

MINNESOTA ENVIRONMENTAL QUALITY BOARD MEETING MINUTES

**Thursday, May 5, 2011
MPCA Room Board Room, 520 Lafayette Road, St. Paul**

EQB Members Present: Paul Aasen, Spencer Cronk, Kristin Weeks Duncanson, Ed Ehlinger, Dave Frederickson, Julie Goehring, Tom Landwehr, Sue McCarville, Mike Rothman, Paul Moe (representing Mark Phillips), Brian Napstad, and Erik Tomlinson.

EQB Members Absent:
Jon Bloomberg, Mark Phillips, Tom Sorel, and Glenn Wilson.

Staff Present: EQB Staff: Princessa VanBuren Hansen, Jon Larsen, Bob Patton, Augusta Paye, and John Wells. EQB Counsel: Robert Roche.

The meeting was called to order at 9:04 a.m. by Chair Frederickson.

I. Adoption of Consent Agenda and Minutes

The motion to approve the consent agenda and minutes of the November 18, 2010 EQB meeting was moved, seconded, and passed.

II. Introductions

Members introduced themselves, with comments relating to EQB:

- Interest in re-invigorating EQB
- A very useful forum
- Reshape EQB into becoming a really useful body
- A very worthwhile board
- An opportunity to step back and think a little bit bigger thoughts
- Look forward to the conversation
- Interest in seeing the board become robust and vital again
- Look forward to its future
- Look forward to working on the EQB board

III. Chair's Report

Chairman Frederickson welcomed members, staff and the audience to the first EQB meeting of the Dayton Administration, noting he was proud to serve on a board with such an impressive number of accomplishments. He explained that the board would begin a serious discussion of ideas about how it can be revitalized to best serve the people of Minnesota. As part of the discussion, he would like to see a board retreat in June to consider how the Dayton Administration and future administrations might use the forum to address complex issues. One outcome of a retreat would be a clear idea of the process and, perhaps, scope of a January 2012 report to the Legislature on the roles, responsibility and staffing of the EQB.

IV. Executive Director's Report

Bob Patton introduced himself, welcomed members, and explained elements of the agenda.

V. Background on the Environmental Quality Board

Staff briefed the board on its history, evolution and accomplishments, noting that the 1973 legislative purpose statement – that “*problems related to the environment often encompass the responsibilities of several state agencies*” and “*solutions require the interaction of these agencies*” – still rings true today. The composition of the board has evolved over time as agencies, themselves, evolved and as legislatures saw different combinations of agencies as important to *problems related to the environment*.

Fueled by this purpose statement, the board's mission is to:

- Investigate environmental issues that cut across agency interests
- Coordinate state plans and policy
- Ensure compliance with state environmental policy
- Engage Minnesotans

Responding to this mission, EQB has undertaken a broad range of studies over the years, including:

- Barge fleetings on the Mississippi
- Copper-nickel mining
- GEIS work on animal agriculture, forestry and urban development
- Genetically modified organisms
- Land use management
- Pesticides
- Water management
- Sustainable development

Among its most significant accomplishments are the following:

- Ensured consideration of environmental effects in four decades of projects
- Helped frame sustainable forest management in Minnesota
- Stimulated development of the science in practice of animal agriculture
- Shaped the comprehensive role of counties in managing water
- Played the pivotal role in establishing the Board of Water and Soil Resources
- Advanced Minnesota's framework for protection of ground water

Major changes to the board have included:

- Decentralization of Environmental Review – 1980-82
- Addition of water planning duties – 1983
- ER/siting requirements for large natural gas & petroleum pipelines – 1987
- Energy & environment strategy – 1991
- Siting of wind energy systems – 1995
- Transfer of energy facility siting duties to Commerce & the PUC – 2005

Today, the board's Environmental Review duties include:

- Maintaining the rule that governs the state process and requirements, including

- adoption of new rule amendments to address greenhouse gas air pollutants
- Providing objective technical assistance
- Developing new guidance and educational opportunities, including those related to implementing Executive Order 11-04 by streamlining review while protecting the environment

The board's water policy coordination function has a 30-year history of coordinating development of the state's water plans and biennial priorities reports, and has led to establishment of BWSR, comprehensive local water planning, ground water protection law, and more. Recently, the board has served as an important catalyst in spawning state discussions on water sustainability. These efforts led to groundbreaking reports in 2007 – *Use of Minnesota's Renewable Water Resources: Moving toward Sustainability* – and in 2008 – *Managing for Water Sustainability: A Report of the EQB Water Availability Project*.

