

# **MINNESOTA ENVIRONMENTAL QUALITY BOARD MEETING MINUTES**

**Wednesday, September 21, 2011  
MPCA Room Board Room, 520 Lafayette Road, St. Paul**

**EQB Members Present:** Paul Aasen, Jonathan Bloomberg, Spencer Cronk, Kristin Weeks Duncanson, Ed Ehlinger, Dave Frederickson, Julie Goehring, Tom Landwehr, Paul Moe (representing Mark Phillips), Brian Napstad, John Saxhaug, and Erik Tomlinson

**EQB Members Absent:**  
Mark Phillips, Mike Rothman, and Tom Sorel

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

The meeting was called to order at 9:03 a.m. by Chair Frederickson.

## **I. Introductions**

Members introduced themselves, and at the request of the Chair, new citizen member John Saxhaug provided introductory comments. The Chair then asked for others in the room to introduce themselves, and thanked members of the public for their attendance.

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

The motion to approve the consent agenda and minutes of the May 5, 2011, EQB meeting was moved, seconded, and passed.

## **III. Chair's Report**

Chairman Frederickson noted the September 7, 2011, letter from the Chair sent to legislators and interested parties concerning results of the EQB retreat held in June 2011. He provided the identified elements of a vision for an effective EQB contained in the September 7 letter and invited comments.

## **IV. Executive Director's Report**

Executive Director Patton provided a summary of the move of EQB staff to the MPCA, and noted that the move does not alter the relationship of the board to state government or the relationship of staff to the board. He thanked MPCA staff for helping make the transition smooth. Mr. Patton also acknowledged the retirements of environmental review staff, Gregg Downing and Jon Larsen, and noted Mr. Downing's presence in the audience. Mr. Patton went over the upcoming meeting schedule, noting that dates would have to be shifted for the planned November and December meetings due to conflicts.

## **V. Adoption of Amendments to the Environmental Review Program Rules to Add a Mandatory EAW Category Applicable to Greenhouse Gas Emissions**

Mr. Patton stated the matter before the board was to approve the proposed amendment to the environmental review rules as recommended by the Administrative Law Judge, the amendment pertaining to the mandatory EAW category for air pollution. Mr. Patton went over the background of the issue as described in the annotated agenda.

Kathryn Hoffman of the Minnesota Center for Environmental Advocacy provided a letter to the board dated September 21, 2011. She alleged two errors in the ALJ report: One was contradiction as to applicable statutory authority, with the implication that an EIS is required “where there is a potential for significant environmental effects.” She stated this was important because that at no point in time did EQB staff analyze whether there would be significant adverse environmental effects of projects below the proposed threshold of 100,000 tons per year. The second alleged error was an incorrect interpretation of statute and rule, that where there is no permit required there is no major government action. She pointed out that there is a wide range of potential governmental actions unrelated to a permit. Ms. Hoffman took exception to comments made by EQB staff at the ALJ hearing that the public confused environmental review and permitting. She also emphasized the importance of environmental review in informing the public in addition to informing governmental actions, and she commented on the importance of the climate change issue. Ms. Hoffman urged the EQB to “go back to the drawing board.”

Commissioner Landwehr asked what led the EQB to settle on 100,000 tons per year as the threshold. Mr. Patton said that it was because that threshold would be the most common threshold for permitting. Mr. Patton also addressed the issue of analysis for significant adverse environmental effects of projects under the proposed 100,000 ton per year threshold, saying that the EQB relied on the analysis conducted by the MPCA and the federal government. Commissioner Landwehr asked why there was a need for environmental review given that permitting would be conducted for the same threshold. Mr. Patton answered that environmental review is always tied to a significant governmental action, and that staff thought the appropriate action would be one relating to air pollution. He stated that he appreciated the point being made by Commissioner Landwehr, but noted there was supplemental analysis that occurs with environmental review on a broader range of issues. Mr. Patton also noted that the amendment affects only the mandatory EAW category, and that discretionary environmental review could still be conducted. He also acknowledged Ms. Hoffman’s point that there were actions other than permitting that could qualify as major governmental actions, but that a permit relating to air pollution category seemed appropriate for the air pollution mandatory category and greenhouse gases.

