saint Paul, MN 55155-4194
RE: Environmental Review Improvements
Dear Colleagues:
Thank you for your time, effort, and energy to improve the State of Minnesota's environmental review process. The suggested environmental review improvements are welcome. In particular, congratulations on your efforts to improve the use of the Alternative Urban Area-wide Review. Having worked in the environmental profession for nearly twenty-five years, I have seen my share of successes and failures in the environmental review process locally, regionally, within the state of Minnesota, nationally, and internationally. I have had the good fortune to write and implement national and international polices in the implementation of the National Environmental Policy Act. I have also had the good fortune to work with former EQB staff (Jon Larsen) in developing and delivering multiple Minnesota Environmental Policy Act workshops for political leaders, senior government staff, and environmental consultants.
It is based on this experience in policy, practice, and education that I suggest that those making changes to the environmental review process review the City of New Brighton's DVD for its recently updated AUAR for the New Brighton Exchange (NBE) issued October 2012. The City approved the original AUAR in 2002. Once approved, the City began acquiring clean, contaminated, and suspect contaminated properties in an effort to redevelop approximately
100 acres in the northwest quadrant of I-35W and I-694. The City updated this AUAR in 2007 under my guidance using in-house resources and in 2012
under my guidance again using in-house resources. Using this more cost-effective approach, the City was more intimately involved in the environmental review process and developed a much greater appreciation of its benefits. Ultimately the City was able to use the AUAR process to
assess reasonable alternatives on how best to redevelop contaminated sites while protecting human health and the environment. Both the City's Economic
Development Commission and City Council express deep appreciation for this effort.
The City posted the updated AUAR on their website; however, due to the size of the technical reports, maps, engineering drawings, etc., the reviewer would get a better sense of this analysis by using the City's

NBE's updated AUAR DVD. Please check with your EQB Monitor representative, who was mailed this DVD on September 3, 2012. As part of the 2012 updating process, the original 2002 AUAR, the updated 2007 AUAR, and all the scientific and analytical data collected during the past ten years are integrated into the DVD.
Thank you again for all the work you're doing to provide environmental planning tools that best meet the needs of Minnesotans. Keep up the good work.
Kind regards,
Kenneth J. Nimmer, MPA, REM

From: MaryAnn Heidemann
To: *Review, Environmental (DNR)
Cc: Barbara Howard; Kelly Gragg-Johnson; David Kelliher
Subject: Environmental Review Improvement
Date: Friday, October 19, 2012 3:46:17 PM

Randall Doneen, Environmental Review Planning Director
Minnesota DNR
500 Lafayette Road, Box 25
St. Paul MN 55155-4025

Dear Mr. Doneen:
The Minnesota Historical Society has received the Environmental Quality Board's draft report titled "Evaluation and Recommendations for Improving Environmental Review," dated September 11, 2012. We do have comments on the draft, which are provided below. Our comments refer primarily to situations when a site listed in the State or National Register of Historic Places is proposed for demolition in whole or in part. At such times, and under current EQB rules, the requirement for a mandatory Environmental Assessment Worksheet is triggered, and the Minnesota Historical Society is asked for comments.
Occasionally, a Responsible Governmental Unit does a good job in explaining the perceived need for destroying a National Register property, and discussing alternatives to rehabilitate the historic site. Far more often, no project alternatives are even considered or discussed. Often, proposals include inaccurate factual information about the historic sites, and show a complete lack of knowledge about standard rehabilitation techniques, or financial incentives available for rehabilitation. Unfortunately, the factual information, technical comments and rehabilitation recommendations the Minnesota Historical Society offers in response to the draft EAW are routinely ignored, and no changes whatsoever are made in the document. When we complain about this to the EQB, we are told that the EQB has no enforcement authority, cannot even ask to correct factual errors or complete incomplete information, cannot check on promised mitigation measures, and claims that the RGU is fully and exclusively in charge. In our opinion, this makes for a disfunctional review system.
Bottom line, the EAW process seems to be used simply as a way to determine if an EIS is needed, rather than as a way to improve the environmental quality of the project, or to seriously consider less damaging alternatives. This really defeats the intent and purpose of the law, and makes the EAW into a bothersome but ineffectual paperwork exercise. In our opinion, the EQB needs to take more ownership of the process, and intervene to assure accurate and complete consideration of pertinent facts and reasonable alternatives, if the law is to have any beneficial effect.
It is also important to note that while historic sites are technically included in the EAW process, no RGUs seem to know a thing about the historic site provisions. There appears to be very little public information about this aspect of the rule, and I am constantly asked by concerned citizens to write letters to RGUs who plan to demolish a Register building, informing them of their responsibility to prepare an EAW first. Where is the EQB in terms of public outreach, education and enforcement? Furthermore, there seems to be no mention at all about cultural resources in the EQB's draft "Recommendations for Improving Environmental Review" report; nor were any cultural resource professionals (to my knowledge) invited to participate in the focus groups organized by EQB. Small wonder then that the topic did not appear in the draft report.
Finally I note that a number of state and local agencies try to use the EAW process to take care of their responsibilities to consult with the Minnesota Historical Society

under the MN Field Archaeology Act and the MN Historic Sites Act. But the EAW process is not implemented in a way the meets the the legal requirements of the other Acts. So the RGU may think they have complied with all relevant cultural resource laws, when that is often not the case.