The board has been responsible for development of the decadal state water plan since 1990. The 2010 Minnesota Water Plan, *Working together to ensure clean water and healthy ecosystems for future generations*, provides a roadmap for the future that:

- Articulates executive branch strategies to achieve sustainable water management
- Recognizes recent agency and stakeholder efforts
- Builds a broad, adaptive framework
- Defines a vision and strategy for the future

The board's next steps relating to the plan are to:

- Apply the plan to state activities
- Implement Clean Water Fund priorities
- Consider recommendations of University's framework & other relevant water reports
- Measure progress and adapt

EQB also today serves as non-federal project sponsor and project co-chair of the Minnesota River Integrated Watershed, Water Quality and Ecosystem Restoration Project. The project is designed to integrate basin watershed and water quality management, ecosystem restoration and economic development by linking efforts of local, state, federal and tribal agencies. The goal is to provide the basin's water and land managers with new tools for making sensible water and land use choices.

Other EQB activities include:

- Leading a land & water policy project to improve the delivery of land and water policy at the local level of government
- Providing leadership on the Sustainable Water Resources Roundtable, a forum for exchange of ideas and information on sustainable management of the nation's water resources
- Serving on the stakeholder advisory committee of the National Water Census

In each of these activities, staff argued, what separates the EQB forum from others is an appreciation and commitment to collaboration. As the saying goes, "*none of us is as*

smart as all of us.” (Ken Blanchard, et.al.)

Commissioner Landwehr requested that the board be given copies of the 2007 and 2008 water sustainability reports, as well as the 2010 Minnesota Water Plan. Member McCarville asked that all members also review the document, *Reports of the Environmental Quality Board, 1972-2004*, which describes the full range of EQB activities and accomplishments over the years.

One member called the new water plan’s ability to measure and adapt one of its most brilliant elements. It really sets the stage for future planning and work in water.

Wells asked members to recognize that the staff is available to brief them on the reports or other matters related to the board and its functions.

VI. Reassignment of the Responsible Governmental Unit (RGU) from Marshall County to the DNR for the Environmental Review of the Proposed Hawkes Peat Mining operation.

A mandatory EAW threshold for public waters and wetlands would normally result in the assignment of environmental review duties for the proposed mining operation to the county. The basis of the project, however, is peat mining at a level that is close to the level that would suggest that DNR conduct the review. Under the circumstances, both the county and the DNR believe it in the public interest to reassign the duty to the DNR. Member Napstad moved and the board adopted the proposed motion with 10 ayes and no nays.

VII. Presentation on December 2010 Report of the Citizen’s Subcommittee on the Future of the Environmental Quality Board

Erik Tomlinson reported that the task of the subcommittee was to chart a new course for the EQB. It recognized that significant gaps exist between the promise of the EQB and its work in practice. The subcommittee’s role was to make recommendations for steps the EQB can take to close that gap.

Tomlinson noted that the EQB, while continuing to provide essential guidance on environmental review and water policy, had fallen short of its promise over the last decade. The Citizens’ Subcommittee on the Future of the EQB was created by past EQB chair, Gene Hugoson, in response to discussions about how the EQB could better fulfill its charter. The subcommittee, which met three times over the 2010 summer, consisted of the board’s five citizen members. Agency members were represented by staff who also participated in the discussions.

The subcommittee report recognized that over the past years, the prominence of the EQB has diminished, in particular, because of:

- The reorganization of state government in 2003, which eliminated the Office of Strategic and Long Range Planning and merged many of those functions with Department of Administration,

- The fact that EQB's budget is subject to review by legislative committees for state government operations and not by the environmental policy committees, and
- The transfer of energy functions to Commerce and the Public Utilities Commission in 2005.

The subcommittee also concluded that EQB is the one place where all agency environmental issues can be communicated to all agencies and the public, in turn improving interagency communication and coordination, and preventing duplication. Its basic recommendations call for the board to:

- Implement a robust strategic planning process
- Develop and implement a communication strategy
- Optimize tools and resources
- Establish mechanisms for sustainable board vitality

The subcommittee understood that because the board reports to the Executive Branch, how well it performs its policy planning and coordination roles is to some degree subject to the preferences and policies of any given administration. If the administration doesn't make it a priority, the members tend to follow suit.