Commissioner Aasen asked what impact the proposed amendment would have on discretionary review, and Mr. Patton stated there would be no effect because the exemptions from environmental review were not being modified. Commissioner Aasen noted that Barbara Conti of the MPCA air quality permitting staff and Assistant Commissioner David Thornton were available for questions, and also noted that scoping and practicality questions were part of the discussion nationwide over the greenhouse gas permitting thresholds, and that it is possible that the threshold could change over time as the science became better understood. MPCA Assistant Commissioner Thornton came forward to further describe the analysis MPCA did, acknowledged that the EPA has announced it would examine lowering the threshold over time, and noted that the lower thresholds of 10,000 or 25,000 tons per year capture only a marginal amount of additional greenhouse gas emissions. Commissioner Aasen described overarching environmental issues of moving water off land differently than 150 years ago, and the fact that substances are burned for energy.

Vice Chair Bloomberg comments that he supports the consistency of addressing this issue the way we deal with other criteria pollutants, that we're feeling our way through the issue and this is a reasonable approach right now. He also emphasized the "backstop" of the petition process.

Mr. Patton noted a concern of the Commerce Commissioner Rothman, who was concerned that the environmental review threshold should be changed as the permitting threshold changes. Mr. Tomlinson asked how many additional projects are expected to require environmental review with the changed threshold. Mr. Patton responded approximately five per year, and that most projects would also trip other mandatory category thresholds. Commissioner Landwehr returned to the question of potential redundancy of permitting and environmental review in this case, and Commissioner Aasen reemphasized that environmental review analyses a broader set of issues.

Commissioner Landwehr moved approval of the resolution. Commissioner Ehlinger seconded and the board adopted the proposed motion with 10 ayes and no nays.

#### **VI. Reassignment of the Responsible Governmental Unit (RGU) from the EQB to the MPCA for the Environmental Review of the Fairmont Power Plant, Fairmont MN**

Mr. Patton provided the staff report, stating that the EQB is assigned RGU status under the rules, but lacks both capacity and expertise to prepare the EAW for this project. MPCA has the capacity and expertise and has agreed to be the RGU. Commissioner Aasen affirmed the willingness of the MPCA to take the reassignment. Mr. Bloomberg moved approval of the resolution. Commissioner Cronk seconded, and the board adopted the proposed motion with 10 ayes and no nays.

#### **VII. Summary of EQB Retreat and Discussion of EQB Vision**

Chair, Dave Frederickson, reviewed the purpose and results of the board's June 16, 2011 retreat, which was facilitated by Charles Peterson of the Management Analysis Division of Minnesota Management and Budget. The retreat produced statements expressing a vision for the EQB's future work. The board's goal for this meeting was to hear from citizens about the environmental vision they would like to see for Minnesota and what they think the board should do to achieve it.

Former State Senator Bob Dunn applauded efforts to revitalize the board, which he considers an important, crucial element of state government. He argued that while the state needs economic development, it is essential that it be done in a way that is compatible with the environmental and that is sustainable. He pointed out that EQB is in a unique position because it has some roles that would be really hard for any other organization to fill: the environmental review program, basic to what goes on here in the state; strategic planning, which is essential to see that we go in the right direction at the right time; and studies of complex issues.

Dunn identified two aspects of the recovery and the road back for EQB. Short-term, he suggested that the board prepare for a 2013 legislative initiative. He considered it fortunate that EQB is located at the PCA and "with an understanding by the

commissioner and others that this is not anything but a housing matter, not an attempt to bring the board under the PCA,” since “the idea of maintaining a separate identity and complete independence as far as possible under the current circumstances is essential.”

Long term, he suggested the question is “What do we want the EQB to be?” Dunn argued that the board should develop a strategic plan for the structure and function of the EQB. A congress should be convened with a gathering of stakeholders, environmental organizations, academics, business interests like the chamber of commerce and other activists to come up with ideas for a plan for where the EQB should go. He thought that if this could be convened with the governor, it would have a higher visibility and be a “step in the right direction.”