Bottom line, the current EAW process is not working to encourage consideration of cultural resources in the project planning process, or to amend projects in ways that lessen or avoid adverse effects on cultural resources. We are ready to engage with you, to find ways to improve the situation.

Sincerely,

--

Mary Ann Heidemann, Manager
Government Programs and Compliance
State Historic Preservation Office
Minnesota Historical Society
345 Kellogg Boulevard West
St. Paul, Minnesota 55102-1906

DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
180 FIFTH STREET EAST, SUITE 700
ST. PAUL MN 55101·1678
Environmental Review Planning Coordinator
Minnesota Department ofNatural Resources
500 Lafayette Road, Box 25
St. Paul, Minnesota 55155-4025

Dear Mr. Doneen:
The St. Paul District, U.S. Army Corps of Engineers (Corps) is pleased to have had the opportunity to comment on the Environmental Quality Board's (EQB) "Draft ReportEvaluation and Recommendations for Improving Environmental Review".
The Corps often utilizes information in the State's Environmental Assessment Worksheets (EA W) and environmental impact statements (EIS) for its federal permit decisions, and acknowledges that there is opportunity for improving and coordinating state and federal processes.
The draft report was reviewed in its entirety; however, the Corps' comments are primarily focused on the front matter of the report, and are provided as an attachment to this letter. In addition, the Corps does see value in federal agencies being included as a focus group for the survey questions posed to other stakeholders in Appendix C; and the Corps would like an opportunity to comment on the recommendations that are carried forward for consideration and potential implementation from Appendix D.
We look forward to working with the EQB and providing additional comment on improving environmental reviews. Please contact Douglas Bruner in our St. Paul office at (651) 290-5378 for questions regarding this correspondence or inquiries regarding the Corps' participation in the EQB environmental review.
Enclosures
SincereJy,
Tamara E. Cameron
Chief, Regulatory Branch

U.S. Army Corps of Engineers Comments
Environmental Quality Board
October 18, 2012
Evaluation and Recommendations for Improving Environmental Review
The EQB evaluation and recommendations for improving environmental reviews is primarily focused on state processes. In summary, there were previous efforts at improving the state's environmental reviews, which are discussed in Appendix A. Appendix A contains a summary of past reports, as well as recommendations generated. Appendix B includes the results of an EQB review of other states' processes (existing studies; and Appendix Cis a summary of discussions held with stakeholder focus groups for recommendations on improving the state process. Appendix D contains a summary of the evaluation and recommendations from MDNR and EQB staff.
The emphasis for Corps comments on the EQB report is placed on the front matter of the EQB report. The comments are as follows:

2. Intent of Environmental Review
Page 4, Working Draft of Intent, 2"d bullet
"Coordination with federal, state and local agencies"

Coordination with federal agencies is recognized as one of the principles for the intent of the environmental review, and review of the draft EQB report indicates that there is opportunity for integration of both state and federal processes. Additional analysis for the report should be considered for federal processes.

5. Environmental Review and Permitting

Page 6, 1st Paragraph

" ... the perception of duplication of effort between the two [environmental review and environmental permits] has been a frequent topic of discussion in recent years."

For the Corps, an EIS or EAW would contain the information necessary to make an informed permit decision. The Corps agrees in principal with the summary provided in the report on the importance of activities for the environmental review preceding the permit decision. The Corps makes use of the information in an EAW or EIS for its permit decisions.

Page 8, 4th paragraph

The report states that, "There are also situations in which critical environmental information is needed to make a reasoned choice among alternatives that are identified in the environmental review. In this case it may be more efficient for a permit to be processed concurrently with the environmental review." Alternatives, as well as the associated analysis, should be included in an EIS and is proactive to be included in an EAW. Alternatives are considered for a permit decision and may be helpful for subsequent comment review. The Corps recognizes the environmental review and permit decision as two separate processes.

October 18, 2012

Page 10, 3rd Paragraph

The report states that, "Highway projects typically involve federal funding, so there are federal information and process requirements that are not part of the permit requirements."

The information contained in environmental analyses prepared for federally funded highway projects is often very useful and necessary for Corps permit evaluations.

The report also states, "Project alternatives are possible but may be limited .... permits and approvals are not prepared concurrently with the environmental review because the permits must be based on the ultimate design of the project, and the final design must take into account the knowledge gained from environmental review."

Given the aquatic landscape of Minnesota, most projects will require a Corps permit, and the majority of Corps permit evaluations require an alternatives analysis. Accordingly, we strongly encourage coordination of alternatives analysis conducted for environmental review with the alternatives analysis necessary for the permit process. Proceeding to final design prior to ensuring that the alternatives analysis is satisfactory for the permit evaluation process could result in considerable additional time and expense that could have been avoided. Early coordination of environmental review with the permit evaluation process is highly recommended.