This lack of priority and coordination between agencies tends to lead to organizations operating in silos. The EQB is also a public forum. Administrations and agencies may not be completely comfortable with the transparency and accountability the forum provides. This lack of cooperation, along with lack of transparency, is something that agencies have been criticized for by the public and Legislature.

Tomlinson noted that the subcommittee's concern, now, is that the Administration hasn't focused on this vision. Before any decisions are made regarding the future of the EQB, he argued that we all need to carefully consider where we want it to go and what we want the EQB to be.

Chairman Frederickson asked if the subcommittee believed that long range planning and strategy development had been missing in the past. Tomlinson responded that EQB had been charged with having a strategic plan in statute, but that it doesn't exist.

McCarville noted that the EQB does exist by statute and doesn't have to justify its existence. The Administration has to justify why it might want to eliminate or substantially reduce the role of the only forum for all agencies to get together and that exists in a neutral environment that isn't housed in one agency. By housing under one commissioner, she argued, the role tends to be what that one commissioner envisions it to be. She said EQB should sit by itself and remain a neutral body.

McCarville also noted that she felt that the board's lowest point was seeing the Legislature authorize the University to develop a water sustainability framework for \$750,000; when EQB was able to complete the state water plan for \$43,000. She concluded that visibility is the key issue, making legislators and commissioners aware of what EQB already has to avoid duplicate spending.

Commissioner Ehlinger asked whether the subcommittee discussed how EQB should engage stakeholders, particularly citizens. Member Duncanson replied that EQB has not had the opportunity of letting the public know what it does to engage the public or to make sure that the work of the agencies be made available to the public.

Ehlinger noted that he is on the board because the environment has an impact on health. The Health Department is going through a process of engaging the public in health matters and environmental health is as important to public health as the medical care system. He noted that it is important to make sure that health is part of the agenda along with economic development and environmental quality.

McCarville suggested that EQB does a good job of engaging stakeholders, although not the general public. However, the board's lowest level of visibility seems to be at the Capital.

Napstad posited that board may not be offering the public a perceived value. As a county commissioner, he sees a great deal of agency participation at annual Association of Minnesota Counties meetings. But if you are not on an EAW committee at the county, you likely don't know that EQB exists or what it does.

Napstad also offered that the board needs to start communications, more than improve them. The decision the board made earlier in the meeting is a case in point. To Marshall County and many other counties, it is no small matter to be relieved of the responsibility for conducting environmental review on a complex project. A press release announcing that the EQB had transferred designation of the RGU to a state agency would be important to issue. Napstad also suggested that the annual AMC meeting was a place for EQB to become a more public participant in the process and communicate its value. This would provide the opportunity, for example, to invite one group of "users" to give advice in developing the board's strategic plan. If the board were to develop a strategic plan with the dozen or so members present at the meeting, it probably would not be right.

Commissioner Landwehr mentioned that he was struggling with what a strategic plan might look like. He argued that the board's principal function of coordination should provide the focus, addressing questions such as:

- How do we envision coordinating in the future?
- How is EQB going to identify the issues it should address?
- How EQB could better coordinate and implement?
- What should we do differently as a result of a process?

Landwehr suggested that identifying for the board's own benefit how it communicates would be most important. He also argued that the main point of an EQB strategic plan should be to decide how the board operates. The topics of a one-year operating plan that might then emerge could include:

- Environmental permitting overhaul and automation
- Copper-nickel mining ... How we set up a discussion, not just among ourselves, but among all stakeholders

- Conservation and reuse of water
- Mississippi River conservation
- Local lake conservation
- Local resource conservation
- Land conservation on a watershed rather than county basis to intersect with TMDL process

Commissioner Rothman agreed that the board needs to identify high priority issues collectively and decide which ones to pursue right away.

Napstad concurred that the board could be the body that moves forward thinking about hydrologic boundaries and watershed management. He suggested that the need to look at this question on a higher, more strategic plane is evident and that the board – with the participation of local governments – is the proper forum to do so.

Commissioner Aasen mentioned that it could be very instructive to look at the Clean Water Legacy Act, the “G-16”, the Legacy Amendment, and the Clean Water Council, since, at the end of the day regardless of the topic, “you have to move people” and that takes political and technical “horsepower.” The board must really keep in mind how it fits in as it talks about the rest of this picture.