Among other ideas, Dunn summed up his view of the board’s needs as including: a) a chair from the governor’s office, the chief advisor, “where they can have the governor’s ear”; b) an independent, full-time executive director – “It’s a big and crucial job”; c) a separate, free-standing situation with a separate structure, budget and annual work program; and d) adequate funding.

Commissioner Aasen asked what started the conversation about the need for EQB 40 years ago. Dunn said he did not recall, but that establishment of the Environmental Protection Agency inspired it.

Member Napstad noted citizen ambivalence about the environment and anti-regulatory, anti-government sentiments. He asked whether Dunn thought it important for EQB to try to reach this sector of the public. Dunn stated that he didn’t think it could be done; yet, he held that Minnesotans showed their support for the environment with their vote for the Legacy Amendment.

Dave Zumeta, Executive Director of the Minnesota Forest Resources Council, followed up on Senator Dunn’s comments with a specific example of the important role the EQB has played over the decades: the preparation of a Generic Environmental Impact Statement on Timber Harvesting and Forest Management in Minnesota.

Under the EQB’s direction, from 1990 to 1994, a “monumental” study was conducted that has had a “profound” impact on forest policy in Minnesota for the past two decades. This study led to formation of a 25-person forestry roundtable that met from 1994-95, essentially to transform the technical and policy recommendations in the GEIS into draft forest policy legislation. The roundtable’s recommendations were the basis for the language in the Sustainable Forest Resources Act, which was passed by the Minnesota Legislature in 1995. That legislation authorized creation of the Minnesota Forest Resources Council, which has a long record of accomplishments over the past 16 years. Without the EQB, there would be no Sustainable Forest Resources Act and no Minnesota Forest Resources Council.

Zumeta called attention to the vision laid out in EQB Chair Frederickson’s letter, noting his view that the need for the EQB is perhaps even greater now than it was in the 1980s. He also suggested there is a compelling need for implementation of the final element in the chair’s letter:

“Coordinate environmental vision. A unified vision will help agencies speak with a common voice on environmental issues and ensure a constructive conversation about state goals and how to collaborate in achieving them.”

Zumeta argued that EQB could provide the leadership for developing this coordinated environmental vision, enrolling the help of the many institutional structures in place in 2011 that were not in place in the 1980s: the Clean Water Council, the Lessard-Sams Outdoor Heritage Council, and the Forest Resources Council, among others. If these and other state entities were to develop a broad, high level, strategic vision for the environment, he felt certain that result would be extremely valuable to the Governor, the Legislature and the people of Minnesota.

Commissioner Landwehr asked what mechanism brought the Forestry GEIS about. Zumeta responded that a citizens’ petition requesting that EQB study the cumulative effects of timber harvesting triggered the study.

Darby Nelson, former state representative, noted that he agreed with nearly all the conclusions of the subcommittees; that the EQB’s mission is valid, and should be revised, strengthened and clarified.

As Nelson put it, “A plethora of issues face our state now, and will continue to do so into the indefinite future. Those include population growth, air quality issues, water issues, groundwater, drinking water, surface water, lakes and streams, transportation, land use plans, solid and hazardous waste, economic development, and the list just goes on.” Nelson made the point that “these issues are not like a set of individual silos unconnected to the others. Different agencies, different constituencies, yes, but they all interconnect.” He gave population growth, as an example, which touches a wide variety of environmental and other issues, including transportation, air quality, water availability, land use, solid waste management, and economic development, among others.

According to Nelson, “We need groups in the agencies talking together, working together. We need an entity that can facilitate and coordinate and has the capacity to conduct strategic planning. Some might say we can’t afford an agency like EQB when finances are tight and we should just give up all financial planning. I would strongly suggest that this is backwards thinking. The greater the fiscal stress, the greater the importance of making sound, strategic decisions. Coordinating and planning, done well, prevents us from making costly mistakes, and we’ll be financially better off as a result of intelligent planning. We cannot afford not to do strategic planning, and EQB is particularly well suited to address these challenges. The citizens committee on the future of the EQB and their summary make five points as to why EQB is the proper entity to take on the tasks required and I recommend those to you.”