8. Recommendations for Improving Environmental Review

Page 13- Revise the Environmental Review Process to Engage Stakeholders Early

The report states, "A significant opportunity to improved usability and completeness of information, as well as coordination among governmental units and other stakeholders is to develop methods to engage interested parties in the Environmental Review process early."

The Corps recommends that the EQB report evaluate how coordination with federal agencies would fit in with state processes.

The Corps receives and often comments on state EAW and EIS documents. In

addition, the Corps is sometimes a co-lead agency for joint state/federal environmental review. Information contained in
EAW and EIS documents is often used in Corps permit evaluations. Early engagement between agencies and stakeholders is helpful. The Corps recommends that required permits be identified during "preapplication" activities (preceding a permit application). Some permits may require long lead times, and
an applicant could be performing analyses and consolidating the information necessary for a permit prior to an application being submitted and government agencies committing resources to a review. Page 14- Pilot Programs for Other Project Types and RGUs
The EQB report states, "Based on what is learned by the pilot program for MPCA projects, initiate a program to investigate how best to coordinate environmental reviews with permits/approvals for other state agencies and for local governments."
Having the Corps and other federal agencies participate in pilot studies subsequent to the initial pilot study (see 2nd paragraph on page 14, Pilot Programs for MPCA Projects) may contribute to the
improvement of environmental reviews.
October 18, 2012
Page 15- Provide a simplified process for environmental assessment for RGUs to use at their discretion The report states, "Develop an Environmental Checklist (simplified EAW form) that RGUs could use to more quickly identify the specific issues that require closer evaluation, (Recommendation 3.2)."
Corps staff would be interested in providing input regarding the development and use of an Environmental Checklist. At a minimum, we recommend including aquatic resource impacts as well as the need for federal permits.
Page 15 - Expand the use of AUAR or AUAR like process

The focus of the Alternative Urban Areawide Review (AUAR) is on development of a scenario for a geographical area as opposed to a project-by-project basis for watershed protection. Corps staff
strongly support and encourage the use of the AUAR process as a holistic approach to resource impacts, particularly connected actions and cumulative effects. We also strongly encourage early coordination with the Corps when beginning preparation of an AUAR.
Appendix C
Although federal agencies were not included as a focus group, Corps staff are available to provide input regarding the survey questions presented in Appendix C. Additionally, there may be value in including other federal agencies as a survey group for the EQB evaluation.
Appendix D - Evaluation of Recommendations (MDNR and EQB staff)
Appendix D includes the overall recommendations from the EQB study as well as recommendations from past reports (Appendix A), recommendations identified from other states' processes (Appendix B), and recommendations from the stakeholder focus groups (Appendix C). It is unclear which recommendations are endorsed by the EQB.
There appears to be additional opportunity for coordinating with federal agencies for improving environmental reviews within the EQB evaluation, and additional analysis on coordinating state and federal processes may prove useful. Some of the recommendations summarized in Appendix D would prove challenging for a joint review. Accordingly, it would be helpful to know which of the recommendations have a high probability for being carried forward for consideration of improving environmental reviews as well as for improving environmental governance and coordination for further comment.

From: "robert dunn" '
To:
----~ -------
Subject: Enviromental Review Improvement
Date: Fri, 19 Oct 2012 15:36:18 -0500

In the draft report reference to the EQB is made in many places. However, the single most important recommendation for improving the ER process and implementing appropriate suggestions in the report and other ideas would be to reconstitute an effective EQB staff.. Providing for an autonomous EQB with adequate, experienced and knowledgeable staff and an independent chair reporting to the governor and housed separately from any member agency is essential.
A basic part of the EQB's mission should be to administer, monitor, oversee and coordinate ER efforts Statewide. Staff should provide guidance, assistance and training to RGUs, agencies, proposers and others in ER activities. The EQB should be responsible for rule making, ongoing evaluation of ER processes. It should also report to the governor on a regular basis and to the legislature each session. It
should also study emerging issues and anticipate problems and changes affecting the environment. This opportunity provided by Executive Order 11-32 and the subsequent efforts in this study, by revitalizing the EQB along lines of its original concept, makes possible the creation of an effective, sustainable, workable and adaptable environmental review process and would be a major accomplishment to improve a critical governmental function.
robert dunn

TO: Environmental Quality' Board
FROM: Paula Maccabee
DATE: October 17, 2012
RE: Environmental Review Improvement Report (Sept. 11,2012 DRAFT)

The Environmental Review Improvement Report ("Report") has some positive recommendations and some that could undermine environmental review. This may be because the Report errs in describing the purpose of the Environmental Assessment Worksheet ("EA W") and the Environmental Impact Statement ("EIS"). Project proposers may perceive environmental review as an obligation to collect data, rather than a tool for substantive decisions on a project. The Report should not accept this view, however. It is contrary to law and to the public interest.

The Report suggests that the EAW and the EIS "are intended to provide a single consolidated source of information about all potential or expected environmental impacts from a project ... An environmental review is not a decision document: a project does not pass or fail environmental review." This description is inaccurate.