VIII. Overview and Discussion of:

- Governor’s Recommendation Regarding the Relocation of Environmental Quality Board Support and Administration to the Pollution Control Agency
- Related Legislative Activity

Aasen noted that the budget description describes the Governor’s position to house EQB at the PCA and to issue a report to the Legislature in January 2012 that recommends the board’s roles, responsibilities and staffing. He noted that this is the only concrete proposal that exists for EQB and suggested that the board should consider, in particular, environmental policy governance with EQB, the MPCA citizens board, Board of Water and Soil Resources, Clean Water Council, Public Utilities Commission, Legislative-Citizen Commission on Minnesota Resources, and the Lessard-Sams Outdoor Heritage Council all involved. He argued that it will be important to understand how all those pieces fit. While they all may have been built independently for good reason and may have fit at one time, Aasen questioned whether they fit right now. Given this picture, he suggested that one role for EQB might be that of board above boards, or a subcabinet with a separate citizen’s advisory committee.

Aasen also expressed the need to do something now: “There are things we need to do sooner than later. Let’s stack them up and decide what to work on.”

Patton summarized implications for EQB of the adoption of HF 1 and Executive Order 11-4, and noted that EQB staff, member agencies and stakeholders are working on the customization of EAW forms. He also singled out two bills of interest to the board: HF 182/SF 196, which would require a study of state and local water management and

impose a moratorium on rule making and HF 1360, which would reassign some EQB duties to other agencies and eliminate others. While the moratorium bill would charge the department of Administration with conducting the study, EQB would likely oversee it. The author of HF 1369 plans to bring the bill back next year and, in the mean time, expects the board to “figure this out.” Patton mentioned that the retreat is planned to give the board the opportunity to begin discussing its future and to help it frame up a response to the Legislature next year.

Aasen noted that all agencies are looking at budget cuts and that if sufficient cost savings are not realized, additional cuts may be required. He said that commissioners and the board will need to deal with the capacities they are facing, citing a recommendation by the Legislative Auditor for additional state assistance to local units of government on environmental review, which would be difficult to address in the current budget climate.

Tomlinson and the other citizen members thanked the commissioners for their engagement in the discussion.

IX. Audience testimony

Jim Erkel, Minnesota Center for Environmental Advocacy, expressed appreciation for the frame that the citizen’s report made with the distinction between theory and practice. He noted that the need for an EQB today is the same as 40 years ago, suggesting that coordination and cooperation are probably even more critical today. In the 40 years since its establishment, the promise of EQB has been weakened, disregarded and cut, he said.

Erkel noted that people have various levels of allergic reactions to looking forward, but that they do want effective government. The board needs to get back to its original purpose.

He also argued that EQB should be a stand-alone board, which comes down to an issue of adequate funding. He noted that EQB has the authority to use staff from all agencies to meet its mandate. He also suggested that it is important for the public, not just the regulated community, to have a better understanding of the board and its governance.

Goehring emphasized that the EQB has a lot of potential.

Duncanson mentioned that she had come to the meeting thinking that the law should be changed to allow alternates to represent agencies at EQB meetings, but was very impressed with the commissioners and their preparation.

Darrell Gerber, Clean Water Action, testified that the board should also keep in mind EQB’s coordination and long-range planning goals. Clean Water Action has seen agencies working together with improved coordination over water in recent years. He argued, however, that that cannot replace EQB or the need for transparency.

Gerber suggested that EQB gives the Administration the opportunity to step back from

day-to-day activities, which gives them an opportunity to be smarter together. He noted the opportunities with Legacy Amendment dollars, but suggested that they are not enough and that, to achieve success at the end of 23 years, the state will need more targeting and this coordination forum.

Gerber also asked members to please:

- Not lose sight of the board's role in environmental review
- Consider funding in the retreat
- Engage the environmental advocacy community in stakeholder discussions
- Re-examine, redevelop, reconsider and refocus on what this board can do

McCarville urged the board to not just recreate the citizen's report, but start from it.

Ehlinger reiterated the need community engagement in board discussions.

Aasen suggested that part of the retreat should consider what has been lost and whether EQB can fulfill it.

The citizen members thanked the new board members for their excellent contributions to the discussion.

Chairman Frederickson adjourned the meeting at 11:25 a.m.