Nelson offered that it made no sense “starving” staff for this effort when faced with the types of needs before the state, including tasks like strategic planning, helping resolve difficult and complex issues, environmental review oversight, and others. He also agreed with the subcommittee’s recommendation that developing functional communication strategy should be given high priority. And he suggested that entities like the Public Utilities Commission, the Metropolitan Council, along with citizens would be welcome providing EQB insight into the issues of mutual concern.

He encouraged the rejuvenated EQB to produce a biennial, if not annual report on the state of the Minnesota's environment. He also expressed the hope that EQB would hold, if not an annual, at least a biennial, daylong event where the board presented the state of the environment to the public and the press as part of its communication strategy and where various constituencies including citizens would be welcome to make input. He cited the DNR round table January meetings where they bring everyone together and get everyone to interact. "Communication is the most difficult thing we are called to do under the best of circumstances," he said, "and because we never have the best of circumstances, you have to work on it."

Nelson closed by commending the subcommittees "for laying out a path by which the EQB can obtain support necessary to help Minnesota make sound environmental and development decisions for the future."

In response to a question by Commissioner Aasen, Nelson argued that the functions EQB was designed to provide were different than those even a well functioning cabinet could offer.

Kristen Eide-Tollefson suggested that EQB base its approaches to coordination and strategic planning on sustainable development principles. Within this framework, she recommended that EQB:

- Host a technical conference to find tools to integrate systems dynamics and life-cycle design
- Use web-based resources to collaborate on education and outreach to all sectors
- Strengthen public partnerships for environmental quality and intergenerational equity
- Clarify sector partner roles, for example:
  - Administration – provides leadership and vision
  - Public agencies - Ecological Development; apply principles and tools to protect natural capital, essential resources; support appropriate regulation; take a long term perspective
  - University and NGO – R&D partnerships; grant and funding partnership opportunities; outreach and education
  - Business - Economic Development, sustainable utilization of natural capital and financial capital
  - Local and Tribal Governments – Cultural capital managers. This is where decisions are made and implemented
  - Citizen partners – provide bottom up leadership and vision
- Support sector collaboration and joint fact-finding in:
  - Generating scientific information to be used in an iterative process
  - Generating options and formulating recommendations
  - Following through on the agreements reached
  - Creating a foundation for adaptive management and other innovative strategies

Eide-Tollefson also recommended that EQB consider the following goals in its strategic plan:

- Revitalize and rebuild EQB's constituency base
- Take leadership in redefining the relationship between Minnesota's environment and economy
- Provide a shared vision that aligns the resources of EQB agencies towards big picture goals
- Free agency resources from unnecessary constraints
- Consider activation of an EQB Citizen Advisory Council (see chapter 342, 1973 c 342 s 1)
- Continue to provide integrated technical support for environmental review, local decision making and citizens

In closing, she expressed the hope that EQB would "keep us in the loop" and asked the board to consider how it would do that.

Erik Tomlinson asked Eide-Tollefson if she had suggestions for how the board should engage citizens. She cited the excellent job EQB staff has done in the past on energy facilities-siting projects in which a designated staff brought information to affected communities and assisted them in understanding issues.

Representative Phyllis Kahn addressed the board, noting her long-term interest in the environment. She suggested words do matter and that EQB had a bigger task than just protection or control. She said that the original idea, still important, was that EQB be kept separate from lead environmental agencies. She suggested, too, that an agency commissioner should not chair the board, but that if that were to continue, it would be especially important for the chair to "maintain his separate hats." She noted her disappointment in EQB in recent years with environmental review today rarely progressing from Environmental Assessment Worksheets to Environmental Impact Statements.

Kahn acknowledged that EQB needed a stable source of funding to support both the technical and philosophical staff it requires and offered that a small percentage of the cost of environmental review might be redirected to support such staff. MNGeo provides a model for this.