Minnesota statutes distinguish between the purpose of an EA Wand the purpose of an EIS. An EA W "is designed to set out the basic facts necessarv to determine whether an environmental impact statement is required for a proposed action." Minn. Stat. &116D.04. Subd. 1a(c). The EIS, on the other hand. is prepared where there is "potential for significant environmental effects resulting from any maior governmental action" and "analyzes its significant environmental impacts. discusses appropriate alternatives to the proposed action and their impacts. and explores methods by which adverse environmental impacts of an action could be mitigated." Minn. Stat. §116D.04, Subd. 2a.

An EIS is not a procedural hurdle consolidating data, but a test of whether a proiect meets substantive requirements oflaw which are stated in Minn. Stat. §116D.04, subd. 6:

No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct. A project can "fail" environmental review if the EIS shows it is likely to cause pollution, impairment or destruction of natural resources and there is a feasible and prudent alternative to the project.

The Report acknowledges that environmental review may be needed to "make a reasoned choice among alternatives," but confuses the analysis of alternatives with "permit analysis." This is not a subtle point. Environmental review evaluates what can be built without impairing the environment, how big it can be, where it can be sited or if there is a better and less harmful alternative. Permit analysis accepts the project proposer's view of the nature, location, and size of the project and then asks if there are measures that can mitigate the project's impact to meet specific pollution control standards (or, in the case of mining industry permits, whether permit writers can apply a multi-year "schedule of compliance" or variance to avoid the requirement for compliance with standards.)

Until the EQB rejects the project proposers' paradigm that the purpose of environmental review is to gather data for permits which are a foregone conclusion, recommendations to "improve" environmental review will fail to serve the public interest. My detailed recommendations to improve the process are contained in Appendix C. Below are comments on the specific recommendations in the Report.

Strengthen EQB Staff Capacity to Implement Environmental Review Program.

Additional staffing, scientific expertise and resources for EQB are positive steps. But, resources must follow function. The function of the EQB must be reinvigorated to ensure citizen participation and

environmental protection. Along with review of mandatory categories, the EQB must review the impacts of any exemptions from environmental review.

Develop a Better System of Making Information Available

Every group I've worked with would support the Report's concept of having web based and readily searchable information with respect to projects in the environmental permitting and environmental review process. In the U.S. Steel Keetac case, the U.S. EPA requested that the MPCA upload information to the EPA's web site, since critical information was not accessible to the public. My experience is that Minnesota agencies' current methods of providing information on permitting and environmental review are opaque, inaccessible, slow and consume professional agency staff time to obtain even the simplest disclosure of materials. However, the pilot program proposed in the Report runs contrary to the needs of the community. An EA W must not incorporate documents by reference, although it could include them as attachments. Immediate development of a plan for full access to documents, rather than a piecemeal system applied to a handful of projects must be required by the Report. The Report should be revised to propose development of a coherent, phased plan for public electronic access to environmental permitting, monitoring and review information developed by actively involving community stakeholders and state and federal agencies that routinely provide information through various docket and project file systems. The convoluted and insular pilot through the MPCA proposed in the current Draft Report is inadequate to achieve public interests.

Provide a Simplified Process for Environmental Assessment for RGUs to Use at their Discretion

This recommendation must be rejected. An EA W already need not be a cumbersome document. But, the purpose of the EA W is to let members of the community and the regulators know the nature of the project proposed. The current process already restricts public ability to know the potential risks of a project, which problem is likely to be exacerbated with a "simplified"
process.

Revise EA W to Consider Broader Issues or Effects

It is doubtful that broadening the consideration of economic effects in an EA W using census and planning data would do anything to protect the environment or to assist in determining if an EIS is needed. This recommendation appears only to distract from the function of an EA W.

Expand the Use of AUAR or AUAR-like Processes

I have insufficient experience with AUAR to comment on this recommendation.

From: Doperalski, Melissa (DNR)
To: Doneen, Randall (DNR)
Subject: RE: Draft Report - Evaluation and Recommendations for Improving Environmental Review
Date: Thursday, October 11, 2012 4:39:02 PM

In reviewing primarily Section 8 of the document, where the discussion turns into recommendations proposed, the document refers to recommendation #s that pertain to the recommendations stated in this section– confusing on where to find these. I noted after a little time had passed that the sentence prior to Section 8 states that there is a matrix of how each recommendation was evaluated in Appendix D but maybe that needs to be spelled out better in the discussion of Section 8 so people know where to refer to. (have I confused you yet?).

In "Strengthen EQB…" I am assuming the re-responsibility of reviewing EAWs PRIOR to publication for completeness is captured here correct?

In "revise the env. review process to engage…" wondering how this will be expressed in the final product for reviewers to gain an understanding of who was involved in the prep – was there early coordination etc.

-Melissa

From: Mixon, Kevin (DNR)
To: Doneen, Randall (DNR)
Subject: RE: Draft Report - Evaluation and Recommendations for Improving Environmental Review
Date: Monday, October 01, 2012 8:32:07 AM

Randall:

Will the requirement/recommendation be included to require counties to post EAW/EIS to their website by the same day it is put into the register/public announcement of availability?? Or it goes to a central location where all counties are represented…I think this is one of the recommendaitons?? This would be a great help as some counties do this and some don't. If I have trouble getting info. I know the public has an even harder time finding it.

Thanks for working on this,

Kevin

Minnesota Department of Natural Resources
From: Schrenzel, Jamie (DNR)
To: Doneen, Randall (DNR)
Subject: RE: Draft Report - Evaluation and Recommendations for Improving Environmental Review
Date: Thursday, October 11, 2012 5:08:55 PM

Randall,

I only had a chance to review the text and not the appendices, but here are my comments on the Draft Report:

-The introduction and historic context to this effort provided throughout is well written, actually quite humbling and moving at times, and includes some very necessary bluntness about that should not be removed in revisions about past failures. I think plain and blunt language is necessary to bring to attention the amount of effort that has gone into ER improvement in the past and break the type of cyclical thinking around the subject.

-There is some extra spacing between paragraphs and in places between words. I also noticed a few typos. Probably a thorough formatting/typo edit is needed before finalizing.

-The Environmental Review/Permits Comparative Analysis section has many good points. There is a slight tone that comes through of promoting Environmental Review and though I personally agree with many of the points made, keeping the same content, while shifting the tone to be more neutral should keep reader's minds open until you get to a recommendation section where more opinions are expected. This is particularly important with many readers coming from vastly different viewpoints. For me, the tone came out because any drawbacks or failures of ER were not clear, while a lot of benefits were explained. Again, I agreed with all of the benefits and thought they were well explained, but I'm imagining there are some helpful critiques from our audit or comments that came in. This section might not be the place for benefits or critiques, but the benefits included without the critiques made it feel like the other side needed to come out too.

-There is a section on why past efforts have failed and the false dichotomy of short time and money vs. completeness and public input. It is a key idea in your recommendations and very powerful. However, the language with the series of "this versus that" gets a little confusing. I had to go back and read it again, which might lose some readers when an important point is being made. It might just be a run on sentence or two.

-The section on the focus groups describes the decision to use focus groups with similar backgrounds. Again, I agree with this approach for this situation, but if you just read this section, it raises some questions. It is a somewhat counterintuitive approach in controversial situations in our culture to not have the two points of view discussed together. Reasons, such as desiring input with more depth instead of the polarized or defensive input that comes from a debate, should be spelled out. They are good reasons for the approach and would strengthen this section.

Thanks!

Jamie

From: Wooden, Rebecca A (DNR)
To: Doneen, Randall (DNR)
Cc: Young, Laurie G (DNR); Templin, Jade (DNR); Anderson, Diane (DNR);
Patton, Bob (MDA); Potter, Ron L (DNR)
Subject: RE: Draft Report - Evaluation and Recommendations for Improving Environmental Review
Date: Tuesday, October 16, 2012 2:32:13 PM

Hi Randall –

Some comments on the draft report –

For reference I started with page 1 being the cover page.

1st line of page 7 – insert "for" between foundation and further.

Page 7 Item 5 – paragraph under Environmental Review – the paragraph asserts "an EAW is a tool for deciding if there are potential environmental effects" – actually, it is already a given that there are environmental effects, otherwise the project would be exempt from environmental review and you wouldn't be doing an EAW. The EAW is a tool for deciding if there is the potential for significant environmental effects – not just any environmental effects. I recommend revising "potential environmental effects" to "potentially significant environmental effects".

Page 8 – 2nd paragraph – "Environmental review documents, such as the EAW and EIS, are intended to provide a single consolidated source of information about all potential or expected environmental impacts from a project". I believe this is incorrect – per 116D, the EIS is supposed to provide information about only *potentially significant environmental effects* – not all conceivable effects – otherwise it would be encyclopedic. Likewise, the EAW analysis should focus on the impacts where there may be potentially significant effects – it should not be an exhaustive analysis of all impacts.

Same paragraph – [environmental reviews]… "also include potential economic, employment, and sociological impacts of a project " - this only applies to an EIS, not an EAW – the statement is too general.

Page 9 – top paragraph – "The intent [of developing permit information concurrently] is to identify potential environmental impacts early……." This is not correct – the intent of identifying permit information that will be developed in conjunction with the EIS, and developing that information in conjunction with the EIS is to reduce duplication and make the process more efficient, which the next several paragraphs explain in more detail.

3rd paragraph – "This is an example of the advantage of environmental review preceding the permit application or issuance" – this sentence is meaningless. I don't think you need to justify why environmental review precedes permitting – the whole program is based on reviewing first then using permits to mitigate/minimize impacts. I don't believe that the order of review vs. final permit issuance is under fire – I would delete this sentence. The following paragraphs give a decent description of how environmental review and permitting can work together.

4th paragraph "treatment process for one media that could potentially **impact** the treatment process for another media". "Impact" is not a verb – it is a noun; change it to "affect".

Bottom paragraph – "Experience has shown that large or complex projects have the potential for significant environmental effects." If that is the case then every large or complex project would be a mandatory EIS – since the potential for significant environmental effects is the EIS trigger.