Member Tomlinson said he perceived a lack of communication between EQB and the Legislature and asked Kahn what the board might do to better communicate with that body. Kahn suggested that EQB should, at the start of every session, present to every environmental, Legacy and agricultural committee of the Legislature with the goal of having them regard EQB as a resource, a "really good place to go to" to get good information.

Member Napstad mentioned that both Dunn and Kahn noted the importance of EQB having deep involvement with the Governor's office. He asked how important Kahn thought it was to quickly move to the Governor's office being chair. She replied that the

Governor “owns” the executive branch. Member Bloomberg argued that active engagement and commitment of the Governor was most important, regardless of who chaired the board.

Darrell Gerber of Clean Water Action noted that he considered the reports from the EQB subcommittees refreshing. He urged the board to look at both crosscutting and emerging issues. He has been involved with a Department of Health committee on contaminants of emerging concern and the development of health-based limits. He noted the need for the state to consider habitat-based standards, as well.

Gerber argued that EQB has a unique role to play with implementation of the Water Sustainability Framework, a role that transcends that of the Clean Water Council.

Regarding the role of environmental review, Gerber suggested that a fundamental lack of understanding existed among decision makers and that an effort by EQB to educate them was important.

Gerber expressed support for the idea recorded in the June EQB retreat that legislative decisions be made with an understanding of their environmental consequences by adopting the concept of “environmental notes,” modeled after fiscal notes.

He cautioned the board to not think of taking on the role of public education to the extent that it might suggest the exclusion of other agencies educating and reaching out to the public on environmental matters. Each agency should feel a responsibility for doing this.

Gerber agreed with the testimony of others that EQB needed support from the Governor and Legislature to find funding sources separate from the General Fund. He suggested the possibility of pulling dollars from funds that benefit from the services of EQB. Lawrence A. Baker, Ph.D., Research Professor at the University of Minnesota, stated his concern about the fate of the Environmental Quality Board. He suggested that the purposes of the EQB were even more important now than when they were written. In his view, a resurrected and properly funded EQB could play a major role creating a sustainable Minnesota.

On the topic of state water management, he called the board’s attention to the findings of the Citizens League report: “To the Source: Moving Minnesota’s Government Upstream.” (Baker served on the Water Policy Study Committee that wrote the report.) He considered Finding #4, which calls for a collaborative model of governance that promotes the roles of those who are affected, and Recommendation #2, which asks for the redesign of government roles and responsibilities to promote model with the public and among government agencies, as particularly appropriate for EQB to pursue. He also suggested that EQB would be well suited to address the report’s recommendation for a single online water resources information hub.

According to Baker, as the state moves into the broader goal of “sustainability,” there will be an even greater need for an empowered EQB. As an example, he noted the relatively recent recognition of the nexus between water and energy, between wastes and resources, and between the economy and the environment. Conventional agencies are



often “siloe” by regulatory requirements, he noted, and cannot address these broader needs. EQB could do so, however, within its current statutory mandate.

He also suggested that a new and empowered EQB would not have to be a large entity, nor conventional in structure. He offered that a core staff of 10-20 professionals would suffice, with the core group augmented by “rotator” professionals with specific expertise who would work on particular projects on loan from their agencies, universities, and non-profit organizations.

Baker recommended that a “matrix management model” be used in which EQB staff would lead projects supported by staff from other agencies. The National Science Foundation, one of the world’s most prestigious scientific organizations, uses this approach in staffing projects. At NSF, there are few permanent program managers; most are brought in from universities to serve for two-to-three years, after which they return to their agencies.

In summary, he suggested that a newly empowered EQB could be a new type of structure within the state of Minnesota, one that is lean but adaptive, and able mobilize quickly to handle new tasks as they arise.

Chairman Frederickson concluded the discussion by telling members that the board needed to formalize its next steps. He said he planned to establish a subcommittee to lead this and encouraged members to contact Bob Patton if they would be interested in serving on it. He also noted that cabinet members were pursuing a conversation with the Governor’s office. Member Duncanson asked Chairman Frederickson to send all members a summary of the results of subcommittee meetings. Bloomberg commented in closing that the EQB roadmap is out there to take those next steps.

Chairman Frederickson adjourned the meeting at 12:05 p.m.