Change this sentence to read "Experience has shown that large or complex projects *are more likely to* have the potential……."

Page 10 – top paragraph – I think a slight rewording here would be valuable – change "an analysis of alternatives to the proposed project" to something like "an analysis of alternatives to the project *as proposed*" or "an analysis of alternatives that still meet the underlying need for or purpose of the project."

4th paragraph – should "duplication" be "duplicative"?

5th paragraph starting with "Another key" – "intent" should be "intended".

6th paragraph – delete "or not" – it's redundant – just say "….opportunity to consider whether it is necessary for both the environmental review and permitting tools to document……." (the 'or not' is implicit in the 'whether')
Last paragraph – the last word "All" ??? then the first word on page 11 is "illustration" -- something is missing here – or I have the pages out of order.
Page 11 – 3rd paragraph. I don't concur with this statement: "Based on the knowledge gained from environmental review, the site design should minimize adverse impacts on the environment, including the surrounding community." While no-impact designs are lovely, there is no requirement that project design must minimize all adverse impacts – nor would the environmental review have to analyze all adverse impacts – environmental review is only required to address the potentially significant impacts – not all impacts. If the review is an EAW, impacts only need to be minimized to the point that they are not potentially significant – we need to keep in mind that some level of adverse impacts is acceptable and allowable.
5th paragraph – starting "In summary"….The introductory clause ends with a period – but it's not a sentence since it doesn't have a verb – do you mean to have a comma instead of a period before "one size does not fit all"?
Page 13 – bottom paragraph – the parenthetical "all that require staff resources" is pretty confusing – maybe rewrite to "(which all require staff resources)" or "(all requiring staff resources)".
Page 14 – the report starts to cite various recommendations – but it doesn't indicate where these recommendations can be located – what if I want to read recommendation 7.2? where is it? I think it's at the very back of the appendices – but that's a long way to go looking.
Paragraph under "Revise the Environmental Review Process to Engage Stakeholders Early" – I think "*may* benefit in multiple ways" is supposed to be "*to* benefit in multiple ways" – as in "recommendations x, y, z… all illustrate a potential for stakeholders to benefit in multiple ways". Same paragraph – "useable" – It is spelled "usable" elsewhere in the document. Pick a spelling and stick with it.
Page 16 – under "Revise the EAW to consider broader issues…" – 'a more complete consideration of the environment by including Recommendation 15.1 and 15.2……' what does "a more complete consideration of the environment" mean? include more environmental parameters? Consider the environment more thoroughly? I recommend rewording this so the meaning is clear.
Under "Expand the use" – there should be a paragraph return before the text "The AUAR process…."
Also – I think an "a" is missing from the first sentence – The AUAR process has been seen by many as *a* very efficient way of combining environmental review with land use planning….."
Finally – page numbers would have been nice – and a word document would have been more convenient – so I could add comments/corrections to the documents in track changes – instead of having to type them all out.
Good luck with this……..you should start numbering the improvement studies/reports – like superbowls – this must be about XXIV.
Thx - R

From: Anderson, Diane (DNR)
Sent: Monday, October 15, 2012 12:05 PM
To: Doneen, Randall (DNR)
Cc: Young, Laurie G (DNR); Templin, Jade (DNR); Wooden, Rebecca A (DNR)
Subject: RE: Draft Report - Evaluation and Recommendations for Improving Environmental Review

Thank you for the reminder, Randall.

Thank you for the opportunity to review and comment on the EQB valuation and Recommendations for Improving Environmental Review, September 11, 2012 Draft. I have gone through much of the document and do not have any comments on the substance of the material. I appreciate the time and effort that has occurred to pull this information together. I believe the evaluation of the proposed recommendations is fair and accurate (Appendix D).

On a formatting note, I will comment on the lack of page numbers and consistency in the footers. I recommend including page numbers in the footer or header – being consistent with it throughout the entire document. Only Appendix C includes page numbers, however, the footer doesn't indicate that it is an Appendix part of Executive Order 11-32, like the others. Lack of page numbers makes it difficult to describe the location of a specific comment, to note items of interest, or to remember where one left off reading, among other difficulties in such a large document (example, I noticed a number of grammatical and punctuation errors, but don't know how to tell you where they are).

Thanks again for your time and work on this project.

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From: Jim Erkel
To: Doneen, Randall (DNR)
Subject: FW: September 12, 2012 Draft Evaluation and Recommendations for Improving Environmental Review
Date: Tuesday, November 13, 2012 1:53:34 PM

Randall – Here are the comments MCEA submitted. Jim

From: Jim Erkel
Sent: Friday, October 19, 2012 4:51 PM
To: 'Environmentalrev.dnr@state.mn.us'
Subject: September 12, 2012 Draft Evaluation and Recommendations for Improving Environmental Review

This email sets forth the comments of the Minnesota Center for Environmental Advocacy (MCEA) on the recommendations for improving environmental review contained in the draft report dated September 12, 2012, from Environmental Quality Board (EQB). MCEA appreciated the opportunity to participate in the environmental review stakeholder process established by EQB, make oral comments at EQB's meeting on October 18, 2012, and to submit these general written comments. The Minnesota Environmental Policy Act (MEPA) remains one of our core environmental safeguards, and we at MCEA appreciate the opportunity to enhance the cost-effectiveness of the MEPA process.

Environmental review under MEPA has been studied several times over the years, and all those reports reach similar conclusions:

- Environmental review only affects a relatively small number of projects. Minnesota averages around ten environmental impact statements a year, and perhaps around 120 environmental assessment worksheets. Only about half of those involve non-governmental private-sector projects.
- Most EAWs take relatively little time and expense, relative to the size that projects have to reach to trip the mandatory EAW thresholds.
- EISs take longer and cost more, but they typically involve more difficult and complex environmental issues, a much higher degree of public interest and involvement, and typically an overlay of federal ER and permitting requirements.
- Environmental review remains the only place where the cumulative impacts of similar projects can be evaluated, and where the public can weigh in on the full range of environmental issues raised by a proposal. Permitting procedures cannot provide either of those important public benefits.[1]

State legislation now requires state agencies to report when permits take longer than 150 days to complete, including any required environmental review. Virtually all state cases meet that deadline. There are only a handful of tough cases, e.g. LRT extensions, major highway projects, mine openings and expansions, where the necessary work cannot be completed within that timeframe without sacrificing the public's right to be protected from environmental harm and running afoul of federal legal requirements.

MCEA's view, then, is that there is no need for further legislation. What is needed, however, is a greater focus, not just on how to reduce the costs of the environmental review, but on how to make environmental review more effective. In too many cases, project proponents and responsible governmental units (RGUs) treat environmental review as simply a box to be checked and a document to be produced for projects that have already been given the green light. They do not see environmental review as a tool for making better decisions or for better managing environmental risks during the life of a project. Since they see so little benefit, they see any cost as being too high.

That needs to change. Environmental review can and should be more effective than it is today. MCEA offers the following recommendations on how to improve the process:

1. **Incorporate mitigation monitoring and enforcement into the process.** EISs virtually always include mitigation options to reduce the negative environmental impact of a project. Larger EAWs typically do as well, because project proponents and RGUs use mitigation to avoid a finding that a project will have a significant environmental impact, thereby triggering a requirement that an EIS be completed. These are called "mitigated FONSIs (findings of no significant impact)" at the federal level, and probably represent "mitigated negative declarations" at the state level under MEPA.

For decades, environmental groups have been decrying that perceived abuse of the EAW, and have urged that more EISs be completed. From MCEA's point of view, however, there is nothing wrong with "mitigated FONSIs" ***if*** the mitigation steps identified in an EAW are actually implemented, monitored, and evaluated. [2]

Today, there is no assurance that mitigation steps even happen at all. There is no assurance that mitigation steps incorporated into permit or grant/loan conditions are ever enforced. And there is rarely if ever a process in place to evaluate whether mitigation steps are effective, i.e. whether they in fact do eliminate or curtail the risk of significant environmental impacts.

MCEA therefore recommends that the EQB modify its environmental review rules to require that mitigation be incorporated into permit or grant/loan conditions, that the enforcing agency and authority be identified, and that a monitoring system be put in place (at the expense of the project proponent) to determine if the mitigation has been implemented and whether it has been effective.[3] This is a step that the federal Council on Environmental Quality (CEQ) has already taken, and would therefore bring Minnesota's law into conformity with the federal standard.[4]

This will also help change environmental review from a one-time-only prediction of the future[5] that typically sits on a shelf into a robust adaptive management tool. If required mitigation is effective, that can inform how to manage similar future projects. If, on the other hand, required mitigation is not effective, RGUs can make necessary changes, and can avoid the same mistake down the road. In either case, the value added by the environmental review process can be

substantially enhanced.

2. **Require evaluation of alternatives in all environmental reviews.** The National Environmental Policy Act (NEPA) has always required all environmental reviews, whether full-blown EISs or smaller environmental assessments (EAs). Minnesota has not had that requirement, largely because the original expectation of MEPA's drafters was that EAWs would primarily be used as scoping documents for the EISs that would be prepared in most cases, where the alternatives would be analyzed.

Now that EAWs play a more prominent role, and EISs have become relatively rare, the value of identifying alternatives to the original proposal, and evaluating whether one alternative has less negative environmental impact than another, has been lost in too many cases in Minnesota. The CEQ has rightly called alternatives analysis the "heart" of environmental review, because it allows government decision-makers to decide among viable alternatives, informed about the environmental impacts of each, instead of being left with only a choice between approving exactly what the proponent wants or denying permits for the project altogether.

For smaller projects, there may not be any viable alternatives or, more precisely, the only alternative to the project proposal is the "no action" alternative. In those cases, an EAW with only those two alternatives can be sufficient. There is a substantial body of federal case law that defines when that is appropriate. [6]

In larger, more complicated cases, however, an EAW that identifies and considers a range of alternatives is much more likely to lead to decisions that minimize adverse environmental impacts. For example, a municipal utility that needs to add baseload electrical generation capacity can and should evaluate coal vs. natural gas vs. renewables in the required EAW. A municipality that needs to provide new protections against floods can and should consider upland impoundments vs. diversions vs. control structures. A transportation department facing a congestion problem should consider alternative alignments, the number of lanes, tolling, and modal alternatives like rail. If, on the other hand, only one alternative is considered, a major opportunity to accomplish needed purposes at minimum risk to the environment is missed.[7]

3. **Create a new, more accessible database of environmental review materials.** One of the fundamental goals of NEPA and MEPA was to find a way that project proponents could learn from the environmental successes and mistakes of those who had gone before. Yet getting access to previously completed EISs and EAWs is a daunting task.

The federal government is taking steps to remedy this problem, with tools like "NEPANet," where interested parties can go online and get information from easily searchable databases. MCEA supports the recommendation to establish a similar database for environmental review in Minnesota.

Such a database would be helpful for project proponents, RGUs, and the public to focus on issues that are ripe for consideration and avoid duplication of effort. For proponents, it would help them anticipate environmental issues that have arisen in the vicinity of their proposed projects and identify mitigations that could be incorporated into the design of their projects at a time when it is most practical and economical. For RGUs, it would also help them to anticipate environmental issues that might arise and consider alternatives and mitigations that could be required. If information from other environmental reviews remains valid, RGUs could also include it by reference or tier off of it in subsequent environmental reviews. In light of the widespread use of mitigated EAWs to avoid full- blown EISs, EQB should consider changes to its rules to allow tiering of information
between EAWs as well as EISs. Most importantly, such a database would greatly benefit the public which is concerned about the burden they will bear from significant and adverse environmental change that may result from proposed projects. This is particularly important on issues of cumulative impact and the monitoring and enforcement of mitigations MCEA has recommended.

MCEA has a sense of ownership about MEPA. Several individuals who established MCEA also played critical roles in drafting and enacting MEPA. Since then, MCEA has worked very long and very hard to make certain that MEPA's promise of integrating environmental considerations into government decisionmaking is fulfilled. MCEA's comments seek to improve the effectiveness of environmental review. MCEA looks forward to working with EQB in adapting MEPA to meet the environmental challenges that confront Minnesota.

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[1] The debate over whether environmental review and permitting should be "sequential" or "simultaneous" has not been all that helpful, and we think a more nuanced approach is in order. MEPA operates under the same "predict-mitigate-implement" model as the federal NEPA. Certainly, much of the "predict" phase needs to take place before a lot of
work on the permits can happen, particularly analysis of cumulative impacts, although there is no reason that any analytical work should have to be done twice. Minnesota statutes already forbid unnecessary duplication of effort, ironically in several places. The "mitigate" and "implement" phases, however, should be all about permit or grant/loan conditions,
and MCEA supports a much tighter integration of mitigation identified in environmental review with the actual conditions that are imposed and enforceable on the project.

2 *See generally* Karkkainen, Toward a Smarter NEPA: Monitoring and Managing Government's Environmental Performance, 102 Colum. L. Rev. 903 (2002). *See also* Karkkainen, Whither NEPA?, 12 NYU Env't'l L.J. 333 (2004).

3 Ideally mitigation monitoring and enforcement would be incorporated into Environmental Management Systems (ISO 14001) that lay out in detail how companies or government agencies will identify, assess and address environmental issues as they arise. All relevant federal agencies are required to have EMS in place pursuant to a Bush Administration executive order. Executive Order No. 13423 "Strengthening Federal Environmental, Energy and Transportation Management," 72 Fed Reg. 3917 (Jan. 24, 2007). Minnesota should follow that lead. *See generally* Council on

Environmental Quality (CEQ), Aligning National Environmental Policy Act Processes with Environment Management Systems: A Guide for NEPA and EMS Practitioners (April 2007)

[4] CEQ, Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact (January 14, 2011), available at http://www.nepa.gov.

[5] The only thing we know for sure about those predictions is that they will be wrong.

[6] *E.g. Nation Ecosystems Council v. U.S. Forest Serv.,* 428 F.3d 1233 (9th Cir. 2005); *Mt. Lookout-Mt. Nero Prop. Prot. Ass'n v. FERC,* 143 F3d 165 (4th Cir. 1998); *Olmsted Citizens for a Better Cmty. v. US,* 793 F.2d 201 (8th Cir. 1986)

[7] One significant abuse that occurs in too many EISs is that alternatives are discarded summarily as being inconsistent with the purpose of the project, because the "purpose and need" (P & N) is defined narrowly to include only the exact project the proponent wants. So, the municipal utility in our example might define the P & N of the project to "build a coal plant," not to "increase electrical generating capacity," and thereby avoid considering alternatives to coal. A real-world example was the US Army Corps of Engineers's initial draft EIS for dealing with flooding in the Fargo-Moorhead area. The Corps identified the P & N as to build a multi-billion dollar diversion project around the two cities, and, consequently, dismissed alternatives like upland floodwater impoundment projects as inconsistent with the purpose of the project, even though those alternatives might address the problem at far lower cost and with far smaller environmental impact.

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